



**Upper Tribunal
(Immigration and Asylum Chamber)**

SD (military service – sexual identity) Turkey CG [2013] UKUT 00612(IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 4 and 5 June 2013**

Determination Promulgated

.....

Before

**UPPER TRIBUNAL JUDGE LATTER
UPPER TRIBUNAL JUDGE DAWSON**

Between

SD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, instructed by Rahman & Company Solicitors

For the Respondent: Mr D Hayes, Home Office Presenting Officer

- (1) *All Turkish males are required to undergo military service but exemption can be granted on the grounds of physical or mental disability which includes "sexual identity disorder".*
- (2) *Homosexuality is regarded by the Turkish army as a sexual identity disorder but the perception of homosexuality in Turkey is not reduced to a person's sexual preference but is informed by an assessment of his whole personality including his outward appearance and behaviour. It is associated with the passive role which is seen as unmanly whereas taking the active role does not attract the same disapproval and is not considered to undermine the essence of manliness.*

- (3) *The exemption process for determining whether a recruit is entitled to exemption generally includes intrusive requirements which do not properly respect the human dignity of someone whose sexual identity would qualify him for exemption such that it can properly be categorised as degrading and involving a real risk of a breach of article 3.*
- (4) *If during his military service a recruit (whether he has not sought exemption or has been refused) is discovered or is perceived to be homosexual as understood in Turkey, there is a reasonable degree of likelihood of ill-treatment of sufficient severity to amount to persecution on the basis of his sexual identity and there is no sufficiency of protection. The risk of such discovery or perception arising during his service will require a fact sensitive analysis of an individual's particular circumstances including his appearance and mannerisms, the way in which he describes his sexual identity, the extent to which he fits the stereotype of a homosexual as understood within Turkish society and the extent to which he will conceal his sexual identity for reasons not arising from a fear of persecution.*
- (5) *Any such risk likely to arise during service is not negated by the fact that there is an exemption process as that process itself carries a real risk of a breach of article 3.*
- (6) *MS (Risk- Homosexual) Turkey CG [2002] UKIAT is no longer to be regarded as providing country guidance.*

DETERMINATION AND REASONS

1. This is an appeal by the appellant, a citizen of Turkey, against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 28 October 2011 to remove him from the UK following a decision that he was not entitled to asylum. In a decision dated 14 September 2012 the Upper Tribunal found that the First-tier Tribunal had erred in law and its decision was set aside. Further directions were given on 26 November 2012 and 15 February 2013 so that the re-making of the decision could proceed as a country guidance determination, enabling the Tribunal to give guidance on whether there was a risk of persecution, serious harm or breach of human rights arising from the sexual identity of someone liable to be called for national service in the Turkish Armed Forces ("TAF"), and in relation both to the exemption process and the risk of serious harm during his service. Both members of the panel have contributed to the writing of this determination.

Background

2. The appellant is a Turkish national born in November 1978. He first came to the UK in 2001 with a valid student visa and on 15 July 2002 and 31 October 2003 he made in-country applications for extensions of his leave and was granted further leave to remain until 31 December 2004. After the expiry of his leave he did not return to Turkey but remained in the UK and next came to the attention of the authorities when on 26 October 2011 he was arrested by the Northern Constabulary following a domestic incident between himself and his partner in Inverness. His immigration status was checked and according to the respondent's records the appellant did not give his own but a similar name. The UK Border Agency had no trace of that name and he was further arrested. On 28 October 2011 he was interviewed. He gave his correct name and said that he wanted to claim asylum.

3. In his screening interview on 28 October 2011 he accepted that he had arrived in the UK with a student visa using his own passport. He said that his passport had now been lost and accepted that his leave to remain had expired at the end of December 2004. He claimed that he had been diagnosed as HIV positive in Turkey ten years previously but had never had any treatment for this. He suffered from depression and thought he had a tumour on his liver. He would be subject to arrest on return to Turkey for evading military service. When asked why he could not return to Turkey he said because of his health condition, his sexual choices and his military service.
4. He was interviewed further about his claim on 2 December 2011. When asked why he was claiming asylum he said that there were a few reasons. The first related to his political choices against the Turkish government and the army and being forced to do military service for a year and he could not do anything else before completing this in Turkey. He could not get a job and could not legally leave because he had an arrest warrant already. The second related to his sexual choices and his health condition. He was a gay bisexual and had HIV. He had serious concerns about living in Turkey and dying from HIV. He could not be open and clear about his sexuality and his choices; he had to be discreet about it, but with his illness that would not be easy. He then explained about how his family had come to learn about his sexuality and set out the relationships he had had. He was asked whether other things had happened before he left Turkey for the UK. He said nothing significantly bad except verbal insults but he had always had to hide his sexuality in every environment, work, school or family. He did not even want to think about the public's reaction. He would be judged, bullied or discriminated against by the majority of people.
5. He was asked whether he eventually intended to return to Turkey when he initially came to the UK and he replied not necessarily, he wanted to stay here mainly because of the difficulties he had back home. When asked when he was diagnosed with being HIV positive, he thought it was a year after he came to the UK. In his screening interview he had said it was roughly ten years ago and he did say that it was in the UK whereas it had been written down that he had been referring to Turkey. He was asked if he had any documentary evidence of his condition. He replied that he did not but said that he would prove it as soon as he could. He was asked when the arrest warrant issued with regard to him doing military service was issued and he reckoned that since 2005 there must have been an arrest warrant for him but he had not seen it. The police had been to his home and contacted his parents about where he was. His mother had told him he had to go to the police station to make a declaration of where he was and what he was doing. He produced what he described as a recent letter dated 2011. His mother had to go to the police station a few times in 2006, 2007 and 2008. He confirmed that he had been living a bisexual lifestyle in the UK because he had freedom to do so and could go out and socialise at gay bars.

6. When asked what he thought would happen to him if he returned to Turkey he said that he came from a very conservative family and leaving all obstacles aside such as military service or other settling problems like finding a job, which would be impossible due to his military service, he could not come clean about his health condition to anyone including his parents. He could not be a gay man dying from HIV as this would cause so much grief and devastation for everybody. He would be forced to go into the army and probably fight against Kurdish people. As a socialist he did not agree with Turkey's actions in this respect. He would not be able to get a job or have any possible financial solution because of his military service and health conditions. If the British government needed to contact the Turkish government for any documentation this would make things more complicated for him. He would surely get arrested and questioned as the Turkish authorities did not like people seeking asylum or help on human rights grounds.
7. The respondent's decision is set out in the Reasons for Refusal Letter dated 19 December 2011. Having reviewed the evidence the respondent did not accept that the appellant was bisexual, that he had been diagnosed with HIV/AIDS or that he had evaded military service in Turkey. His claim for asylum was rejected in its entirety [31]. The respondent noted that the appellant had come to the UK in 2001 at the age of 22/23. According to information available to the respondent about military service in Turkey, male Turkish citizens were required to report to military draft branches between 1 January and 31 October of the year of their 20th birthday or provide documentary evidence to show they were unable to do so, e.g. medical reasons or being a student. It was considered that the appellant had either completed his military service prior to coming to the UK or had produced evidence to postpone it. The respondent noted that the appellant's last grant of leave expired on 31 December 2004 but he had made no application of any kind to regularise his stay until claiming asylum after he was apprehended by the police and immigration authorities on 26 October 2011, having overstayed for almost seven years. She considered that the appellant had not provided a reasonable explanation for failing to inform the UK authorities of his circumstances or attempting to regularise his stay and had not claimed asylum at the earliest opportunity. When arrested he initially gave a false name and date of birth and this further damaged his credibility. In summary, the respondent was not satisfied that the appellant qualified either for asylum or relief under the Human Rights Act. For these reasons his application was refused.
8. His appeal against this decision was heard by the First-tier Tribunal on 21 February 2012 but subsequently set aside by the Upper Tribunal. The Upper Tribunal's reasons for finding an error of law such that the decision should be set aside are set out in a Decision and Directions dated 14 September 2012, attached to this determination as Annex 1. Following the directions given for the re-making of the decision, the following evidence was filed for the appellant: bundles (A1) witness statements, indexed and paginated 1-30, (A2) expert reports and material 1-212, (A3) background evidence 1-367, (A4) background evidence 368-711, (A5) authorities. The respondent filed a bundle of background evidence (R) divided into tabs 1-39. A

schedule of the background evidence is attached at Annex 2 and of the expert evidence and material at Annex 3. We heard oral evidence from the appellant and two witnesses K and A giving evidence about his sexual identity, from Ulrika Böhnish who made a documentary (Cürük – The Pink Report) and expert evidence from Dr Ozgur Çinar and Julian Irlenkäuser.

(i) The Appellant's Evidence

9. The appellant's evidence is set out in his witness statement of 7 February 2012 (A1, 7-15 and his supplementary statement of 20 May 2013, A1, 1-6). In these witness statements he confirms that he is bisexual and says that he was around 13 to 14 years old when he realised that he had feelings for men in addition to women. He describes his relationship with a boy who lived nearby and the suspicions his mother had about their relationship. His first sexual experience with a woman was when he was about 17 or 18, a relationship which lasted about two years. He started university in September 1996 when he was still in this relationship but at university he entered into a relationship with a man from Bosnia. They knew they had to keep their relationship as discreet as they could, as in Turkey it was not acceptable for two men to be with each other. They did not want to be totally in hiding as they wanted to have freedom. However, they were the victims of verbal abuse and homophobic remarks. In June 2007 his mother discovered the appellant and his boyfriend in bed together and became hysterical. She told his father who was seriously angry. The appellant had a fight with his father and was ordered to leave the family home and told he was no longer a member of the family.
10. The appellant completed his university degree in December 2000 after taking his last exam. In the UK he has had relationships with both men and women, saying that in this country he was able to be open and free about his sexuality. Until a few weeks before his statement he thought he had contracted HIV. About a year after coming to the UK he had had unprotected intercourse with a man and after about six to eight weeks started to feel very ill. His glands came up in his neck and he started having pains in his neck and shoulders. He started to get diarrhoea and suffered from fevers. He went to hospital in Chelsea and a test was done which showed that he was HIV positive. When the tests were done he had given a different name as he was very ashamed of his situation and did not want to use his real name. After he made his claim for asylum he did try to register with a GP so that he could obtain some medical attention and eventually he was able to do so. He had further tests which showed that actually he did not have HIV. He was shocked at this news. Obviously it was good news to him but a shock as he thought he had had HIV for a long time. He explained this to the staff at the STD clinic and they thought he might have had another condition which had effects similar to HIV and he was referred to his GP but further blood tests have shown no abnormality. He had not been able to get a copy of the original HIV test in 2002. He had telephoned the hospital but they said without identification they could not disclose any details.

11. He said that he was wanted in Turkey as he had not carried out military service. When studying he had not had to undertake actual service. The university would automatically inform the relevant authorities that their call up papers should not be sent. After he finished his education the rules allowed one year to decide what he was going to do. If he had wanted to continue with higher education he could have his service postponed even further. He was not in favour of military service because he was not a supporter of war and armed conflict and had always disliked the military. When he thought about his situation following completing his degree, he felt the best option was to leave Turkey to study. Going to another country like the UK would allow him to live where he could practise his sexuality without constant worry.
12. In around January 2002 he went to the Turkish Embassy in London to inform them that he was in the UK continuing with his education. He told them this because he knew it would give him the right to postpone further his military service and stop the authorities from issuing any notices. He was only allowed to defer his service for another year to eighteen months because he was only studying a language course. Once that period expired he knew he would be required to carry out military service. Towards the end of 2004 to the beginning of 2005 he was contacted by his sister who told him that the authorities had been coming to his parents' house and trying to find out if he had returned to Turkey. His sister used to call him regularly over the years and told him the authorities were still coming and asking about him. Before his asylum interview he had got in touch with a friend of his in Turkey, asking him to try and send over any document to show that he was required for military service. The friend later contacted him, saying he had spoken to the authorities and he had obtained a document which he forwarded to the appellant. The document and its translation appear at A1, 14-18. He had received it before his asylum interview and mentioned it but he was confused and forgot to bring it to the attention of his solicitor and so it had not been sent in earlier.
13. When he came to the UK he was glad to leave Turkey behind, because in the UK he could be open about his sexuality and not fear being discovered with the prospect of ill-treatment and persecution by the public and authorities. When his visa expired in December 2004 he was suffering from depression brought on mainly by the belief that he was HIV positive. This had a big impact on him and affected his ability to plan things. He had no money and was in no position to extend his visa. He did not want to be sent back to Turkey as he felt he would be forced to carry out military service or face being sent to prison. He felt his only real choice was to stay in the UK. He was aware he had the option of claiming asylum but did not do so because of his fear of being refused and deported. When arrested in October 2011 he was scared of being sent back to Turkey and that was the reason for giving false details. When he did claim asylum, he had said that if his application was refused he would go back to Turkey himself arranging his own passport. This was because if he went back himself he would try to find some way of getting into the country without the authorities finding out.

14. In his supplementary statement he said he had reacted very badly when he learnt that he was HIV positive. He would spend days at a time in his room drinking and after four to five months he went to a clinic for antidepressants but had not used them for long. He kept his condition hidden from everyone. It had been a massive shock when he learned that in fact he was HIV negative. He was now able to meet people with a view to forming relationships without hiding his medical issue. He had not told his girlfriend C that he was HIV positive and she had been the only person with whom he had had a sexual relationship, who was not HIV positive but he always used protection. Since his previous statement he had met two or three men and had casual sex but had not had any relationship with a woman. His male partners had known his sexuality. He did not really go out to clubs on a regular basis but preferred to go out with friends for a quiet meal or drink. His one relationship that was more serious, having started casually, was with K. He knew him as he used to organise single gay men's drink parties and dinners in various restaurants. There came a stage when they met after dinner and formed a relationship, sleeping with each other and going out as a couple. This lasted for about three or four months but they still met up on occasions.
15. He confirmed that he had kept in contact with his sister on a regular basis, speaking to her every two months or so, but had had no contact with his parents since he left the family home. He did not want to report to the authorities if he had to return to Turkey. He would not want to disclose the fact that he was bisexual to the authorities and did not want to have to go through the humiliation of proving this. However, this would be a better option than staying silent and starting military service. If it was discovered that he was gay or bisexual during his service the consequences would be very bad as he would be bullied, beaten or attacked by fellow recruits or senior officers. He might also be punished in other ways and he would not want to go through that.
16. In the UK he had been living openly as a bisexual and had become used to this way of life. If he went back to Turkey he would not be open about his sexuality to people he did not know. He would go out to gay clubs and bars and interact with gays and bisexuals but would not do it as often as in the UK and would be reserved if he had to do military service. He felt there was a real risk that during military service his sexuality would be discovered. He had been told that soldiers found to be gay had been beaten, punished by the military and detained. He was aware that there was an option that he might be asked to bring a family member to see the military authorities but there was no way that his parents would help him gain exemption in this way and it was something his sister would not be willing to do. He had raised this issue with her on the telephone but she was not willing to talk about his sexuality with him or anyone else. He would reveal his sexuality to the military and suffer the humiliation of getting exempt on that basis.
17. In his oral evidence the appellant confirmed that his statements were accurate. He explained how he had been completely "freaked out" by his test diagnosis in 2002 and had been too immature to handle it. Initially he had not intended to receive

treatment but later started to think about it. He did not have the strength to face what had happened and he became depressed. He got into the state of delaying and postponing things. He said that if he went back to Turkey he could create his own social life but there would be times when he could not and he would have to hide his sexual identity. He would always seek people out he could relate to who made the same sexual choice as him. But there were circumstances when he would hide this, for example if starting a job and from some old friends whom he knew from past experience would not be positive. Initially, he would go to Istanbul where there would be more opportunities to survive and then he would go to the south of Turkey where he would have more freedom, particularly where there were a lot of tourists and life was a lot more chilled out and other sexual choices were more acceptable. He would hide this if in the military as they would not like his sexual choices and lots of other things about him. He would not be able to choose who he would be with. Things would be very difficult. He thought if discovered he would be abused, bullied or attacked at a personal level and be detained or forced to do unfair duties.

18. In cross-examination he said that he had tried to put his confusion about his sexual identity aside. When he was young he had still continued to question these things. At university he had felt more relaxed and comfortable and could try to be more open. He did feel attracted to women. When attracted to his first girlfriend he said that it was not love but he thought it had been at the time. He explained that when he went to university he had moved from Samsun in the north of Turkey to Istanbul, where his father worked, and he and his mother moved to live with him. This was why he had not moved into university accommodation at that stage. He had stayed with them for about one and a half years before the troubles arising from his relationship with one of his fellow students. This had led to the break-up of his family. He had never spoken again to his father but had on a few occasions with his mother. His father was very conservative, believed in Islam and that his type of sexual behaviour was not allowed. After the fight with his father he did not try to reconcile with him as he knew he would always be judged by him. He knew what his father thought and did not bother to try and reconnect with him. He had not had an HIV test in Turkey even though he had had intercourse there. There were no test results or paperwork he could produce in relation to the 2002 test in London as he had used a false name but the test result was HIV positive. He accepted that at that time he would have access to healthcare in this country but said that he was scared of being judged and was not ready to discuss or talk about the issue.
19. He confirmed that he had returned to Turkey on two occasions but had not wanted to live there. He was petrified of having AIDS and dying in Turkey. He had to support himself and get a job. He explained that from 2004 to 2011 he was organising parties, working as a DJ and doing stall jobs. He had cheap rents or shared accommodation. He stayed here not just because he enjoyed it but because he could not face going back. When arrested in Scotland he had given his girlfriend C's address as he did not have an address in London. He had claimed asylum after he was arrested. His big fear was of having to go into the army. He had deferred his service before coming to the UK. When he had finished his degree he would get

another year before having to do his military service. He had graduated in December 2000 and has provided his deferment document to the British Embassy. He had returned to Turkey in 2002 and 2003. He referred to the letter at A17 and 18. He had been asked to get a copy of this and he had done so from a friend who worked in the army. He could not get any letters from his parents as they would not send them. His sister would not involve herself in this. This document set out his ID number. He did not think he had ever received an identity document but when in Turkey he had had an identity document and passport but they would have had the old serial numbers. If he had to do military service he would either do six or twelve months. He confirmed that there were exemptions obtained by payment. If he had worked in this country legally he could pay about 10,000 Euros. He had looked into this to consider the options. However, a student visa followed by unlawful residence would not meet the requirements.

20. The appellant explained that he had telephoned the Turkish Embassy about three or four years ago to ask if he could be exempted and was given exact information. Having AIDS would have exempted him but living healthily with HIV would not. He had called the enquiry line at the Embassy and had been put through to an expert on the military side. He had also researched this on the internet and confirmed that being HIV positive would not affect his military service. So far as the exemption for being gay was concerned he had been looking at this for a very long time since his last years at university. He had to make a choice of doing military service or finding a way out. There would be a risk of bullying in the army and he feared he would be singled out. Initially he said he was not prepared to go through the exemption process but otherwise he would be bullied and may have to do it. He would go through some humiliation and would rather do this. He had been researching this from a very young age. The authorities required physical evidence and it was his view that it was outrageous that by drawing a picture someone could be judged as gay or not.
21. He had had relationships with both men and women and was bisexual. Things could happen which could identify him and he did not want to go through the risk of what might happen. It was out of the question that his sister would be prepared to speak up for him during the exemption process. She would not go through that humiliation. She did not think that being gay was an option but that there was something wrong with him that he needed to change.
22. In re-examination he accepted that his sister had helped a lot and tried to be supportive but when he tried to speak to her about the option of speaking up for him in the exemption process, she was silent and uncomfortable and refused to hear what he was saying. He knew the consequences of not speaking up for himself, but his family would rather he went in the army and proved himself to be normal. She would never go and talk to anyone about his sexuality. This was because of the society she lived in. He explained that the reason he obtained a new identity number had come from the fact that he had been online trying to find out his pension and tax payments arising from when he had worked in Turkey. He had read an article about

making payments from outside Turkey and then made enquiries. He had been asked for his identity number and had put through the old details and they had come up with his contributions and found his number. He had worked part-time for two and a half years when at university and then also for a private airline. These enquiries had been made about three or four years ago.

(ii) Evidence of IK

23. IK's statement is at 1A 30-1. He is a Danish national who was born in Turkey but has been living in the UK since 1997. He described himself as a self-employed mentor and personal development coach for business owners. He is gay and involved in the LGBT scene organising single gay men's drinks and dinners in various restaurants in London. He confirmed that he first met the appellant when he attended one of these drinks and dinner evenings last year, about six or seven months ago, spoke at length and then met after the dinner. They were close for three or four months but as he was busy with work and family issues, they started to see each other less often and he realised that they would not be suited to each other. Their relationship ended in terms of not seeing each other but they have continued to meet and sometimes spend the night together. The appellant had not told him about his immigration issues until two months ago. He confirmed that the appellant was bisexual and not lying about this issue.
24. In his oral evidence he confirmed that his statement was true and that he and the appellant still met occasionally. The appellant was bisexual but he (IK) wanted to be with someone who was not bisexual as he was looking for a long term partner.

(iii) Evidence of BA

25. BA's witness statement appears at 1A 22-24. He has known the appellant since 2007 after meeting in a club. This was a regular event and they kept seeing each other at similar events. They kept in contact and they told each other about their sexuality. He was bisexual like the appellant. They had never had an actual relationship apart from being friends but had spoken about their problems. He confirmed that the appellant was bisexual and he knew that he had had male partners in the UK.
26. In his oral evidence he said that on many occasions he had seen the appellant with someone whom he believed was a male sexual partner. They would talk about who they were seeing and about their relationships generally. When he had seen him with male partners, the appellant had been happy, calm and relaxed and was not hiding anything, being open about the relationship. The appellant had been a lot happier in 2007. He could be himself and he went out and had a good time. He saw him about once a week or maybe every couple of weeks.
27. In cross-examination he said the appellant had not spoken to him about military service as there was not much to speak about, although he was very scared of being ill-treated or worse as the military were not very tolerant of homosexuality. He had

not been in the military himself: he was from Cyprus. He liked to go to Turkey. Many Turkish people set up business in this country because it was a different way of life. The appellant feared that there was not much toleration of homosexuality in Turkey and those were things that you could not do.

(iv) Evidence of CD

28. The evidence of CD is in her witness statement at 1A 19-21. This witness did not give oral evidence before us. She is a British citizen who met the appellant in around 2010 when they were introduced through some mutual friends. A few months later they started to have casual sex with each other but neither wished to enter into a relationship beyond that. She had already been told that he was bisexual and this made no difference to her. They continued to see each other for casual sex. She felt more attracted to him and wanted to be his girlfriend but that was not the type of relationship he wanted and she accepted this. She had been with the appellant at a hotel in Inverness when he was arrested on 26 October 2011. She had gone to Scotland because at that time he had been living there with some of his friends. They decided to book a hotel room but having spent the day together drinking, they began to argue, the appellant raised his voice, she also started shouting and someone from the hotel must have called the police and he was arrested. CD did not attend the hearing even though Mr Gilbert had indicated that it had been his intention to call her to give oral evidence.

The Expert Evidence

(i) The Evidence of Ulrike Böhnish

29. Ms Böhnish's witness statement is at 2A 25-30. Although not tendered as an expert witness, we have included her evidence in this section as she gives evidence about the situation for non-heterosexual men facing military service in Turkey. She is a director and producer and has produced "Çürük – the Pink Report", her first feature length documentary. She spent a year in Turkey on this project and three years researching it. She interviewed two people, who were successful in obtaining exemption from military service and appear in the documentary, and met three others who were each exempted but she did not interview them specifically for the documentary. She did not meet anyone who had applied for exemption but failed. She interviewed one person who decided to do his military service and hide his sexual orientation. She also met ten people who hid their sexual orientation during their period of service but did not interview them for the documentary and one person who "outed" himself during military service. She had found it very difficult to meet people who were willing to talk to her about this. She had a link with someone described as a well known and trusted member of the Ankara "queer scene" and he put her in touch with people to interview. She had not paid any of the people she had met because as a film maker she did not want people to participate in projects for financial gain. They were all consulted before the documentary was published and a Turkish and a German lawyer viewed it before publication. It

started as a university project but later she spent a year collecting small amounts of funding from LGBT organisations in Germany.

30. Most of the men she spoke to told her that they tried to hide their homosexuality during military service. This was not an easy decision for them as it was like fighting against themselves and could cause serious psychological trauma and conflicts of conscience. For those who managed to hide their homosexuality until the end of their duty, military service remained a painful memory for them. The fear of the consequences of being discovered was a constant factor. Their biggest fear seemed to be that their sexuality would not be compatible with the general hetero-normative and masculine environment. They also feared sexual harassment by their commanding officers.
31. One former soldier told her that he was moved into a special unit where he shared a small room with ten people instead of fifty. She commented that whether this was a way the officer was trying to protect him or to discriminate against him by segregation was subject to interpretation, but the officer had told him that homosexuality was bad behaviour and that he should change his beliefs. Homosexuality was still considered a psycho-sexual disorder by the Turkish military. Homosexuals were considered to be sick and were not allowed into a military school. Most of the gay men she met who were in military service suffered from discrimination because of their sexual orientation.
32. She then dealt with the issue of how homosexuality is understood in Turkish society. It is generally associated with the idea of the passive part in sexual intercourse; homosexuals are seen as feminine men who have passive anal sex. The active partner on the other hand is considered especially virile and "twice a man" for having active sexual intercourse with another man. It is considered a proof of masculinity.
33. She said that a man outing himself in his military service could easily become the subject of different kinds of discrimination which could include sexual abuse and violence. She had not met any bisexual men who had served in military service but would say that if the man's behaviour did not conform with the image of masculinity existing in promoting military service, regardless of whether he was homosexual or bisexual, that could cause discrimination. She added that if such a person was to live the homosexual part of their sexual orientation in a hidden/secret way with the heteronormative life on the outside, the person might not be perceived as bisexual, but men engaging in active homosexual intercourse were not considered bisexual but 100% heterosexual. Only the passive partners were considered homosexual, even if they might be bi-sexuals. She said that bisexuals who gather with the LGBT community are socially seen as gay.
34. Her researches revealed that the means of proof employed by a psychologist in charge of military exemption could be quite different. In some cases a person was asked to draw a house as this was considered a psychological method of diagnosis.

Depending on the results of such tests other evidence may be asked for: photographs and sometimes videos of passive intercourse or anal examination. The methods used by the military psychological departments were not written in any official publication and could vary depending on the person in charge.

35. After her documentary was completed, she got feedback from many gay men that they had had a similar experience to those described in the documentary. It was her view that outing yourself in the TAF during military service could lead to serious discrimination, even sexual violence. The behaviour shown from military hospitals revealed not only homophobia but also a serious danger for homosexual men as they were completely exposed to the will of the doctor. She observed in Turkish society a deep homophobia that led to discrimination in its different forms. It was her view that the humiliation incurred during the exemption process was a proof of chicanery and the fact that many men preferred to get humiliated in that extreme way in front of military psychologists instead of going into military service itself shed a light on the possible dangers a non-heterosexual man could face during his service.
36. In her oral evidence she explained that there were several reasons why people did not wish to appear in her documentary. Some were afraid because of the lack of freedom of speech in Turkey and did not want to speak out on military issues. Others feared being recognised by family members. The whole subject of military exemption was incredibly intimate and it was hard to speak out in public. The interviewees did not demonstrate loyalty to the military as an institution but to the meaning of the military in Turkish society. It was an important institution and to speak against the military was to speak against the nation and the flag. Those who had been successful in hiding their sexuality had not suffered. There was a fear of harassment from commanding officers. She confirmed that only the passive male was considered to be homosexual and indeed that it was seen as an honourable activity to be the active partner. Fear arose from the position of domination, in the military there would be no way of saying no and there was no other exit.
37. In cross-examination she said that the report issued when someone was exempted on the basis of their sexual identity was known as the rotten report. She did not know if exemption for other medical reasons was issued on the same report. One of the purposes of her documentary was because she wanted to make people understand how afraid someone had to be voluntarily to go through the humiliating process of exemption. The basic fear was of military service and the point she was trying to make was how bad the second option (military service) had to be to go through the process of applying for exemption. She was asked what it was that had to be hidden in the context of army service, particularly if there was nothing to suggest that someone was passively gay or not obviously effeminate. She said that sexual identity still had to be hidden. There was a general conception of what was normal. If someone said they were gay, even if they said they took the active role, from the moment the word was used there would be stigmatising with the risk of verbal discrimination, special duties and at worst rape.

38. On the process of exemption, she did hear about cases where the military authorities had taken the initiative and had referred someone to the psychiatrist. So far as the procedure was concerned, people did disagree with it but were afraid to bring the matter up. Her documentary had been the first on this subject and it was her view that a Turkish citizen would not have been allowed to make it. Her film had not been shown publicly in Turkey but only at small festivals.
39. She had seen about three or four copies of a Pink Report. A person would regard this as an intimate document and it would not be the first thing to be shown. She was not aware of anyone obtaining exemption when they were not homosexual, i.e. a successful false claim by a heterosexual. She imagined that could exist as there was no right to conscientious objection in Turkey and she could envisage some people might try to claim exemption by pretending to be gay. The basic fear was a simple human fear of bad things happening because of sexual orientation and being in a helpless position and getting abused, discriminated against or persecuted.

(ii) The Evidence of Dr Ozgur Çinar

40. Dr Çinar's report appears at 2A, 1-24. His CV is set out at 2A, 25-30. This sets out his academic background, his professional qualifications, his employment background and his publications. He is a Turkish lawyer who has also worked as a legal expert for the Council of Europe since 2008. He received his PhD from the University of Essex in September 2012 on the subject of conscientious objection. He is a senior associate at St Anthony's College, Oxford, working on freedom of thought, conscience, religion and expression in Turkey.
41. He confirms the obligation for Turkish males to undertake military service, set out in article 72 of the 1982 Constitution that:

"National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the armed forces or in the public service shall be regulated by law".

There is no alternative civilian service. The specific law relating to military service is the Military Service Act 1927 – No 1111 which provides that: "Every male Turkish citizen is obliged to perform his military service in accordance with this law".

42. When a man reaches the age of 20 he is liable to recruitment but military service can be postponed in a number of situations, either for medical reasons or to study. The appellant in his witness statement had explained how he deferred his military service, firstly for his higher education and then he renewed his extension because of studying abroad and so followed the correct procedures. There was no recognition yet of conscientious objection as a right and no form of any alternative service. Conscientious objectors faced "civil death" and were suspended in a vicious circle of incarceration, prison and military barracks and once leaving they are surrounded by a militarised society. The issue was addressed by the European Court of Human Rights (ECTHR) in the case of Ulke v Turkey (39437/98) January 2006. The Court

found the position of the applicant in that appeal to be degrading and a violation of article 3 because of the cumulative effects of repeated criminal convictions and the constant alternation between prosecutions in terms of imprisonment, together with the possibility of prosecution for continuing failure to carry out his military service.

43. The qualifying ages for military services are between 20 and 41 but in practice there is no upper age limit for recruitment. In Tastan v Turkey (63748/00), the ECtHR had found a violation against Turkey in the case of the applicant who was ordered to perform military service at the age of 71. Conscientious objectors, draft evaders and deserters were not accepted as good citizens and military conscription was regarded as the first step on the path to manhood and the essential condition of manliness. His report explains the punishment under Turkish law for refusal to join the Turkish armed forces under conscription and the relevant legal provisions. There are several reasons for exemption from military service such as health, psychosexual diseases (namely homosexuality, transsexualism and transvestism) or disability. When a man declares he does not want to join the military as he is a homosexual he first needs to visit his doctor or a doctor at a civilian or military hospital. He is then referred to the military hospital because he has to prove his sexual orientation to a doctors' committee in a military hospital and this committee is authorised to issue an unfit report for military service.
44. He describes this as a long and harsh procedure. The applicant has to show an advanced sexual behaviour disorder which is "explicitly seen and diffused all over his life". He has to prove his homosexuality in several ways such as by a personality test, Minnesota Multiple Personality Inventory, incomplete sentence test, by videos or photos taken during sexual intercourse with a partner or photos or videos taken while wearing women's clothes in public places, rectal examination, proof from a relative and hospital stay in the "pink ward". If the doctors still cannot reach a decision in the light of the various examination methods a gay candidate will be temporarily exempted for a year after which he has to return to the military hospital to undergo the same procedure again.
45. The armed forces do challenge the sexual orientation of recruits who identify themselves as gay. He refers to a 2005 study of Lampba Istanbul which covered 399 gay (including bisexual) individuals exploring the unfit report issue. Out of the 27 gay males who agreed to talk, six were rejected after their first interview at the conscription centre and were not sent to military hospital. Out of the 21 individuals sent to the hospital six said they had submitted pictures taken during sexual intercourse and 13 that they had undergone rectal examinations. Seven individuals were denied a report for "not being effeminate enough". Sometimes it was not possible to gain an unfit report in spite of providing all the evidence requested. Dr Çınar then refers to an article in the Milliyet newspaper about AA, a homosexual, who did not receive an unfit report despite pictures and a rectal examination because he was found to be "not effeminate enough". Later he appealed to the Military High Administrative Court which found in his favour on the ground of "suspicions about his being homosexual in the military would cause unavoidable problems". If the

military authorities are satisfied that someone is gay they issue a "report" to the person stating he is unfit for military service. This is informally called a pink card and sets out the individual's personal details, the diagnosis, the findings explaining why the person is gay and the doctor's signatures.

46. So far as gay recruits not exempted from military service are concerned, he refers to an Amnesty International report of 2011 saying that they were subjected to threats and abuse from commanding officers and from fellow conscripts and in some instances to homophobic violence by conscripts. Gay men also said that they feared or were threatened with rape or other forms of sexual violence by fellow conscripts. There is provision under the military penal code that if such actions are conducted by commanders they would be brought before military courts and may face imprisonment, but the issue is whether these measures are effective or not in practice. He refers to a report "Violations of the Rights of Conscripts in Turkey" published by the Rights of Conscripts Initiative stating that "ill-treatment, torture and systematised abuse have remained part of military culture for decades without notable improvement".
47. If an exemption is issued the decision is automatically sent to the local authorities and in a village or small town this may lead to details of sexual orientation being made public, putting him at risk of homophobic abuse or violence. Similar problems may be faced in a big city. If someone applies for a job he would be asked to provide a certificate indicating he had completed military service. Even though the grounds are not stated on the certificate there was a common suspicion that it was granted on grounds of sexual orientation and this can lead to employers refusing a job.
48. Dr Çinar refers to the recent European Union Report, 2012 Annual Progress Report for Turkey for the accession to the European Union noting that the internal rules of the Turkish armed forces continue to define homosexuality as a psychosexual illness and to declare homosexuals unfit for military service. The same report also states that homosexuality is not a criminal offence but LGBT people continue to suffer discrimination, intimidation and are victims of violent crime. He explains that this arises from the concept of honour and the value attributed in Turkey society to masculinity, the position being compounded by homophobic statements from state officials to the effect that homosexuality is a biological disorder, an illness that should be treated.
49. In his oral evidence Dr Çinar gave further details about the exemption certificate. When asked whether gay recruits were subject to physical or psychological harm, he referred to the Rights of Conscripts Initiative October 2012, describing this as the most detailed and intensive report. There was also a risk of punishment in Turkey for criticising the army in the light of para 318 of the Turkish penal code. He referred to the "Do Ask, Must Tell" report of December 2010, saying this was one of the first reports setting out the complaints about what could happen during military service and raised issues of ill-treatment. More attention was now being paid to these issues.

50. In cross-examination Dr Çinar confirmed that so far as he was aware the copies he had seen of the Pink Reports were of genuine documents. The names, titles and language used were correct. He had practised for two and a half years as a lawyer in Istanbul and during that time he had had a couple of clients who were draft evaders. He was still part of a legal firm in Turkey and if any issues of draft evasion or conscientious objection arose, he would be consulted. When doing his PhD he had done research on homosexuality but was advised not to include it. He explained that there had been an amnesty in Turkey last year providing for payment of 30,000 Turkish lira to gain exemption from military service. If a man was outside Turkey, had lived abroad and worked lawfully for three years he could pay 10,000 Euros. He had obtained exemption on this basis.
51. He confirmed that only a military hospital can issue the exemption report. If someone claimed an exemption on the basis of being gay, he went to a doctor and then would be referred to a military hospital. Everything was under the control of the Ministry of Defence. Homosexuality was not now referred to as a psychosexual disorder but as sexual identity and behaviour. If someone was asked for pictures they would have to show them. None of the methods used were compulsory but failure to comply could lead to failing to establish an exemption. If an exemption was claimed and refused there would not be a punishment. The tests started with the personality test and then moved on to other tests such as rectal examination, asking for pictures or for testimony from a family member. Sometimes the applicant was required to stay overnight in hospital or in a cell so that he could be observed.
52. Dr Çinar said that he had been invited to give training to military judges in Turkey on behalf of the Council of Europe. This included the most senior fifty judges and he felt that most of them had great difficulty understanding gay issues. He accepted that small changes were taking place in Turkey as it was attempting to obtain EU membership, but there was a huge gap between theory and implementation. After someone had been exempted and had applied for employment, it was not compulsory to show the certificate but some employers would ask for it. Job applications usually asked whether military service had been completed. Employers were anxious that someone would not be called for service after being offered employment. He confirmed that there had been an instance of attempts to rectify discrimination by sending a warning letter to employers. In 2010 legislation had been introduced to permit individual applications on human rights grounds in Turkish courts, but he was not aware of any such application and in any event it would be a long process, although this did represent an important change.

(iii) The Evidence of Mr J Irlenkäuser

53. Mr Irlenkäuser's evidence is set out in an expert report entitled "The Situation for Homosexuals in the Turkish Armed Forces" dated May 2013 at 2A 31-60. His CV at 61-62. The bundle also includes his master's thesis, "The Rotten Report – Gender Identities in the Turkish Military" at 2A 63-149. His report is written from the perspective of cultural and social anthropology. He is currently a PhD candidate at

the European University Viadrina in Frankfurt (Oder), Germany. He works in the same university as the coordinator of the European studies MA programme. As part of his master's thesis he carried out research on military service in Germany from April 2011 to May 2012 and within this framework conducted interviews with twelve men and one woman on this issue. Since October 2012 he has continued his research on military service in Germany and conducted thirteen further interviews.

54. His report is generally consistent with the evidence set out in Dr Çinar's report. It is not in issue that military service is mandatory for all male citizens of Turkey and there is no alternative service or provision for conscientious objection. Military service liability starts at 20 and continues to 41 but that age only refers to the fact that anyone who has performed his service remains a reservist until the age has been reached. As for starting military service, no age limit exists and there are cases of people in their older age being asked to perform their service. Turkish nationals permanently and legally residing abroad can apply every second year for deferment until the age of 39. Those who have worked abroad for at least three years holding valid work and residence permits have the opportunity of being exempted by paying 10,000 Euros, the so-called "foreign currency military service". Under certain preconditions it is also possible to qualify for exemption if military service has been completed in another country.
55. The only ground for ineligibility for military service is for distinct health issues based on the Turkish Armed Forces Health Regulation, which sets out a variety of disorders and diseases including "sexual identity disorder". Gay people can be excluded from military service as they are regarded both as a threat to military order and as disabled/disordered people. They are exempted by military doctors during military health examinations. Asking recruits to identify their sexual orientation is not a usual part of recruitment and examination procedures but recruits can be referred to the psychiatric department to have their sexual orientation determined if there is a suspicion that they suffer from a "sexual identity disorder" or the recruit demands to see a psychiatrist.
56. There is no provision which per se excludes gay people from military service but two reasons for exclusion exist: to get exempted on the basis of the TAF Health Regulation or the Forces Disciplinary Law for being involved in unnatural behaviour. The usual reason for a gay man to be excluded was to be considered ineligible due to diagnosis of a "psychosexual disorder" in respect of advanced sexual disorders which were "explicitly apparent in the person's whole life" which could cause "objectionable situations in the military environment". In January 2013 there was a major amendment to the TAF Health Regulation replacing "sexual disorders" by "sexual identity and behavioural disorders". But just as in the old regulation the "sexual identity and behavioural patterns should be dominant and apparent in every part of [the recruit's] life".
57. Mr Irlenkäuser then sets out the procedures adopted to determine whether a recruit should be exempted on this basis. The military has developed a range of diagnostic

methods to determine and measure someone's sexuality. These comprise: a personality test, photos or videos taken during sexual intercourse, photos or videos taken while wearing women's clothes in public places, the "relative/forced come-out proof", rectal examination and hospital stay. The aim of these methods is to determine whether the recruit is "really" homo-/bi-/transsexual in the sense that the "disorder" is "dominant and apparent in every part of his life". The decision whether a recruit is really considered to be homosexual so qualifying for exemption is based on three factors: his outer appearance (female characteristics like no/few body hair, breasts, female clothing), his behaviour (facial expressions, gestures, voice intonation) and his personal characteristics (among others to be the passive/receiving party during sexual intercourse). After the various tests had been carried out, the medical estimate is made by a military medical committee, usually comprising ten high ranking military doctors. If a recruit is asked to provide a video or photo material, the committee is also in charge of evaluating this evidence. His report then describes the procedure in stages: first stage, health examination, second stage, consulting a psychiatrist/psychologist and personality tests, the third stage, being asked to provide further material, being asked to bring a close relative to testify to homosexuality, rectal examination, hospital stay, fourth stage, questioning by the military doctors' council and fifth stage, meeting with the military doctors' committee.

58. His report says that the TAF does not challenge the sexual orientation of the recruit but might challenge the demand to be exempted on the grounds of his sexual orientation. It is not usually the sexual orientation itself which is questioned but the fact of whether the recruit is considered to be a "real homosexual" or just a person with unusual sexual preferences. The perception of homosexuality is not reduced to a person's sexual orientation but refers to a person's whole personality including his outward appearance and behaviour. Medical staff at a military hospital might believe a recruit to be sexually drawn towards other men but may still consider him as too manly to qualify as a "real homosexual" and therefore refuse his demand to be exempted from military service. He says that if a gay asks to be exempted from military service due to sexual orientation and the psychiatrist at the military hospital, after a personal consultation and some personality tests cannot reach a final diagnosis, the recruit might be asked to provide proof of his sexuality or further examination methods might be carried out. When asked whether gay recruits are required to undertake special physical examination he said that as part of the exemption procedure they can be asked to undergo a rectal examination but according to his research this practice had become much less common after it had appeared in various international media outlets and been recorded in the 2011 European commission "Turkey progress report". Studies prepared on the issue in 2006 and 2007 mentioned cases in which recruits had to undergo this examination method but none of Mr Irlenkäuser's interviewees (post June 2011) had had to do so. It was now more and more common for recruits to be asked to bring a close relative to the military hospital and in many cases proof from a close relative had become a necessary precondition in order to obtain exemption. It had become almost impossible to get exemption from recruits who were not "out" with their families. He

was asked to comment on what would happen if a gay recruit refused to provide evidence of his sexuality and his view was that in these circumstances the most likely consequence is that he would not get exempted. If recruits choose not to produce evidence the military doctors will refuse to diagnose him as suffering from a sexual identity disorder.

59. He confirms that in Turkey there is no legal discrimination against LGBT people but equally they are not specifically protected by any legislation in the sense of anti-discrimination rules. There is a range of legal provisions in the form of morality based laws which are commonly used to discriminate against LGBT people. Being a lesbian, gay, bisexual or transgender person is still broadly considered as a moral offence, often leading to discrimination and violence. Within the closed surroundings of a military unit this violence can be particularly dangerous. As military service is considered a rite of passage into adult heterosexual masculinity, the TAF is seen as having a particularly hostile atmosphere towards anything/anybody considered unmanly. He refers to instances of gay recruits being faced with violent harassment during their military service.

60. He says at [86]:

“In sum, being homo-/bi-/transsexual in the TAF does not necessarily mean to be confronted with violence. But, and this obviously counts in particular for those cases where the fellow recruits found out about the ... person’s sexual orientation, it definitely goes hand-in-hand with a significantly higher risk of facing various degrees of psychological or physical violence than is the case for heterosexual recruits.”

He says that depending on the situation of the individual case homo-/bi-/transsexual recruits face different degrees of psychological and physical violence. However, what most probably counts for all recruits who did not “fit the norm” with regards to their sexuality, it is the constant fear that their sexual orientation is discovered by their fellow recruits and the consequences this might have for their personal security. Discovery could lead to verbal abuse, threats of or actual physical violence. He was asked if the TAF have effective measures to prevent such harm and referred to the provisions of the military penal code providing for punishment. It is his view that the TAF does not seem to be able to protect gay recruits from possible harm they might experience through their sexual orientation.

61. It is his view that many gay men decide not to get exempted as they fear that their family will find out about their sexual orientation. If exemption is granted, military duty is considered as fulfilled. The pink report is issued by the authorities as proof that someone is exempted and sets out the military doctor’s final diagnosis.

62. Mr Irlenkäuser says that during the last ten years the issue of gays in the TAF has attracted increasing public attention, particularly after the issue got picked up by various media outlets from Turkey as well as from abroad. While the issue has been addressed by the media and a broad range of human rights organisations, government and military officials have tended not to comment on it. If a man

applies for employment his employer will expect him to prove that he has completed his military service. The main reason is that employers want to exclude the danger of an employee being conscripted in the near future. As military service can only be postponed for educational reasons, it is very likely a man who has not completed his military service will not be able to stay in a job position for a long time. Any recruit who is not exempt from military service who refuses to serve is liable to punishment as a draft evader. If a recruit asks to be exempt on grounds of sexual orientation but refuses to provide proof of his sexuality it is likely at best that the exemption will be refused. As the appellant has failed to report for service for more than a year, his potential penalty under the military code would be a prison sentence of between four months and two years if he reports or between six months and three years if he is arrested, and he would most likely be imprisoned in a military prison. Those perceived as gay within a military prison regime face a danger of being subjected to torture, inhumane or degrading treatment both from prison inmates and the prison staff. He refers to a report relating to the treatment of a conscientious objector Mehmet Tarhan but says it is not quite clear from these reports whether he was abused because of his sexual orientation or because of his approach towards military service.

63. In his oral evidence Mr Irlenkäuser confirmed that his research was as a cultural anthropologist. He worked at the Istanbul office of Amnesty International on a project collecting data for a database on human rights organisations which he confirmed were mainly Turkish organisations but covered some NGOs. He felt there was still very little evidence about gays in the military. The matter had been raised essentially for the first time in the newspaper article of 2006. He confirmed that in Turkish culture generally it was not seen as problematic to have sex with another man as the active party. There would be pressure on gays from men to have sex with them and in the closed environment of the military there would be no escape.
64. In cross-examination he said that his interest in this subject had developed during his exchange semester from October 2010 to April 2011. He had later gone back to conduct interviews. There had been limited sources of information but he had been able to obtain evidence from academics and in particular from a retired academic who had been aggressively critical on the whole issue. He accepted that a gay person might well feel the whole process of exemption was humiliating but would not want to lose that process. If someone was living in fear of what would happen during fifteen months' military service it would be better to undertake the humiliating process of obtaining exemption and then the matter was over. He confirmed that there were other ways of obtaining exemption, working and residing legally abroad for three years. The previous provision was the payment of 5,100 Euros and doing three weeks' basic training but this had now been replaced by paying 10,000 Euros and undertaking no service. As far as he knew the appellant would not be able to take advantage of that provision. Service could be deferred as a student but not beyond the age of 38. If someone was studying abroad and failed to report to service at 38, they would lose their passport and this could lead to the loss of a valid residence permit abroad.

65. There has been discussion within Turkey about alternative service for a number of years. The process for identifying whether someone should have a military exemption has been developed by military doctors. During the past six years there had been criticisms of the methods of diagnosis. Different doctors might apply different tests. He was not aware of any case where a potential recruit had not had to undertake the personality test. It could be that someone was signed off simply on that basis but he did not think that that was the case. Of the people he interviewed all eight had been exempted. Only two or three underwent the personality test, the other five had to submit to a rectal examination. The background was simply that the military did not want homosexuals in the armed forces for fear of disturbing military discipline. They sought to determine whether someone was completely homosexual, passive or effeminate. Some recruits feared applying for an exemption because they did not want the risk of family rejection. He accepted that evidence from family members was becoming a more important way of proving homosexuality. Recruits were not now asked on a regular basis to provide photographs. If someone had been exempted on this basis, it would not be possible to obtain employment in the public sector, although he did not know whether this was by legal provision. One person he had interviewed had said he was so gay that he would only work for a gay friendly company and there were such companies. He confirmed that the amnesty referred to by Dr Çınar (at [50] above) in Turkey had run for six months but there was no such provision currently in place. If someone was studying abroad he thought that the individual would inform the authorities as opposed to the position in Turkey when the university did so.

Submissions

66. On behalf of the respondent Mr Hayes submitted that the first issue was to consider whether the appellant was bisexual or would be treated as gay by the authorities in Turkey. The respondent doubted whether this was the case. The appellant's credibility was undermined by the delay in claiming asylum, particularly in circumstances where his sexuality formed a core part of the claim. He said he had been diagnosed with HIV but he had never sought treatment and had continued his life in the UK. It had now been accepted that he was not HIV positive. This raised real doubts as to whether his sexual identity was at the heart of his claim or whether this was a case of a simple unwillingness to undertake military service. The second issue was whether the appellant would seek exemption from military service on the grounds of his sexuality. He asserted that he would, regarding this as the lesser of two evils. Assuming that he was bisexual and therefore prima face falling within a category entitled to exemption, the policy and process applied in Turkey would not generally fall within article 3 or 8, although on a case-by-case basis an individual might be able to substantiate such a claim.

67. He submitted that there was nothing in the appellant's circumstances which would compel him to seek an exemption. His situation could properly be distinguished from that of a homosexual. As a bisexual, potentially at least he shared aspects of the

identity of a heterosexual. There was no real issue about the process of applying for exemption or the techniques used to discover whether the exemption criteria applied. The aim was to protect military "health" and discipline and to prevent heterosexuals dishonestly seeking exemptions. There was evidence of the techniques used but no figures about the total exemptions claimed, the basis or the process gone through. The use of photographic evidence appeared to be a technique developed by doctors, not by the military as such. The situation was different from the processes employed to "out" the parties as in the ECtHR in Smith and Grady v UK (33985/96 and 33986/96). He argued that it could be inferred from the evidence that there may in some circumstances be a minimum process leading to an acceptance that an applicant fell within the category granted exemption, but in other cases there may be more enquiries. He accepted that there was evidence that being exempted from military service as a "gay" could lead to discrimination but the evidence failed to establish generally or in the present case that the high article 3 threshold would be met.

68. He accepted that acts of persecution and reasons for it could take different forms but they must be linked: see articles 9 and 10 of the Qualification Directive. The evidence as a whole did not show widespread or systematic discrimination or that there was a risk for gay/LGBT individuals generally. There were a number of gay rights organisations and non-governmental organisations in Turkey offering advice and support. Organisations such as Social Policy, Gender Identity and Sexual Orientation Studies Association ("SPoD"), and Kaos Gay and Lesbian Cultural Research and Solidarity Organisation ("Kaos GL"), both national non-governmental LGBT organisations in Turkey provide HIV/AIDS consultancy and both agreed that there was a gay scene in Turkey, particularly in urban areas in Istanbul, Ankara, Eskisehir, Izmir, Antalya and coastal areas such as Marmaris and Bodrum and there were many gay networks in Turkey and on the internet. The situation could properly be distinguished from the position in the East African Asian case (1981) 3 EHRR 76
69. Conscientious objection was not recognised as an exemption and in Sepet and Bulbul v SSHD [2003] UKHL 15, the House of Lords established that there was no internationally recognised right of absolute or partial conscientious objection such that where it was not respected a good case for refugee status was established. In any event the background evidence now showed that the military courts had shown a willingness to implement ECHR judgments, although he accepted that there were isolated incidents of prosecutions that breached article 3. He submitted that if not exempted or an exemption was not applied for, there was no sufficient evidence to show that the appellant would be targeted as a gay person or suffer any worse treatment. He referred to HJ (Iran) [2010] v Secretary of State for the Home Department [2010] UKSC 31. The question of whether the appellant could be expected to be discreet about his sexual identity had to be looked at in the context of military service, which was for a limited period of time. It was not unreasonable in these circumstances for the appellant to be discreet about or to hide that aspect of his sexual identity.

70. Mr Gilbert submitted that the appellant had established that he was a bisexual. He had called two witnesses to support his own evidence about his sexual identity. If he had to return to Turkey he would have to hide this to avoid persecution. The appellant could not be expected, assuming he was not exempted, to dissemble about his own identity even for six months. The issue had to be looked at against the background of the situation in Turkey and in particular during military service. Heterosexual recruits would not be in the same position of having to repress an important aspect of their personality or hide the outward appearance of who they were. The general attitude of people in Turkey towards those who were not heterosexual was evidenced by the report at R29 about the position of LGBT asylum seekers in Turkey from Iran. They had been the subject of violently homophobic treatment. He submitted that the background and the expert evidence identified something seriously concerning in the exemption process and in the prospect of military service for those identified as gays. There was clear evidence of ill-treatment in the Turkish military which appeared to be condoned.
71. The exemption process and the procedures employed involved a series of measures of such severity that the article 3 threshold was met. Potential conscripts might voluntarily undertake the exemption process but this was only because the alternatives were even worse. An applicant would be labelled, categorised and denigrated as a result of his sexuality. This led to discrimination and being treated as very much a second or even third class citizen. The Turkish military was not the direct cause but must understand what the situation was. Someone going through this process suffered degradation and stigmatisation for the rest of their life. He submitted that the appellant as a bi-sexual had good reason to be fearful of military service as a result of his sexual identity. There was a real risk if he was outed of being subject to not only abuse but also ill-treatment and rape. If a conscript was identified as "ibne", (an intensely abusive term for a gay man), he would be unable to engage in full service with sufficient protection from the authorities. There was evidence of endemic bullying within a homophobic military.
72. The fears held within the gay community in Turkey about the risk of homophobic ill-treatment during military service were confirmed by Ms Böhnish and the expert evidence. In summary, he submitted that the appellant as a bisexual male would be faced with a situation of either having to apply for exemption or undertake military service in an atmosphere in which certain categories of gay were not permitted to serve. An open or identified bisexual man would be at real risk of treatment in breach of article 3 and there would be inadequate protection to obviate the risk of harm. He submitted that the appellant was entitled to asylum on the basis that the risk would be for a Convention reason as bisexual conscripts would form a particular social group. He further submitted that even if the appellant's claim failed on asylum and article 3 grounds that in his particular circumstances to remove him would be in breach of article 8. He was now estranged from his family but maintained limited contact with his sister. As an openly bisexual man present in the UK for twelve years he had established private life rights and removal would be disproportionate.

The Law

73. The appellant is entitled to asylum if, owing to a well-founded fear of being persecuted for a Convention reason he is outside his country of nationality and is unable or, owing to such risk, unwilling to avail himself of the protection of that country. He must show that there is a reasonable degree of likelihood or a real risk that this is the case. We must also take into account the Qualification Directive given effect in The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and in particular reg 5.

It is provided by reg 5(1) that in deciding whether a person is a refugee an act of persecution must be:

- “(a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).”

Reg 5(2) provides that an act of persecution may take the form of:

- “(a) an act of physical or mental violence, including an act of sexual violence;
- (b) a legal, administrative, police or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
- (c) prosecution or punishment which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7.”

74. On the issue of military service we are bound by the opinions of the House of Lords in Sepet and Bulbul v Secretary of State [2003] UKHL 15 where it was held that there was no established international law providing for a right of conscientious objection to military service. It was accepted that a state may require compulsory military service of its nationals and prosecution and punishment arising from such refusal does not amount to persecution unless some additional element is identified and proved to establish persecution.

75. We remind ourselves of the guidance in HJ (Iran). In [22], Lord Hope said that a carefully nuanced approach was called for to separate out those who were truly in need of surrogate protection from those who were not. His guidance on the approach to be followed is set out at [35(a)-(e)]. The first stage is to consider whether an appellant is indeed gay and the next stage to assess what his situation will be on return. The question was how the appellant, looked at individually, would conduct himself if returned and how others would react to what he did. He must not be expected to conceal aspects of his sexual orientation which he was unwilling to conceal, even from those he knew may disapprove of it. If he feared persecution as a result and that fear was well-founded, he would be entitled to asylum however unreasonable his refusal to resort to concealment may be, and the question of what was reasonably tolerable had no part in that enquiry.
76. In [35(c)] Lord Hope said that the fact the appellant would not be able to do in his country of nationality everything that he could do openly in the country where he sought protection was not the test. The Convention was not directed to reforming the level of rights in the country of origin, and it would be wrong to approach the issue on the basis that its purpose was to guarantee that an appellant who was gay could live as freely and openly as a gay person would be able to do so if he was not returned. In [35(d)] he said that if it was found that the appellant would in fact conceal aspects of his sexual orientation on return, the next stage would be to consider why he would do so. If this was simply a response to social pressures his claim for asylum must be rejected, but if the reason he resorted to concealment was that he genuinely feared that otherwise he would be persecuted, it would be necessary to consider whether that fear was well-founded.
77. We must also consider the provisions of article 3 of the ECHR which state that:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3. The assessment of this minimum is in the nature of things relative and depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and in some cases the sex, age and state of health of the victim etc.

We have been referred to the decision of the ECtHR in Pretty v United Kingdom [2002] 35 EHRR 1 and in particular [52] which says that:

“Where the treatment humiliates or debases an individual showing a lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of article 3.”

We also accept that the determination of whether treatment is severe enough to violate article 3 requires all matters to be considered cumulatively. In a similar vein

we have been referred to Ocalan v Turkey [2005] 41 EHRR 45 where at [181] the court said that in considering whether a punishment or treatment is “degrading” within the meaning of article 3, the court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequence is concerned, it adversely affected his or her personality in a manner incompatible with article 3. No submissions were made on MR (Risk-homosexual) CG [2002] UKIAT 05654 but that case very much turned on its own facts and in any event in the light of the evidence now available cannot now be regarded as providing country guidance.

78. We have been referred to the judgment of the ECtHR in Smith and Grady v UK which dealt with complaints that the actions of the UK government in investigating whether serving members of the armed forces were homosexual and their consequential discharge constituted violations of the Convention. When considering the applicable general principles at [87]-[89] the Court confirmed that the right to respect for sexual identity concerned a most intimate part of an individual’s private life and that there must exist particularly serious reasons before an interference can justify the requirements of article 8. However, an interference would be considered necessary in a democratic society and for a legitimate aim if it answered a pressing social need and was proportionate to the aim pursued. The Court recognised that it was for the national authorities to make the initial assessment of necessity, although the final evaluation as to whether the reasons cited for the interference were relevant and sufficient was one for the Court. A margin of appreciation was left to contracting states in the context of this assessment which varied according to the nature of the activities restricted and the aims pursued by those restrictions.
79. The Court held that where the core of a national security aim pursued was the operational effectiveness of its armed forces, each state was competent to organise its own system of military discipline and enjoyed a margin of appreciation in this respect. It was open to the State to impose restrictions on an individual’s right to respect for his private life where there was a real threat to the armed forces’ operational effectiveness as the proper functioning of an army was hardly imaginable without legal rules designed to prevent service personnel from undermining it. However, national authorities could not rely on such rules to frustrate the exercise by individual members of the armed forces of their right to respect for their private lives, which right applied to service personnel as it did to others within the jurisdiction of the state.
80. So far as sufficiency of protection is concerned we have been referred to Horvath v Secretary of State [2009] Imm AR 205 and to Svazas v Secretary of State [2002] EWCA Civ 74 and to the need for cogent evidence that a state is willing and able to offer effective protection against abuses by its own agents. The appellant also seeks to rely on article 8 and in this context we have been referred to a number of authorities and in particular we take into account the guidance of the House of Lords in Razgar v Secretary of State [2004] UKHL 27 and Huang v Secretary of State [2007] UKHL 11.

Background Evidence

81. We have been provided with substantial background evidence in three bundles. This evidence supports in broad terms the expert evidence about the position of LGBT individuals in Turkey. In the US State Department Human Rights Report 2012 at 3/4A 1-48 under the heading "Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity" it is recorded that:

"LGBT individuals continue to suffer discrimination, intimidation and violent crimes. LGBT groups claim that the police harass and arbitrarily arrested transgender individuals during the year. Human rights organisations reported many prosecutions for 'offending public morals'. Authorities will often use the law on misdemeanours to impose fines on transgender persons when they have frequented stores or walked on city streets. Police claimed they were acting on complaints they had received. Transgender NGO representatives reported they were subjected to violence but that there was no place where they could make a complaint or press for their rights. They allege that police insulted and swore at them while doctors ridiculed them. ... Police provided protection to some 'pride' events in Istanbul and other cities. During the Istanbul trans pride parade in June, an extremist group attacked marchers; riot police broke up the altercation. In the Istanbul pride parade in July, no instances of violence were reported.

There were active LGBT organisations in Istanbul, Ankara, Izmir, Adana, Eskisehir, and Diyarbakir and unofficial groups in smaller cities and on university campuses. Groups reported harassment by police and government authorities. Many university groups in small cities complained that they had tried to organize, but the rector denied permission. LGBT organizations reported that the government used regular and detailed auditing to create administration burdens and threaten the possibility of large fines."

82. On the issue of gays in military service the report says:

"Authorities did not allow openly gay men to perform military service for 'health reasons' due to their sexual orientation. Gay men requesting military exemption for reasons of sexual orientation had to undergo an invasive burden of proof, but authorities denied such requests many times, even after the men proclaimed their sexual orientation and underwent treatment and examination at several military medical facilities. LGBT groups complained that gay men were required to show photos or videos of themselves in overtly sexual positions and to undergo thorough medical evaluations to prove their homosexuality to military officials. The groups further complained that military officials 'outed' gay men to their families and communities."

83. There is clear evidence of hostility and discrimination against members of the LGBT community and we note in particular the reporting of a letter in the Council of Europe of 26 April 2012 from members of the Parliamentary Assembly expressing concern about the degrading treatment applied to gays and transwomen by excluding them from service in the Turkish armed forces [3A108] and an article "Do Ask, Must Tell" of 4 December 2010 asserting that the military does not just

discriminate against gays in Turkey but humiliates them [3A77-79]. We have also taken into account the Amnesty report "Not an Illness Nor a Crime" 2011 and in particular the part dealing with gay men in the military at [3A141-143].

84. We also take into account the fact that the evidence shows that there is an increasing interest in and awareness of LGBT issues. We note in particular that Kaos GL published a military service brochure for gay people in January 2011 3A at 54-65. This referred to the fact the Supreme Court in Turkey has found discrimination on the basis of sexual orientation to be contrary to law and has reached a verdict on these lines [3A60]. There has also been a report on the violations of rights of conscripts in Turkey [3A83-105], the Askerhaglari executive summary of October 2012. We also take into account [R 31] the Turkey Gay Guide which identifies that there is a liberal and lively gay scene in Istanbul, but we contrast with this the article at R tab 32 from e-International Relations describing government hostility towards LGBT individuals in an article headed LGBT rights in Turkey: the Long Road to Tolerance. We are satisfied that some steps are being made but there are still many steps to take.
85. We must also take into account that the Turkish authorities are beginning to respond to ECtHR judgments and to the requirements of the European Union in the light of Turkey's application for membership. In the European Commission Turkey 2012 Progress Report (R tab 10) it is recorded that overall some progress has been made on the observance of international human rights law, but important reforms are needed to strengthen human rights structures and the number of criminal proceedings brought against human rights defenders is a matter of concern. On the issue of anti-discrimination legislation, although homosexuality is not a criminal offence in Turkey, it is reported that LGBT people continue to suffer discrimination, intimidation and were the victims of violent crime. High profile public figures repeatedly used negative stereotyping against LGBT persons and the internal rules of the Turkish armed forces continued to define homosexual as a "psychosexual illness" and declared homosexuals unfit for military service. We note that there has been a change in form in this respect but the report says that substantial government efforts are needed to effectively protect vulnerable groups including LGBT individuals from societal abuse, discrimination and violence.

Conclusions on the expert and background evidence.

86. We turn now to our assessment of the expert and background evidence on the issues of military service in Turkey and the circumstances in which an exemption may be granted because of sexual identity. There are consistent strands running through the expert evidence we have heard and the background evidence. The evidence of Mr Irlenkauser is substantially based on the work he carried out researching military service as part of his MA programme and he is currently a PhD candidate at the European University in Frankfurt (Oder). Although still pursuing his academic qualifications, it is clear that he has had direct experience of working in Turkey and has acquired a considerable knowledge of military service and the circumstances in

which exemptions can be granted. The bibliography, journal articles and other sources set out at the end of his Master's thesis taken with his thesis and his expert report satisfy us that he can be properly regarded as an expert on this particular issue. He gave his evidence in an objective and dispassionate way and we found his evidence reliable.

87. His evidence is consistent with the evidence of Dr Çinar whose expertise on this subject is evidenced by his education and professional qualifications at the end of his report. Dr Çinar's evidence appeared less objective than that of Mr Irlenkäuser in that what he had to say is imbued with his own strong views on the issues of military service in Turkey and in particular the lack of any right to conscientious objection and the procedure for determining whether exemption will be granted because of sexual identity. He is a Turkish citizen and had no wish to undergo military service as evidenced by the fact, as he accepted, that he was able to take advantage of the "foreign currency military service" option. The evident strength of his views, whilst leading us to take a cautious approach, did not detract from our assessment of him as a reliable witness.
88. We have not treated the evidence of Ms Böhnish as expert evidence although clearly she acquired knowledge about the issues before us in the context of preparing her documentary. We have borne in mind that the requirements of editing and selection in order to make a film documentary inevitably shape the way the topic being covered is presented. Even so, her evidence is generally consistent with and confirms that of Dr Çinar and Mr Irlenkäuser.
89. Subject to the above qualifications, we therefore see no reason to reject any of the expert and additional evidence by these witnesses from which, together with the related country information, we draw these conclusions. It is not in dispute that military service is mandatory for all male citizens of Turkey and there is in practice no provision for alternative service for grounds of conscience. Liability for military service starts at 20 and continues to 41 but that age only relates to those who have performed their military service remaining a reservist. Deferment can be obtained for the purpose of studies and Turkish nationals permanently legally residing abroad can apply every second year for a deferment until the age of 39.
90. Those who have worked abroad for at least three years holding valid work and residence permits have the opportunity of being exempted by paying €10,000, the so called foreign currency military service. It is also possible to qualify for exemption if military service has been completed in another country. There was a period when an exemption could be purchased within Turkey on payment of a lump sum.
91. The army in Turkey plays an important role in society. It is some 600,000 persons strong, of whom some 80% are conscripted. All Turkish males (there is no conscription for women) are required to undergo military service, although deferment is possible for those in education either within Turkey or studying abroad. Legitimate employment abroad may also result in deferment. If someone does not

wish to undertake military service (which is normally six to twelve months for those who have received tertiary education and up to fifteen months for all others), it is possible if there is an amnesty scheme in play whereby a substantial sum is paid and service reduced to three weeks. Otherwise the only ground for exemption is on the grounds of physical or mental disability and we are concerned with what is now described in the relevant regulations as a "sexual identity disorder".

92. Dr Çinar in his evidence identified these as homosexuality, transsexualism and transvestism. Mr Irlenkäuser described them more generally as advanced sexual disorders "explicitly apparent in the person's whole life". He said that recruits would not generally be asked to identify their sexual orientation but they could be referred to a psychiatric department to have their orientation determined if there was suspicion that they suffered from such a disorder or the recruit initiated the process by demanding to see a psychiatrist. Ms Bohnisch confirmed in her evidence that she had heard of cases where the military authorities had taken the initiative and made the referral but normally it is the recruit who seeks exemption.
93. When he does so, he needs to visit his doctor or a doctor at a civilian or military hospital and is then referred to a military hospital to prove his sexual orientation to a doctors' committee. A number of procedures have been adopted to determine whether a recruit should be exempted. These include a personality test, the production of explicit videos or photos of sexual activity or wearing women's clothes in public places, a medical examination, a hospital stay in the "pink" ward and confirmation of sexuality from a relative. This will be followed by questioning by a military doctors' council and meeting with the military doctors' committee. Which procedures are used in any given case are in the discretion of the relevant doctors and military personnel. Some people are granted exemption after the psychological test and interview whereas others have to provide further evidence. The further evidence now most commonly required is confirmation from family members and we accept in the light of Mr Irlenkäuser's evidence that the requirements of personal explicit photographs and of a rectal examination are now generally not imposed.
94. There was agreement between the experts and Ms Böhnish on the issue of how homosexuality is understood in Turkish society. It is generally associated with the passive role in sexual relations, which is seen as unmanly. As Mr Irlenkäuser put it, it is not usually the sexual orientation itself which is questioned but whether the recruit is considered to be a "real homosexual" or just a person with unusual sexual preferences. The perception of homosexuality is not reduced to a person's sexual preference but is informed by the whole personality including his outward appearance and behaviour. As Dr Çinar describes it, an applicant has to show an advanced sexual behaviour disorder which is "explicit and seen and diffused all over his life".
95. Therefore, if a man takes (or is believed to take based on his appearance and demeanour) a passive role, this is seen as unmanly and is disapproved of. A male

taking the active role does not attract the same disapproval and it is not considered that this undermines the essence of his manliness.

96. Before considering the risk during military service we will first consider the exemption process. The prohibition on gay men or more accurately a particular category of gay men serving in the Turkish army is not easy to reconcile with international human rights norms particularly in the light of the decision by the ECtHR in Smith and Grady v UK nor is the categorisation of particular sexual identities as disorders. However, the policy of excluding those perceived as having a sexual identity disorder from military service has not been challenged in these proceedings nor has it been argued that having a process of exemption in itself falls within article 3 or is persecutory. The prohibition is regarded by the Turkish authorities as a necessary restriction with a view to ensuring the operational effectiveness of the Turkish armed forces. As Mr Irlenkäuser put it in cross-examination, a gay person might well feel that the whole process of exemption was humiliating but he would not want to lose that process.
97. The exemption process is a therefore a route to exemption available to those who fall within the category of having a sexual identity disorder as understood in Turkish society. It was Mr Gilbert's submission that the exemption process and the procedures employed involved a series of measures of such severity that the article 3 threshold was met whereas Mr Hayes argued that the process would not generally fall within article 3 or 8 although on a case-by-case basis an individual might be able to substantiate such a claim.
98. The evidence we have considered has satisfied us that the exemption process is generally contrary to article 3. Dr Çinar described as a long and harsh procedure. He accepted that the methods used were not compulsory but failure to comply could lead to failing to obtain exemption. Mr Irlenkäuser has given a full account of the procedures saying that the aim of the methods is to determine whether the recruit is "really" homo-/bi-transsexual in the sense that the "disorder" is "dominant and apparent in every part of his life". The process can include the authorities resorting to intrusive requirements such as carrying out a rectal examination or requiring the production of explicit photographs or evidence of dressing in female clothes and there is evidence that those exempted have been stigmatised as "rotten" by failing to meet society's expectation of how a man should be.
99. A requirement to undertake an assessment by a psychiatrist or a personality test may not without more be a breach of article 3 and it may well be that a man perceived to fit the Turkish stereotype of a homosexual will be able to obtain exemption without having to produce photographs or undertake a rectal examination, and in this context we have already noted Mr Irlenkäuser's evidence that these requirements are now less likely to be imposed. The more usual requirement is for the authorities to require confirmation of sexuality from a family member but this in itself may for some men be intrusive and demeaning. There is no standard procedure followed and the requirements will depend upon the particular psychiatrist or military doctors

and in these circumstances it is not possible to exclude the real likelihood that someone seeking exemption will be subjected to intrusive and humiliating procedures.

100. We find that there is an increasing awareness in Turkey of the requirements of human rights obligations and an increasing interest generally in such issues in the context of military service, and this has meant that there has been some improvement in the way the exemption process is carried out. Nonetheless, the US State Department report 2012 records that gay men requesting military exemption for reasons of sexual orientation had to undergo an invasive burden of proof, but authorities denied such requests many times even after undergoing treatment and examination at a military medical facilities and in April 2012 a letter from members of the Parliamentary Assembly of the Council of Europe were expressing concern about the degrading treatment applied to gays and transwomen by excluding them from service in the Turkish armed forces. Therefore, whilst there is evidence of some improvement it is not sufficient to satisfy us that the exemption procedure does not involve a real risk of a breach of article 3. We are satisfied that the nature and extent of the process is such that it is carried out in a way in which does not properly respect the human dignity of someone whose sexual identity would qualify them for exemption and can properly be categorised as degrading.
- 101 We now turn to the consequences of the exemption process. We are satisfied that the process has the effect of humiliating and stigmatising someone whose exemption is accepted. It was argued that this led to an inability to obtain employment in government service, a risk of an exempted recruit's sexuality being made public in their home area when the decision was reported back to the local office and that exemptees were labelled with what amounted to an officially authorised subordinate masculinity which marginalised this category of homosexual men.
- 102 We have dealt with these issues save for the claimed inability to obtain employment in government service. Whilst the respondent accepts in this context that the consequences of exemption could lead to discrimination, it is argued that this does not reach the high article 3 threshold. We note from the background evidence that discrimination is prohibited in the form of equal treatment provisions in the constitution and that an employer is not entitled to know details regarding any military exemption. If a person is exempted from military service because of open mannerisms or appearance, inability to obtain employment in the government or with conservative employers is likely to be attributable to their manner and appearance rather than to being exempted. Unsatisfactory as such discrimination may be, we are not satisfied that this factor adds anything to our assessment of article 3.
103. We now turn to the question of whether gay men are at risk of persecution or serious harm during their military service. It is not Mr Gilbert's case that all conscripts face a risk of article 3 ill-treatment. There is evidence of bullying and ill-treatment of conscripts, but no sufficient evidence of a consistent and sustained pattern of

behaviour to give rise to a general risk under article 3. Although there is no legal provision that per se excludes homosexuals from military service, such orientation as understood in the context of Turkey will lead to exemption on the basis of the Turkish Armed Forces Health Regulations or the disciplinary law of involvement in unnatural behaviour. Serving as a conscript in the Turkish army is generally portrayed as a matter of pride and as an important part of the passage to manhood or more particularly to adult heterosexual masculinity and against this background Mr Gilbert argues that homosexuals face an enhanced risk by reason of their sexual orientation.

- 104 In the light of the evidence about how homosexuality is perceived in Turkey, it does not follow that all homosexual or bisexual men will face difficulties. On the evidence before us we are satisfied that if a person is seen as a homosexual in the sense of coming within the Turkish stereotype and thus regarded as having a sexual identity disorder, if not exempted from service, there will be a reasonable degree of likelihood of ill-treatment likely to be sufficient to amount to persecution on the basis of his sexual identity and there would be no sufficiency of protection.
105. We accept that, if a conscript simply declares himself to be homosexual or gay, there is a risk that it will be understood by other conscripts and soldiers that he takes the passive role even if that is not the case although having regard to the evidence on attitudes generally held in Turkish society, the fact that a recruit is from that society and the fact that the likely perception of sexuality is not simply by reference to a person's sexual orientation but to a person's whole personality including his outward appearance and demeanour, we consider this that it is very unlikely that someone not falling within the stereotype of a homosexual would so identify or describe himself when that was not the case. The risk of harm during military service would therefore depend upon a number of factors, including his appearance and mannerisms the way in which he describes any previous homosexual activity; the extent to which he fits the stereotype likely to be identified as a homosexual as understood within Turkish society; and the extent to which he will conceal his sexual identity for reasons not arising from a fear of persecution.
106. When assessing these issues, as Lord Hope said in [22] of HJ (Iran), a carefully nuanced approach is called for to separate out those who are truly in need of surrogate protection from those who are not. The working out of this nuanced approach depends upon an assessment of the particular circumstances of each individual case, set in this case in the context of military service. We must take into account that, irrespective of the role someone may play in sexual intercourse, a gay man who does not wish to obtain exemption because of the process, for whatever reason including the possibility of involvement of his family, may face abuse and humiliating treatment in the army if there is a reasonable degree of likelihood that he might be regarded as a passive homosexual.
107. We follow the guidance in HJ that as a matter of general principle a person must not be expected to conceal aspects of his sexual orientation which he is unwilling to

conceal, even from those he knows may disapprove of it. If, however, a conscript conceals his sexual identity in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, he will not be entitled to asylum.

108. If someone conceals his sexual identity because he does not wish his family to learn about it, he would not be doing it for a fear of persecution nor would a conscript who was responding to social pressures in society generally, which must include in the context of Turkish society the attitude to military service, which by its very nature curtails many aspects of personal behaviour as an inevitable part of the need for military discipline, and in this context recruits may well choose not to disclose their sexual identity for personal and social reasons.
109. It is a question of fact in each individual case what a recruit will do, and why. A member of the armed forces will expect to have to exercise a degree of constraint consistent with the special circumstances of serving for a limited period of time in the forces with the need for military discipline. Such restraint would not without more undermine a fundamental aspect of his identity. We are not suggesting contrary to the guidance in HJ, that there is an objective requirement for a recruit to behave reasonably save in so far as it is consistent with military discipline, but simply that this is a factor to be taken into account when assessing how any particular individual will in fact behave or can be expected to behave. In cases where it is found that there is a real risk of serious harm arising from a recruit's sexual identity or the perception of his identity, it cannot be said that the risk can be avoided or will not arise because there is an exemption process. As we have already found the exemption process itself as presently carried out leads to a real likelihood of a risk contrary to article 3.
110. We are only concerned with the specific issue of military service. For the sake of completeness, on the evidence before us we find that the general conditions in Turkey for gay men do not give rise to a real risk of persecution or treatment contrary to article 3. As identified in the background evidence there are a number of gay rights organisations and NGOs offering advice and assistance, and Kaos GL not only provides shelter for those suffering from ill-treatment but also provides lawyers to provide legal support for LGBT individuals and provides printed material and a magazine distributed in 24 cities. It has also noted a degree of openness in being gay or LGBT among more educated people and in urban areas, and there is evidence of a gay scene in Turkey particularly in urban areas, and some coastal areas.

Country Guidance

111. We summarise our country guidance as follows:

- (i) All Turkish males are required to undergo military service but exemption can be granted on the grounds of physical or mental disability which includes "sexual identity disorder".

(ii) Homosexuality is regarded by the Turkish army as a sexual identity disorder but the perception of homosexuality in Turkey is not reduced to a person's sexual preference but is informed by an assessment of his whole personality including his outward appearance and behaviour. It is associated with the passive role which is seen as unmanly whereas taking the active role does not attract the same disapproval and is not considered to undermine the essence of manliness.

(iii) The exemption process for determining whether a recruit is entitled to exemption generally includes intrusive requirements which do not properly respect the human dignity of someone whose sexual identity would qualify him for exemption and can properly be categorised as degrading and involving a real risk of a breach of article 3.

(iv) If during his military service a recruit (whether he has not sought exemption or has been refused) is discovered or is perceived to be homosexual as understood in Turkey, there is a reasonable degree of likelihood of ill-treatment of sufficient severity to amount to persecution on the basis of his sexual identity and there is no sufficiency of protection. The risk of such discovery or perception arising during his service will require a fact sensitive analysis of an individual's particular circumstances including his appearance and mannerisms, the way in which he describes his sexual identity, the extent to which he fits the stereotype of a homosexual as understood within Turkish society and the extent to which he will conceal his sexual identity for reasons not arising from a fear of persecution.

(v) Any such risk likely to arise during service is not negated by the fact that there is an exemption process as that process itself carries a real risk of a breach of article 3.

(vi) MS (Risk- Homosexual) Turkey CG [2002] UKIAT is no longer to be regarded as providing country guidance.

Assessment of the Appellant's evidence

112. We must now turn to assess the evidence of the appellant in the context of the background and expert evidence and consider whether he would be at real risk of serious harm on return to Turkey. There are a number of aspects in the appellant's evidence which give us considerable cause for concern such as to undermine his credibility to a large extent. He first came to the UK with a valid student visa in 2001 which was renewed in 2002 and 2003, his leave to remain expiring on 31 December 2004. When his leave expired he returned to Turkey on two occasions but did not return after the expiry of his leave. He remained in the UK and only came to the attention of the authorities when he was arrested in Scotland on 26 October 2011. At that stage he did not give his full name and UKBA had no trace of him but he later gave his correct name and said that he wanted to claim asylum. His failure to claim until after his arrest is a factor we must take into account as detracting from his credibility. We are not satisfied that any adequate explanation has been given for this delay.

113. The appellant's evidence is also undermined by the fact that he claimed he had been diagnosed as HIV positive in Turkey according to his screening interview but subsequently said that this had been diagnosed in the UK. Despite, on his own account, being diagnosed after a visit to a hospital in Chelsea, he did not seek treatment saying that he had reacted very badly to the diagnosis and after about four or five months went to a clinic for antidepressants but did not use them for very long. When seeking to confirm that he was HIV positive, medical tests showed that this was not the case. The appellant described being shocked albeit in a good way at this news. He explained this to the staff at the STD clinic and they thought he might have another condition with effects similar to HIV. He was referred to his GP but further blood tests have shown no abnormality. We do not believe his evidence that he thought he had HIV. We have taken into account the evidence of Professor Geretti at C201-2 that there was a low but not negligible likelihood of an HIV screening test being reported as falsely positive but we do not believe that the appellant was falsely diagnosed. We consider this a fiction in order to account for the time he spent in the United Kingdom without satisfactory explanation for why he did not seek asylum.
114. The appellant has said that he has made enquiries of the Turkish Embassy about postponing his military service and generally about exemptions. He said in evidence that so far as the exemption for being gay was concerned, he had been looking at this for a long time since his last years at university. He said he had to make a choice of doing military service or finding a way out. We accept that the appellant remains liable for military service but he clearly does not want to undertake this and has sought ways of avoiding doing so. He has not been able to take advantage of the foreign currency option as he has not been legally residing abroad and was not in Turkey during the period when an internal amnesty was offered.
115. We now turn to the issue of the appellant's sexual orientation. He describes himself as a bisexual and although we have not accepted other parts of his evidence, bearing in mind the relatively low standard of proof we accept that this is the case. He has given evidence about his sexual orientation and has called two witnesses one of whom testified to having a relationship with him describing him as a bisexual although the witness wanted to be with someone who was not bisexual as he was looking for a long term partner. The other witness was a friend who said that he was bisexual like the appellant. They had not had an actual relationship apart from being friends and had spoken about their problems. It was his view that the appellant was bisexual as he had had male partners in the UK. There was also a witness statement from CD who spoke of the fact that she had been in a casual sexual relationship with the appellant. Although she did not attend the hearing to be cross-examined about her statement, we do give it weight in the light of the fact that her evidence also deals with the incident in Scotland leading to the appellant's arrest and this does tend to support her assertion that they were in a relationship. We therefore accept that the appellant has had sexual relations with both men and women and to this extent his description of himself as bisexual is accurate.

116. However, there is no adequate evidence before us to support the submission that the appellant would readily fall within the category of homosexual as perceived by the Turkish authorities or as someone with a sexual identity disorder entitling him to an exemption from military service and he does not satisfy us that there is a reasonable degree of likelihood of him being regarded as a “real homosexual” rather than as “a person with unusual sexual preferences” to use the phraseology of Mr Irlenkäuser. We do not consider the appellant is of an appearance and presentation which is likely to lead to the suspicion that he would be seen by other soldiers as a homosexual within the cultural understanding in Turkey. The assertions of risk to gays and bisexuals (see for example the report of the interview with SPoD at R39) have to be set in the context of the cultural perception of homosexuality in Turkey. We do not consider that the appellant will talk about his sexual preferences in a manner that is likely to lead to him being identified as a homosexual within the meaning described above. Any restraint the appellant considers he needs to exercise whilst serving in the army is not unreasonable having regard to the nature of the task and the general behavioural constraints that can be expected in any military context. We do not accept his stated intention to return to Turkey and apply for exemption from serving as a conscript. We find that in any event he would not meet the exemption requirements and that he himself does not believe that he would be successful in doing so.
117. For these reasons we are not satisfied that the appellant is able to show that he would be at real risk of persecution or treatment falling within article 3 as a result of carrying out military service in Turkey or by reason of the process of determining whether he is entitled to such exemption. It has not been argued that the appellant would be at risk in his particular circumstances as a bisexual on return. We consider that he would be able to lead a reasonably open life in Turkey having regard to the nature of his sexual identity and his evidence of the situation in Istanbul and the south of Turkey of which he spoke favourably. The appeal was also pursued on article 8 grounds but in the light of our findings of fact we are not satisfied that returning him to Turkey would be an interference with his right to respect for his private and family life to engage the operation of article 8 or that removal would be disproportionate to a legitimate aim within article 8(2).

Decision

118. The First-tier Tribunal erred in law and the decision has been set aside. We re-make the decision dismissing the appeal.
119. No application has been made to vary or discharge the anonymity order made by the First-tier Tribunal and the order remains in force.

Signed

Date: 22 November 2013

Upper Tribunal Judge Latter

ANNEX 1: RULING ON ERROR OF LAW

Before

UPPER TRIBUNAL JUDGE DAWSON
DEPUTY JUDGE OF THE UPPER TRIBUNAL I A LEWIS

Between

S D

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert
For the Respondent: Ms F Saunders, Senior Presenting Officer

DECISION and DIRECTIONS

1. Permission to appeal has been granted to [SD], a national of Turkey born November 1978 on grounds relating to the assessment by First-tier Tribunal Judge Scott Baker of the evidence of a witness [BA] that he knew the appellant to be bisexual and grounds relating to the judge's absence of any finding as to the consequences for a bisexual or gay man entering the military. She had found the appellant was neither gay nor bisexual.
2. The appellant's orientation is acknowledged in the grounds of application to be the central issue in this appeal. The judge gave these reasons for not believing him:
 - (i) The appellant had arrived in the United Kingdom as a student in 2001 and had extended his leave on this basis until 31 December 2004. Thereafter seven years lapsed without attempt to regularise his position, with the appellant only claiming asylum after his arrest on 26 October 2011 with reference to s.8(6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
 - (ii) The appellant had given differing dates on which he had been tested for and revealed to be HIV positive. He had no proof that he had been previously positively diagnosed and had produced a report dated January 2012 from Chelsea and Westminster Hospital stating that he had neither HIV1 and 2 or

syphilis. The judge did not accept the appellant's statement that he had been erroneously informed of his diagnosis before, having given evidence in the screening and substantive interviews of the effect of the diagnosis on his psyche, his depression and belief that a tumour had grown on his liver and also his inability to commit himself to relationships.

(iii) The appellant had obtained an adjournment to enable him to produce evidence he was suffering from symptoms similar to those of being HIV positive. No evidence had been produced.

(iv) Although the appellant claimed to have had relationships with both men and women in the UK based on him being bisexual, apart from the appellant's own assertions, the only evidence of that was from (the witness referred to above) with whom he had not had sexual relations. That witness's evidence was "limited".

3. The judge went on to find the appellant had not completed his military service in Turkey and will therefore be wanted as a result. She considered however that he would be regarded as a draft evader and not a deserter, and furthermore did not accept that he was a conscientious objector. With reference to *GS* (Article 3 – persecution – military service) Turkey CG [2004] UKIAT 00041 she found that the appellant would not be at risk of persecution as a military draft evader. In the light of her finding that the appellant was neither gay nor bisexual, she considered that the consequences for a bisexual or gay man entering military service having evaded the draft, had no relevance to the determination of the appeal. She nevertheless referred to the most recent country guidance decision on that, *MS* (risk – homosexual) Turkey CG [2002] UKIAT 05654.

4. The judge thereafter at [97] observed:

"I note that the appellant has enjoyed a gay lifestyle in Turkey, having had a partner and attending at gay bars and that he did not experience any problems at that time while in Turkey. I note that he had a job working in security at Istanbul Airport and there was no evidence that he had experienced any discrimination whilst living in Turkey."

5. The judge discounted any need for humanitarian protection and gave reasons why she did not consider removal would be disproportionate to the appellant's rights under Article 8 of the Human Rights Convention.

6. The respondent was unrepresented at the hearing before the FtT. According to the record of proceedings, Mr A adopted his statement explaining that he had known the appellant since 2007, giving details of where they had met at a club in Old Street and explaining that he, like the appellant, is bisexual. At [6] and [7] of his statement he gives evidence that:

- “6. [S] and I have never had an actual relationship together apart from being friends. We have spoken to each other about our personal problems like our relationships and sexuality.
7. I confirm that [S] is bi-sexual and I know he has had male partners in the UK.”

Mr Gilbert had not represented the appellant at the hearing before the First-tier Tribunal. Mr A was present at the hearing before us and instructions were taken as to the extent of his cross-examination. We have noted the judge’s record of proceedings which appears to indicate that his statement was adopted and that he also confirmed he is a British citizen (his statement reveals that he was born in the UK). The next question “gay men and Mil” has unfortunately an indecipherable answer of which we are only able to make out “A used to go”.

7. The record reveals also that the witness answered questions about the treatment of gays in military service. He also explained that he had been to Turkey with his family and alone. He confirmed also that in Islamic countries such as in North Africa men could be seen holding hands but not in Turkey. There otherwise appear to have been no questions on this witness’s dealings with the appellant and the information that they exchanged in the course of their friendship.
8. Ms Saunders maintained the respondent’s position stated in a response pursuant to rule 24 (of the procedure rules of the Upper Tribunal) dated 30 May 2012 including the assertion that corroborative evidence from the witness did not oblige the judge to find in favour of the appellant. Unfortunately Ms Saunders was hampered by an incomplete file and she did acknowledge at first some difficulty with para [97] which we have quoted above, although sought to resolve this by arguing the judge had included these observations when dealing with the claim on a hypothetical basis.
9. Mr Gilbert made application to amend the grounds of application in three respects:
 - (i) Failure to give any or any adequate reason why a negative credibility finding should apply under s.8 of the 2004 Act.
 - (ii) Failed to give any or any adequate reasons for finding that the appellant was not a conscientious objector.
 - (iii) At [97] the judge had made a finding which was inconsistent with her earlier conclusions on the appellant’s orientation.
10. Ms Saunders agreed for the grounds to be enlarged to include (iii) above but objected to (i) and (ii). We saw no justification in enlarging the grounds other than as agreed by Ms Saunders. The appellant has been advised throughout. There was no response to the directions sent with the grant of permission. In any event there appeared to be little merit in either ground as:

- (i) the judge was entitled to take into account the appellant's behaviour in claiming asylum only after arrest which formed only part of her adverse credibility finding; and
 - (ii) in the light of that adverse credibility finding which was otherwise open to her on the evidence, but for our concerns on the evidence of Mr A, she was entitled to disbelieve the appellant's claim to be a conscientious objector.
11. We announced at the hearing that we were satisfied that the judge had made a material error of law in failing to give adequate reasons for rejecting the unchallenged evidence of Mr A on his knowledge of the appellant's orientation. It is not clear what was meant by the judge in referring to Mr A's evidence as "limited". Given his account of the history of his relationship with the appellant, the rejection of his evidence based on an absence of sexual relations between the parties was not rationally open to the judge. The materiality of the error requires the decision to be set aside, as if the appellant is able to establish that he is bisexual, there will need to be a consideration of the country evidence which identifies difficulties for those requesting military exemption for reasons of sexual orientation as well as the consequences for gay men in military service who choose not to seek exemption, bringing into play the principles in *HJ (Iran)* [2010] UKSC 31.
12. We observed to the parties that the case may be suitable for country guidance to determine whether there has been any change since *MS (risk – homosexual)* was promulgated in 2002. The case will therefore be listed for Case Management Review after which a final decision will be made whether to take the case forward by way of country guidance.
13. In summary therefore, we are satisfied that the First-tier Tribunal erred in law. None of the findings of the FtT stands except in relation the appellant's outstanding liability to military service in Turkey and his negative HIV status. We set aside the decision which will be remade at a further hearing.

Signed

Date: 14 September 2012

Upper Tribunal Judge Dawson

APPENDIX 2: SCHEDULE OF BACKGROUND EVIDENCE

| Item | Document | Date |
|------|--|------------------|
| 1. | Eurasiane.org article "Turkey: bullying issues puts army on defensive" | 23 May 2013 |
| 2. | British Embassy Ankara letter | 21 May 2013 |
| 3. | US State Department, Human Rights Practices Report 2012 | 19 May 2013 |
| 4. | British Embassy Ankara letter | 14 May 2013 |
| 5. | ILGA Europe Rainbow Map | May 2013 |
| 6. | The National "Patriotic duty may no longer be mandatory for Turkey's men" | May 2013 |
| 7. | TR Defence: Turkish Military News, Strategy & Geopolitics Website | May 2013 |
| 8. | Turkey Operational Guidance Note v 7.0 | May 2013 |
| 9. | European Network of Legal Experts in the non-discrimination field "Main Legislation: Turkey" | 6 April 2013 |
| 10. | KAOS GL article "Colonel father kidnaps his son, authorities silent" | 27 February 2013 |
| 11. | Index Mundi "Turkey military service age and obligation" | 21 February 2013 |
| 12. | KAOS GL article "Officers committing homosexuality offences to be dismissed from the Turkish Army" | 4 February 2013 |
| 13. | AI Monitor Turkey Pass article "Suicide add to Turkish Army's troubles" | 28 January 2013 |
| 14. | Hurriyet Daily News Article "Suicides in US military rise to record level" | 15 January 2013 |
| 15. | ILGA Europe "AKP and Turkish armed forces agree on gay soldiers" | 9 January 2013 |
| 16. | Jane's Sentinel: Security Assessment, Turkey - Army | 8 January 2013 |
| 17. | KAOS GL article "AKP and Turkish armed forces agree on gay soldiers!" | 7 January 2013 |
| 18. | TACS News Announcement " Rights Abuses during Military Service" | 30 December 2012 |

| | | |
|-----|---|------------------|
| 19. | The International News article "Suicides soar in Turkish armed forces" | 26 December 2012 |
| 20. | Technical Assistance for Civil Society Organisations article "Rights abuses during compulsory military service" | 20 December 2012 |
| 21. | KAOS GL article "Turkey reproduces and institutionalises discrimination towards LGBTs" | 12 December 2012 |
| 22. | Hurriyet Daily News article "Military on defensive on suicides" | 8 December 2012 |
| 23. | KAOS GL article "Faggot referee, we love you!" | 30 November 2012 |
| 24. | KAOS GL article "Turkey military institutionalises discrimination on the basis of sexual orientation" | 30 November 2012 |
| 25. | KAOS GL article "The housing rights of transgender citizens cannot be seized!" | 29 November 2012 |
| 26. | Hurriyet Daily News "Turkish military to expel gays" | 27 November 2012 |
| 27. | Tert.am "Turkish military to expel gays" | 27 November 2012 |
| 28. | Gay Star News "Murder and being gay listed as expulsion reasons from Turkish army" | 26 November 2012 |
| 29. | EUDO Citizenship Observatory, Country Report: Turkey | November 2012 |
| 30. | IMED: The Institute for Middle Eastern Democracy "LGBT rights: Turkey guilty of violating human rights of gay prisoner" | 31 October 2012 |
| 31. | European Commission: Turkey 2012 Progress Report | 10 October 2012 |
| 32. | Askerhaglari Executive Summary "Violations of the rights of conscripts in Turkey" | October 2012 |
| 33. | European network of legal experts in the non-discrimination field News Report on exemption for homosexuals from military service on grounds of their sexual orientation | 4 August 2012 |
| 34. | KAOS GL article "Police officer interdicted of his job due to gender identity" | 17 July 2012 |
| 35. | KAOS GL article "Letter from Council of Europe: Stop the degrading treatment of gays by Turkish army" | 9 May 2012 |
| 36. | Global Post "Turkey's gay men must get a 'pink certificate' to exempt themselves from military service" | 27 March 2012 |
| 37. | BBC News article: "Proving you're gay to the Turkish Army" | 26 March 2012 |

| | | |
|-----|---|-------------------|
| 38. | Care2 article "Gays must prove identity for pink pass out of Turkey's army" | 26 March 2012 |
| 39. | Hurriyet Daily News "Gays to be discharged from the army under new draft" | 26 March 2012 |
| 40. | KAOS GL article "New psychological torture for gays from GATA: Facing the family" | 14 March 2012 |
| 41. | Hurriyet Daily News "Conditions at Turkish military prison criticised" | 28 January 2012 |
| 42. | European Parliament Parliamentary Questions – Subject: Arrest of Turkish Cypriot activist | 20 January 2012 |
| 43. | Child Soldiers International "Louder than Words" | 2012 |
| 44. | Jamestown Foundation "Turkey's Law on Military Service Exemption" | 19 December 2011 |
| 45. | Today's Zaman "Parliament approves bill on military service exemption" | 30 November 2011 |
| 46. | Voice of America "Turkey Considers Allowing Conscientious Objection to Military Service" | 22 November 2011 |
| 47. | United Nations Annual Report "Discriminatory laws and Practises and Acts of Violence against individuals based on their sexual orientation and gender identity" | 17 November 2011 |
| 48. | Cafebabel.com article "In Turkey, only 'rotten' boys escape military service" | 25 May 2011 |
| 49. | Amnesty International Report on equality for LCBT people in Turkey | 2011 |
| 50. | Two Articles from Regional Network Against Homophobia hosted by KAOS GL | 2011 |
| 51. | Foreign policy.com article "Do ask, Must tell – Turkey's military doesn't just discriminate against gays - it humiliates them" | 4 December 2010 |
| 52. | Hurriyet Daily News "Turkish military denies asking for 'photo proof' of homosexuality" | 19 November 2010 |
| 53. | Country Information Report: Turkey | August 2010 |
| 54. | Translation of Austrian Centre for Country of Origin and Asylum Research and Documentation report "Draft avoidance in Turkey" – original language document included | March 2009 |
| 55. | Optional Protocol to the Convention on the Rights of the Child in the Involvement of Children in Armed Conflict | 14 September 2009 |

| | | |
|-----|--|--------------|
| 56. | Translation of Glad.de article "The military masculinity and sexual orientation – liability to military service and exemptions for homosexual men in Turkey" - original language document included | 2009 |
| 57. | Human Rights Watch Report "We need a law for liberation" – Gender Sexuality and Human Rights in a changing Turkey | 21 May 2008 |
| 58. | Immigration Refugee Board of Canada "Turkey: Treatment of homosexuals in the military; process to establish that a man is gay; consequences of refusing to undergo this process (2005-2007)" | 5 April 2007 |
| 59. | Lambdaistanbul Gay Civil Society Initiative on the Problems of Homosexuals and Bisexuals (translation and original language document) | March 2006 |
| 60. | Personal Identity Card for "UB" | 14 May 1999 |
| 61. | Cyprus News Article "Ten days for conscript who criticised Turkish military" | Undated |
| 62. | Gay Star News "Turkey to expel out gay soldiers" | Undated |
| 63. | Two DVDs: Curuk: The Pink Report and BBC World Service: The Pink Certificate | Undated |

APPENDIX 3: SCHEDULE OF EXPERT EVIDENCE AND MATERIALS

| Item | Document | Date |
|------|--|------------------|
| 1. | Letter from Dr Rebwar Fatah | 17 May 2013 |
| 2. | Expert Report by Julian Irlenkäuser (including supplementary report) | May 2013 |
| 3. | Expert Report by Dr Ozgur H Çinar (including supplementary report) | May 2013 |
| 4. | Expert Report on HIV testing by Prof Dr Anna Maria Geretti | 09 April 2013 |
| 5. | Translation of TSK Disciplinary Draft Law with original language document | 20 December 2012 |
| 6. | Master Thesis by Julian Irlenkäuser "The Rotten Report – Gender Identities and the Turkish Military" | 29 May 2012 |
| 7. | Expert Report by Dr Rebwar Fatah | 16 February 2012 |
| 8. | CV of Dr Ozgur H Çinar | Undated |
| 9. | CV of Julian Irlenkäuser | Undated |
| 10. | CV of Prof Dr Anna Maria Geretti | Undated |
| 11. | Translation of Minnesota Multiphasic Personality Inventory Test Book with original language document | Undated |