

**IN THE WESTMINSTER MAGISTRATES COURT**

**THE GOVERNMENT OF THE REPUBLIC OF TURKEY**

V

**TALIP BUYUK**

**ALI CELIK**

**HAMDI AKIN IPEK**

**RULING**

The Government of **Turkey** (**the Government**/**Turkey**) has submitted separate requests for the extradition of the following Defendants (**the Defendants**):

1. **Talip Buyuk** (**Mr Buyuk**)
2. **Ali Celik** (**Mr Celik**)
3. **Hamdi Akin Ipek** (**Mr Ipek**)

The Request is governed by the provisions of Part 2 of the Extradition Act 2003 (**the 2003 Act**), the Extradition Act 2003 (Commencement and Savings) Order 2003 and the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003.

**Turkey** is designated for the purposes of s.71(4), 74(5), 84(7) and 86(7) of the 2003 Act and is **not** required to demonstrate a Prima Facie case. It is no part of this court's function to become involved in matters relating to the guilt or innocence of these defendants. Evidential sufficiency is exclusively for the trial court to concern itself with.

- 1) The Secretary of State issued a certificate under s.70(8) of the Act certifying that the Request for Extradition is valid and that it has been made in the approved way in respect of each of the Defendants on the following dates :
  - (i) **2<sup>nd</sup> February 2017** for **Mr Buyuk**
  - (ii) **26<sup>th</sup> September 2017** for **Mr Celik**
  - (iii) **9<sup>th</sup> August 2017** for **Mr Ipek**
  
- 2) The Government has sought the return of these defendants to stand trial for a number of offences, detailed below :
  - (i) Attempting to Violate the Constitution of Turkey
  - (ii) Attempting to Abolish the Government of Turkey
  - (iii) Political and Military Espionage
  - (iv) Establishing and Leading an Armed Terrorist Organization
  - (v) Conspiracy to Encourage / Encouraging Terrorism
  - (vi) Counterfeiting Official Documents
  - (vii) Conspiracy to Launder / Laundering the Proceeds of Crime
  - (viii) Conspiracy to Defraud
  - (ix) Preparation of Terrorist Acts
  - (x) Fundraising / Conspiracy to Fund Raise for terrorism purposes
  - (xi) Qualified Embezzlement
  - (xii) Use and Possession of / Conspiracy to Use and Possess Money for the Purposes of Terrorism
  - (xiii) Fraud by False Representation
  - (xiv) Blackmail / Conspiracy to Commit Blackmail and make Fraudulent Representations
  - (xv) Unlawful Recording, Disclosing & Securing personal data of others.
  - (xvi) Conspiracy to Unlawfully Intercept Telephone Communications
  - (xvii) Conspiracy to Pervert the Course of Justice
  - (xviii) Conspiracy to Commit Misconduct in Public Office
  - (xix) Conspiracy to Transfer / Conceal Criminal Property
  
- 3) **Mr Celik** was arrested in the UK on **23<sup>rd</sup> January 2018**, **Mr Buyuk** on **12<sup>th</sup> February 2018** and **Mr Ipek** on **23<sup>rd</sup> May 2018**.
  
- 4) **Mr Buyuk** was born on **5<sup>th</sup> January 1968**  
**Mr Celik** was born on **12<sup>th</sup> May 1967**  
**Mr Ipek** was born on **29<sup>th</sup> December 1963**.  
None of the Defendants consents to extradition.
  
- 5) At an early stage in these proceedings, this court agreed to hear extensive submissions, raised on behalf of each of the defendants, that

the Government had failed to demonstrate that **any** extradition offence was made out and that they should all be discharged. This was strenuously resisted by counsel instructed by Turkey.

- 6) After adjourning to absorb the detailed submissions, this court ruled that it was satisfied that sufficient particulars had been produced which satisfied the `Dual Criminality Test` and which established the following extradition offences in relation to each defendant ·
  - (i) Fundraising for the Purposes of Terrorism
  - (ii) Conspiracy to Fundraise for the Purposes of Terrorism
  - (iii) Use and Possession of Money for the Purposes of Terrorism
  - (iv) Conspiracy to Use and Possess Money for the Purposes of Terrorism
  - (v) Fraud by False Representation
  - (vi) Conspiracy to Make Fraudulent Representation
  - (vii) Conspiracy to Launder Proceeds of Crime.These offences have been described colloquially in court as the `**Money**` allegations.
- 7) These defendants are named (along with 70 or so other individuals) in an Indictment prepared by the Ankara Court that spans over **2,000** pages and filed in June 2016.
- 8) At the full hearing, which resumed on **25<sup>th</sup> September 2018**, the Government was represented by **James Stansfeld** of counsel in respect of **Mr Buyuk & Mr Ipek** and by **Daniel Sternberg** of counsel in respect of **Mr Celik**, while **Hugo Keith QC** leading **Ben Watson** of counsel appeared for all 3 Defendants.
- 9) The release of my ruling was reserved to today.
- 10) s.78(2) of the 2003 Act places a duty on the Judge dealing with the extradition request, at the extradition hearing, to decide a number of matters.
- 11) The Judge who deals with this request has to be satisfied to the necessary standard that the documents sent to him by the Secretary of State include the following :
  - (i) the documents referred to in s. 70(9) of the 2003 Act , i.e. the extradition request and the accompanying certificate issued by the Secretary of State.
  - (ii) particulars of the person(s) whose extradition is requested.
  - (iii) particulars of the offence(s) specified in the request.

(iv) in the case of a person alleged to be unlawfully at large after conviction, a certificate issued in the category 2 territory of the conviction and (if the person has been sentenced) of the sentence. As this is an accusation case, in relation to all 3 defendants, this provision does not apply.

12) I have been able to review the documents received and I am entirely satisfied that the provisions of s.78(2) have been fully complied with. Indeed no submissions to the contrary have been made. I must then move to consider the provisions of s.78(4) of the 2003 Act.

13) s.78(4) of the 2003 Act then requires the Judge to consider and be satisfied that :

- (a) the person(s) appearing before me is/are the person(s) whose extradition is sought
- (b) each offence specified in the request is an extradition offence and
- (c) copies of the documents received from the Secretary of State have been served on the requested person(s).

14) Having analysed the information and documentation received, as stated above in paragraph 6, I am satisfied to the necessary standard that the provisions of s.78(4) have been fully complied with in respect of each defendant, in relation to a number - but not all - of the offences in respect of which extradition has been sought.

15) I am next required to proceed under s.79 of the 2003 Act which makes it necessary to consider whether the extradition of each or any of the Defendants is barred by reason of :

- (a) The rule against double jeopardy (as defined in s.80 )
- (b) Extraneous considerations (as defined by s.81)
- (c) The passage of time (as defined by s.82)
- (d) Hostage-taking considerations (as defined by s.83)

16) The Defendants raise a number of challenges to the proposed extradition, as follows :

17) **ARTICLE 2 (Right to Life)**

The relevant part of **Article 2** states :

*“ Everyone`s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”.*

- 18) This court is required to exercise great care once an allegation under this provision is raised (see, for example, **R (On the Application of Al Sweady) v Secretary of State for Defence (2010) H.R.L.R. 2 para 26**). This is because the right to life *‘must rank among the highest priorities of modern democratic state governed by the rule of law’* **R (On the Application of Middleton) v HM Coroner for Western Somerset (2004) A.C. 182**). The test for successfully establishing a violation of Article 2 is set **very high**.
- 19) With regard to the Court’s approach in applying a State’s positive obligation to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of others, in **McLean v Ireland (2008) EWHC (Admin)** where the Divisional Court ruled that the court has moved away from the *‘near certainty’* test (previously espoused in **Miklis v Lithuania (2006) EWHC (Admin)**) preferring the *‘real risk’* test as commonly recognized under Article 3 challenges.
- 20) In **Osman v UK Reports 1998-VIII, p 3159**, the ECHR acknowledged the positive obligations under the Convention holding that the duty on the requesting State is not only to *‘refrain’* from the intentional and unlawful taking of life, but also to take appropriate steps to ensure the safeguarding of the lives of those within its jurisdiction. (see paragraph 85 of **Mahmut Kaya v Turkey** ruling delivered **28<sup>th</sup> March 2000**)
- 21) In order to successfully make out an Article 2 argument the defence is required to establish, to a high degree, not only that there is a *‘real and imminent risk’* to the defendant’s life if extradited, but more importantly, that the authorities are **unable or unwilling** to take appropriate preventative measures to reduce such risk.
- 22) **ARTICLE 3 (Prison conditions)**  
Article 3 of the ECHR states that ....“ **No one shall be subjected to torture or to inhuman or degrading treatment or punishment.**”
- 23) The defendant has to demonstrate that there are strong grounds for believing that, if returned, he will face a *real risk* of being subjected to torture or to inhuman or degrading treatment or punishment. (see **R v Special Adjudicator ex parte Ullah (2004) AC** which, albeit an Immigration Appeal decision, has equal relevance to extradition cases. *‘Real risk’* does not mean that there has to be proof

on the balance of probabilities but there needs to be a risk that is **substantial** not merely **fanciful**.

- 24) In **Saadi v Italy (Application 37201/06)** the ECHR stated that in order to determine whether there is a **real risk** of ill-treatment, it is necessary to examine the foreseeable consequences of sending the person to the receiving country, bearing in mind the general situation as well as his personal circumstances.
- 25) In **Miklis v Lithuania (2006) ECHR (Admin)** Lord Justice Latham ruled ..... “ *The fact that human rights violations take place is not of itself evidence that a particular individual would be at risk of being subjected to those human rights violations in the country in question. That depends upon the extent to which the particular individual could be said to be specifically vulnerable by reason of a characteristic which would expose him to human rights abuse*”.
- 26) In **Richards v Ghana (2013) All ER (D) 254 (May)** the Divisional Court ruled that, albeit the requirements of Article 3 were absolute and not to be weighed against other interests, such as public interest in facilitating extradition, there remained an element of relativity involved in the application of those requirements.
- 27) The Court in **Richards** ruled that in deciding whether treatment or punishment was inhuman or degrading, local circumstances and conditions such as climate and living conditions were relevant. It ruled that very strong grounds were required for a court in the U.K. to conclude that prison conditions in a non-convention state attained the level of severity that Article 3 of the Convention would be violated (see paragraphs **45 & 58**).
- 28) In **Richards**, the Court also opined that although there were aspects of the prison conditions in Ghana that would be considered unacceptable in a UK prison environment, those criticisms did not come close to attaining the level of severity necessary to constitute a violation of Article 3.
- 29) **Da Silva v Brazil (2014) EWHC (Admin)**, concerned a request by Brazil for the return of the defendant to serve a lengthy sentence for child rape. Brazil provided assurances that he would be detained in a prison designated for sex-offenders, and which was not known for violence.

30) The assurances in **Da Silva** were accepted by this court, a decision later upheld by the Divisional Court ....

*.....` The District judge was right to be satisfied with the assurances in relation to where the defendant would be detained. They had not been given by the Brazilian court, which would not have had jurisdiction to determine the location of his detention, but by the Sao Paulo secretariat responsible for prisons and the allocation of prisoners..... The Sao Paulo authority had stated that the defendant would be sent to one of 3 prisons specifically for sex-offenders and therefore confirmed that he would be treated in the same way as other prisoners in his category were habitually treated`.*

31) It is noted that there have been no Pilot decisions against Turkey in respect of prison conditions.

32) **ARTICLE 6 : RIGHT TO A FAIR TRIAL**

In order to succeed with this challenge, the defendant would need to demonstrate that he risks suffering a **`flagrant denial`** of a fair trial in the event of his extradition being ordered.

33) This issue was considered in detail in **Government of USA v Montgomery (No 2) (2004) 1 WLR 2241** when the House of Lords emphasized the **`exceptional`** nature of this jurisdiction.

In order to succeed, **Lord Carswell** stated that the defendant would need to show **`an extreme degree of unfairness`**, amounting to a ***`virtually complete denial or nullification of his Article 6 rights, which might be expressed in terms familiar to lawyers in this jurisdiction as a fundamental breach of the obligations contained in the article`***.

34) The European Court held in **Delcourt v Belgium (1970) 1 EHRR 355** that ..... ***“In a democratic society... the right to a fair administration of justice holds such a prominent place that the restrictive interpretation of Article 6(1) would not correspond to the aim and purpose of that provision.”***

35) In **AT v Luxembourg (2013) EWHC 4010 (Admin)** the Divisional Court considered, in some detail, what could amount to a flagrant denial per **Othman v UK (2012) 55 EHRR 1.1.** confirming

that what has to be established to justify a refusal to extradite `is set at a high level`.

36) **AT** was a conviction case where the court acknowledged that albeit a breach of Article 6 had occurred (denying access to a lawyer when first detained at the police station), the threshold needed to establish a refusal to extradite had not been reached.

37) **EXTRANEOUS CONSIDERATIONS. (s.81)**

A person`s extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that- :

(a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or

(b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

38) It is submitted, on behalf of the defendants, that the phrase `*political opinions*` should be interpreted broadly, so as to give adequate protection to a proposed extraditee (see **Asliturk (2002) EWHC 2326 (Admin)**, following on from the Immigration Appeal Tribunal decision in **Emilia Gomez v Secretary of State for the Home Department (2000) INLR 549**. The defendants firmly assert that this prosecution is politically motivated.

39) A challenge under s.81(b) requires this court to try to predict the potential prejudice that these defendants might suffer by reason of one or more of the identified discriminatory reasons provided for.

40) In **Holman v Poland (2012) EWHC (Admin)**, the Divisional Court rejected submissions that the appellant would suffer discriminatory ill-treatment in custody by reason of his ethnicity. The requested person was a black British national who said that he feared he would suffer racist abuse, threats and / or violence if extradited.

41) In **Holman**, some emphasis was laid on the fact that Poland is a signatory to the ECHR and doubtless aware of its Convention obligations and that - absent cogent and compelling evidence to the contrary - the UK courts should infer that it would abide by its Treaty obligations.



It may be suggested that different considerations apply in the current case involving Turkey, a Category 2 Territory.

- 42) **Relevant Factual details of the current Requests :**  
These requests are based on assertions that each defendant is a member of the terrorist organization led by the religious cleric Fetullah Gulen ('FETO'), and which has the aim of overthrowing the democratically-elected government in Turkey, under cover of a religious community, and thereafter seeking to establish a dictatorship.
- 43) Of particular relevance to these proceedings, it is said that members of FETO :
- (i) stole certain examination papers so as to unlawfully install sympathizers into the judiciary, the police service, military and public authorities.
  - (ii) illegally bugged the residence of the then Prime Minister
  - (iii) unlawfully intercepted encrypted telephones belonging to the President of the Republic, the Prime Ministers and other government ministers.
  - (iv) became involved in widespread acts of Blackmail whereby threats were made and money forcibly collected.
  - (v) prepared for a coup d`etat by infiltrating the military and police.
- 44) Turkey contends that these three defendants are high-ranking executives of the FETO organization and that as such, for a period of time up to June 2016, they instructed others under their supervision within of the Movement to commit certain offences with the aim of attaining FETO`s goals. Thus Turkey asserts that each defendant is to be considered responsible for the offences that have been committed or attempted *`within the framework of the organization`*.
- 45) On **16<sup>th</sup> June 2016**, the Erzincan Assize Court ruled that FETO was to be regarded as an illegal Armed Terrorist Organization.
- 46) There was then said to have been a failed coup in **July 2016** in which hundreds of Turkish nationals were killed and thousands injured. Those **July 2016** actions are **not** laid at the door of these defendants in the requests submitted to this court.
- 47) During the course of these proceedings, the Turkish authorities were asked a number of pertinent questions by the CPS in response to issues raised by the defence during the early stages of these proceedings. The Turkish authorities have provided a detailed and

thorough 87 page response to which reference has been made by the parties during the course of the full hearing.

- 48) In that response Turkey makes clear that it rejects all of the criticisms and submissions made by the defence. Turkey seeks to assure this court that :
- (i) the prosecution of the defendants, per the requests, is not politically motivated contrary to s.81(a).
  - (ii) it will provide each defendant with Article 3 compliant prison conditions.
  - (iii) each defendant will receive a fair trial, per Article 6.
  - (iv) none of them will suffer s.81(b) prejudice / discrimination if returned.
- 49) **Outline Defence Submissions :**  
The defence have, through counsel, made withering criticisms of these requests for extradition. However, this court must deal with the requests respectfully, noting as it does, that Turkey is a member of the Council of Europe and of the OSCE, as well as being a signatory to the ECHR.
- 50) The duty of this court is to consider each request and assess the challenges raised, through the medium of a balanced critical analysis of the information received (including reasonable inferences that can be properly drawn) and not on mere submissions, however elegantly and powerfully advanced by counsel for the parties.
- 51) The grounds upon which discharge is sought for each defendant can be summarized as follows :
- (i) This is a politically-motivated prosecution that offends the principles laid down in s.81(a) of the 2003 Act.
  - (ii) It will be impossible for each of the defendants to have a fair trial in Turkey contrary to the protection enshrined in Article 6.
  - (iii) Prison Conditions in Turkey severely offend Article 3 & Article 5.
  - (iv) The defendants will suffer Prejudicial / Discriminatory treatment in custody if returned to Turkey contrary to s.81(b).
  - (v) This request amounts of an Abuse of this Court`s Process.

- 52) **Witnesses called by the Defence during the Full Hearing :**  
The first live witness called by the defence was Sir Jeffrey Jowell KCMG QC (**Prof. Jowell**).
- 53) Prof. Jowell is Professor of Law at University College London, a former member of the Venice Commission, the former head of the Bingham Centre on the Rule of Law and one of the very distinguished authors of a substantial Report commissioned in **January 2015** and released in **July 2015** dealing with the Rule of Law in Turkey (**The Woolf Report**). He was knighted in 2001 for his services to Human Rights, Democracy and the Rule of law.
- 54) I am satisfied that he is well-qualified to provide this court with expert evidence regarding :
- (a) whether these requests are s.81 `politically-motivated`.
  - (b) the Rule of Law in Turkey.
  - (c) the prospects of these defendants having a fair trial if returned to that country.
  - (d) the likelihood of ill-treatment being meted out to them, if extradited.
- 55) After carrying out extensive enquiries and detailed research, Prof. Jowell's opinions can be summarized as follows :
- (i) the nature and context of the charges brought against the defendants before this court provides `*powerful evidence*` to support the belief that they are politically-motivated contravening s.81 of the 2003 Act
  - (ii) a reasoned analysis of the situation in Turkey reveals that there are `*overwhelming reasons*` for believing that each of the defendants will suffer a flagrant violation of his right to a fair trial contrary to the provisions of Article 6
  - (iii) there is a real risk (again described as there being `*overwhelming reasons to believe*`) that each of the defendants will suffer Article 3, Article 5 and s.81(b) violations in respect of the anticipated treatment / detention within the Turkish prison estate.
- 56) Prof. Jowell recounted a critical series of events that took place in Turkey in and after **December 2013** which are relevant to the issues that this court is having to consider. He reported that on **17<sup>th</sup> December 2013** a number of suspects were arrested and detained by Turkish police in relation to an investigation into allegations of bribery for public tenders and the smuggling of large quantities of gold out of the country. Among those apprehended were three sons of cabinet

ministers, a high-profile Mayor from the ruling political party and the manager of Turkey`s largest State-owned bank.

- 57) During the searches a very large sum of cash is said to have been seized. There was said to have been an incriminating telephone conversation between the then Prime Minister (and current President) Recep Tayyip Erdogan ( `Mr Erdogan` / `President Erdogan` ) and his son with the former instructing the latter to hide a large sum of money from the investigators.
- 58) Prof. Jowell says that with the onset of damaging corruption charges looming, the Turkish government reacted by alleging that the investigation was part of an attempted judicial coup instigated by what has been termed a `parallel structure` inside the State of Turkey orchestrated by followers of Fethullah Gulen. Mr Erdogan called the FETO Movement a terrorist organization and vowed to locate and `destroy` all its members.
- 59) The following day, (**18<sup>th</sup> December 2013**) a large number of police officers, many of them high-ranking, were summarily removed from their respective posts.
- 60) According to the researches carried out by prof Jowell, on **21<sup>st</sup> December 2013**, the Turkish Government issued instructions to the Judicial police to inform the Ministry of Justice - in advance - of their investigations.
- 61) On **25<sup>th</sup> December 2013** newly-installed police officers refused to execute search and / or arrest warrants previously issued by a several Judges and prosecutors in relation to a number of suspects including, so it is believed, Mr Erdogan`s son. When a prosecutor publically denounced the government for obstructing his efforts he was immediately removed from the investigation.
- 62) Important changes to certain aspects of criminal procedure were then hurriedly adopted. According to Prof. Jowell, there then followed an extraordinary crackdown by the Turkish authorities.
- 63) Since the said corruption investigation in **December 2013** approximately 40,000 police officers, civil servants, Judges and prosecutors have been either removed from their jobs or relocated, by reason of their purported support of and / or links to the Gulenist Movement.

- 64) Prof. Jowell stated that one leading constitutional Turkish lawyer described the actions of the government were being generally seen ...` *as an effort to interfere with the on-going judicial process in order to cover up the corruption charges`*.
- 65) In my view, Prof. Jowell is an authoritative and persuasive witness, notwithstanding that he has not been to Turkey recently. I am satisfied that he has carried out a considerable amount of detailed research and he spoke with assuredly about the changes (in his opinion for the worse) to the Turkish Judicial system. I shall return to his evidence in respect of the Article 6 challenge shortly.
- 66) I am persuaded by Prof Jowell`s evidence that there is substantial evidence that this request is politically-motivated contrary to the provisions of s. 81(a) of the 2003 Act, and that there are real risks of Article 3 breaches for all three defendants, and that the protection afforded by s.81(b) will be rendered nugatory, by reason of their perceived political opinions.
- 67) **Witness `A`.**  
The next live witness called was `Witness A`. After hearing contrasting submissions from the parties I granted an anonymity order coupled with special measures (screens) for this witness.
- 68) I was entirely comfortable that the criteria laid down in the **2009** decision of **B & others v Rwanda** had been satisfied and that the defence had provided the court with all necessary information relating to this witness so as to enable an appropriate assessment to be made regarding the anonymity application. I was satisfied that it was clearly in the interests of justice to allow this witness to give his evidence anonymously, as the revelation of his identity may very well result in serious risks to himself and / or members of his family.
- 69) Witness `A` said that he was a former member of the Turkish Judiciary who fled the country fearing for his own safety. He provided this court with a first-hand account of a number of measures imposed by the Turkish government in recent times that raised serious concerns. These included actions that appear to have a direct and inappropriate bearing upon the independence of the Turkish judiciary.
- 70) An example of the Turkish government`s actions complained of was the decision in **early 2014** to push through reassignment decrees

which, according to this witness, resulted in an unhealthy and unfair purge of the Judiciary. This witness's evidence was that this involved the removal of a considerable number of fellow judges who were known to him (directly or indirectly) and who he continues to hold in high regard as being independent, reliable, and honest. He added that they were replaced by judges whose independence was compromised and who were obliged to do the bidding of the government.

- 71) According to this witness, President Erdogan confirmed his determination to rid Turkey of what he described as the *parallel structure* and in order to seek to achieve this aim, in **mid-June 2014** his government introduced *Criminal Judges of the Peace* whose task was to focus on those said to have had links to the Gulenist Movement.
- 72) Witness `A` said that he has learned that certain criminal charges have been brought against him by the Turkish authorities albeit he has not been made aware of the full details. He has no current intention to return to Turkey. He strenuously denies any wrongdoing and maintains that he is not connected with either the Gulenist or any other proscribed movement or organization.
- 73) He added that most of the fellow Judges that he worked with have been in prison since their arrest in **July 2016** on what he describes as the *pretext of terror charges* and that most of them remain in solitary confinement.
- 74) Furthermore Witness `A` expressed the view that the prosecution and request for the extradition of these 3 defendants was undoubtedly by reason of their perceived political opinions. He remains convinced that they would not be able to receive a fair trial if extradited and that each would be prejudiced at trial and / or punished by reason of their purported political opinions. He stated that, ``.... *My conviction is that this has been from the start a political process, a political trial.*``
- 75) **Other Defence Witnesses :**  
Statements made by other defence witnesses were then either read or appropriately summarized by counsel. These witnesses are the following :  
(i) Professor Rod Morgan (**Prof. Morgan**)  
(ii) Philip Rocher (**Mr Rocher**)  
(iii) Michael Drury (**Mr Drury**).

It should be borne in mind that counsel instructed by Turkey pointed out that the contents of these witness statements were **not** agreed.

76) **Prof. Morgan** :

He prepared a detailed report for these proceedings wherein he expresses the clear opinion that, in respect of each of the defendants, extradition would result in there being a substantial real risk of them being held in detention conditions that would breach their Article 3 rights. Indeed he goes further. As they are said to be supporters of Fethullah Gulen, he believes that there is a real risk that they would suffer serious harm from either the Turkish authorities or from fellow prisoners.

77) Prof Morgan has appeared before the courts in the UK on a number of occasions in recent years and is a well-respected expert, particularly in relation to matters regarding prison conditions and allied Human Rights.

78) This court bears in mind that Prof Morgan was unable to attend court and thus his evidence could not be tested by way of cross-examination.

79) **Mr Rocher** :

This witness is a partner in the law firm Gibson, Dunn & Crutcher. His firm is retained by both Mr Ipek and Koza Limited, a company in which Mr Ipek is a substantial shareholder.

80) Mr Rocher`s firm has instituted High Court proceedings seeking to thwart attempts that are said to be being made by the Turkish authorities to unlawfully seize Koza`s assets. In those ongoing – and contested – civil proceedings, it is asserted on Mr Ipek and Koza`s behalf that there is a political motivation behind the actions by the Turkish authorities.

81) I do not consider that this witness`s evidence is of any particular material assistance to the issues that this court has to deal with. The fact that there are ongoing contested High Court Civil Proceedings in respect of a company or companies in which one of the defendants (in this case Mr Ipek) is said to have a substantial financial adds very little to the challenges raised.

82) **Mr Drury** :

This witness is a partner at BCL, solicitors retained by all 3 defendants

in these proceedings. He exhibited documents which are relied upon to show what are said to be inherent weaknesses in the criminal case brought by the Turkish authorities.

83) Additionally, with particular reference to Mr Ipek, Mr Drury exhibits documents which appear to show actions taken against members of Mr Ipek`s family along with the reluctance of several Turkish lawyers to provide evidence for the defence for fear of repercussions. Mr Drury also describes threats that are said to have been recently made against Mr Ipek, including threats to his life.

84) I do not find that the evidence of this witness particularly adds weight to any of the challenges raised. Furthermore, it is noted that none of the defendants has chosen to give evidence to this court in support of their challenges.

85) **Turkey v Nurhak Talay (2016)**

I have been referred to the Ruling decision of my fellow District Judge Quentin Purdy in the case of **The Republic of Turkey v Nurhak Talay**, which was released on **14<sup>th</sup> December 2016**. That request related to a conviction request where the defendant was wanted by Turkey to return to serve **7 years 2 months 17 days** being the balance of a lengthier sentence imposed for 5 offences including those set out below :

- (i) membership of the Turkish Communist Party (TKP),
- (ii) implication in the planting of a bomb at Istanbul police station and
- (iii) displaying banners deemed to have been unacceptable.

86) Judge Purdy refused the request to extradite as he was satisfied that to do so would result in a real risk of breaches of **Articles 2, 3 & 6**. Furthermore, he found **Article 8** to have been engaged and that it would have been a disproportionate interference with his Article 8 rights to order extradition. The learned Judge also found both limbs of s.81 had been satisfactorily established in favour of the defendant. In addition he found that extradition would have been s.91 unjust by reason of the defendant`s health.

87) Albeit Judge Purdy`s ruling in Talay is not binding, I am entitled to take such cognizance of it as I deem appropriate. In my view DJ Purdy`s ruling is helpful to my considerations.

88) I have listened carefully to the submissions impressively and eloquently made by all parties. I have also given detailed consideration



to the live evidence that I have heard as well as to the voluminous documentary evidence placed before me, including the very helpful Skeleton Arguments prepared by both parties.

- 89) I make it clear that I have considered the extradition request for each defendant separately.
- 90) This court bears in mind that the UK has enjoyed an important and generally harmonious relationship with Turkey for many years and it is essential for both countries that these ties are maintained and, if possible, strengthened.
- 91) Turkey is a democracy and respect must be afforded to the wishes of the Turkish people and to their choice of a democratically-elected government. However events in recent times in that country have resulted in concerns being raised by an increasing number of Human Rights organizations both inside and outside of Turkey.
- 92) Chapter 9 of *'The Rule of Law'*, a book written by the former Law Lord, Thomas Bingham, is devoted to the right to a fair trial. Lord Bingham states (page 91) ... *'The constitution of a modern democracy governed by the rule of law must, (thirdly) guarantee the independence of judicial-decision makers.... Acceptance of this principle, as a principle, is widespread'*.
- 93) He continues (p 93)..... *'Does the principle require independence of anyone or anything other than the government? It does. It calls for decision-makers to be independent of local government, vested interests of any time public and parliamentary opinion, the media, political parties and pressure groups, and their own colleagues, particularly those senior to them. In short, they must be independent of anybody or anything which might lead them to decide issues concerning before them on anything other than the legal or factual merits of the case as, in the exercise of their own judgment, they consider them to be. There would be an obvious threat to that independence if a decision-maker's salary or tenure of office were dependent on the acceptability of his judgments to those affected by them. A similar threat would arise (as has happened in other countries but scarcely ever, in recent years in the UK) a decision-maker's prospects of promotion could be blighted because his judgments were unwelcome to the powers that be....'*

94) The final page of this book contains the following words that cannot be contradicted.....` *The concept of the rule of law is not fixed for all time. Some countries do not subscribe to it fully, and some subscribe only in name, if that. Even those who do subscribe to it find it difficult to apply all its precepts quite all the time..... It remains an ideal, but an ideal worth striving for, in the interests of good government and peace, at home and in the world at large.*`

95) **Conclusions and Relevant Findings :**

This court continues to attentively consider requests for extradition from Turkey, on a case by case basis.

96) As an example, on **20<sup>th</sup> February 2018** District Judge Baraitser, having rejected a series of challenges raised, sent the case of Erkan Yilmaz and Veli Yilmaz to the Secretary of State for a decision as to whether they were to be extradited to Turkey. It is right to point out that she rejected defence submissions that the offences in that case were of a political nature.

97) In my opinion, in this current case, as I have indicated above, Witness `A` spoke persuasively and I found him to have been an honest witness, notwithstanding the fact that - according to his testimony to this court - he currently has criminal charges pending in Turkey.

98) I found Prof. Jowell to have been an authoritative and persuasive witness, albeit he has not been to Turkey recently and some of his evidence amounted to little more than a repetition or mere confirmation of certain publicly available reports.

99) I am satisfied that Prof. Jowell has carried out a considerable amount of his own research and has expressed his genuine concerns about (i) the s.81 challenges, including the risk of ill-treatment upon / after return (ii) the ability of these defendants to receive a fair trial (iii) the current state of the Rule of Law in Turkey.

100) I have had to make a balanced assessment of the evidence received in relation to each of the challenges raised. Accordingly, the fact that, for example, I found Prof. Jowell and Witness `A` to have been reliable witnesses, does not mean that I have necessarily found that each challenge that they purport to support has succeeded.

101) **Article 6 :**

The defence have laid emphasis on the assertion that, in the current climate, a defendant who is perceived to be a member or supporter of FETO will not be able to receive a fair trial and that this therefore must apply to these defendants in a country where the rule of law is said to have, in effect, disintegrated.

102) However, the Turkish Ministry of Justice has produced an important document dated **8<sup>th</sup> November 2018** which merits careful examination. I allowed this document to be received into evidence after absorbing submissions from both parties as I was satisfied that it was in the interests of justice to do so.

103) The defence were afforded the opportunity, if they so chose, to apply for an adjournment to enable them to make enquiries in respect of the information provided in the document, but they declined to do so, preferring to make written submissions on its contents. I have taken those written submissions into account.

104) The said document of **8<sup>th</sup> November 2018** states as follows :

*(i) Whilst courts in Turkey have `sentenced` under offences of membership and management of FETO is 31,400 (Article 314/1 and 2 of the Turkish Criminal Code) , the number of cases where the courts have found no criminal offence and acquitted under the same sections of the Criminal Code is 10,657.*

*(ii) In relation to cases brought under Article 309 of the Turkish Penal Code (Crimes committed against Constitutional Order) courts have `penalized` 190 and 632 have resulted in acquittal.*

*(iii) The Court of Cassation is the Appeal court for FETO-related cases and it has `reversed` nearly 40% of convictions by local courts since the beginning of 2018 for the violation of the following FETO cases : (a) Convictions / sentences based on the defendant's `sympathy with Fetullah Gulen and his organization (FETO) (b) Bylock, `an application used for communication among FETO members, cannot be evaluated as an evidence, unless its contents are used for carrying out some criminal and secret activities, vital for achieving FETO's disguised objectives...`*

*(c) any activity involving financial support to FETO can't use on its own establish FETO membership*

*(d) Convictions cannot only be based on obtained witnesses (sic) statements and other evidence by police, the court must also seek and hear every piece of evidence by defendants.*

- 105) In **Ismail v Secretary of State for the Home Department (2013) EWHC 633(Admin)**, Goldring LJ underscored the **very high** threshold that needed to be vaulted by the defendant in order to succeed in an Article 6 challenge.....  
*“ Even in a case where defence counsel was appointed by the public prosecutor, the applicants were kept incommunicado until trial, the trial was not held in public and closed to the defence lawyers, and self-incriminating statements were obtained in highly doubtful circumstances, extradition was permitted. That underlines how very exceptional must be the circumstances to result in the application of Article 6 in a case such as the present. ”*
- 106) It is also to be borne in mind that, so far as I am aware, there have been **no** Pilot decisions against Turkey in relation to the fairness of criminal trials in that country.
- 107) This court also notes that the State of Emergency in Turkey, in place since July 2016, was lifted in **July 2018**.
- 108) In addition to the actions of the Turkish government in **December 2013**, as described by Prof. Jowell, certain events that have occurred in Turkey since the attempted coup on **16<sup>th</sup> July 2016** give this court little comfort that the rule of law has remained undisturbed.
- 109) One can perhaps understand the shockwaves likely to have hurtled through the hierarchy of the Turkish government at the time of the later attempted coup in **July 2016** and the need for the authorities to then try to locate and bring to justice those responsible.
- 110) It appears clear to this court that the atmosphere in Turkey for those who are said to be part of the upper echelons of the Gulenist Movement remains hostile. They are seen as leaders of a terrorist organization who are said to be enemies of the democratically-elected government.
- 111) Albeit I have serious reservations about the current state of the Rule of Law in Turkey, I am unable to ignore the contents of the letter of **8<sup>th</sup> November 2018**, which provides support for the contention that the mere fact that someone is said to be a member or a purported supporter of FETO does not mean that he or she will inevitably be criminally convicted and / or that any such conviction will not be properly scrutinized on appeal. Indeed it appears that many such

decision(s) of the lower court have often been overturned.  
Additionally, it is to be noted that this document states that the mere proffering of financial support for FETO is insufficient to warrant a conviction as a member of FETO.

112) Accordingly, having given careful consideration to the evidence received as well as the relevant case law on point, I am **not** persuaded that the defendants – if returned – will be unable to have a fair trial and accordingly **this challenge must fail** in respect of each defendant.

113) I shall now move to deal relatively shortly with the other challenges raised.

114) **s.81 Challenges (Both limbs).**

I have also given careful consideration to the evidence received and the submissions made in relation to these challenges.

115) The evidence of Professor Jowell and of Witness `A` - to which the parties are referred – as well as other supporting written Reports relied upon, satisfies me to the necessary standard that the decision to prosecute of each of the men before this court was politically - motivated (i.e. by reason of their actual or purported political views as alleged members and supporters of FETO) contrary to the provisions of s81(a) and that, furthermore, each defendant will similarly face a real risk of s.81(b) ill-treatment in the event of return, again by reason of their actual or perceived political opinions, such that extradition must be **refused under both limbs**.

116) **Article 2 :**

In order to successfully make out an Article 2 argument the defence is required to establish, to a high degree, not only that there is a **`real and imminent risk`** to the defendant`s life if extradited, but more importantly, that the authorities are **unable or unwilling** to take appropriate preventative measures to reduce such risk.

117) Having analysed the evidence received, including that given by Prof. Jowell and Witness `A`, I am **not** persuaded that the defence have vaulted the **very high** hurdle necessary to succeed in their Article 2 challenge. Accordingly that challenge **fails** for all 3 defendants.

118) **Article 3 :**

I accept the evidence served by the defence in support of this

challenge, especially that of Prof. Morgan, that there is a real risk for each of these defendants of Article 3 breaches in the event of return..

- 119) It appears to be agreed by the parties that, if returned, these defendants will be housed in either the Silivri Closed prison, the Sincan No 1 F-Type prison or the Sincan No 2 F-Type prison. These are said to be the highest security prisons in Turkey.
- 120) Notwithstanding the further information from the Turkish authorities, Prof Morgan remains of the opinion that there are serious concerns about prison conditions in those establishments, such as the deliberate ill-treatment of prisoners by prison staff or by fellow inmates. I acknowledge that his unavailability to attend court resulted in his evidence not being tested in cross-examination
- 121) Accordingly, having reviewed the evidence received in respect of this challenge - including the further information provided by Turkey - I am entirely satisfied that, by reason of their actual or perceived political views, coupled with the assertion by the Turkish authorities that they are part of the hierarchy of the Gulenist Movement, each defendant before this court runs a real risk of Article 3 breaches in the event of return, from State and non-State agents, and that accordingly **extradition must be refused**.
- 122) **Article 5 :**  
The **Article 5** challenge raised on behalf of all 3 defendants appears to have slipped under the radar as there has been little evidence served in relation thereto during the course of these proceedings and limited references by way of closing submissions.
- 123) In relation to **Article 5**, I am satisfied that the defendants will be able to make application to a Criminal Judge of the Peace and for compensation if they believe that their Article 5 rights have been violated. They would be able to apply for a review of their detention at any time and may ask a court to review any decision to detain every 30 days.
- 124) Furthermore they have the added protection of being able to make application to the Turkish Constitutional Court as well as to the ECHR. Accordingly I am **not** persuaded that the **Article 5 challenge** succeeds and it must therefore **fail in respect of each defendant**.

125) In view of my findings relating to the specified challenges set out above, I do not consider it necessary to rule on the overlapping Abuse of Process challenge.

**126) For the reasons set out heretofore, in accordance with the provisions of s.79(3) / s.87, I refuse this request for extradition in respect of each Defendant as I uphold the defence challenges raised under s.81 (both limbs) and Article 3.**

127) I therefore Order the **discharge** of each defendant **Talip Buyuk, Ali Celik & Hamdi Akin Ipek** from these proceedings, subject of course, to the Government of Turkey`s right to seek permission to appeal to the High Court against my decision to order discharge.



**John Zani**

**District Judge (M.Ct)**

**Appropriate Judge**

**28<sup>th</sup> November 2018**

