



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00735/2016

THE IMMIGRATION ACTS

Heard at Field House
On 2 October 2018

Decision & Reasons Promulgated
On 16 October 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Y S

[ANONYMITY ORDER MADE]

Respondent

Representation:

For the appellant:

Mr T Melvin, a Senior Home Office Presenting Officer

For the respondent:

Mr A Bandegani, Counsel instructed by Duncan Lewis & Co
solicitors

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an anonymity order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original claimant, whether directly or indirectly. This order applies to,

amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against his decision on 12 January 2016 to refuse the claimant international protection under the Refugee Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The claimant is a Ukrainian citizen: he is a computer systems analyst with a degree in Information Technology from the Kyiv Slavonic University. From 2007-2014, the claimant worked in the Ukrainian central bank, the National Bank, as a systems analyst, setting up WiFi and maintaining the servers and the internal and external computer systems of the bank.
2. The claimant's wife, also a citizen of Ukraine, is a dependant in his appeal. The couple met in the autumn of 2010 and married in June 2014, just after the Euromaidan Revolution in February/March 2014. She has a Masters' degree in Ecology from the National University of Zaporozhye and worked in Ukraine as a freelance writer and copywriter. The wife was not a state employee: she worked privately for clients.
3. Ukraine was formerly part of the Soviet Union, becoming a separate country by declaration of independence in 1991. The Euromaidan Revolution was sparked by the decision of then President Yanukovich to suspend the signing of an Association Agreement between Ukraine and the European Union, in favour of closer ties to Russia. Following an agreement to settle the conflict, President Yanukovich was forced into exile, and the Ukrainian Parliament removed him from office. On 21 March 2014, Ukraine signed an Association Agreement with Europe, with the Russian witness declining to countersign the Agreement.
4. In February-March 2014, Russia invaded and annexed Crimea and Sevastopol in eastern Ukraine and actively supported separatist movements in the Donbas (the Donetsk and Luhansk oblasts). Protests in the Donbas escalated into an armed pro-Russian separatist insurgency there. The claimant's home area of Zaporozhye is 150 miles to the west of the Donbas, but still in eastern Ukraine.
5. The basis of the claimant's international protection claim is that he fears rogue elements within the Ukrainian Security Services (the SBU), acting in Russian interests, his case being that they have already detained, tortured, and tried to assassinate him, following his refusal to take part in a sabotage plot to damage the computer systems of his employer, the National Bank. There is said to be a pending false criminal case against the claimant and that he is on a Ukraine-wide wanted list.
6. In his refusal letter in January 2016, the Secretary of State accepted that the claim as put engaged Article 1A of the Refugee Convention and that if credible, the claimant's account would entitle him to international protection. The Secretary of State now also accepts, following the decision of the Upper Tribunal in *VB & Anor* (draft evaders

and prison conditions: Ukraine) (CG) [2017] UKUT 79 (IAC), that if detained or imprisoned on return to Ukraine, the claimant risks a breach of his unqualified Article 3 ECHR protected rights by reason of the prison conditions in Ukraine.

7. This appeal therefore turns on the credibility of the claimant's account and that of his wife. I heard oral evidence from them both. Their evidence, and that of the claimant's father, together with a summary of the contents of the 23 translated documents, are summarised in Appendix A. At Appendix B, I have summarised the relevant country evidence in the bundle, including the country expert evidence of Dr Rano Turaeva-Hoehne of the Max Planck Institute in Germany.

Secretary of State's case

8. The Secretary of State considers that the claimant's account lacks both plausibility and credibility. The asylum interview was a lengthy one, taking over five hours to complete but the factual matrix was assessed briefly at [19]-[21] in the refusal letter:

"19. The material facts of your claim have been examined and either rejected, accepted, or they remain unsubstantiated. If any aspects of your claim are left in doubt these have been considered in conjunction with section 8 of the 2004 Treatment of claimant Act, 339L and 339N of the Immigration Rules.

20. Any documents that you have submitted have been considered where appropriate within the consideration of the material fact of your claim to which they relate. They have also been considered in line with the case-law of Tanveer Ahmed IAT 2002 UKIAT 00439 STARRED. This means that it is for you to show that any documents you rely on to support your case can be relied on."

9. The claimant in his asylum interview relied on 23 documents written in Ukrainian and/or Russian, of which he did not then have English translations, which he considered supported his account of events in Ukraine. None of those documents is medical evidence of his claimed depression, or of the physical sequelae of the torture he says he experienced in detention in Ukraine.
10. The refusal letter contains no analysis of the 23 documents. That was reasonable: they were not translated, and it is the claimant's responsibility to produce his evidence in translation.
11. Following the August 2016 rejection of his appeal, in December 2016, the claimant supplied the Secretary of State and the First-tier Tribunal with translations of the 23 documents. Those have never been considered by the Secretary of State. The claimant's position is that the translated documents could and should have been considered by the Secretary of State pursuant to her own policy, given the length of time this appeal has been outstanding.

Procedural history

12. The appeal was heard for the first time by Designated Judge Woodcraft and First-tier Judge Monaghan at Hatton Cross on 26 August 2016. The panel rejected the credibility of the claimant's account and dismissed the appeal. The claimant

challenged that decision on the basis that the First-tier Tribunal had failed to consider the documentary evidence before it in the round.

13. On 12 February 2017, Upper Tribunal Judge Maller set aside the decision of the First-tier Tribunal and remitted the appeal to the First-tier Tribunal for rehearing afresh, on the basis that consideration of the 23 unchallenged Court and other official documents could have made a material difference to the outcome of the appeal. The appeal was reheard in the First-tier Tribunal on 12 September 2017. This time, the claimant's account was accepted as fully credible, and the appeal was allowed on Refugee Convention grounds.
14. The Secretary of State appealed, alleging inadequate reasoning by the First-tier Tribunal and failure to resolve evidential conflicts. On 15 February 2018, I set aside the decision and ordered that the appeal be retained in the Upper Tribunal for remaking of the decision. The appeal was listed for substantive rehearing on 9 August 2018, with the appeal notices being sent out on 10 July 2018.
15. On 9 August 2018, at the beginning of the hearing, Mr Melvin sought an adjournment, arguing that this was a complex case, with two huge files of documents, and that he was disadvantaged because the Home Office file had reached him only the day before the hearing. Mr Melvin explained that there was a considerable amount of country evidence in the bundle on which he had been unable as yet to prepare his written submissions. There were also serious credibility issues on at least 10 points, for which Mr Melvin needed to prepare detailed cross-examination. He considered that the appeal would require a full day for rehearing.
16. Mr Bandegani resisted the adjournment, arguing that the Secretary of State had advanced no proper explanation for such a late application to adjourn and that it was irrelevant that Mr Melvin had been unable to prepare, as the Secretary of State was the party, not a particular presenting officer. The appeal should not be adjourned for the Secretary of State's administrative convenience. The Secretary of State had been in possession of almost all the relevant evidence (apart from one or two new documents) for at least two years. The appeal was not inherently complex, despite the volume of documents.
17. I granted the adjournment request and directed the provision of skeleton arguments for the hearing. The bundle prepared for the 9 August 2018 was to stand as the claimant's evidence for the adjourned substantive hearing. I directed that if the Secretary of State wished to rely on any additional documents, she was to serve and file them not later than 21 days before the adjourned hearing. In the event, no such documents were filed.
18. The appeal came back before me on 2 October 2016 for substantive rehearing, with the benefit of skeleton arguments from both representatives.

Upper Tribunal hearing

19. Despite the additional 3 months granted to the Secretary of State when I adjourned this hearing in July 2018, at the October 2018 hearing there had been no formal consideration by the Secretary of State of the 23 translated documents provided by the claimant in December 2016, and in particular whether, taken with the other evidence he relied upon and his own account and that of his wife, those documents would affect the credibility of his account overall. Mr Melvin for the Secretary of State told the Tribunal at the hearing that the Secretary of State 'could not be expected to drop everything' and consider new material while an appeal was pending. He was entitled to rely on the decision already taken.

Oral evidence

20. I heard oral evidence from the claimant and his wife. The wife remained outside the hearing room during the husband's evidence. Both of them adopted their original witness statements and were tendered for cross-examination. Mr Melvin cross-examined both witnesses very fully, but without making any significant impact on their accounts, which remained consistent with each other, with the translated documents, and with the claimant's father's witness statements. Having heard from the claimant and his wife, I am satisfied that both are witnesses of truth, save in relation to the address where they lived in Lvov.
21. The account they give must be seen in the context of the internal conflicts in Ukraine in 2014/2015 and the Russian incursions into Crimea and the Donbas regions of Ukraine in that year. The claimant is a loyal Ukrainian, supportive of the government which took power after the Maidan revolution. Following his studies at the University of Kyiv which ended in 2007, the claimant received two job offers, one from the SBU and one from the Ukrainian central bank, National Bank: he accepted the offer from the National Bank. By the time of the Euromaidan Revolution in the spring of 2014, the claimant had been working for 7 years for the National Bank as a systems analyst, maintaining its servers and computer systems. He worked on a shift system, either from 8 a.m. to 5 p.m., or from 1 p.m. to 10 p.m.
22. The claimant was not a political animal, but after the annexation of Crimea by Russia in February/March 2014 and Russian sponsorship of separatist movements in the Donbas oblasts of Donetsk and Luhansk, less than 150 miles from Zaporozhye, where the claimant lived, he became concerned and wanted to help support the army to resist the Russian incursion. He looked for ways to assist the pro-Maidan forces, first by assisting fundraising for the military resistance to pro-Russian and separatist forces, and later by undertaking internet research for the Ukrainian Security Services (the SBU), using his computing skills as a system analyst and networking engineer.
23. In 2014, the pro-Russian Ukrainian President was refusing to fund the army, which was short of both weapons and clothing. Young people who were pro-Maidan used the internet to raise funds to support the army, using online fundraising pages and sites. The claimant set up some of these pages and sites: he never handled the

money, but helped with the technical IT element of fundraising, which was his area of expertise. It took him about an hour to an hour and a half in the evenings.

24. The claimant discovered that some of the online fundraising pages were scams, set up to raise money then disappearing swiftly without accounting for it. Overall, however, useful work was being done and he was proud of his contribution to the pro-Maidan resistance effort. The claimant's wife was aware of the claimant's online activities to help raise funds for the Ukrainian army, but did not involve herself in them. She was incurious about the claimant's online activity, saying that in their new family, they respected each other's privacy.
25. At the end of October 2014, the SBU contacted the claimant again. A Major, who would become his first SBU handler, started by asking about someone whom the claimant knew only by name, and then invited the claimant for a meeting. The claimant was asked to work as an SBU volunteer source. The claimant was told that Russian online activity was so extensive in Ukraine that the SBU needed volunteer helpers to show them where to look for pro-separatists. He was made aware, when his SBU work began, that he would someday be asked to take part in an operation. He did not give that much thought but continued with his volunteer activities on behalf of the SBU, replacing his fundraising for the military.
26. The claimant's task was to search online for pro-separatist pages and websites, and also the fraudulent fundraising pages he had already spotted. The claimant reported online twice weekly to his SBU handler, by emailing him a spreadsheet of what he had discovered, including names and contact information for the members of pro-separatist groups and their online pages and groups. The SBU work took about the same time as his previous activity had done, and his wife noticed nothing.
27. On 5 January 2015, two and half months after his SBU work began, the claimant's first SBU handler was promoted. His new handler took a much more proactive approach, asking a lot of questions about the National Bank equipment and servers, and the claimant's access. The claimant said he had access to the server room and the whole system. The new handler listened carefully. At the end of January 2015, he asked the claimant to come to the SBU office and the claimant signed a non-disclosure agreement, prohibiting him from discussing what he was told with anyone, including his wife and his employer. The new SBU handler told the claimant it was now time for him to undertake an operation for the SBU, to test the National Bank's emergency processes and its capacity to protect itself from a cyber attack.
28. On 3 February 2015, the claimant met an SBU technical specialist, who told him what would be required of him. On 6 February 2015, just a few days ahead, the claimant was to turn off the air conditioning for the National Bank servers at end of his shift (10 p.m.) and delete all the emergency contact numbers which would automatically inform National Bank employees that the servers were overheating. With no intervention by National Bank employees, and no air conditioning, the server processors would overheat and burn out.

29. The next morning, at 8 a.m., when the claimant reported for his early shift, a telephone call would be made saying there was a bomb in the National Bank. Everyone would be evacuated for 3 hours, during which time the claimant was to restore the servers and reinstall the telephone numbers. The plan was to test how long it would take to get the National Bank's systems up and running again, without the managers being aware what had occurred.
30. The claimant protested that there was no spare equipment and voiced his concern about the damage the operation would cause. The claimant and the technical specialist parted on reasonably good terms on 3 February: the claimant had not committed himself to the operation but he also had not refused.
31. On 5 February 2015, the day before the operation, the claimant met the technical specialist again and said he would not undertake the operation. He thought it looked more like outright sabotage of the Ukrainian banking system than a test of cyber-security. The claimant said that this went beyond the IT assistance he had agreed to undertake. The effect of this operation would be to make it impossible for commercial banks or private individuals to draw or transfer money. The effect would be catastrophic, causing mass panic.
32. The technical specialist threatened the claimant to make him do what was asked of him, saying that he had no choice, he could not refuse. If he did refuse, said the technical specialist, his career and his personal life would both be made difficult for him. The SBU would find someone else to carry out the operation. The claimant maintained his refusal to take part, and left.
33. The claimant reflected on his way home, and concluded that the new handler and his superiors might well be pro-Russian. He decided that he must break his confidentiality agreement and warn the Head of Security at the National Bank about the server sabotage plot. However, when he reached home, about an hour later, there were two SBU agents waiting. They handcuffed both the claimant and his wife, and attempted to take her as a hostage to ensure that the claimant would carry out the operation.
34. Fortunately, there was a panic button in another room and while packing some things for the two days she would be held hostage, the wife triggered it. Police arrived within minutes and asked the SBU officers for a warrant for their intrusion into the claimant's home. The SBU men had no warrant, and left. The claimant had to tell his wife about the National Bank sabotage plot, though he still did not tell her about the internet work he had done for the first SBU handler. She was furious and disappointed that he had kept the secret of the sabotage plot from her.
35. The claimant and his wife went to the police station and attempted to record the incident but the police told them they had no authority over the SBU, and refused. This is all corroborated in the 23 translated documents. The claimant was told to approach the prosecutor if he wished to complain about the SBU. It was too late by

then, so the couple went to stay with a friend as they thought it was unsafe to return to their apartment.

36. On 6 February 2015, the day of the planned sabotage, the claimant telephoned and spoke to the Head of Security at the National Bank; he told him of the sabotage plot, saying that he feared for his life and would not be coming to work, but that the SBU might find someone else to carry it out. At 2 p.m. that day, SBU agents went to his parents' flat, looking for the claimant. They also raided the couple's flat, taking the claimant's laptop and computer away with them.
37. They couple fled to Lvov, some 700 miles away, and rented accommodation there, living on savings. Both the claimant and his wife claimed to have no memory of the address, or any details of the property in which they lived for the next few weeks, a privately rented apartment. This part of their account lacks credibility: I find that they probably do remember but do not wish to say, for reasons of their own. However, given the overall credibility of the rest of the account, I do not find that apparent loss of memory is fatal to their protection claim.
38. The couple began trying to access domestic protection. On 14 February 2015, the claimant wrote to the District Prosecutor, using his parents' address for correspondence, but in mid-March, he received a response saying that the SBU had done nothing wrong, and that all the information he had given about the SBU would be sent to the SBU office. On 1 March 2015, the claimant's parents were taken to the SBU office, where they were told that the claimant was now on a national wanted list and that a criminal case had been opened against him. The claimant next wrote to the head of the SBU office, explaining his volunteer work on the internet and asking for help resolving the problem.
39. The couple were arrested in Lvov on 31 March 2015, because they had been drawing out money and shopping in supermarkets; they were tracked down by their electronic transactions and accosted at the door of the apartment. The SBU took the couple's laptop and a couple of flash disks. SBU agents took the couple back to Zaporozhye, keeping them separate on the journey. The wife was questioned and released. The claimant had told the SBU she knew nothing, and that he had not told anyone about the sabotage plot, except the head of security at National Bank (they already knew about that call). The claimant was detained, under court oversight, from 1 April 2015 to 30 July 2015 when, after cooperating with the SBU and signing a false confession, he was given bail on a recognisance in excess of £8000.
40. The wife and the claimant's father had continued to try to access domestic protection: the wife wrote to the Regional Prosecutor, explaining what had occurred, but all that happened was that the investigating officer called her and told her to stop, or she would also be detained. The family appointed a private lawyer to represent the claimant, but he was not allowed to visit him in prison and was intimidated into ending his retainer. A court appointed lawyer acted instead.

41. The claimant was held in an isolation unit. He was asked to sign a pre-written statement, leaving the name of his second SBU handler and the technical specialist out of account, but naming two politicians instead. He refused. One of the politicians, Mr Gordeev, was arrested and the claimant was questioned about that man in his presence. Following three weeks of torture with chlorine fumes in his isolation cell, the claimant agreed to accuse Mr Gordeev. He was taken to the SBU office to be questioned in front of Mr Gordeev, then the SBU beat up Mr Gordeev in front of the claimant. The claimant does not know what became of Mr Gordeev.
42. The claimant was released on bail on 30 July 2015, and began trying to reach the Ukrainian President, since his letters to the prosecutors and the head of the SBU had not achieved anything. On 15 August 2015, he had a private meeting with an assistant to the President who, he was told, had oversight of SBU matters. He showed the assistant all the documents he had, and was promised investigation and protection.
43. The claimant began trying to sell his car, to help repay those who had loaned his wife the money for his bail. On 28 August 2015, he was out in his car, with a friend of his father who was considering buying it. The claimant was sitting in the back but his father's friend was driving. A car pulled up, men in balaclava face masks and plain clothes got out and shot the driver, who was badly injured. The police came and took a statement from the claimant, but let him go.
44. The claimant's account is that he overheard the police controller on the radio, checking whether someone with the claimant's name was alive after the shooting, and realised that the attack had been meant for him. A press report of the shooting is among the 23 translated documents, but does not mention a back seat passenger in the car.
45. The couple fled immediately, first to Moscow where they rented an apartment, and then, as soon as the claimant's father could pay for the tickets, they booked a flight from Moscow to Hong Kong, transiting in London, where they claimed asylum on arrival. They did not claim asylum in Russia where the claimant's pro-Maidan activities were unlikely to be well regarded, and human rights were worse than in Ukraine.
46. After the couple left, in September 2015, the wife received a Court summons to forfeit the bail surety, addressed to her at their home in Ukraine. The surety has been forfeited: later court documents confirm that.
47. Local police and SBU agents continue to question the parents of both the claimant and his wife, trying to find out where they are. The claimant's father keeps an eye on the couple's apartment in their home town. A neighbour told him that the police had been to all the apartments in the house, asking when they had last seen the claimant, where he was, and so forth. The policemen returned in December 2015 and February 2016, asking the same questions and saying it would be better for the claimant to hand himself in.

48. In the autumn of 2015, the claimant's former private lawyer was interviewed by the SBU to see if he knew where the claimant was, or if he was in contact with the couple.
49. The claimant's parents received similar visits and were told again that the claimant was on a Ukraine-wide wanted list. The claimant's father told the SBU agents that the couple had left the country, but they did not believe him. SBU agents said he could not have left, that he would be found and this time he would not get bail.
50. On 4 December 2015, the SBU came with a search warrant and searched the parents' home. They broke kitchen utensils, and were rude, arrogant and 'barbaric', turning over furniture unnecessarily, so that everything fell out. The claimant's father told them again that the claimant had left the country.
51. On 7 December 2015, the claimant's father complained to the Deputy General Prosecutor of Ukraine about the illegal behaviour of the SBU, asking for a legal assessment of the SBU's actions and the validity of the criminal proceedings against his son. He asked for the investigation to be transferred to the Special Investigations Agency of the Head Office of the GPOU (the SIA). In January 2016, the Deputy General Prosecutor's response was that there were no grounds for a referral to the SIA, but the other matters would be investigated. In March 2016, the General Prosecutor's office said that the SBU's actions and the Court proceedings were lawful and that the claimant remained on a wanted list. The claimant's father was disappointed, seeing the response as a cover up.
52. The police have continued to visit the claimant's parents every 2-3 months, as well as their neighbours and the claimant's neighbours, asking when the claimant had last been seen. On 25 June 2017, the claimant's father was watering the plants as usual when two plainclothes officers attacked him, pushing him back into the apartment, handcuffing him and checking his documents, before releasing him when they realised he was not the claimant. Later, after an interview at the police station, the father was released with an apology for the 'misunderstanding'.
53. The claimant's father has tried to get both the private lawyer the family employed, and the court-appointed lawyer, who were involved when the claimant was detained, to represent him now. Both have refused, fearing that they would be arrested and the SBU would fabricate a case of separatism and terrorism against them. The court-appointed lawyer said that since the claimant had absconded and become a wanted man, he had no further access to the case. Under Article 49(2) of the Ukrainian Criminal Code, where an accused evaded investigation or trial, the statute of limitations provided no exemption from criminal liability until 15 years after the date of the offence (February 2030).

Country evidence

54. Dr Rano Turaeva-Hoehne is an associate post-doctoral researcher on post-Soviet countries, including Ukraine, at the Max Planck Institute for Social Anthropology in Halle/Saale, Germany. In her main report, Dr Turaeva-Hoehne set out the

Ukrainian background to the claimant's account. The weight to be given to expert evidence is a matter for the Tribunal.

55. I am satisfied that Dr Turaeva-Hoehne's evidence, which is carefully sourced and composed mainly of direct quotations from other country experts, should be given weight in assessing the credibility of the claimant's core account. It is Dr Turaeva-Hoehne's evidence that the SBU contains many high-ranking members who trained with the KGB in the Soviet Union days, some of whom were Russian Communist party members and are 'still involved in organised crime to enrich their private or political needs'.
56. Dr Turaeva-Hoehne quotes Alan Malcher as saying this:
- ““Apart from several senior SBU officers saying it is going to be extremely difficult to overcome the disloyalty within their ranks, expressions of concern over the large quantity of data thought to be in the hands of the FSB, and having an intelligence agency that one officer described as: “Riddled with officers whose loyalties are unknown, at a time when Ukraine's sovereignty is in danger from a Russian-proxy war which is increasing in intensity. ...””
57. Dr Turaeva-Hoehne's report quotes the Euromaydan Press as saying that a weak point of the SBU was its close connection to the FSB (the modern Russian security service) as many of its members used to work for the KGB and that it was 'hard to imagine that a person who once worked in this repressive structure could remain unaffected and would not maintain old connections...during the three months of the revolution, three groups of persons occupying high positions in the FSB worked within the structure of the SBU'.
58. Dr Turaeva-Hoehne considered that the second SBU handler, if he was pro-Russian, would be likely to perceive the claimant's internet research as a threat, as it helped identify separatist activities on social media. The second SBU handler, if pro-Russian, could well have been tasked to remove the claimant and stop the flow to pro-Maidan SBU officials of his valuable information on separatists and their online activities.
59. Dr Turaeva-Hoehne described what the claimant was asked to do as a 'classic prisoner's dilemma': if he accepted, the National Bank would be sabotaged and the claimant imprisoned. If he failed, appropriate criminal charges could be constructed against him, to neutralise him. The government controlled the media and could ensure that the corruption and failure in the state legal system which the claimant's case displayed did not receive much, if any, publicity.
60. Dr Turaeva-Hoehne concluded that the claimant had been a victim of 'political games played between pro-Russian officials and corrupt Ukrainian state security' and was highly likely to be on the national SBU wanted list, which was widely shared within the overall Ukrainian security system. He risked arrest and detention at the airport, or anywhere within Ukraine, because of the *propiska* system: the SBU had unlimited access to data on individuals and their movements within Ukraine.

61. In an updated report in August 2018, Dr Turaeva-Hoehne said that OHCHR's 2018 report confirmed that the Donbas armed conflict continued, corruption was still a problem, and there was 'an atmosphere of physical insecurity and socio-economic degradation' in eastern Ukraine. Conditions in prisons remained poor, perhaps worse than in 2016. Freedom House's 2018 report said that there was interference with the independence of the judiciary, with some judges becoming the subject of criminal investigations themselves.
62. Other country evidence in the bundle before me includes an article from The Times on 2 April 2018, indicating that in November 2014, as part of a wider Kremlin attempt to destabilise Ukraine and prepare for Russia to move west into the Zaporizhzhia region, where the claimant lived, a plan by Alexei Muratov included contacting sympathisers in the local police and the SBU. The plot was revealed by a network of Ukrainian hackers. This is supportive of the claimant's assertion that he thought that his second SBU handler wanted him to assist in damaging the Ukrainian National Bank, creating a crisis in the Ukraine's financial services; it also supports his account of a pro-Maidan hacker and fundraising community.
63. The US State Department report for 2017, published in April 2018, confirmed a climate of impunity for SBU officials who committed abuses, in particular regarding allegations of torture. The UN Subcommittee had no difficulty in crediting numerous and serious allegations of torture and mistreatment of individuals under the control of the SBU, or during periods of unofficial detention. There was a continued pattern of arbitrary detention by the authorities, concerns about fair trial issues, including demands for high bail sureties, and intimidation and attacks against lawyers and unlawful searches.
64. The National Bank had a political profile: in 2015 the Kyiv Administrative Court of Appeal had overturned a decision by the National Bank that Crimean IDPs were non-residents of Ukraine, restricting access to banking and financial services for those fleeing the Russian occupation.

Submissions

65. Mr Melvin in his skeleton argument set out the history of the appeal and the claimant's core account. He argued that the account was littered with inconsistencies, implausibility and credibility issues, such that the Secretary of State did not accept the core account. The only aspects accepted were the claimant's name and nationality. Even taken at its highest, the Secretary of State did not accept that the claimant had demonstrated a need for international protection, since there was sufficient protection from the Ukrainian authorities against rogue state agents and officials.
66. At [8], Mr Melvin set out, then characterised as not credible, the secrecy agreement which the SBU imposed on the claimant, as against the attempted prosecution now, bringing matters into the public domain. He attacked the core account as highly or seriously implausible. There is no reference in the Secretary of State's skeleton argument to any decided case, immigration rule or statutory authority.

67. The skeleton argument is a vigorously expressed disagreement with the claimant's evidence as expressed in his witness statement and those of his wife and father, as well as with the evidence of the country expert, Dr Turaeva-Hoehne.
68. The Secretary of State rejected the evidence of the country expert, Dr Turaeva-Hoehne, in particular her conclusion that the claimant had become caught up in political games played between pro-Maidan and pro-Russian forces within the SBU. The Secretary of State also disputed the expert's assessment of the claimant's social media skills, and a number of other matters in the expert report. There is no expert evidence for the Secretary of State before me.
69. In relation to the 23 translated documents, the skeleton argument says that Mr Melvin would make or provide detailed submissions thereon at the hearing and that the Upper Tribunal should consider them as part of the evidence as a whole, on *Tanveer Ahmed* principles. No attempt was made in the skeleton argument to assess the claimant's account overall, with reference to those documents.
70. The Secretary of State rejected as implausible the wife's account of her lack of awareness of the claimant's activities and her pressing the panic alarm and noted that while there was a witness statement from the claimant's father (the credibility of which was rejected) there was no witness statement from the wife's parents. The skeleton argument concludes by disagreeing with the core account. The Secretary of State did not accept that there ever had been a sabotage plot to cripple the National Bank servers, or that the claimant had undertaken social media research to pinpoint pro-Russian supporters. The Secretary of State would reject the totality of the claimant's core account.
71. In his oral submissions, Mr Melvin continued to dispute the plausibility and credibility of all the evidence given by the claimant and his wife. The claimant had no reason not to tell his wife what he was doing. There was no evidence of the termination of the claimant's contract of employment with National Bank.
72. Mr Melvin argued that there was very little corroboration of the sabotage plot, which never had any prospect of success, because it was implausible that the National Bank would not have closed circuit television cameras in the server rooms, a fire alarm, and far more guards than the claimant said it did. There was no evidence to support this supposition on the Secretary of State's behalf.
73. Mr Melvin submitted that it was not reasonably likely that the SBU would use someone with this claimant's qualifications and experience, either for the internet research or the server sabotage plot. The claimant's fear was of rogue pro-Russian SBU agents, not the Ukrainian authorities and there was sufficiency of protection from the Ukrainian authorities available to the claimant and his wife.
74. Mr Melvin asked me to find that the SBU would not have deferred to the local police, nor would the police have refused to record the 5 February 2015 incident. There was a lack of police evidence overall and the news report of the shooting did not mention a second man in the car.

75. Mr Melvin argued that the 23 documents did not indicate a continuing interest by the Ukrainian authorities in this claimant, nor that there was still any criminal case against him. Mr Melvin did not content that the documents were totally unreliable, but asked the Tribunal to treat them with caution.
76. Overall, Mr Melvin asked the Tribunal to find the core account implausible in the extreme, like a plot from a Hollywood film.
77. For the claimant, Mr Bandegani provided a chronology, which has been very helpful in writing this decision. He also provided a glossary of people and places relevant to this claim. As this decision is anonymised, those names and places largely do not appear in my decision. Mr Bandegani argued that the claimant's account was credible, to the lower standard appropriate for international protection claims, if viewed fairly and in context. There followed a good deal about the standard and burden of proof, the role of expert evidence, and the treatment of country information which it is not necessary to set out in this decision.
78. The skeleton argument set out the expert opinion and addendum, so far as relevant, and the contents of the 23 documents. Mr Bandegani asked the Tribunal to find, as a minimum, that the claimant had been threatened by the SBU, that there were false charges against him, that he had signed a false confession, that an attempt had been made to kill him, that the SBU tortured him in detention and that the claimant's name appeared on a wanted list. If all of these elements were accepted, the claimant was at risk of persecution on return to Ukraine, as set out in *VB (Ukraine)*. The Ukrainian authorities had demonstrated repeatedly that they were unwilling or unable to provide him with protection: every attempt he made had either been thwarted or led to further persecution.
79. The claimant's attempt at internal relocation to Lvov, some 700 miles from home, had not protected him. He had been re-arrested by the SBU, returned to his home area, and detained and tortured. The claimant and his wife were refugees.
80. In his oral submissions, Mr Bandegani observed that Mr Melvin's cross-examination had been wholly focused on plausibility, which was an error of law (see *MM (DRC, plausibility) Democratic Republic of Congo [2005] UKIAT 00019*).
81. The Secretary of State had never had a case in this appeal, and despite Mr Melvin's valiant efforts to challenge the credibility of the claimant's account, his challenge amounted to no more than assertion and speculation. The Secretary of State's arguments were based on supposition as to the putative practices of the National Bank and the Tribunal should give such supposition no weight. The Secretary of State had produced no expert evidence of his own, nor had he complied with his own policy guidance and considered the 23 documents, which he had now had for almost 2 years. The country evidence (including the Secretary of State's own country of origin report) supported the claimant's account.
82. If the claimant were to be returned to Ukraine, and there was an outstanding serious criminal charge against him, he would be detained again while it was resolved and

VB & Anor (draft evaders and prison conditions : Ukraine) (CG) [2017] UKUT 79 (IAC) held that he was likely to suffer torture and/or a breach of his Article 3 ECHR rights in detention.

83. The Tribunal should prefer, and give the benefit of any doubt, to the claimant's account. The oral testimony of the claimant and his wife had been entirely consistent with their written account, with the documents, and with each other's evidence. The expert evidence was properly sourced and should be given weight: the expert was a member of an elite institution, the Max Planck Institute and very well qualified to give an expert opinion in this appeal. Her evidence supported the claimant's account.
84. There was no reason not to find the claimant's account and that of his wife credible and the appeal should be allowed.

Discussion

85. The claimant's account is extremely detailed and backed by documentary and expert evidence. It must be seen in the context of the internal turmoil in 2014/2015 in Ukraine, and the tension between the pro-Maidan and pro-Russian movements within the country. The country evidence which has been produced, including the expert evidence of Dr Turaeva-Hoehne, is highly consistent with the claimant's very detailed account of his treatment after the appointment of his second SBU handler. The 23 translated documents support his account and that of his wife and his father.
86. I have had regard to the guidance given by the Upper Tribunal in *VB & Anor* (draft evaders and prison conditions: Ukraine) (CG) [2017] UKUT 79 (IAC) that:
- "...2. There is a real risk of anyone being returned to Ukraine as a convicted criminal sentenced to a term of imprisonment in that country being detained on arrival, although anyone convicted in absentia would probably be entitled thereafter to a retrial in accordance with Article 412 of the Criminal Procedure Code of Ukraine.*
- 3. There is a real risk that the conditions of detention and imprisonment in Ukraine would subject a person returned to be detained or imprisoned to a breach of Article 3 ECHR."*
87. The charges laid against this claimant are extremely serious and the attempts made by him and his family to seek domestic protection have been unsuccessful, or perhaps worse, if the shooting of the driver of his car was, as the claimant believes, intended for him. He has tried internal relocation, but without success.
88. I am satisfied, in the light of the evidence before me and having regard to the lower standard of proof applicable to the Refugee Convention, humanitarian protection and Article 3 ECHR that it is reasonably likely that the account of the claimant and his wife is true, and that the interest of the SBU and the Ukrainian authorities in him has not faded. I find that there is a real risk that if returned now to Ukraine, he would be detained again and would not receive bail. The respondent accepts that if detained, the claimant would be subjected to conditions which breach Article 3 ECHR.

89. I have found the claimant's account to be credible, including his account of past persecution: I accept that he was subjected to chlorine gas torture in his cell. He says he continues to have breathing and gastric problems arising from that, but there is no medical evidence of his present health. At [42] in *VB and another*, the Upper Tribunal found as follows:

"42. It is clear from paragraph 23 of the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment] report that [in 2014] there were still concerns about the effective investigation into allegations of torture and ill-treatment from public officials, with the phenomena of torture being said to have been "an issue of grave concern for the CPT since the Committee's first visit to Ukraine 15 years ago". In relation to those held in Kiev by internal affairs officials in ITT facilities the Committee found that since the entry into force of the new CCP the instances of severe physical abuse had reduced although there were still many detained persons who complained of physical ill treatment such as punches, kicks and being hit with hard objects, and threats of beatings. The improvement in relation to such matters was not as good in other regions outside Kiev and there were also allegations of treatment which was severe enough to amount to torture such as being suspended, the use of electric shocks, burning with cigarettes and asphyxiation. CPT conclude that the phenomenon of ill-treatment is a long way from being overcome and has become closely connected with corrupt practices. There were great improvements in relation to this issue at Kiev and Simferopol SIZOs where no complaints of ill-treatment by staff were made, but this was not the case at Odessa and Dnipropetrovsk SIZOs. In the correctional colonies and in the closed prisons improvements relating to staff ill-treatment were found, but in both cases a group of inmates was being used to ill-treat others at the behest of the prison authorities."

90. I have regard also to paragraph 339K of the Immigration Rules:

"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

91. On the evidence before me, I am not satisfied that in this appeal, there are good reasons to consider that this claimant, if detained again, will not suffer similar ill-treatment amounting to persecution or serious harm. I do consider that it is likely that there are outstanding criminal charges against him and that he remains on a wanted list, having absconded while on bail. I therefore consider it reasonably likely that on return to Ukraine the claimant would be detained for further investigation, triggering the Article 3 ECHR risk identified in *VB and others*.
92. The claimant's appeal is therefore allowed.

DECISION

93. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the claimant's appeal.

Date: 9 October 2018

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Appendix A

Evidence before the Upper Tribunal

Claimant's evidence

1. The claimant adopted his witness statement of 5 September 2017. He was born in 1986 in Zaporozhye in south-eastern Ukraine, 142 miles west of Donetsk and almost 700 miles away from Lviv in the west. He went to an aviation college and graduated, after four years of study, as a Junior Specialist in Computing Networking in 2005. He considers this to be the equivalent of an undergraduate diploma in the United Kingdom. The claimant supported himself by working as an electronic engineer in a factory, building aviation engines, but was quickly transferred to their IT department where he was responsible for computer networking.
2. He next worked at an internet provider, Radiocom, as engineer programmer, while pursuing his studies at Kiev Slavonic University, about 350 miles from his home town. He graduated in 2007 with a Masters degree in Information Technology. He received two job offers, one as a system administrator for the SBU, and one from the National Bank of Ukraine. The claimant had not completed his military service and considered that this would disadvantage him in the SBU, so he chose the National Bank post. His role at the National Bank was as a systems analyst, maintaining the National Bank's servers and computer systems.
3. The claimant was interested, but not active, in Ukrainian politics. In spring 2014, he became very concerned by what was happening in Ukraine. Russia had annexed Crimea and sponsored the 'independence' of two oblasts in the Donbas region in eastern Ukraine, Donetsk and Luhansk. In other areas of Russia, those loyal to the Ukrainian state were seeking to support the military effort: the President of Ukraine was refusing to fund the military effort. Following the outbreak of war in the Donbas, the army was in a bad way and loyal Ukrainians began raising funds to help the military effort by buying clothing and weapons for the army.
4. The fundraising took place mainly online with crowdfunding pages and websites. Some of the pages were obvious scams, opening, collecting money, and then closing down suddenly and vanishing, but overall, the effort seemed worthwhile and from June 2014, the claimant spent an hour or two every day online involving himself in the military effort online, creating and managing a group on social media and setting up a website, [~], and a Facebook page for the volunteers. The claimant continued to do this work for about 6 months, until the end of 2014. He never fought, or picked up a gun, and he did not meet the people he was working with, except electronically.
5. The claimant had married his wife in June 2014. She was a freelance writer. His father was a security guard in another bank, and his mother was a sales assistant. He has an older half-brother who is a warehouse assistant. His wife's father is a plumber in the theatre and security guard.
6. Towards the end of October 2014, the claimant received a telephone call from an SBU Major who wanted some information about another volunteer. The claimant did not know the person, except as a name, but the SBU Major then invited the claimant for a meeting to 'help

him to find out a few things'. He was asked about his work at the National Bank, the team spirit at work, and the attitudes towards the war. He was asked to assist the SBU on a voluntary basis for a couple of hours or so a day.

7. The Major explained that the SBU was monitoring social network safety but that the Russian Secret Service's activities were so high that they could not manage with their existing resources. He asked the claimant to help them by monitoring the internet for new separatist groups, with the names of those involved, threats towards volunteers and Ukrainian patriots. He was also asked to keep an eye out for pages where money was collected but not remitted to the Ukrainian army. The Major said that at some time, the claimant would take part in an SBU operation.
8. The claimant stopped spending very much time on the fundraising website and page, turning his attention instead to the SBU work. He would spend an hour, or an hour and a half, every day, and email the Major twice a week with a spreadsheet of the information he had tracked down. The SBU gave him a special email address to use for this, but he no longer has access to it.
9. On 5 January 2015, the claimant was invited to the SBU office again. The Major said that he was being moved on, and that the claimant's work for the SBU would now be managed by a different person (the handler). The new handler met the claimant that day. He wanted to know a great deal about the claimant's work at the National Bank; the equipment used, his access to rooms within the bank, and in particular, to server rooms. The claimant said that he had access to all the National Bank's networks. The new handler listened carefully.
10. The claimant continued with his raw information searches on the internet until the end of January 2015, when he was asked to return to the SBU office. He described the building, the guards, their uniforms and arms. He signed in, and signed a non-disclosure agreement, agreeing not to discuss anything he spoke about, even with his wife. He was warned that if he breached the agreement, he would be punished.
11. The claimant was told that he would now take part in an SBU operation. He was to assist in 'checking and inspecting the security protection of the National Bank and its capability to protect itself from separatist attack or to withstand a cyber-attack'. An SBU technical specialist would give him the technical details later. On 3 February 2015, he met the technical specialist in a park. He was told the plan: when he finished his shift at 10 p.m. on Friday 6 February 2015, the claimant was to turn off the air conditioning in the server room, and change the information server settings, deleting the telephone numbers of National Bank employees who would normally receive warning messages if the server temperature began to rise.
12. The rising temperature would 'collapse' all the equipment in the server room. On Monday 9 February 2015, on his early shift, the claimant was to be first in and to make sure all the equipment had been destroyed. If the information server was still working, he was to reinstall the employee telephone numbers and delete all system logs, to hide his actions on the Friday. The technical specialist said that at 0800 on Monday 9 February 2015, there would be a telephone call saying there was a bomb in the National Bank building. Everyone would be evacuated, and this would take about 3 hours. The SBU would use this period to prevent the managers knowing what had happened to the server, and to put the systems back on. The intention of the operation would be to find out how long it would take to get the system back up and running after an attack.

13. The claimant was reluctant. He told the technical specialist that there was no reserve equipment and that to restore the whole system would take quite a long period of time. The server system was very costly, and cost millions. He could not see the sense or logic in breaking the system. The technical specialist said that the operation had been planned at a high level and was not negotiable: the claimant's job and that of the technical specialist was to carry out the instructions. They were soldiers and should fulfil the mission. The claimant neither accepted nor refused the task and they parted on reasonably good terms.
14. The claimant met the technical specialist again two days later, on 5 February 2015, just a day before the operation was due to occur. He said he was not going to carry out the operation: it did not look like a standard checking operation, but rather, a sabotage to destroy the National Bank systems. The technical specialist became threatening. He said maybe the claimant did not understand that he could not refuse to take part; if he refused, he would have problems both in his career and in his personal life, and they would find someone to do it.
15. The claimant said that his agreement with the SBU was only for analytical help, not destroying the server systems of the National Bank. He tried to explain: such action would stop all electronic banking in the region, both commercial and personal, and cause a mass panic. He refused to take part and left.
16. After the meeting, the claimant reflected on the way home. He thought that his new handler, and the handler's SBU superiors might be linked pro-Russian rogue security operatives in the Ukrainian government and that they wanted to sabotage the National Bank. He decided to warn the National Bank's head of security in case SBU did find someone else to carry out the job.
17. It took the claimant about an hour to get back to his home: two men were waiting for him there, and attacked him as he opened the door, handcuffing him and pushing him into his flat. They handcuffed his wife, too, and told her to be quiet. They pointed guns at them. They called his handler, who came to the flat and told the claimant that he had no choice. While he undertook the work, his wife would be held hostage: the handler left, and the other two men told the claimant's wife to collect belongings for the next two days. When in the other room, she activated a panic button in the flat. The claimant and his wife subscribed to a panic button service with a private department of the police force, paying a monthly amount so that they could receive prompt assistance if attacked by thieves in their home.
18. The panic button brought a swift response. Less than five minutes later, the security officers arrived and asked the SBU men for a document giving them authority to intrude into the claimant's flat. The SBU men showed their SBU identity cards. The claimant and his wife were screaming that the SBU men wanted to take them as hostages. The security men said that all of them (including the SBU men) should go to the police station and file a report. The SBU took the handcuffs off the claimant and his wife, but refused to attend the police station. As they left, they told the couple that it would be 'the end of [them]'
19. The claimant and his wife went to the police station, but when they mentioned that the attackers were SBU men, the police refused to help or to file any report. They said it was a matter for the prosecutor. By then, it was 8 p.m. and the prosecutor's office was closed. The police said they could not protect the claimant and his wife; the claimant's wife was hysterical, so he decided they would stay away from their flat and go to stay with a friend. He called his wife's father, who took them to the friend's house for the night.

20. The next day, Friday 6 February 2015, was to have been the day of the sabotage. The claimant called the National Bank head of security and told him that SBU officers had asked him to help sabotage the banking system. He said he was afraid for his life, and that of his wife, and would not be coming to work. He had no doubt by this time that the intention of the SBU handler and technical specialist was criminal, to sabotage the National Bank. He was scared, frightened for his life: he tried to compose a letter to the prosecutor, but could not find the right words.
21. At 2 p.m. on that Friday, the claimant's parents told him that SBU members had been to the parents' flat looking for the claimant, and had raided the claimant's flat, taking his laptop and computer. The claimant decided to relocate to Lvov in Western Ukraine, almost 700 miles away, where he hoped that they would be safe. The couple had been to Lvov several times but had no friends or acquaintances there. They could not return to their flat or put their parents at risk by staying with them; they needed to start afresh.
22. The couple arrived in Lvov on Monday 9 February 2015, travelling by private hire car and rented a flat through a private agency.
23. On 14 February 2015, the claimant wrote a letter to the District Prosecutor, giving his parents' address for correspondence. In mid-March 2015, the prosecutor responded, saying that the SBU had done nothing wrong and that all information about the SBU would be sent to the SBU office.
24. On 1 March 2015, the claimant's parents were taken to the SBU office, where they were told that the claimant was on a wanted list and a criminal case had been opened against him. They told the claimant about this, and he decided to try contacting the head of the SBU office, explaining his unofficial SBU work (finding and analysing information online) and what he had been asked to do with the bank servers. He asked the head of the SBU to resolve the problem.
25. While in Lvov, the couple lived on their savings, not working while they were there. They withdrew money and spent money in the supermarket. On 31 March 2015, the claimant was accosted by plain clothes officers at the doorway to the flat they were renting, having been tracked down by his electronic money transactions. Officers from the Lvov SBU arrested and handcuffed the claimant, took him up to the flat, and arrested his wife too. They took the couple's laptop and a couple of flash disks. They were taken separately to the SBU office and kept separately overnight. The next day, they were transferred back to their home town, in the same van. The claimant's wife was no longer handcuffed, but he was.
26. On 1 April 2015, the claimant was taken to the SBU office in his home town and questioned. He was asked if he had told anyone about the sabotage plot, and whether his wife was aware he had been working with the SBU. He told them she was not. They released her and sent her home. They knew about the call he had made to the security officer at National Bank.
27. The next day the claimant was taken to Court and charged with crimes involving plotting to destroy the National Bank server. He was remanded in custody for 60 days, while the investigations were carried out. He was questioned, then put in a damp unpleasant cell, without access to legal representation, although he paid for a private solicitor. The claimant's wife wrote to the regional prosecutor, explaining what happened: the officer who was interrogating the claimant contacted her and said that if she did not stop contacting the prosecutor, the claimant's wife would also be detained.

28. On 28 May 2015, the claimant was brought before the Judge again, and returned to custody for a further 60 days, in isolation. He was interrogated again and asked to cooperate by leaving the SBU handler and technical specialist out of his account and instead giving false evidence against two named people, to say that they had asked him to destroy the server. The named people were involved in politics; the statement was already written and ready to sign, but the claimant would not sign it. One of the political men was arrested, even though the claimant had not named him, and the claimant was questioned about that man in the man's presence.
29. The claimant was held in an isolation unit. He could neither lie down nor sit down during the day. If he tried to sit on the floor, the guards beat him. On 17 June 2015, they began to torture him with chlorine fumes in the sink, handcuffing the claimant to the cell bar. The room would fill with fumes and the claimant would feel suffocated, his eyes sore, and his throat burning. After about an hour, he would faint. This happened once a week for three weeks; the claimant could not eat for an entire week because his throat was so sore, and he still has a dry throat and burning sensation there, as well as allergic reactions on his face which previously he did not have.
30. Finally, on 6 July 2015, the claimant signed the false statement. He was taken on 20 July 2015 to the SBU office to be questioned in front of the political accused. The claimant could not look him in the eye, but he gave the false evidence. They beat up the accused in front of the claimant. In a brief conversation between the two men, the accused man asked what the claimant had been promised, to say these things; the accused man said that if they had promised to set the claimant free, they would kill him. The claimant does not know what happened to the man.
31. On 28 July 2015, the claimant had a bail hearing and was granted bail, conditional on payment of money and an undertaking not to leave the country. On 30 July 2015, his wife raised the money, and he was freed. They went home, but did not feel safe. The claimant tried to contact the office of the Ukrainian President, because his letters to the prosecutors and the head of SBU had not achieved anything. On 15 August 2015, he had a private meeting with the President's assistant who was charged with SBU matters. He showed the assistant all the documents he had; the assistant promised protection and that he would investigate.
32. The claimant heard no more, but on 28 August 2015, his car was shot at in the centre of town. The claimant was not in the driver's seat: he had been selling the car to raise money for his bail, and the intended purchaser, a friend of the claimant's father, was driving. The friend was badly injured; the claimant escaped uninjured. The assailants all had plain clothes and balaclava face masks. The police came and took a statement then let the claimant go. He overheard their controller on the radio, asking whether the claimant was hurt, and using his name. The controller asked twice if the policeman was sure that the claimant was not hurt. The claimant realised the bullets had been meant for him. He left the police officer his mobile telephone number and called his wife, asking her to collect his belongings.
33. The couple fled. They got a lift from a friend to a place near Donetsk, and paid an acquaintance of his father's friend US \$1000 to get them into Russian-occupied territory. Once in Donetsk, they bought coach tickets to Rostov-na-Donu, and crossed into Russia, using Ukrainian internal passports which were valid for entry into Russia. They were stopped at the border and asked why they were travelling, then allowed to proceed.

34. At about the same time, another friend paid \$500 to immigration officials for the return of the couple's external travel passports, which had been with the Ukrainian authorities for the issue of duplicate passports, a common practice in Ukraine. The friend organised tickets from Moscow to Hong Kong, transiting the United Kingdom. The claimant's parents paid for the tickets, another \$1000. The couple did not claim asylum in Russia: human rights are worse there and his history of helping raise funds for the Ukrainian army was not likely to endear him to the Russian authorities. He feared detention without investigation or trial and did not know what would happen to him.
35. The couple claimed asylum as soon as they arrived in the United Kingdom. The claimant says he fears return to Ukraine because SBU agents had already tried to kill him, and because of the fabricated case against him. His wife had received a summons after he left the country (although she had also left). The claimant could not prove his innocence or protect himself. He had been attacked after being promised protection from the President's assistant. The police and several different prosecution offices had not assisted him.
36. The claimant was asked no supplementary questions and was tendered for cross-examination. Mr Melvin's cross-examination is recorded in my notes and consisted principally of asking the claimant questions to which he replied as set out above. It is not necessary to set out the cross-examination in full. Mr Melvin put it to the claimant that he should have told his employer much sooner what he was being asked to do: the claimant's response was that he had signed a confidentiality agreement, and that he was trying to persuade the SBU not to proceed with the plan. Once he realised that they would try to find someone else to undertake the sabotage, and at some personal risk, he did inform his employer what was planned.
37. The claimant said that he had not told his wife of his internet work for the SBU, nor the National Bank server sabotage plot, for two reasons, first that he had signed a confidentiality clause, the breach of which was a criminal offence, and second, that he wanted to protect her. He had been obliged to tell her something of the National Bank server sabotage plot after the kidnap incident on 5 February 2015, but had not told her the full story of his unofficial work for the SBU until they were in Moscow. His precautions to protect his wife had been successful: when they were arrested on 31 March 2015, his wife genuinely knew nothing and was quickly released.
38. The claimant said that generally speaking, the bank and the SBU were still on the same side, but locally, there could be people who were corrupted. In the Donbas regions, the SBU were supporting separatist pro-Russian movements. At his workplace, there were some individuals who were obviously on the side of Russia, but the claimant's view was that if there was any pro-Russian movement, there would be a lot of victims. Nothing had changed.
39. Asked why the SBU would want to damage the National Bank, the claimant said that there were two possibilities: either there were pro-Russian rogue agents within the SBU who wanted to damage the Ukrainian banking system, or there were corrupted people higher up in the SBU.
40. Mr Melvin asked why the SBU would use someone like the claimant, who had no apparent expertise. I found that line of questioning difficult to follow, given the claimant's experience and qualifications.

41. The claimant explained how the damage would have worked. If the air conditioning was switched off, the processors would overheat and burn out. There were about 15 working networking servers at the bank. There was insufficient spare equipment. The National Bank had closed circuit television cameras only at the entrance, not in the server room.
42. The claimant's working hours were shifts, either from 1 pm to 10 pm or from 8 am to 5 pm. There would have been nothing extraordinary in his being there at 10 pm on the 6 February 2015 to undertake the sabotage, and returning early to reinstall the telephone numbers and so forth. There were to his knowledge only two security guards, one at the till where the money was stored, and one at the entrance; if there were others, he had not seen them in all the time he had worked at the National Bank.
43. The claimant confirmed that his father's friend, to whom he was trying to sell his car, was sitting in the front seat when the shots were fired. The claimant was in the back seat and was very lucky not to be hit. The police took his statement from him while he was sitting in the car, just as a witness, and let him go after about half an hour. He did not think that the police realised he was on bail when they interviewed him, or he might have been detained again.
44. The press report indicated that the driver survived, but the claimant and his wife left immediately, so he could not be sure what the outcome had been. He had not been in contact with the man to ask for a statement confirming that he was shot, nor had he asked for any police report of the incident, but he had produced a media report of the event.
45. The claimant was sure the criminal case was still outstanding against him in Ukraine. His father had asked their lawyer, who said that if the claimant was outside Ukraine, the case could be kept open for as long as 15 years.
46. The claimant was asked about his cooperation with the investigation, following the second detention during which he was tortured. He had identified as co-conspirators two political persons who were not really involved in the sabotage. The claimant said one was still in prison for killing a member of the SBU. The other remained a Deputy in the Ukrainian Parliament.
47. There was no re-examination.

Wife's evidence

48. The claimant's wife adopted her statement of 27 June 2016. She was born in 1991 and grew up in the same town as the claimant. She has a Master's degree in Ecology from the National University of Zaporozhye. She is a freelance writer and copywriter, working privately, not for any particular organisation.
49. The couple met in the autumn of 2010 and married on 14 June 2014. They did not live together before marriage, although she visited him at his flat from time to time. The wife knew nothing about the claimant's SBU activities until the kidnap incident on 5 February 2015. Her description of what happened matches that of the claimant. She described being 'deeply disappointed' and unable to sleep, screaming and shouting at her husband, when she learned that the flat had been raided in their absence. It was not easy to move to Lviv, far away from friends and family and their usual lives: they were sure that it would not be for long.

50. The wife described her interview on 1 April 2015, after they were transferred back to their home town. She was asked whether she knew about the bank sabotage; she said she knew that some people had asked her husband to damage a network system in the National Bank where he worked; she did not know the people involved. She knew that her husband had written to the SBU from Lviv. She signed a non-disclosure agreement and was released, then went to her parents' home, as she was afraid to be in the couple's own flat.
51. The wife then described being informed of the Court judgment, trying to get a lawyer for her husband, and the advice given to her private lawyer that he should not handle the case. After that, he just agreed to 'provide consultation regarding the official complaint...to back my husband was beyond his power or possibility'. The lawyer declined to take the case.
52. The wife tried many times to see her husband, or to get from the prosecution service the reason why her husband had been arrested, and the crime with which he was charged. The only result was that the SBU investigator threatened that if she pursued a complaint to the prosecution service, there would be no outcome but she would be charged as a co-conspirator in the same offence. The wife was able to see the claimant briefly at Court on 28 May 2015: he 'seemed very awful and lost some weight'. It was a closed hearing, and she was not permitted to attend. The court-appointed lawyer was no help to the claimant and would not even allow her to visit, without the investigator's permission. She became distressed, very nervous, and hysterical. Her parents persuaded her to see a private psychiatrist and she had five therapy sessions and some herbal medication. It did not help her much.
53. Despite the threats, the wife persisted in trying to challenge the claimant's incarceration. She appealed to the Prosecutor General of Ukraine, asking whether the arrest, and the procedure of leaving him without legal representation, were legal. She attached the responses from the local prosecution service and the SBU. She told them that her husband was innocent and complained that the investigator was not allowing her to see him.
54. The claimant was finally released on bail, after his wife collected the sum of UAH 300,000 (about £8000), on 30 July 2015. He was completely changed; closed in, nervous, and very weak. He slept badly and had lost weight. He had problems with his stomach and an allergic reaction with spores on his face. She tried to persuade him to go to hospital, but he would not do so without protection. The wife described the claimant's attempt to seek protection from the Office of the Ukrainian President.
55. Following the attack on the claimant's car, they knew they had to go, to leave before the SBU were informed of the situation and could react. If they knew he was still alive, they might detain him again: she thought the traffic police who responded probably did not have orders to detain the claimant. The wife's statement concludes:

"40. So we arrived in Donetsk, and from there we passed the border towards Russia by bus and reached Rostov na Donu and from there to Moscow. In Moscow we rented a flat. After that, we decided to claim asylum in one of the European countries, as in Russia, we cannot rely on any help and justice relating to our case. Also, because of our situation involving Russia and Ukraine, the personal case of my husband indirectly relates to Russia, which is at war with Ukraine, and Russia is not a democratic country. Hence we could not come back to Ukraine, as we were threatened to die. It was one attempt to kill my husband already. There is a very high probability that they will do it again. If my husband is not killed, certainly as soon as he comes back to the country, he will be imprisoned without any rights to have a lawyer or any protection, as all authorities in our country relating to our trouble we many times requested

them to help us. We contacted all the institutions relating to justice and law, however nobody helped. ...”

56. The wife confirmed that local SBU agents questioned both sets of parents after they left the country, trying to find out where they were, where they went, and whether they had left the country.
57. In September 2015, a letter was sent to their home address, forfeiting the recognisance. The wife thought the Ukrainian authorities probably knew the claimant had left the country by then.
58. The wife was tendered for cross-examination. Mr Melvin explored when they had met, and how well the wife knew the layout of their flat, so that she was able to use the panic button. The wife had not been involved with any of her husband’s volunteering work: they each had their privacy and it was a matter for him. She knew he was working to help raise money for the army, and to provide people with correct information about what was happening in Ukraine and in the Donbas and Crimea regions. The wife was very upset at first when she found out about his work for the SBU, because she had not been aware what was happening, but now she understood that it had been for her own safety.
59. The remaining questions asked by Mr Melvin elicited information matching the wife’s witness statement and do not need to be set out here.
60. There was no re-examination.

Father’s witness statements

61. The claimant’s father made a witness statement on 5 May 2016. He said he was born in 1957 and a citizen of Ukraine, as was his wife. They had two sons, who lived separately from them. The younger was this claimant.
62. The claimant had not told his parents of his problems, probably to avoid worrying them. The first they knew of it was that on 6 February 2015 (the day after the SBU incursion into the claimant’s flat) SBU officers came to the parents’ home. They said that the claimant and his wife were suspected of a serious crime, and they wanted to search the house, to see whether they were hiding there. The father asked to see a search warrant, but the SBU did not have one.
63. The father asked what crime his son and daughter-in-law were supposed to have committed. The SBU responded by threatening him and he said he would call the police. ‘Things were heating up’: the father agreed to let the SBU search the house. They did not find the young people. When leaving, the SBU said it would be best if the claimant and his wife handed themselves in to the SBU.
64. After they left, the father tried to call either his son or his daughter-in-law. Their telephones were ‘out of reach’. He called the wife’s father, who knew nothing about the problems, nor where their children were. One of the claimant’s neighbours rang his father later, to say that the SBU had searched the claimant’s apartment and she had been asked to be a witness.
65. At about 20:30 the claimant called. The father and mother were very worried: the claimant’s mother had taken sedatives to calm her. The claimant said not to worry, they were not guilty, and he would prove it, but for now they would have to disappear to avoid being

arrested illegally. The father did not ask where they were staying, and the claimant did not say. The father told the claimant of the SBU search at the parents' home. He agreed to keep Skype on all the time: the claimant would contact them when he could.

66. On 1 March 2015, the claimant's parents were summoned to SBU for questioning. They were told that a criminal case had been opened against the claimant under Articles 15, 113, 361 of Ukraine Criminal Code: attempt to commit a crime, sabotage, unauthorised intervention in the operation of computers, automated systems, computer networks or telecommunications networks. They were asked where the claimant was and informed that he was on a Ukraine-wide wanted list. Towards the end of March, they received a letter from the Prosecutor's Office addressed to the claimant. They did not open it, waiting for him to get in touch and tell them to do so.
67. On the night of 1 April 2015, the claimant's father-in-law telephoned the claimant's father. The claimant's wife was in her parents' home. Her father asked the claimant's father to come urgently, saying that the claimant was in pre-trial detention. The claimant's father went immediately to their home. He found the claimant's wife shaking all over and very shocked. Her account came out gradually; she still did not know the exact reason why they had been persecuted, because the claimant had not told her. She did know that at the end of January 2015, some people had ordered him to disable the equipment at the National Bank where he worked. She believed he had been offered a lot of money to do so, but had refused. The people had then tried to force him to comply, even breaking into their flat. Her account as remembered by the claimant's father matches the account she gives in her evidence.
68. They were up all night, discussing the situation. On 2 April 2015, as they calmed down a little, the families began to consider how to proceed. They decided it was important to get a good lawyer, and some friends gave them a name. The families decided that the claimant's wife would deal with getting him released, and the parents would do nothing without consulting her. The next day, 3 April 2015, the claimant's wife went to see the lawyer, who agreed to act, reassuring her and promising to help. He discovered that on 2 April 2015, the Court had already decided that the claimant's detention would continue to 30 May 2015. A few days later, the lawyer was intimidated and refused to continue to act. The families were unable to find another lawyer.
69. On 28 May 2015, there was a further hearing at the Court. Nobody was allowed to enter the courtroom. The claimant's wife was able to speak very briefly with him before the hearing. The pre-trial detention was extended for another 60 days. The claimant's wife complained, but without success.
70. At the end of July there was a third hearing. The claimant had begun to cooperate with the investigation. With the agreement of the SBU investigator, bail was granted, subject to payment of UAH 300,000 (about £8000). The claimant's parents were not in a position to raise that amount, but his wife borrowed it from some friends and paid the bail money so that he could be released.
71. On 30 July 2015, the claimant's parents, his wife, and her parents all met him outside the detention facility. He had a tired, haggard look. They took him back to the claimant's apartment where he told them he had been cleared of suspicion. They believed him, and thought the worst was behind the family, but it turned out later that the claimant was just trying to reassure his family: he was still in danger.

72. The claimant and his wife had no choice but to leave Ukraine and seek asylum in the United Kingdom. The claimant's parents did not know they had left until 30 August 2015, when the claimant contacted his parents on Skype: the couple were already in Moscow by then. He asked his parents to pay for their flights to Europe, and gave his father the necessary details.
73. The claimant's parents keep in touch with their son on Skype, and at his request, are keeping an eye on the claimant's flat. They go there twice a week, to water the plants and pick up post, and so on. The district police continue to visit the claimant's parents about once a month, asking them and their neighbours where the claimant and his wife had gone. In September 2015, the post at the apartment included a summons for the claimant's wife to attend a Court hearing on 25 September 2014.
74. In mid-November 2015, when the claimant's father was checking the apartment, a neighbour came out and said that in early November, the district police had been to all the apartments in the house, asking when they had last seen the claimant, where they might be, and so forth, and left a card with his contact details if there were to be any news. He returned to ask the neighbours the same questions in December 2015 and February 2016.
75. At the end of November 2015, the claimant's parents were summoned to be questioned by the SBU. The same investigator asked the questions. He wanted to know where the claimant and his wife had gone, and when they had last seen or talked to them. The claimant's father said they had left Ukraine, but the investigator did not believe them. He told the claimant's parents that the claimant was on a wanted list all over Ukraine and would not have been able to leave Ukrainian territory; finding him was just a matter of time, and this time, he would not be granted bail.
76. The investigator said that it would be better for the claimant if he handed himself in, and that if the claimant did not understand this, his parents should help the authorities to locate him. He asked about the claimant's work for the National Bank, but the parents had nothing to say on that; they still did not know the details. The investigator said it was a pity the parents would not cooperate. He switched between persuasion and threats, saying that the parents would be held accountable and a criminal case would also be opened against them, if they continued to refuse to cooperate.
77. On 4 December 2015, the SBU came with a search warrant to the claimant's parents' home. His mother telephoned his father at work: his father who left work and went home immediately to deal with the situation. The parents were kept outside the house while the search was conducted. The SBU officers were rude, arrogant and barbaric, not taking off their dirty shoes, overturning furniture aimlessly, so that its contents fell on the floor, and breaking kitchen utensils. They said they were looking for the claimant, and for documents and other things associated with his case: the claimant's father did not understand why, in that case, they needed to overturn furniture and break kitchen utensils, or rummage through the parents' possessions. He told them again that the claimant and his wife were outside the country.
78. On 7 December 2015, the father made a formal complaint to the Deputy Prosecutor General of Ukraine about the illegal behaviour of the SBU. He hoped that this high-ranking officer, tasked with reforming the Prosecutor's Office, would understand the situation and view it objectively. He set out everything that had happened and asked for a legal assessment of the SBU's actions and the validity of the criminal proceedings against his son. He asked for the

case to be transferred for investigation by the Special Investigations Agency of the Head Office of the GPOU (the SIA).

79. In January 2016, the claimant's father received a disappointing response: there were no grounds to refer the case to the SIA, but other matters would be transferred to a different department for oversight. The statement concludes:

"I realised that if they did not see the violations of the law, and the other departments would hide everything. That's how the system of covering up crimes of those in power works against ordinary citizens of this country.

The response of the General Prosecutor's Office, which I received in March 2016, contained information that all the actions of the [SBU] and the Court fully comply with the law, that the criminal case was opened legally, the son is hiding from the investigation authorities and therefore is on wanted list. ..."

80. The father enclosed supporting documents which I review below.

The translated documents

81. The translated Ukrainian documents were sent to the Secretary of State by the claimant's solicitors on 10 December 2016, but have not been examined by the Secretary of State and form no part of his January 2016 credibility decision. They are, however, fully supportive of the claimant's account and there is no indication on the face of the documents that they are not reliable to the *Tanveer Ahmed* standard. Indeed, it was only at the latest Upper Tribunal hearing that there was any suggestion that these documents should not be given weight by the Tribunal. I summarise them in date order.
82. On 13 June 2014, just before the claimant's marriage, the National Bank certified that the claimant had been working at their Zaporizhzhia administrative branch from 28 August 2007. His post was 'electronic engineer of the 1st category of the sector of network technologies of the department of the telecommunication systems of the information centre'. Details were given of his average salary for the last six months, totalling UAH 51543.82 (about £1400 for the entire period).
83. On 28 August 2015, at 12:29 hours a news report from www.Prestupnosti.net (translated as saynotocrime.net) records that in the claimant's home town, a man with a gun shot at a car at about 08:50 hours, with two volleys of automatic gunfire and then escaped. The driver's identity was not yet known. He was badly injured and was in intensive care. The event had been registered in the Unified Crime and Offence Registration Log, with the provisional designation of 'intentional homicide' under Article 11591) of Ukraine Criminal Code.
84. On 18 September 2015, the District Court summoned the claimant's wife to appear at a hearing on 25 September 2015, as surety for her husband, who had absconded while on bail. The hearing was to determine whether the surety money should be forfeited. The claimant's wife was required to bring her passport with her. The notice of hearing contained a warning of the consequences of failure to attend, but as this is just a list of provisions of the Ukrainian Criminal Code, it is not clear what those were. On 25 September 2015, in a lengthy decision, the Court forfeited the bail surety to the state.
85. On 16 March 2016, a letter signed by the local Deputy Prosecutor of the General Prosecution Office of Ukraine (GPOU) confirmed the attendance of employees of the Advanced Maintenance Service (AMS) of the Ministry of Internal Affairs on 5 February 2015,

responding to an alarm signal to their computer monitoring system. On arrival, the AMS employees checked who was in the flat. They interrogated the claimant and his wife and noted that SBU representatives were also in the flat. They reported back to the AMS local emergency centre, and as the SBU employees did not object, they took the claimant and his wife to the local Komunarsky (police station).

86. There was a record in the Unified Crime and Offence Registration log for 20:10 hours on 5 February 2015, recording 'that the representatives of the [SBU] treated you unlawfully'. The letter continues:

"I hereby inform you that the current legislation of Ukraine does not give to representatives of the State Guard Service any authority for detention of employees of the [SBU] and search operations towards them. Taking the above into account, the [local prosecution office] had not established any violations with current legislation in relation to actions of the employees of the [SBU].

Regarding the information you provided in relation to intrusion into work of your PC and other involvement to make you work under duress at your work place at the [National Bank] we understand importance of this information and possible involvement of the employees of the [SBU] to this matter. Your application was sent to the [local SBU department] for verification of evidence set forth herein. If the grounds prove true and violations with current legislation were established, then the prosecution will impose appropriate response measures."

87. A press report from www.korrespondent.net dated 27 March 2016 reports unlawful imprisonment of a detainee and abuse of power by SBU employees, who beat a terror suspect to death in Donetsk Province; an agreement between the SBU and Amnesty International to investigate 'matter of tortures' together on 27 May 2015; and that a woman living in Kharkiv had won damages of €20,000 for police torture. The United Nations had repeatedly 'blamed' the Ukrainian government for SBU employees using torture, with impunity.

88. On 22 January 2016, a letter from the GPOU says that the main task of the SIA, created on 8 December 2014, was to act as a single point of investigation for crimes committed during protest actions in Ukraine in 2014-2015, and in particular, the circumstances of seizure of power and the whole range of criminal actions committed during President Yanukovich's various terms of office. The SIA is primarily intended to investigate the mass killing of peaceful protesters on 18-20 February 2014. The letter continues:

"Tasks of bodies of the [SBU] in supervising the implementation of criminal proceedings do not fall within the competence of the [SIA]."

89. There were no grounds to call on the SBU investigator to account to the SIA for his conduct of the proceedings. However, the supervision of law enforcement by the SBU was within the competence of the GPOU and the complaints by the claimant's father, and earlier complaints by his wife, would be considered by the GPOU's Office of Criminal Investigations. The facts and circumstances raised would be thoroughly examined and a decision made by 25 March 2016. The claimant's father would be notified of the outcome in accordance with the established procedure.

90. On 26 February 2016 the GPOU's department of supervision of criminal proceedings, wrote to the claimant to confirm that on 20 February 2015, the SBU's local Department of Criminal Investigations had lodged a pre-trial enquiry regarding offences contrary to Articles 15(3) 113 and 15(3) 361(2) of the Ukrainian Criminal Code. The GPOU letter sets out the detention and bail history of the claimant between 1 April 2015 and 28 July 2015, his breach of bail

conditions, and confirmed that on 23 September 2015, he had been placed on the national Ukrainian 'wanted' list. The SBU investigator who had filed the criminal charges was now charged with 'retrieval of the alleged criminal'.

91. The General Prosecution Office had reviewed the handling of the SBU investigation and found no breach of procedure by the investigator and accordingly, the Court decisions thus far could not be reopened. The circumstances of the December 2105 complaint were not such as to 'lay the case open to revision of activities of the above-mentioned subordinated prosecution offices and employees of the [SBU]'.
92. There is a group of four documents concerning a letter and enclosures sent by the claimant's father to him in the United Kingdom on 13 May 2016. The first document is the postal receipt by the Ukrainian State Enterprise of Postal Services (UKRPOSHTA), confirming that a letter was posted to the claimant in the United Kingdom; the next is a lost post enquiry form dated 6 June 2016; on 16 June 2016, the Central Bureau of Complaints at UKRPOSHTA confirmed that the delay in delivery was being investigated.
93. A letter from the claimant's father dated 15 July 2016, stated that on 13 May 2016, he had sent the claimant a letter including the father's witness statement, a Court summons against the claimant's wife dated 18 September 2014, a Court decision dated 25 September 2015, and responses from the Prosecutor General's Office to his complaints dated 22 January 2016 and 26 February 2016. The father said that the claimant still had the scanned copies of all the documents: it was the originals which were missing and might take months to locate.
94. On 19 April 2018, the father made a supplementary statement, setting out what had happened since May 2016.
95. In September 2016, the SBU investigator had sent for the father. He was aware that the father had sent a letter to the United Kingdom in his son's name and placed a tracing request on the missing item. He wanted to know what the claimant was doing in the United Kingdom, what the father sent him, and whether the claimant planned to return to Ukraine.
96. The police were continuing to visit the claimant's parents every 2-3 months, and also their neighbours, and neighbours near the claimant's flat. In each case, they were asking when the people had last seen the claimant.
97. On 25 June 2017, the claimant's father visited the claimant's flat to water the flowers and check everything was in order there. He was attacked as he left by two plainclothes men who pushed him back into the apartment, knocked him to the floor, twisted his arms behind his back and handcuffed him. They asked for his name and surname and checked the documents in the claimant's father's pocket, making sure he was not the claimant. Then they removed the handcuffs and took him to the police station to explain where his son had gone. After being interviewed at the police station, the father was released with an apology for 'the misunderstanding of the arrest'.
98. On 12 March 2018, the claimant's father tried again to instruct the lawyer who had previously refused to act. He asked the lawyer to prepare a witness statement for these proceedings. The lawyer said that he remembered the case, but would not testify. The father begged him to help: the witness statement would be used only in the United Kingdom and not shown to anyone in Ukraine. The father recorded what the lawyer told him: he had tried to visit the claimant in prison, as his retained lawyer, but the investigator 'rudely refused' and said that the claimant already had a state-appointed lawyer. The lawyer explained that

if he continued to try to act, or to refer to the Criminal Code or the Constitution, he would be arrested and the SBU would fabricate a case of separatism and terrorism against him.

99. The lawyer continued:

“...I did not have another choice, I was forced to withdraw from the case. I explained to [the claimant’s wife] the seriousness of the situation, that the cause of [the claimant] obviously involved high-profile people, and in such circumstances, the case will not be taken by any lawyer because of the threats from the SBU. ...

The lawyer [name redacted] also said that in his opinion, taking into account all of the above circumstances and the Articles of the Criminal Code that [the claimant] is accused of, we should not count on an objective and fair resolution of the case in the Ukrainian courts.”

100. The lawyer had also been interviewed in autumn 2015, to see if he knew where the claimant and his wife had gone, and if he was in contact with them.

101. On 14 March 2018, the claimant’s father met the State-appointed lawyer who had represented the claimant at Court. He said that he no longer had access to the case, from the date when the claimant absconded while on bail and became a wanted man. The claimant’s father asked when the statute of limitations would permit the claimant’s case to be closed: the lawyer said that in accordance with Article 49(2) of the Criminal Code, if an accused evaded either investigation or trial, exemption from criminal liability was not available for 15 years from the date of the offence.

APPENDIX B

Country Evidence

Expert evidence: Dr Rano Turaeva-Hoehne

1. Dr Rano Turaeva-Hoehne is an associate post-doctoral researcher on post-Soviet countries, including Ukraine, at the Max Planck Institute for Social Anthropology in Halle/Saale, Germany. She sets out her professional background: she is working on a research project studying migration within post-Soviet Republics, focusing on Russia. She has worked with local and international non-governmental organisations conducting and assisting various research projects, including on domestic violence and trafficking. She monitors the academic literature but also has informants, family members and friends living in Russia, Ukraine, and throughout the region. Dr Turaeva-Hoehne's report is carefully sourced, with all quotations identified and links to the source material.
2. After setting out her methodology, Dr Turaeva-Hoehne explained the political situation in Ukraine. She characterises President Poroshenko as a former oligarch. She notes that on 24 June 2015, the head of the SBU was dismissed by the Ukrainian parliament at the request of President Poroshenko as a result of 'his growing independence in running the SBU'. At [8]-[9], Dr Turaeva-Hoehne notes that there remain high levels of corruption in Ukraine and that 'high-ranking officials who were party members during the Soviet times are still involved in organised crime to enrich their private or political needs. ... These high ranking officials who bought their political participation power now are referred to as magnates or oligarchs'.
3. At [12]-[16], the report deals with the SBU, the Ukrainian security service. Most of its higher echelons were trained by the KGB in Moscow during the Soviet era. The SBU system resembles that of the modern Russian FSB. At [12] she notes that:

"12. The [SBU] is currently under President Poroshenko's control, its role having grown considerably since the start of the armed uprising by pro-Russian militants in eastern Ukraine. The security agency now has no qualms about monitoring civic activists, independent journalists and opposition politicians, and is actively involved in resolving business conflicts. ...

14. Kuzio (2015, page 472) describes current security structures in Ukraine which have their roots in KGB system centered around Moscow and most of higher echelons of this systems being trained in Moscow in Soviet schools of KGB. The structures remained the same, the author argues, and stated: "The SBU, in similar manner to the Russian FSB, have Soviet-era KGB mind-sets where their main function is not to protect state but to defend those who are in power". This can be seen within internal divisions of SBU in Ukraine along pro-Russian and pro-Ukrainian lines of belonging. For instance, Alan Malcher describes this problem within SBU as following in his analytical piece: "Apart from several senior SBU officers saying it is going to be extremely difficult to overcome the disloyalty within their ranks, expressions of concern over the large quantity of data thought to be in the hands of the FSB, and having an intelligence agency that one officer described as: "Riddled with officers whose loyalties are unknown, at a time when Ukraine's sovereignty is in danger from a Russian-proxy war which is increasing in intensity. ..."

15. Euromaydan Press, highlighting the link between SBU and Russian FSB, stated: "Before Euromaidan, the SBU in Ukraine had been perceived as the government's assistant, which covered its crimes and served its interests, including in business. However, another weak point

of the institution was its close connection to the Russian Security Services, as many employees of the institution used to work for KGB. It is hard to imagine that a person who once worked in this repressive structure could remain unaffected and would not maintain old connections. Moreover, it has been revealed that the connections of the SBU to Russian FSB had a great effect on the events after the Euromaidan revolution. In 2014, then head of the SBU Valentyn Nalyvaichenko stated that during the three months of the revolution, three groups of persons occupying high positions in the FSB worked within the structure of the SBU.

The architecture of the security system of Ukraine

16. ...Here I would like to describe the de facto functioning principles of the state security apparatus of Ukraine. There are two major security ministries which are important for the security of the state and its sovereignty in Ukraine, namely Ministry of Defense and Ministry of Internal Affairs, which comprises SBU and the police. Besides formal structures defined by law, there are also informal structures within this system, which is crucial in the functioning of this apparatus in the way it does function, namely undemocratic and abusive ways much criticised by human rights activists and others. Within SBU, informal staff is also known as *stukachi* (informants) and other personnel make it possible for the SBU to successfully operate their illegal activities. These are officially known as volunteers and there is diverse reciprocal relations between security officers and those individuals working for the SBU. This system of informal personnel is not new and stems from Soviet KGB style of functioning within security services which proved to be effective at all times. ...”

4. Moving to the claimant’s case, Dr Turaeva-Hoehne found it plausible. She noted that the claimant was loyal to the Maidan government and had worked as a *stukachi*, collaborating with the SBU to find out about separatist activities on social media, which might have been regarded negatively by pro-Russian officials within the SBU in eastern Ukraine, where the claimant lived. Dr Turaeva-Hoehne considered that the decision to use the claimant to sabotage a strategic unit of the national government such as the National Bank was rational ‘to make the [claimant] stop doing jobs he did before for SBU and eventually to get rid of him’. She had looked up the online profile of his second handler, who asked him to do this, finding that the handler’s social media profile contained strong indications that he worked for the security structures and was pro-Russian.
5. At [20], Dr Turaeva-Hoehne dealt with the panic button element of the account, and confirmed that the police do indeed offer a special private service of the type described:

20. ...Their actions in the situation described by [the claimant] are professional that the geed the security in the house and referred all the parties to go to police office. ... The fact that SBU left the house of [the claimant] that evening did not indicate that they were intimidated considering the following up events and violence performed by the same officials. Local police (not private security agencies) collaborate with the SBU which is well documented in the sources (both academic and media) I cited in this report in the section on criminal state structures. The question of loyalty is a different question which is unsolved in the conflict-torn Ukraine where major reforms of KGB-like security system, where former KGB nomenclatura still remain holding powerful positions. ...”
6. It was to be expected that a pro-Russian SBU official perceived as a threat the valuable work the claimant was doing as an SBU volunteer, contributing information from social media about separatist activities, and was tasked to remove him. As the claimant worked in the IT system of a strategic unit of the Ukrainian government, it was not unusual if the official concluded that the best way to do that was to ask him to sabotage his employer’s server.
7. Dr Turaeva-Hoehne considered that the claimant was presented with a classic prisoner’s dilemma: if the claimant agreed to perform the sabotage, under threats to his life and his

family, that would be a win for the pro-Russian SBU officials, as the National Bank would be sabotaged and the claimant imprisoned. If he refused, appropriate criminal charges could be crafted, fitting his profile, to cover his plans and neutralise him. The government controlled the media and it was unlikely that a case like the claimant's, revealing corruption and failure in the state legal system, would receive much publicity because the government would want to save face:

"22. ...The fact that the problem of disloyalty within SBU and security system of Ukraine is unresolved, speaks about the professionalism of the former KGB officials who hold pro-Russian attitude, who are able to keep right balance in the power structures of state criminal security system of Ukraine."

8. Dr Turaeva-Hoehne was unable to comment on the allegation that the SBU had made the claimant blame the lawyer and activist, Mr Gordeev, or Mr Andre Denisenko, the national deputy of the Ukrainian parliament for the region. It was public knowledge that Mr Gordeev had shot an SBU officer who was supporting contraband, which Mr Gordeev wanted to prevent.
9. Overall, Dr Turaeva-Hoehne did not consider that the claimant's account was implausible or inconsistent: the powerful position the SBU had gave it impunity, and the background evidence indicated that a statement from the SBU would have more weight than that of a bank employee, who had absconded, making him automatically seem more guilty than someone who remained to explain.
10. Dr Turaeva-Hoehne concluded that the claimant had been a victim of 'political games played between pro-Russian officials and corrupt Ukrainian state security' and was highly likely to be on the SBU wanted list, which was widely shared within the overall Ukrainian security system. He risked arrest and detention at the airport, or anywhere within Ukraine, because of the *propiska* system: the SBU had unlimited access to data on persons and their movements within Ukraine.
11. On 7 August 2018, Dr Turaeva-Hoehne provided an updated report, describing the present situation in Ukraine. The OHCHR in its 2018 report said that corruption continued to be a problem, with an active armed conflict entering its fifth year, and 'costs for civilians amassing by the day...The unpredictable nature of the armed hostilities and its consequences maintained an atmosphere of physical insecurity and socio-economic degradation among the conflict-affected communities in eastern Ukraine'. The Donbas conflict continued. Conditions in prisons were the same or perhaps worse.
12. The Freedom House report for 2018 also supported high levels of corruption, and OHCHR noted that there had been interference in the independence of the judiciary 'as judges who released individuals accused of terrorism or separatism-related charges pending trial became subjects of criminal investigations themselves'.
13. Dr Turaeva-Hoehne provided a response the Secretary of State's skeleton argument as it related to her report. I have not had regard to that: responding to a party's argument is no part of an expert witness' role, as Dr Turaeva-Hoehne should be well aware.

Other country materials

14. The bundle before First-tier Judge Wilson included 103 pages of country evidence for 2017. I was not asked specifically to look at any of that evidence. The Upper Tribunal bundle

contains just four additional documents: the US State Department Human Rights Report for 2017, published on 20 April 2018 (included twice); the Amnesty International report for 2017/2018, and an article from The Times dated April 2 2018, entitled *Operation Troy: Russia's blueprint for spreading chaos in Ukraine*.

15. The *Operation Troy* article describes a plan sent to the Kremlin by Alexei Muratov in November 2014, as part of a wider Kremlin engagement to destabilise Ukraine and prepare the people of Zaporizhzhia region in eastern Ukraine, where this claimant lived, for a pro-Russian takeover. The proposal was a 'blueprint for manipulating public opinion before an insurrection in Zaporizhzhia, wresting the region from the orbit of the central government in Kyiv' and would make use of an existing espionage network, contacting sympathisers inside the local police and the SBU, in parallel with Moscow's direct military intervention in the Donbas conflict in Eastern Ukraine.
16. The *Operation Troy* plot was revealed by a network of Ukrainian hackers in November 2016. Its budget included \$10,000 for maintaining agents in the SBU and Interior Ministry; \$100-\$300 for hacking an email account; \$50-\$5000 for bringing down a website, and \$130,500 for 'demotivating enemies' on social media and amassing the personal data of targeted individuals in Kharkiv, Ukraine's second city, as well as funds for staging rallies, organising pro-Russian protests in the region, and backing a local Council election campaign for 30 banned ex-communist figures.
17. The US State Department 2017 report in its Executive Summary said this:

"The government generally failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity. Human rights groups and the United Nations noted significant deficiencies in investigations into human rights abuses committed by government security forces, in particular into allegations of torture, enforced disappearances, arbitrary detention, and other abuses reportedly perpetrated by the Security Service of Ukraine (SBU). ..."
18. In Section 1(c) of the report, it confirms that although the constitution and law prohibit torture and other cruel and unusual punishment, there were reports of law enforcement agencies engaging in such abuse, including torture, and of false confessions being obtained in this way: the UN Subcommittee on the Prevention of Torture in 2016:

"... received numerous and serious allegations of acts that, if proven, would amount to torture and mistreatment. ...beatings, electrocutions, mock executions, asphyxiations, acts of intimidation and threats of sexual violence against themselves and their family members. ...the Subcommittee has no difficulty in concluding that these allegations are likely to be true. Many of the above-mentioned acts are alleged to have occurred while the persons concerned were under the control of the SBU or during periods of unofficial detention."
19. There was a culture of impunity for the SBU officers. There was 'a continued pattern of arbitrary detention by authorities'. There were also concerns about fair trial issues, with both judges and prosecutors reportedly taking bribes in exchange for favourable decisions, lengthy court proceedings, inadequate funding, high bail surety demands, and difficulty for courts in enforcing rulings. There were reports of intimidation and attacks against lawyers representing pro-Russian or pro-separatist defendants.
20. There were also reports of arbitrary or unlawful interference with privacy, family, home or correspondence:

“By law the SBU may not conduct surveillance or searches without a court-issued warrant. In practice, however, law enforcement agencies sometimes conducted searches without a proper warrant. In an emergency, authorities may initiate a search without prior court approval, but they must seek court approval immediately after the investigation begins. Citizens have the right to examine any dossier in the possession of the SBU that concerns them; they have the right to recover losses resulting from an investigation. Because there was no implementing legislation, authorities generally did not respect these rights, and many citizens were not aware of their rights or that authorities had violated their privacy.

There were some reports that the government had accessed private communications and monitored private movements without appropriate legal authority. For example, on October 20, journalist Oleksandr Chernovalov filed a complaint with the police alleging the government had conducted illegal surveillance on him. The Darnytsia district police in Kyiv launched an investigation, which remained underway.”

21. Supervision of the internet was also an issue:

“Law enforcement bodies monitored the internet, at times without appropriate legal authority, and took significant steps during the year to ban major Russian-sourced news and social media sites. ...

Human rights groups and journalists who were critical of Russian involvement in the Donbas region and the occupation of Crimea reported their websites were subjected to cyberattacks, such as coordinated denial of service incidents and unauthorized attempts to obtain information from computers, as well as coordinated campaigns of “trolling” and harassment on social media.

In its annual *Freedom on the Net* report published in November, Freedom House concluded that internet freedom had deteriorated for the second year in a row. It noted in particular that “authorities have become less tolerant of online expression perceived as critical of Ukraine’s position in the conflict, and the government has been especially active this year in sanctioning social media users for ‘separatist’ and ‘extremist’ activities, with many users detained, fined and even imprisoned for such activities. Meanwhile, separatist forces in the east have stepped up efforts to block content online perceived to be in support of Ukrainian government or cultural identity.”

22. The National Bank had a high profile:

“In 2015 the Kyiv Administrative Court of Appeal overturned a National Bank decision that Crimean IDPs were non-residents, which had restricted access to banking and financial services for those fleeing the Russian occupation. Nonetheless, media reports indicated that banks continued to restrict banking services for Crimean IDPs even after the court decision.”

Amnesty International 2017/2018

23. The Amnesty International report on Ukraine for 2017/2018 reported that the investigation into the SBU for alleged secret prisons failed to make any progress, and that law enforcement officials continued to use torture and ill-treatment. There was ‘continued impunity for past and ongoing violations of international humanitarian law’.

24. The Secretary of State’s Country Policy and Information Note on Crimea, Donetsk and Luhansk, Ukraine, September 2017, summarises the situation in 2014 at 5.1.1 and following:

“5.1.1 In the Country Report on Human Rights Practices in 2016, the US Department of State (the USSD’s 2016 report) noted:

‘In February 2014 Russian forces entered Ukraine’s Crimean Peninsula and occupied it militarily. In March 2014 Russia announced the peninsula had become part of the Russian

Federation following a sham referendum that violated Ukraine's constitution. On March 27, 2014, the UN General Assembly adopted Resolution 68/262 on the "Territorial Integrity of Ukraine," which called on states and international organizations not to recognize any change in Crimea's status and affirmed the commitment of the UN to recognize Crimea as part of Ukraine. In April 2014 Ukraine's legislature (Verkhovna Rada) adopted a law attributing responsibility for human rights violations in Crimea to the Russian Federation as the occupying state... Russian law has de facto applied in Ukraine's Crimea since the Russian occupation and purported "annexation" of the peninsula.'

5.1.2 In a September 2015 report, the UNHCR noted that 'Following a referendum, which was not authorized by Ukraine, in the Autonomous Republic of Crimea in 2014, the legislative framework of the Russian Federation has been applied across the territory of Crimea in January 2015.'

25. At 2.2.9, the same report records the annexation of Donetsk and Luhansk in 2014, and the continuing military conflict there between the Ukrainian government and pro-Russian armed groups. A ceasefire in September 2014 was never fully effective.
26. Further excerpts from the US State Department Report for the year 2015, published in April 2016, appear in the general Country Information and Guidance report set out the interrelation between the police and the SBU living in territory controlled by the Government of Ukraine, as was the case for this claimant:

"9.1.1 The US Department of State provided the following information, which covered the year 2015 and was published in April 2016:

'The Ministry of Internal Affairs is responsible for maintaining internal security and order. The ministry oversees police and other law enforcement personnel. The SBU [Security Service of Ukraine] is responsible for all state security, non-military intelligence, and counterintelligence. The Ministry of Internal Affairs reports to the Cabinet of Ministers, and the SBU reports directly to the president. The State Fiscal Service exercises law enforcement powers through the tax police and reports to the Cabinet of Ministers. The State Migration Service implements state policy regarding border security, migration, citizenship, refugee registration and other registering other migrants; the Ministry of Internal Affairs oversees it.

'Civilian authorities generally had control over law enforcement agencies but rarely took action to investigate and punish abuses committed by security forces.

'Impunity for abuses by law enforcement remained a significant problem. During a September [2015] visit to the country, the UN special rapporteur on extrajudicial, summary or arbitrary executions recommended that the government establish a system of independent overview of the conduct of law enforcement, with a particular focus on allegations of mistreatment by the SBU.

'Human rights groups expressed concern that authorities have not properly investigated crimes committed by Ukrainian forces and have not punished them. In particular human rights groups noted that alleged crimes committed by the Aidar Battalion remained unsolved, including the killing of two persons in Shchastya in February [2015].

'While authorities sometimes brought charges against members of the security services, cases often remained under investigation without being brought to trial, while authorities allowed alleged perpetrators to continue. ..."