Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02087/2019

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On the 13 November 2019	**On 27 November 2019**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

A O
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M. Cleghorn, Counsel instructed on behalf of the Appellant
For the Respondent: Mr A. McVeety, Senior Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008
Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Turkey. He appeals with permission against the decision of First-tier Tribunal ("FtTJ"), promulgated on the 6 August 2019 dismissing his appeal against the decision to refuse his protection and human rights claim.

2. The appellant's history is set out in the decision letter of the 24 February 2019 and the decision of the FtTJ at paragraphs 1-3. The appellant arrived in the United Kingdom having been granted leave as student from 2012 until January 2013. He was issued with a 6-month student visa on xxxxx 2016 and entered the using his own Turkish passport with a student visa valid until xxxxxxxx 2016. He applied for leave to remain under the EC Association Agreement which was refused on the 7 June 2017. On the 29 December 2017 return preparations were made for his departure to Turkey and on the 29 March 2018 he was served with a RED.0001 for overstaying his leave. He then made a human rights application on the 10th April 2018 which was refused on the 18th April 2018. He made a claim for asylum on 12th June 2018.

3. He provided a screening interview and was interviewed about the factual basis of his claim on December 3rd 2018. The basis of his claim can be summarised as follows. The appellant claimed to be a member of the Gulen Movement (also referred to as "FETO") which he stated had joined when he was 18 years of age as he was introduced to the elder brothers (ABIs) when at university.

4. His role in FETO was to obtain subscribers to a newspaper called "Zaman". In interview he said he also went to different shopkeepers and asked them to subscribe to the Zaman (Q35), a FETO newspaper He was also forced to read books and listen to cassettes by the ABI's and was given no choice but to pray five times a day. That is why he left the house with them as he did not want to pray and did not want to be forced to listen to the material that they gave him. He did not identify any other role that he had participated in support of FETO.

5. He later stated that he had taken part in meetings and that he had agreed with all their thoughts at the time. When asked to describe what happened at the meetings he attended he said that they were normal gathering of friends sitting down talking having team nothing to do with terror.

6. He stayed in FETO accommodation for 1 ½ months.

7. He stated that nothing could attract him to the FETO organisation but found it comfortable that he was able to stay in the accommodation rent-free.

8. Since 2016 he had not continued his support with FETO and had not had any problems the Turkish authorities. He confirmed in interview that between 2013 – 2016 he was a completely away from FETO (Q63).

9. On 5 November 2016 he received a phone call from his father in Turkey informing him that the Turkish authorities had searched the family home. When they arrived, they took the family computer and took his father to the police station where they questioned him for four hours. The police asked where the appellant was and whether his father had any connections to FETO.

10. The appellant stated he had not completed his national service in Turkey and was able to postpone that until 2017 but as he is now a fugitive from the Turkish government if sent back he will be made to join the army.

11. In a decision letter dated the 24 February 2019, the respondent refused his claim for asylum and humanitarian protection.

12. As can be seen within those paragraphs, the Secretary of State set out a number of credibility issues relating to the core aspects of his claim to be of interest to the Turkish authorities. In relation to his claimed involvement in FETO, the respondent made reference to his account of duties within FETO, his own personal motivations behind joining the organisation along with the objectives of FETO. When considering his answers in his interviews, the respondent noted that on his own admission he was forced to participate in the FETO related activities and he did not pursue them out of his own will and that when given an opportunity to provide his motivations behind joining the organisation, he stated that nothing had attracted him but he had met some friends. The respondent considered that the appellant had not provided any details as to what had drawn him to the movement. The respondent also took into account that he had stated that he was not in a good situation financially and that he would be more comfortable if he was working on renting the house. Therefore it was noted by the respondent that his intentions are staying at the houses of FETO was not because he was motivated to be involved in the organisation but because it helped his financial situation.

13. As to the meetings he claimed to have attended, the answers he provided as to what the meetings were about was considered to be vague and lacking in detail and he had failed to provide details of the "thoughts" that he agreed with.

14. When asked to provide information about the cassettes that he was forced to listen to and the books he read, the respondent noted that he had failed to provide any specific information about the cassettes that he had listened to (see Q45) and could not give specific details about the information that he had obtained by listening to those cassette. He also stated that he did not read any books in connection with FETO. Thus the respondent considered that he had not remained consistent with the FETO activities that he participated in.

15. The appellant had been asked in interview to provide information about the organisation, but he could not provide any timeframe as to when the movement was founded. As to the aims of the organisation he set out his reply at question 58. However the account given was considered to be inconsistent with the level of detail expected from a member of the organisation.

16. He was asked how the organisation of FETO implemented their aims, and he stated "if we were to follow the path of Hoca Efendi good things will happen to us we will have a good community and working good employment and bring about children in a better way by following his teaching" (Q58). That answer was assessed against the background information, but the respondent considered that his account was vague and lacking in specific details. It failed to provide any detailed information with regards the motivations within the organisation and how the organisation

implemented these aims. The account provided was inconsistent with the level of detail expected from a member of the movement.

17. It was further considered that he provided no evidence of his involvement in the organisation.

18. As to his claim that either on 15 November 2016 on 5 November that he was informed that his affiliation with FETO I brought him to the attention of the authorities, it was noted that he had made no mention about that event in his screening interview or his PIF. When given the opportunity to make any amendments to his account in the screening interview, he made no mention of it

19. it was further noted that if his FETO affiliation would be accepted, he only had a minor role within the movement and that his affiliation ceased in 2013 and therefore there was no reasonable explanation given by him as to why he would be of interest to the Turkish authorities.

20. Whilst the respondent considered the country materials which made reference to 50,000 people having been jailed for suspected ties to the attempted takeover in July, it was noted that the appellant left Turkey before the coup attempt and that he had not demonstrated that he had held a position within the movement or that his occupation that would have brought him to the attention of the authorities, for example a civil servant, as he was a hotel receptionist. By reference to the country materials that linked people to FETO, the respondent concluded that he had made no mention of holding a bank account with bank Asya or being affiliated with the Gulen affiliated institution. Whilst his account of affiliation with FETO had been rejected by the respondent, it was noted that even if it had been accepted, Zaman newspaper was Turkey's biggest newspaper and had given no reasonable explanation as to how it would come to the attention of the Turkish authorities on the account provided. Given his own evidence that he had stopped any affiliation in 2013, he had given no reasonable explanation as to how he came to the attention of the Turkish authorities.

21. The respondent made reference to the arrest warrant provided, however it was noted that the arrest warrant stated that he could not be interviewed by the Turkish police on 6 November 2016 however the appellant stated that his father told him about this event on 5 November 2016, a day before the event occurred. Therefore it was considered the appellant's evidence was inconsistent that his father had informed him of this event before it took place. The warrant not been presented in black ink and had been signed by hand whereas the translation stated that the arrest warrant been signed electronically therefore no weight was attached to that document.

22. As to military service, it was noted that military service is compulsory for all male citizens between 20 – 41 years of age (with some exceptions such as the mentally ill, or for health reasons). However it was further noted that the appellant was able to postpone military service whilst abroad and that given the age he was at the time for studies and the age at the time came to the UK, it was accepted that he had not completed his national service. Consideration was given to the country materials and that penalties the draft evasion and desertion would not normally be regarded as persecution. As regards Turkish national service, the guidance stated that in general

the conditions and/or treatment likely to be faced by person required to undertake compulsory military service would not be so harsh as to amount to persecution or serious harm. The respondent also noted that the Turkish Parliament in 2018 and ratified a law which will enable Turkish citizens to reduce the term of their military service by paying a certain amount of money. The law would enable men to complete military service in 21 days instead of 5 ½ or 12 months if they are university graduates and pay an amount of money to the government through bank accounts.

23. According to the law, citizens born on or before January 1, 1994 will be required to complete just 21 days of military service if they pay 15,000 Turkish lira.

24. The respondent therefore concluded that it not been demonstrated that he would be at a real risk of persecution or serious harm on return to Turkey.

25. The appellant sought to appeal that decision. In a decision promulgated on the 6 August 2019, the FtTJ dismissed the appeal having concluded that the appellant had not given a credible or plausible account as to his activities in Turkey and that he would not be at risk of persecution or serious harm contrary to Article 3, either on account of any political opinion held or imputed to him by the authorities or by reasons of his claim relating to military service.

26. Following the dismissal of his appeal, grounds of appeal were issued for permission to appeal and that application was refused by Designated First-tier Tribunal Judge Manuell on the 30 August 2019. On reconsideration was granted by Upper Tribunal Judge Grubb on the 17th September 2019. He refused to grant permission on ground 3 relating to the appellant's claim outside the Rules but granted permission on grounds 1 and 2.

27. As a result of the grant of permission the appeal comes before the Upper Tribunal, Ms Cleghorn of Counsel who appeared before the FtTJ relied upon the grounds as drafted.

Ground 1:

28. Dealing with ground 1, she submitted that the judge had found that the appellant was only interested in FETO when they offered him financial personal gain, but he was not truly interested in their doctrines at paragraph 14. However the judge then made an entirely contradictory finding when she stated that "he knows little about the organisation and it is unlikely that he was involved in it in anyway" (at [15]). She submitted that it was not clear whether she believed the appellant was involved in FETO at all and this was significant because of the country materials dealing with the risk for those involved in the movement. She submitted that the authorities would not care why someone would involve themselves in FETO and the judge had found that he did this because they had offered him financial gain. Thus she submitted, the judge had made inconsistent findings at paragraphs 14 and 15.

29. She submitted that at paragraph 16 the judge made a finding that she accepted that he was involved again, and this was a further inconsistent finding.

30. Ms Cleghorn direct the Tribunal to paragraph 17 of the decision. The written grounds stated that it was not clear why the judge assumed that the appellant would give a university address stating "no one in their right mind would for example give halls of residence as their home address. It is submitted that it is far more likely that until a person has established a permanent address i.e. one that goes beyond eight months of the year, would give their parents address until they actually ceased living with their parents". In her oral submissions she submitted that the judge reached a finding that he lived away from home and did not accept that that address would be as home address but that somebody would not give their address as their university address.

31. She submitted that the country materials (Human Rights Watch, World Report 2018 Turkey January 2018) at page 6 relating to freedom of expression, association and assembly made reference to the prosecution and jailing of journalists who were doing their work which continued after the closing of media outlets since the coup attempt. She made reference to a first trial hearing in March of a group of journalists accused of FETO membership, the court releasing on bail 21 defendants had been held in prolonged pre-trial detention but later a new investigation was undertaken, and none were released. The three judges who had ruled to release the journalists were suspended along with the prosecutor. The trial of the 19 journalists and board members and other personnel from the Cumhuriyet newspaper on charges of FETO links began on July 24. At page 10 of the AB (OHCHR report on the state of emergency on human rights in Turkey January – December 2017, 20/3/2018) the report made reference to the state of emergency having led to considerable limitations of the civic space. The government permanently closed 1719 organisations/human rights, humanitarian, lawyers associations, foundations and NGOs. It liquidated 166 media outlets, including publishing houses, newspapers and magazines, newsagent's, television stations and radios. The closing down of media outlets was accompanied by the confiscation of all their assets without compensation. Over a hundred thousand websites were reportedly blocked in 2017 including a high number of pro-Kurdish websites and satellite TVs. The climate of fear and judicial harassment has compelled many immediate human right NGOs to self-censorship. She submitted that against that background it was plausible that if his name was found on a computer the authorities would consider that he was associated with FETO. She submitted that this was particularly the position as evidenced at paragraph 43 of the same report where it was stated that the presidential decrees adopted since July 2016 had broadened the scope of the original emergency to include measures against individuals who "belong to, connect to, or have contact with the Fetullahist terrorist organisation and public personnel who have membership in, affiliation or connection with the organisation as well as the spouses and children of such persons".

32. Ms Cleghorn referred the Tribunal to page 33 AB (Stockholm Centre for freedom (SCF) Turkish government conducts 38,725 operations against alleged members of Goole and movement in year dated 30/10/2018 article). She submitted that the Turkish police conducted 38,007 25 operations against FETO in a year and that a total of 19,007 people had been detained over alleged links to the movement by the end of

September 2018. She therefore submitted that it was plausible that what the appellant was saying was reasonably likely to be true if his computer was confiscated and his name was linked to FETO.

33. As to paragraph 5 of the grounds, she submitted that the FTT J imposed her idea of how the organisation would work. The issue was not whether his details would be "annexed" the newspapers delivered but it was not clear that the appellant suggested his details would be annexed but that presumably any organisation the size of FETO would have computer records of various things. She submitted that it was not clear why the FtTJ would presume his name would not appear on a database somewhere in relation to the subscriptions.

34. The FtTJ's finding out [20] was also the subject of challenge on the basis that it was not a sustainable finding. It was submitted that it was not suggested anywhere that it was only those on a "wanted list". The judge accepted that those were not present in Turkey at the time of the coup did not necessarily mean that the Turkish government would not still draw the conclusion that he had been involved with the Gulen movement (see [26]) but the FtTJ returned to the issue of a wanted list being determinative of whether someone would be at risk on return. She submitted that this was plainly wrong given the sheer number of those who have been arrested.

35. Mr McVeety on behalf of the respondent relied upon the Rule 24 response filed on the 8 October 2019. He submitted that the FtTJ gave sustainable reasons for rejecting the appellant's claim to be involved with the Gulen movement and that the judge made findings at paragraphs 14, 15, 16, 17 and 18 which when combined with the adverse findings where the judge considered and rejected the arrest warrant as not genuine, led to the overall conclusion that he had not given a credible or plausible account of being of interest to the Turkish authorities. The judge was also entitled to reach an overall view of the credibility of the claim including the fact that having made an application under the Ankara agreement (which was refused) the appellant then overstayed and when served with removal papers made an application under article 8 and only when that was refused was any claim for asylum made.

36. In his oral submissions, Mr McVeety submitted that there was no inconsistency in the findings of fact made by the judge at paragraphs 14 and 15. At [14] the judge was considering the first part of the appellant's claim and found that his lack of knowledge about the details of the organisation indicated someone who was never involved with the organisation in any meaningful way and that it was unlikely that he would be able to persuade people to subscribe to the newspaper. The bottom part of paragraph 14 was referring to the appellants own account. When the paragraphs are read together it is plain that the finding made by the judge was that the appellant was not involved in the Gulen movement.

37. As to the challenge to paragraph 17, he submitted that the submissions made by Ms Cleghorn applied a "westernised approach" as to what people do in the UK when they are university. However, that missed the point -the judge was stating that the appellant had not been using the family computer and that it would not reveal any links to FETO.

38. As to names on lists, he referred the Tribunal to the CPIN dealing with Turkey: military service (September 2018). That made reference to the government maintaining a sophisticated national database of military service, making evasion almost impossible and that once the government is aware of those who have evaded military service their name and address is forwarded to the security authorities by the administrative authorities and they are authorised to begin a search for those persons. Simultaneously the military branches in question send an official letter to their address stating that they have become draft evaders and they have to apply to their military branch to complete the relevant procedures. He submitted that therefore there was a system in place. Against that background, it was open to the judge to find that he was not on any list and the findings of the FtTJ were consistent with the background.

Ground 2:

39. This ground related to military service. Ms Cleghorn submitted that it had been accepted on behalf of the respondent that the appellant had not completed his military service as reflected in the decision at [10].

40. The background evidence set out in the CPIN Turkey: Military service September 2018 at paragraph 7.1 makes reference to the requirement for military service. The appellant has not completed military service because he left Turkey with a Visa to study English in the UK which expired in 2017. She therefore submitted that he had evaded military service as he has not been pursuing education.

41. The grounds made reference to the decision in Sepet v UK [2001] EWCA Civ 681 confirming that any person avoiding military service to be sentenced to a period in prison. The current CPIN made reference at 7.5.1 for the evasion of military service to include prosecution and either a fine or imprisonment of between one and 36 months.

42. It was submitted on the appellant's behalf that any period of time held in prison in Turkey would be in breach of Article 3. The written grounds made reference to the February 2016 CPIN which made reference to the prison facilities remaining inadequate, not meeting international standards, underfunding and lack of access to adequate healthcare and overcrowding in some prisons. The written grounds make reference to the above information being taken prior to the coup. From this it was extrapolated that it meant that already serious overcrowding would be exacerbated by the imprisonment of another 50,000 by the president. Thus it was admitted there was a real risk of Article 3 harm arising, but the judge failed to engage with that argument.

43. In her oral submissions as Cleghorn pointed to the material at p.7AB in support of her submission.

44. Mr McVeety on behalf of the respondent submitted there was no evidence that the appellant had ever been called for military service and posed the question that if that was so why had he not been arrested given that he had left Turkey in 2016 when he was aged 24 and made reference to the CPIN and the methods used by the police and the authorities who have lists of those evading the draft. Given that the information

makes reference to those who are no longer studying, and the methods used by the authorities to detect those in this position, there is no evidence that has been any attempt to track him down which was supported by the appellant's own evidence that his family would have been aware of this.

45. As to prison conditions, there was no evidence before the FtTJ relating to such conditions and in order to demonstrate a breach of Article 3 cogent evidence would be required therefore this was not dealt with by the judge because there was no such evidence to show a breach of Article 3. Consequently he submitted, the appellant is not a conscientious objector, there is no evidence whatsoever that he has been called for military service there is nothing in his witness statement or the interview and it is possible to infer from his own evidence that he is in contact with his family given that the arrest warrant was sent to him but that there was no evidential foundation to establish any risk to him. He submitted that there was no evidence that the authorities had been to his home looking for him.

46. Ms Cleghorn by way of reply made reference to his interview at question 81 where the appellant stated that all males in the age of 20 did military service and that as he was at university between the ages of 20-22 he was able to postpone his military service and as he came to the UK he was able to postpone it until 2017. Now he has no legal right to postpone it. She submits the issue is what happens after 2017 and that he would be at risk of serious harm on return.

Discussion:

47. I am grateful for the submissions made by each of the advocates and I have taken into account the matters raised both in the written grounds and in those oral submissions as recorded above. I can only interfere with a decision of a First-tier Judge if I it has been established that the decision involved the making of an error on a point of law. Having considered the submission made in the light of the FtTJ's decision, I am not satisfied that the decision of the FtTJ involved the making of an error on a point of law. I shall set out my reasons for reaching that decision below.

48. The grounds challenge the findings made by the FtTJ at paragraphs 14 and 15 on the basis that she had made inconsistent findings. However, in my judgement the findings of fact should not be read in isolation but should be read in their entirety.

49. The FtTJ made the following factual findings:

    1. The FtTJ made reference to his evidence concerning his involvement with FETO and that other than the generalisation of praying five times a day, fasting, making donations to people who needed help, he could give no details about the movement, despite his claim to have listened to cassettes and have sat around having tea and talking about particular things.

    2. The judge made reference to his evidence which related to the aims of the organisation. The FtTJ found that the appellant's lack of knowledge about the details of the organisation were indicative of someone who was never involved with the organisation in any meaningful way and particularly, if he was unable

to provide information about the organisation, it was unlikely that he would be able to persuade people to subscribe to a newspaper issued by that movement. The judge found "in my judgement, his evidence is that he only involved himself with the ABIs when they offered him financial or personal gain but was not truly interested in their doctrines, aims and objectives" (at [14]).

3. The judge rejected the appellant's explanation for his failure to record details about the history of the movement. Whilst the appellant was aware that on special religious days people go to the mosque or be invited to houses, the appellant never did either. The explanation was that he had not been involved with the "Ceemat" from 2013 – 2016 and this was why he could not recall any details about the history of the movement. The judge found that "the appellant will be unlikely to forget the history of the movement he claims to have believed in and promoted by persuading people to subscribe to their newspaper" (at [15]).

4. The FtTJ recorded that the appellant did not know the movement was in any other countries or if it owned, ran or was affiliated to any other organisation in Turkey. The judge concluded, "this indicates the appellant knows very little about the organisation and it is unlikely he was involved with it in anyway."

5. When considering his history, the judge made reference to account that in 2013 the appellant returned to his home and had nothing more to do with FETO and did not collect any new subscribers. "This would mean that he lived and worked in Turkey as a hotel receptionist for three years before leaving to travel to the UK" (at[16]).

6. The FtTJ considered the appellant's claim that the authorities had come looking for him. The basis of that claim was that while he was at university he actively worked for FETO by finding subscribers to the Zaman newspaper and claimed that there was evidence on his computer that he signed papers in respect of the people he managed to persuade to subscribe to the newspaper. His claim was that there would be a trace of his involvement with FETO on their computer as his signature would appear alongside the new subscribers signature to confirm their agreement to purchase the newspaper. The judge did not accept that account.

   (a) Firstly, if the appellant was living in accommodation away from home, the address that will be found for him would not be his family's home address but that of his accommodation when he was at university and the computer he would have use of that time, could not be described as the family computer, which is the one he claims was confiscated by the authorities. As the appellant lived away from home, the computer he used university would not be shared with his siblings and therefore, the judge did not accept that the computer in his family home would reveal any links to FETO.

   (b) Secondly, the judge found that any FETO related financial matters would be unlikely to be on the personal computer of the appellant and if they did exist, would be on a computer controlled by FETO (see [17]).

(c) Thirdly, the appellant's evidence was that a person could buy the Zaman newspaper anywhere but because people did not have the time to do that it could be delivered. The judge found that any information about subscribers would not necessarily have to have the name of the person who sold the subscription to them and it there to as their details would be all that will be required to have the newspaper delivered and to obtain payment from them. She did not accept that the appellant's name would appear on a computer linking him to the Zaman newspaper or FETO.

7. At [19] the judge made reference to the 2016 coup that had taken place in Turkey and that the president had rounded up all the academics and civil servants and in particular those were members of the Gulen movement and it was declared a terrorist organisation although it was not on the UN list as such. The judge therefore considered the appellant's claim against that background.

8. The judge recorded the position of the respondent in the decision letter that the appellant would not be of interest to the Turkish authorities as his name was not listed as someone suspected of having links with the movement. The respondent did not accept that the arrest warrant that the appellant had submitted was genuine. The judge took into account the appellant's evidence that he said his name was not on a wanted list and believed that his family had heard or saw that it was, they would have told him. The FtTJ Judge therefore concluded that the appellant would not be the subject of treatment described for those whose names appear on the list. Therefore if his name was not on the wanted list or not been published in the newspaper, then it was not likely that he would be wanted by the Turkish government for any reason.

9. At paragraphs [21]-[25] the FtTJ set out her findings concerning the arrest warrant relied on. The appellant had stated that the warrant was brought to his father's house the day after it had been searched by the authorities, his computer taken, and his father arrested. However, the FtTJ found that the translation of the warrant stated, "this document is electronically signed and send to the address by post in accordance with the Act 5070" and that this was inconsistent with the appellant's oral evidence that it was brought to his father's house (at [21]).

10. The warrant was also internally inconsistent as the warrant did not give an address for the appellant but the original, shown to the judge, had a handwritten signature in red ink at the part with the translation states "signed and sealed".

11. The judge recorded that the information supplied with in the warrant is that it was issued by the court on 8 October 2016 but that as he could not be interviewed on 6 November 2016 a warrant was issued for the appellant's arrest that day. The contents of the warrant went on to say that it was not withdrawn, the appellant could not be found in his home and is banned from leaving the country. Having done so, she concluded that the number of discrepancies had led to find the warrant was not genuine and could not be relied upon as evidence that he was wanted by the authorities.

12. The judge found that the appellant had left Turkey using his own passport with a Visa to study English in the United Kingdom and that it would not take "a great deal of detective work for the authorities to discover this fact and there is no indication that the authorities do not keep an electronic record of nationals leaving the country" (at [23]).

13. The appellant had failed to mention the warrant in his PIF and claimed he did not mention it until his asylum interview for fear of being returned to Turkey or the British government telling the Turkish government where he is. The judge rejected that explanation as credible because at the time the appellant had completed the form, he was well aware of the asylum process and had already told the respondent that he was wanted by the Turkish authorities and believed he would be imprisoned. The judge found that the existence or not of a warrant, would not have prevented the British authorities from checking the appellant's claim to be wanted as a member of the movement should they be intent on doing so. Furthermore, the appellant knew in December 2017 that arrangements were being made for him to return to Turkey and in April 2018 he was served with papers as an overstayer so he would know the respondent's intention was to return him to Turkey and yet, even against that background, he failed to mention that there was a warrant for his arrest outstanding in Turkey or that the authorities in Turkey suspected him of activities as a member or supporter of the movement (at [24]).

14. The judge considered the envelope provided to her dated 5 November 2018 (the envelope that was said to have contained the warrant is sent to the appellant). When looking at the chronology, the appellant claimed asylum on 12 June 2018 and page 16 of his PIF, completed on 12 August 2018 there is a section in respect of documentation in support of the claim which the appellant had left blank even though he claimed he knew that there was a warrant for his arrest with his father in Turkey. It was not until a few weeks before the asylum interview that the warrant was posted to him. The judge found that the appellant had the document prepared by someone in Turkey and sent to him in time for his interview in an attempt to bolster his claim (at [25]).

15. The judge found that he could not have been active in the coup attempt in Turkey in July 2016 as he was in the UK studying at that time. However the judge considered that that itself would not stop the government from reaching the conclusion that if he had been involved in the movement while studying in Turkey, he was still opposed to the presidency and the government. However, the absence of his name from any wanted list and the fact that the judge did not accept that there was an arrest warrant issued for his arrest demonstrated that he was not being sought by the Turkish authorities nor that it was likely on return he would be arrested, imprisoned and then questioned about allegations against him (at [26]).

16. At paragraph [28] the judge recorded the country information concerning the two-year period of state of emergency which ended in July 2018 but that the government continued to use its powers to silence cortical voices and strip away fundamental rights and freedoms (see Amnesty international report,

covering 2019). The judge also recorded that as recently in February 2019, the public prosecutor ordered the detention 1112 people as part of a massive crackdown targeting followers of the faith-based Gulen movement and that the majority of the thousands of people arrested as members or suspected members of the movement was civil servants, teachers and members of the judiciary and lawyers. Against that background the judge made reference to the appellant's employment in Turkey from 2013 – 2016 was as a hotel receptionist. The judge considered that despite his claims to been offered assistance by FETO members to become a police officer or to get a job in the tourism ministry, neither of the jobs became available to him. The evidence supplied by the appellant in his Visa application forms that his father was assisting with the funding his studies, his accommodation and maintenance and the ECO granted this Visa in 2012 and in 2016 and was therefore satisfied that the information provided was substantiated. The judge therefore found that there was no indication the paperwork of any third-party sponsorship and if this information was available to the Turkish government, there could be no suspicion of the appellant being funded by or having any involvement with FETO.

17. At paragraph [29] the FtTJ set out her findings concerning Section 8 of the 2004 Act. The judge rejected the appellant's evidence and explanation as to why he had delayed his claim for asylum.

50. The FtTJ made a number of adverse findings of fact concerning the core of the appellant's account as to his historical involvement with FETO and also his claim that the Turkish authorities had become aware of this leading to the issue of an arrest warrant.

51. Whilst the grounds challenge paragraphs 14 and 15, it is plain my judgement that the FtTJ had reached the conclusion on the evidence that the appellant's lack of knowledge of the details of the organisation, its aims and essential details which were lacking, demonstrated that he was someone who had failed to establish that he had been involved in the movement. In particular, the judge considered his account that his role was to persuade people to subscribe to the newspaper but reached the conclusion that if he had no knowledge of the group that it was not reasonably likely that he would have been able to undertake such a role (see [14]).

52. The bottom of paragraph 14 highlighted by Ms Cleghorn is not inconsistent with the FtTJ's earlier finding because the judge was setting out what the appellants evidence was. This is further demonstrated by paragraph 15 where the FtTJ continued her assessment of his account and considered his explanation for his lack of knowledge concerning the movement. For the reasons given, she rejected the explanation given for his inability to recall relevant details. The judge found that it was not reasonably likely that the appellant would have forgot the history of the movement he claimed to believe in given the factual account he provided of promoting the movement by persuading people to subscribe to the newspaper. The judge therefore concluded at [15] "in my judgement, this indicates the appellant knows very little about the organisation and it is unlikely he was involved with it in anyway." This

demonstrates that there is no inconsistency in the findings of fact reached as submitted.

53. The grounds also challenge the FtTJ's findings at [17]. The written grounds make reference to the use of a university address and that "no one in their right mind would give halls of residence as his home address." As Mr McVie submits, this approaches the evidence and the judge's fact-finding from a "westernised UK perspective". What is relevant is the evidence before the FtTJ which was referred to at [17]. It had been stated by the appellant that he actively worked for FETO by finding subscribers to the newspaper and and there was evidence on his computer that he signed papers in respect of people he had managed to persuade. His claim also was that there would be a trace of his involvement with FETO on their computer as his signature would appear alongside the name of the new subscriber. The judge recorded that this was the reason given by the appellant for the authorities apparent interest in him (as evidenced by the arrest warrant).

54. However, on the FtTJ's analysis of the evidence, the computer that the appellant stated he was using was his own computer and was not the family computer as he was actively using it at university therefore it could not be said to have been confiscated from the appellant's home address. It is against this background evidence that the FtTJ reached the conclusion that the computer at his family home would therefore not reveal any links to the appellant.

55. Whilst Ms Cleghorn referred the Tribunal to the country materials (HRW report 2018 Turkey (which I have set out at paragraph 32), this is generalised material referring to journalists and the closure of media outlets. She submits that it is plausible that his name was on a computer that he would be associated with FETO. However that submission ignores the findings made by the judge at[17] where the judge rejected that his name was on a computer at the family home and at [18] when the judge gave reasons why his name did not appear on a computer linking him to the Zaman newspaper or FETO. It also ignores the findings made in respect of the arrest warrant at paragraph [21 – 25].

56. At [18] the judge took into account the appellant's own evidence relating to how the Zaman newspaper could be purchased (it is the largest newspaper in Turkey) and the FtTJ reached the conclusion that it had not been reasonably explained as to why information concerning subscribers would have the name of the person who sold the subscription either annexed or alongside it given that their details would be all that would be required to have the newspaper delivered and to obtain payment. The FT TJ therefore gave reasons why she did not accept his account that his name would also appear on a computer linking him to the newspaper or FETO. The grounds are simply disagreement with the FtTJ' s findings and do not demonstrate any error of law.

57. At paragraph 20 the submissions ignore the entirety of that paragraph and also the paragraphs that follow thereafter. At [20] the FtTJ made reference to the respondent's position that the appellant was not of interest to the Turkish authorities and made reference not only to lists held by the government but also that the respondent did not accept that the arrest warrant submitted by the appellant was genuine. The FtTJ

does not set out the parts of the CPIN referred to but there was evidence in the country material referring to the sophisticated intelligence systems operated by the Turkish authorities (in relation to military service see GBTS database and the material at 7.3.1) and also in the appellant's bundle at page 22 where it was recorded that on 5 June 2017, a notice was published in the official Gazette with the names of 130 individuals residing abroad, summoning them to return to Turkey and present themselves for criminal investigations. The FtTJ further recorded that the appellant's own evidence was that his name was not on any "wanted list" and gave the reason why this was the case, namely that if he had been on such a list, the family members with whom he was in touch within Turkey would have been aware.

58. It is correct that the country materials refer to large numbers of people being investigated over links with the Gulen movement (see p46AB), however the judge did not consider that any exclusion from any list held would be a determinative factor. The judge undertook an analysis of the evidence provided by the appellant to demonstrate that he was in fact under investigation by the submission of an arrest warrant. The written grounds raise no challenge against that assessment which the judge undertook at paragraph 21 – 25, applying well-known principles in Tanveer Ahmed by considering both the form, the content of the document and its provenance. The FtTJ also made findings open to her concerning the failure of the appellant to adequately or reasonably explain why had made no reference to that document at the relevant time (see paragraphs 24 – 25).

59. Other findings made by the judge were at [28) where she made reference to the background material which was also cited in the decision letter concerning those employed in the public sector such as civil servants had been disproportionately affected by the actions of the government and also taken against the years 2013 – 2016 where, on the appellant's own case, he was not involved in any way with FETO, and the Visa information. The judge concluded from that evidence that there was no suspicion of the appellant being funded by any other third-party or having any involvement with FETO.

60. At [29] the judge made a finding concerning section 8 of the 2004 act taking into account his immigration history and his delay in claiming asylum. The judge considered that this, when taken together, did not demonstrate someone in fear of the government. The judge expressly rejected his explanation that asylum was "only from people from African countries" and did so in the light of his university education and his background.

61. Taking all of those findings together, the FtTJ gave adequate and sustainable reasons for reaching the conclusion that the appellant was not of interest to the Turkish authorities on account of any or any suspected links to the Gulen movement.

62. Dealing with ground 2, and the issue of national service, the judge recorded that the appellant had not completed that national service at [30]. The country materials demonstrated that compulsory national service was a prerogative of sovereign states and that Turkey had chosen to make all men between the ages of 20 and 41 complete a maximum of 12 months military service. There were exemptions available and people can buyout or delay their military service. The FtTJ recorded that the

appellant did not claim to be a conscientious objector due to his religion or to be LGBT and therefore the judge found that he did not fall into the category of person who would face a real risk of serious harm or persecution by virtue of having to complete his national service in Turkey.

63. Whilst Mr McVeety submits that there was no evidence that the appellant had been called for military service, I proceed on the basis that the respondent accepted that he had not undertaken military service. According to the appellant's chronology he was in education in Turkey when he was 21 years of age and became eligible for military service and was therefore exempt on that basis. He left Turkey in 2016 when approximately 24 years of age as a student and it reasonably follows that an exemption was likely to have been granted to him. This was the appellant's evidence in his interview at question 18.

64. The appellant is therefore still eligible for military service in the light of his age and as set out in the country materials in the CPIN. However as the FtTJ found on the facts, the appellant was not objecting to undertaking military service. Unlike other cases, he did not raise the issue of conscientious objection either on the basis of religion, sexuality nor on the basis of the conditions of service. At its highest, he stated in not particularly welcome it. He would therefore on return be viewed as someone who was not refusing to take military service but was returning to his country of nationality and would thus undertake that service.

65. The objective material set out in the eligibility for military service at 3.2 of the CPIN makes reference to the DFAT report which notes that university students can delay their service until their completion (3/3.4). There are also "buyout" options. The rule 24 response is incorrect in suggesting that one of the buyout options is available to the appellant because he is not over 38 years of age. However the CPIN also makes reference to a law ratified by Parliament enabling young Turkish men to complete military service in 21 days instead of 5 ½ months by paying a larger sum of money. This does not refer to being over 38 years of age but refers to its citizens being born on or before January 1, 1994. The appellant's date of birth is recorded as being on or before 1994.

66. The submission made on behalf of the appellant is that he is a draft evader and therefore any time spent in prison, whether it be for the minimum term would be in breach of Article 3. I can see no reference to any argument advanced before the FtTJ in this respect but even if it were, the material relied upon in support of those submissions does not demonstrate that the prison conditions are in breach of Article 3. The material relied on was highlighted by Ms Clegg as that at page 7 of the appellant's bundle. where it was recorded that cases of torture and ill-treatment in police custody were widely reported to 2017 especially by individuals detained under the anti-law despite the government stated zero tolerance of torture policy. There were widespread reports of police beating detainees, subjecting them to prolonged stress positions**.** That material refers to police custody and not prison conditions.

67. The CPIN and prison conditions (February 2018) was before the FtTJ and noted that the prison conditions vary widely in Turkey with some being overcrowded and

harsh (2.4.1) but by 2017 it was said that a number of new prisons were being built and would be in service. The report makes references to the CPT report also.

68. Since Turkey is a Member State of the Council of Europe and there is currently no pilot judgment of the European Court of Human Rights in force relating to conditions in its prisons, the starting point for examination of the Article 3 issue is the presumption that a member state will comply with the Convention. The conclusion in the CPIN is that in general terms the prison conditions in Turkey are not systematically inhumane or life-threatening to meet the threshold of Article 3.

69. I accept the submission made by Mr McVeety, that the evidence relied upon by the appellant before the FtTJ does not demonstrate the prison conditions are in breach of Article 3.

70. Drawing together those conclusions, it has not been demonstrated that the decision of the First-tier Tribunal judge involved the making of an error on a point of law. The assessment of appellant's account was one that was reasonably open to the judge to make.

Notice of Decision

71. The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the decision of the First-tier Tribunal shall stand

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Upper Tribunal Judge Reeds

Date 20/11/2019

Upper Tribunal Judge Reeds