Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**241**
Land:	Tyrkiet
Kilde:	British Home Office
Titel:	”Home Office Report”
Udgivet:	Februar 2005
Optaget på baggrundsmaterialet:	6. oktober 2005

Turkey

1.Introduction

1.1 This document summarises the general, political and human rights situation in Turkey and provides information on the nature and handling of claims frequently received from nationals/residents of Turkey. It must be read in conjunction with the Turkey country report and any CIPU country bulletins.

1.2 This guidance is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights.

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part III on main categories of claim.

1.4 Asylum and human rights claims must be considered on their individual merits. However, if following consideration, the claim is refused, caseworkers should consider whether the claim can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether certain types of claim are likely to be clearly unfounded.

Source documents
1.5 Where paragraph numbers have been cited, these refer to the CIPU Turkey country report October 2004.

2.Country Assessment

2.1 Legislative power is vested in the unicameral Grand National Assembly (Parliament), which is elected by universal adult suffrage for a five-year term. Executive power is vested in the President, who is elected by the Grand National Assembly for a seven-year term and is empowered to appoint a Prime Minister and senior members of the judiciary. **[para 5.11]**

2.2 The most recent general election, that of 3 November 2002, was won overwhelmingly by the AKP (Justice and Development Party). **[para 4.30 - 4.31]**

2.3 The military exercises indirect influence over government policy, actions and politics. **[paras 5.18]** However, the European

Commission in its October 2004 report on Turkey stated that a number of changes have been introduced over the last year **[2003-2004]** to strengthen civilian control of the military with a view to aligning it with practice in EU member States. The constitutional and legal framework has been amended to clarify the position of the armed forces versus the civilian authorities. **[para 5.20]**

2.4 A state of emergency (in Turkish: Olaganüstü Hal, often abbreviated to OHAL) applied in some south-eastern Turkish provinces from the mid-1980s until 30 November 2002. **[para 6.333]** The state of emergency was lifted in the two remaining provinces on the 30 November 2002. **[para 6.334]** The European commission reported in October 2004 that overall the situation in the East and Southeast of the country, where people of Kurdish origin mostly live, has continued to improve gradually since 1999, both in terms of security and the enjoyment of fundamental freedoms. The emergency rule has been lifted and the return of the internally displaced persons (IDPs) has continued. **[para 336]**

2.5 In November 2003, the PKK/KADEK changed its name to the Kurdistan Peoples Congress (abbreviated to either KHK or Kongra-Gel). **[para 4.20]**

2.6 On the 1 June 2004 Kongra-Gel announced that its five-year unilateral cease-fire had ended and that it would start to target Turkish security forces. **[para 4.21]** The European Commission 2004 reported that despite a general improvement in the situation in the Southeast, the security threat has increased since the Kongra-Gel (formerly PKK) announced the end of the ceasefire in June 2004. Terrorist activities and clashes between Kongra-Gel militants and the Turkish military have been reported. **[para 6.337]**

2.7 According to the European Commission Regular report on Turkey "Since 1999 Turkey has adopted two constitutional reforms and eight legislative reform packages. The most recent May 2004 constitutional reform addresses a number of issues related to human rights. These include: eradicating all remaining death penalty provisions; strengthening gender equality; broadening freedom of the press; aligning the judiciary with European standards; and establishing the supremacy of international agreements in the area of fundamental freedoms over internal legislation." **[para 6.1]**

2.8 According to the Human Rights Watch Report of 13 January 2005 "Turkey?s human rights record continued to improve during 2004, albeit slowly and unevenly, as the country attempted to recover from the legacy of gross violations committed by state forces and armed opposition groups fighting in the countryside and cities in the early 1990s. The reduction in political violence since 1999 has encouraged reform." [1]

2.9 According to the US State Department report 2003 (published February 2004) "The [Turkish] Government generally respected the human rights of its citizens; although there were improvements in a number of areas, several serious problems remained." **[para 6.10]**

2.10 According to the European Commission "The Government's policy of zero tolerance and its serious efforts to implement the legislative reforms have led to a decline in instances of torture. In the first six months of 2004 the Turkish Human Rights Association received 692 complaints related to torture, a 29% decrease on the first six months of 2003. However, the number of complaints of torture outside of formal detention centres has increased considerably as compared with 2003." **[para 6.21]**

2.11 Although torture is no longer systematic, numerous cases of

2.11 Although torture is no longer systematic, numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practice. **[para 6.23]**

2.12 Human Rights Watch reported in January 2005 that "There were fewer cases of torture and ill-treatment in 2004, largely due to safeguards imposed in recent years, and by the government?s frequent assertions of zero-tolerance for such abuses. Nevertheless, detainees from all parts of the country report that police and gendarmes beat them in police custody. In some cases, detainees still complain that they have been subjected to electric shocks, sexual assault, hosing with cold water, and death threats." [1]

2.13 According to Freedom House January 2005 "Torture and ill-treatment by officials continue to be an issue in Turkey. The Erdogan government has declared a zero-tolerance policy toward torture, and it appears to be backing up its position with new detention laws and, as of April 2004, a policy forbidding police from entering the room when doctors examine alleged torture victims. Recent legal amendments have limited the initial custody period after arrest to 24 hours, a measure widely believed to reduce opportunities for torture. A Council of Europe Committee for the Prevention of Torture investigation found that this period was respected in practice, and proper procedures were followed when an extension was necessary. The cumulative result of these policies has been a marked decline in torture cases in the past couple of years." [2]

2.14 According to the Human Rights Watch report, published 15 June 2004 "Turkish legal protections for detainees are better than in many EU member states." **[para 6.28]**

2.15 According to Amnesty International's annual report on Turkey covering the events of 2003, published May 2004 "Implementation of the reforms was uneven and it was too early to gauge significant progress on human rights as a result of the legislation. Reports of torture and ill-treatment in police detention and disproportionate use of force against demonstrators continued to be matters of grave concern, although the use of some torture methods appeared to diminish." **[para 6.8]**

2.16 The International Federation for Human Rights report (May 2003) states that "Turkey fails to carry out adequate and effective investigations into the alleged violations of the right to live and the right to be free of torture." **[para 6.46]**

2.17 According to the US State Department report 2003 (February 2004) "The investigation, prosecution and punishment of members of the security forces for torture or other mistreatments was rare, and the light sentences imposed on police and other security officials for killings and torture continued to foster a climate of impunity." **[para 6.45]** Human Rights Watch, however, reported in September 2004 that "Compared to the mid-1990s, it is far easier today for victims of torture to bring complaints against alleged perpetrators." **[para 6.47]**

2.18 The European Commission report published 6 October 2004 stated that "With regard to the promotion and enforcement of human rights, Turkey has established a number of bodies since 1999 such as the Reform Monitoring Group, the Human Rights Presidency, the provincial and sub-provincial Human Rights Boards, the Human Rights Advisory Committee and several investigation boards. **[para 6.273]**

2.19 With regard to training on human rights, the Turkish authorities have pursued a number of programmes targeting relevant personnel in the Ministry of the Interior, Ministry of Justice, the gendarmerie and the police. **[para 6.274]** The USSD

2003 reported that "The armed forces emphasized human rights in training for officers and non-commissioned officers throughout the year." **[para 6.275]**

2.20 Since its establishment in September 2003, the Reform Monitoring Group has examined a number of human rights violations and exerted influence to resolve specific problems raised by foreign embassies and NGOs. **[para 6.278]** Since January 2004, the Human Rights Presidency has intensified its work to raise awareness on human rights, process complaints and address specific cases. Individuals are now able to register complaints of human rights abuses by completing a form with a list of questions inspired by the ECHR, which can be posted in complaint boxes. **[para 6.279]**

2.21 The Parliamentary Human Rights Investigation Committee continued to collect complaints on human rights violations and requested that the relevant authorities follow up and redress the situation when necessary. It received 791 complaints between October 2003 and June 2004; of these 322 have been dealt with. The Committee is also providing procedural advice to citizens who would like to apply to the ECtHR following the exhaustion of domestic remedies. The Committee has adopted two reports on issues related to the human rights situation. **[para 6.287]**

2.22 According to information on human rights monitoring provided by the Turkish Embassy in London in August 2004, "The Gendarmes Investigation and Evaluation Centre for Human Rights Abuse Issues (JIHIDEM) became operational on 26 April 2003 within the Gendarmes General Command Headquarters and operating on a 24 hour basis in order to systematically deal with or answer complaints regarding human rights abuse issues that might arise whilst gendarmes are fulfilling their duties." **[para 6.297]**

2.23 A number of non-governmental organisations are also active in the human rights field. They include the Human Rights Association of Turkey (HRA), the Turkish Human Rights Foundation (HRF) and Mazlum-Der. **[paras 6.308-6.332]**

2.24 Turkey recognises the jurisdiction of the European Court of Human Rights. **[para 6.302]** Turkey has made increased efforts since 2002 to comply with the decisions of the European Court of Human Rights (ECtHR). The possibility of retrial in civil and criminal cases in which the ECtHR has found violations was introduced. Retrials have taken place and led to a number of acquittals. The case of Leyla Zana and colleagues is emblematic of the difficulties experienced by the different branches of the judiciary when it comes to the interpretation of the reforms. **[para 6.304]**

3.Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Turkey. It also contains any common claims, which may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim. Where consideration is being given to the certification of the claim under Section 94 of the Nationality Immigration and Asylum Act 2002 refer for guidance to the current APU instructions for dealing with such cases.)

3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

3.6 The majority of asylum claims made by nationals of Turkey are based on a number of separate but interrelated issues; Association with or membership of an illegal organisation, Kurdish ethnicity, Alevi religious faith and a fear of performing military service. Often all four issues will form the basis of an individual?s asylum claim.

3.7Association with/ membership of illegal organisations

3.7.1 The groups for which applicants most frequently cite support/ sympathy or (less often) membership are;

- Militant Kurdish separatist/nationalist organisations such as the PKK/KADEK/KHK/Kongra-Gel. Militant left-wing (Marxist/Leninist) groups such as the DHKP/C, TKP/ML, TDKP, TKEP and MLKP.
- Armed radical Islamic movements including Hizbullah/Hezbollah and the IBDA-C (Islamic Great East Raiders - Front).
- Banned pro Kurdish political parties such as HADEP. (Although HADEP was a peaceful party, which never resorted to violence **[para 6.166]**, it was banned by Turkey's Constitutional Court in March 2003 on the grounds that it aided and abetted the PKK. **[para 6.172]**)
- Legal pro Kurdish political parties such as DEHAP

(N.B. if an applicant states that they have participated in terrorist acts/crimes then it may be appropriate to refer the case to a Senior Caseworker.)

3.7.2 The majority of applicants will cite a fear of persecution from the Turkish authorities because of their involvement with these organisations. They will often claim to have been tortured and ill treated by the security forces while in detention. Involvement may be at a high level or at a low level (support or assistance). Some

applicants state that they fear persecution from the authorities on the basis of a relative's involvement with an illegal organisation.

Treatment
3.7.3 Members of militant left-wing, Islamist organisations, and PKK/KADEK/KHK/Kongra-Gel face criminal prosecution [para 6.250] under Article 168 of the Criminal Code in conjunction with Article 5 of the Anti-Terror Law and if found guilty would be subject to substantial prison sentences. Heavier penalties are imposed on leaders of such organisations. They will also be prosecuted for attempted subversion of the established constitutional order, which is punishable by life imprisonment. **[para 6.251]**

3.7.4 Anyone who is prosecuted for conducting marginal activities for illegal organisations may be sentenced to imprisonment not exceeding three years and nine months on the basis of Article 169 of the Turkish Criminal Code (support for an armed society or band). **[para 6.253]**

3.7.5 Although torture is no longer systematic, numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practice. **[para 6.23]** (See country assessment section above)

3.7.6 Persons returned to Turkey who are suspected of membership of an illegal organisation, or suspected of giving support or shelter to one of those organisations, are handed over to the Anti-Terror Branch of the police. **[para 6.261]** The Immigration Appeal Tribunal (IAT) judgement in A (Turkey) 2003 cited below indicates that there is a real risk of persecution or breach of human rights of suspected separatists at the hands of the Anti-Terror Police.

3.7.7 Depending, among other things, on the degree of kinship and the (suspected) position of the relative within the illegal organisation, family members may be subjected to various degrees of intimidation, harassment, official obstruction and questioning, either to determine the whereabouts of the relatives or because they may be potential suspects themselves. **[para 6.255]** However, if the authorities are convinced that relatives do not have any links with the organisation they are not persecuted. As a result, many people in Turkey have one or more relatives in an illegal organisation without having any significant problems with the authorities as a result. **[para 6.256]**

3.7.8 Relatives of HADEP members need not fear persecution by the Turkish authorities solely because a relative is a member of HADEP, although close relatives may be closely watched by the State because of their relative's activities. **[para 6.177]**

Sufficiency of protection
3.7.9 As the ill treatment/persecution alleged is at the hands of the state, sufficiency of protection does not apply.

Internal Flight / Relocation
3.7.10 If there is a well-founded fear of persecution in the applicant's home area due to the behaviour of local officials but there is no real risk of him being suspected by the state authorities of membership of, or giving support or shelter to, an illegal organisation, then internal relocation may be available. In assessing this issue caseworkers should assume that the majority of information concerning an individual which is known to the authorities in his local area will be made available in the area to which he relocates. Where, however, it appears that the risk of persecution stems from information known only to a few individuals in the applicant?s local area internal relocation may be a possibility. As a general rule it would not be unduly harsh for someone to move to another part of Turkey, however internal

someone to move to another part of Turkey, however internal relocation cannot generally be relied upon if the applicant would need to avoid registration with the local mukhtar in the area to which he moved in order to avoid any risk of persecution.

3.7.11 Turkish citizens generally enjoy freedom of movement domestically. **[para 6.133]** UNHCR advised in March 1999 that, in general, Kurds fleeing south-east Turkey have a possibility to relocate within Turkey. **[para 6.139]** However, if they were at risk of being suspected of connection to or sympathy with the PKK, or have otherwise a political profile, they should not be considered as having been able to avail themselves of the option to relocate in a region outside the south-east of the country. **[paras 6.140]**.

Caselaw
IK (Turkey) [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004 concluded that Internal relocation may be viable, notwithstanding the need for registration in the new area. The issue is whether there is a differential nature of risk outside the applicant's local area and whether his material history would be reasonably likely to lead to persecution outside his home area.

Conclusion
3.7.12 The Immigration Appeal Tribunal (IAT) in **Hayser (2002)**, A (Turkey) (2003) and **IK (Turkey) (2004)** (see below) concluded that persons suspected by the authorities of membership of, or giving support or shelter to, illegal organisations may be at risk of persecution if returned to Turkey. They have listed a number of factors that must be considered when deciding if an applicant will be at risk. The IAT stressed that these factors are not a checklist and that no single factor is more important than any other. If it is decided that an applicant would come under suspicion by the authorities and that there is a real risk of persecution or treatment contrary to Article 3 then a grant of asylum or humanitarian protection is likely to be appropriate.

3.7.13 Although relatives of members or supporters of illegal organisations may face some police harassment or discrimination this does not generally reach the level of persecution. Therefore applicants who apply only on the basis of a relative's involvement in an illegal organisation are unlikely to qualify for asylum or humanitarian protection and such claims are likely to be clearly unfounded.

Caselaw
IK (Turkey) [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004. Concluded that many of the individual risk factors described in **A (Turkey)** [below] comprise in themselves a broad spectrum of variable potential risk that requires careful evaluation on the specific facts of each appeal as a whole. The factors described in A (Turkey) were not intended as a simplistic checklist and should not be used as such. The proper course in assessing the risk for a returnee is normally to decide first whether he has a well founded fear of persecution in his home area based upon a case sensitive assessment of the facts in the context of an analysis of the risk factors described in A (Turkey). If he does not then he is unlikely to be at any real risk anywhere in Turkey.

A (Turkey) [2003] UKIAT 00034 Heard 12 May 2003, notified 28 July 2003
The IAT considered several appeals concerning risk on return for Kurds involved with or suspected of involvement with separatists and concluded that:

- Torture continues to be endemic.
- The outlawing of HADEP on the basis it was closely linked to Kurdish rebels may arguably increase the risk of

HADEP members and supporters being associated with the PKK. Ill treatment of non-prominent members of HADEP/DEHAP is not precluded by the evidence.

- The Turkish Governments attitudes towards the PKK has not changed since it renounced violence, altered its objectives and regrouped as KADEK. Anyone suspected of giving support/membership/shelter to the PKK, left wing radical organisations or militant Islamic groups are handed over to the Anti-Terror Branch and would face a real risk of persecution or breach of human rights.
- That the Tribunal in Hayser were correct in finding that there are no minimum number of factors which have to be satisfied before an individual comes under suspicion and none of these factors are necessarily of greater or less weight than any of the others, the assessment of risk should be a cumulative one but not all factors will be of equal significance. The factors referred to in Hayser were:

a) The level if any of the appellant?s known or suspected involvement with a separatist organisation. Together with this must be assessed the basis upon which it is contended that the authorities knew of or might suspect such involvement.
b) Whether the appellant has ever been arrested or detained and if so in what circumstances. In this context it may be relevant to note how long ago such arrests or detentions took place, if it is the case that there appears to be no causal connection between them and the claimant's departure from Turkey, but otherwise it may be a factor of no particular significance.
c) Whether the circumstances of the appellant?s past arrest(s) and detention(s) (if any) indicate that the authorities did in fact view him or her as a suspected separatist.
d) Whether the appellant was charged or placed on reporting conditions or now faces charges.
e) The degree of ill treatment to which the appellant was subjected in the past.
f) Whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP.
g) How long a period elapsed between the appellant?s last arrest and detention and his or her departure from Turkey. In this regard it may of course be relevant to consider the evidence if any concerning what the appellant was in fact doing between the time of the last arrest and detention and departure from Turkey. It is a factor that is only likely to be of any particular relevance if there is a reasonably lengthy period between the two events without any ongoing problems being experienced on the part of the appellant from the authorities.
h) Whether in the period after the appellant?s last arrest there is any evidence that he or she was kept under surveillance or monitored by the authorities.
i) Kurdish ethnicity.
j) Alevi faith.
k) Lack of a current up-to-date Turkish passport.
l) Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the appellant since he or she left Turkey.
m) Whether the appellant became an informer or was asked to become one.
n) Actual perceived political activities abroad in connection with a separatist organisation.
o) If the returnee is a military draft evader there will be some logical impact on his profile to those assessing him on his immediate return. Following Sepet of course this alone is not a basis for a refugee or human rights claim.

- The IAT emphasise the importance of avoiding treating this as a checklist. The claim must be assessed in the

round as a consequence of careful scrutiny and assessment of the evidence, the existing political and human rights context overall also being of significance (as the same circumstances may not prevail in 6 months).

3.8 Kurdish Ethnicity
3.8.1 Applicants will often claim that their Kurdish ethnicity has been a factor that has lead to their ill-treatment at the hands of the Turkish authorities.

Treatment
3.8.2 Citizens of Kurdish origin constitute a large ethnic and linguistic group within Turkey. Millions of the country's citizens identified themselves as Kurds and spoke Kurdish. **[paras 6.154]** The Netherlands Ministry of Foreign Affairs estimates (January 2002) that there are 13 million Kurds in Turkey **[para 6.155]** out of a population of 67.8 million (2000 census). **[para 2.1]** The constitution provides a single nationality designation for all Turks and thus does not recognise ethnic groups as national, racial, or ethnic minorities. **[para 6.144]**

3.8.3 The Netherlands Ministry of Foreign Affairs reported (January 2002) that the Turkish Government does not persecute Kurds solely because they are Kurds. Such persecution would be incompatible with its concept of the state, according to which a person's ethnic origins do not matter as long as they comply with the principles of the Turkish Republic. Therefore all Turkish citizens (including the Kurds) have equal access to public institutions such as health care and authorities responsible for issuing official documents. **[para 6.156]**

3.8.4 The UNHCR reported that outside south-east Turkey, Kurds do not usually suffer persecution, or even bureaucratic discrimination, provided that they not publicly or politically assert their Kurdish ethnic identity. **[para 6.159]**

3.8.5 According to the European Commission 2004 the first broadcasts in languages and dialects other than Turkish were aired on radio and television by state broadcasting corporation TRT in June 2004 and are ongoing. These broadcasts consist of news headlines, documentary, music and sports programmes. **[para 6.161]**

3.8.6 According to Human Rights Watch World Report published 13 January 2005 "In June 2004 state television began broadcasts in Kurdish, Bosnak, Circassian, Arabic, and Zaza. The programs were short with uninspiring content, but represented a significant change in official attitudes to minority languages." [1]

3.8.7 Teaching in Kurdish has been allowed for the first time. Six private schools started teaching Kurdish (Kirmanci dialect) in Van, Batman and ?anliurfa in April 2004, in Diyarbakir and Adana in August 2004 and in Istanbul in October 2004. **[para 6.164]**

Sufficiency of protection
3.8.8 As the ill-treatment/persecution alleged is at the hands of the state sufficiency of protection does not apply.

Internal Flight / Relocation
3.8.9 As it is unlikely that applicants will have a well-founded fear of persecution, internal relocation will not generally be relevant.

3.8.10 In any event, Turkish citizens generally enjoy freedom of movement domestically. **[para 6.133]** UNHCR advised in March 1999 that, in general, Kurds fleeing south-east Turkey have a possibility to relocate within Turkey. **[para 6.139]** As a general rule, therefore, it would not be unduly harsh for such a person to

move to another part of Turkey. Internal relocation cannot, however, generally be relied upon if the applicant would need to avoid registration with the local mukhtar in the area to which he moved in order to avoid any risk of persecution.

3.8.11 According to the UNHCR advice, it is only if Kurds were at risk of being suspected of connection to or sympathy with the PKK, or have otherwise a political profile, that they should not be considered as having been able to avail themselves of the option to relocate in a region outside the south-east of the country. **[para 6.140]**

Conclusion
3.8.12 Although Turkish citizens of Kurdish ethnic origins may face some unequal treatment or discrimination this does not generally reach the level of persecution. Therefore it is unlikely that applicants in this category would qualify for asylum or humanitarian protection and such claims are likely to be clearly unfounded.

Caselaw
Yadin Aydinoglu [1994] UKIAT 11398 IAT decision notified 22/09/1994. The IAT accepted that Kurds in Turkey labour under difficulties and experience discrimination. However, the mere fact that a person is a Kurd does not qualify him for asylum: his individual circumstances and experiences must be reviewed to determine whether he has a well-founded fear of persecution.

Eser Cinar [2002] UKIAT 06624 IAT decision notified 19/02/2003. Mr. C stated that he had suffered persecution and harassment since his school days because of his ethnicity (Kurdish) and his faith (Alevi). The IAT concluded that although the situation for Alevi Kurds in Turkey is not altogether pleasant, there was no reason why this appellant should be regarded by the authorities on return as anything more than the usual failed asylum seeker, that is to say someone who has left Turkey to seek economic betterment and who has claimed asylum to try to achieve that objective.

3.9 Alevi Religious Faith
3.9.1 Applicants will often claim that their Alevi religious faith has been a factor that has lead to their ill treatment at the hands of the Turkish authorities.

Treatment
3.9.2 There are conflicting estimates of the total population of Alevi's in Turkey ranging in scale from 5-20 million **[para 6.99]** out of a population of 67.8 million (2000 census). **[para 2.1]**

3.9.3 The US State Department report (December 2004) stated that the Turkish Constitution provides for freedom of religion and that the government generally respected this right in practice, however the Government imposes some restrictions on religious groups. **[para 6.83]**

3.9.4 The Netherlands Ministry of Foreign Affairs reported (January 2002) that there is no persecution solely on religious grounds in Turkey and that in general the legal guarantees for freedom of religion are respected in practice. However, religious minorities can encounter practical restrictions such as administrative difficulties in managing church buildings or other real estate. It has also been known for a difference in religious background to induce a discriminatory attitude on the part of the local population or (lower) government officials. In such cases the authorities can usually be contacted. **[para 6.86]**

3.9.5 The State does not regard the Alevi faith as a separate religion, and the Alevis are not an officially recognised religious minority. Alevis' identity cards have "Islam" indicated as religion

minority. Alevis' identity cards have "Islam" indicated as religion. Many Alevis accuse the Turkish Directorate for Religious Affairs of being geared solely towards the Sunni faith. In addition the Turkish education system does not allow any room for the Alevi interpretation of Islam. **[para 6.100]**

3.9.6 In April 2003 the previously banned Union of Alevi and Bektashi Associations was granted legal status which allowed it to pursue its activities. **[para 6.101]**

Sufficiency of protection
3.9.7 As the ill treatment/persecution alleged is at the hands of the state sufficiency of protection does not apply.

Internal Flight / Relocation
3.9.8 As it is unlikely that applicants will have a well-founded fear of persecution, internal relocation will not generally be relevant.

Conclusion
3.9.9 Although Turkish citizens belonging to the Alevi religious faith may face some unequal treatment or discrimination this does not generally reach the level of persecution. Therefore it is unlikely that applicants in this category would qualify for asylum or humanitarian protection and such claims are likely to be clearly unfounded.

Caselaw
Eser Cinar [2002] UKIAT 06624 IAT decision notified 19/02/2003. Mr. C stated that he had suffered persecution and harassment since his school days because of his ethnicity (Kurdish) and his faith (Alevi). The IAT concluded that although the situation for Alevi Kurds in Turkey is not altogether pleasant, there was no reason why the individual appellant would be regarded by the authorities on return as anything more than the usual failed asylum seeker, that is to say someone who has left Turkey to seek economic betterment and who has claimed asylum to try to achieve that objective.

3.10 Military Service

3.10.1

- Applicants will often claim that they fear to perform military service due to the problems they will encounter within the military due to their political opinions, Kurdish ethnicity, or Alevi faith.

- Some will claim that their refusal to perform military service is based on political/moral grounds and that they are therefore conscientious objectors.

- Some applicants will claim that if they are returned to Turkey the very fact they have evaded military service will lead to ill treatment at the hands of the Turkish authorities and that the punishment suffered by draft evaders would breach Article 3 of the ECHR.

Treatment
3.10.2 The armed forces are held in high regard by a large section of the population, this stems partly from the fact that public opinion is convinced that the army is essentially immune from the corruption which is widespread in Turkey. **[para 5.109]** Every male Turk is obliged under the Military Act No.1111 to carry out military service. The obligation commences on 1 January of

the year in which he becomes 19, and ends on 1 January in the year on which he reaches 40. **[para 5.111]** In July 2003 the standard length of military service was reduced from 18 months to 15 months. This change has led to a 17 percent reduction in the number of conscripts in the Turkish armed forces. **[para 5.112]** A number of provisions allow people liable to military service to defer their service, principally for educational reasons. **[para 5.114]**

3.10.3 Every conscript's unit for posting after his basic training is determined by computer. The place of subsequent posting depends on basic training, place of registration and possible criminal record. **[para 5.127]** A person with a criminal record is not usually deployed in sensitive posts. The HRA and various military sources say that they do not believe that a criminal record, whether or not of a political nature, results in an extra-harsh posting by way of additional punishment. **[para 5.128]**

3.10.4 As armed confrontations in south-eastern Turkey have virtually ceased since the end of 1999, the possibility of a conscript being deployed in combat there is extremely slight. **[para 5.129]**

3.10.5 The armed forces operate a harsh regime - disciplinary measures occasionally include physical violence and insults, which in many cases are tolerated. Discrimination against conscripts occurs from time to time, but depends entirely on the individual unit commander - the army high command cannot be said to discriminate systematically against any single group. In many cases the problems stem from conflicts between conscripts themselves. **[para 5.130]**

3.10.6 The Netherlands report July 2001 reported that "Systematic discrimination against Kurdish conscripts can be ruled out. At the level of the unit in which conscripts serve, the situation is very often dependent on the individual commander." In addition the report continued "There is therefore no systematic discrimination against conscripts who are known to be left wing activists. Again much depends on the commander of the respective unit." **[para 5.131]**

3.10.7 The Netherlands report continues "Apart from occasional harassment, which depends entirely on fellow soldiers and the commander, Christian conscripts in the army encounter no discrimination? and "By comparison with the past, Jehovah?s Witnesses face hardly any problems during their military service." **[para 5.132]**

3.10.8 The penalties for evasion of military service (draft evasion or desertion from the army in peacetime) are set out in Article 63.1a of the Turkish Military Penal Code. There is a sliding scale of imprisonment and the sentences for desertion are higher than those for evasion of registration/ examination or enlistment. **[para 5.116]** As a general rule, normal prison sentences of less than one year can be commuted into a fine. A sentence does not imply dispensation from further military service. Military judges in general impose minimum sentences. Ethnic origin plays no role in determining the sentence for evasion of military service. **[para 5.117]** The enforcement of judgements takes place in military prisons if the sentence is six months or less, and in normal prisons if the sentence is more than six months. **[para 5.118]**

3.10.9 The right to conscientious objection or to perform alternative service does not exist in Turkey. **[para 5.119]** Persons refusing to perform military service on grounds of conscience are therefore viewed as routine cases of evasion of military service and punished accordingly. **[para 5.120]**

Sufficiency of protection
3.10.10 If the ill-treatment/persecution alleged is at the hands of the state sufficiency of protection does not generally apply.

3.10.11 Sufficiency of protection may, however, be available to applicants whose claims are based on discrimination and abuse suffered within a particular unit of the military. There is no systematic state discrimination of any group within the military and the situation is dependent on the individual commander and unit in which conscripts serve.

Internal Flight / Relocation
3.10.12 As the ill-treatment/persecution alleged is at the hands of the state internal flight does not apply.

Conclusion
3.10.13 Although some Turkish citizens may face some unequal treatment or discrimination within the military because of their political opinions, Kurdish ethnicity, or Alevi faith, this does not generally reach the level of persecution. Therefore it is unlikely that applicants in this category would qualify for asylum or humanitarian protection and such claims are likely to be clearly unfounded.

3.10.14 The House of Lords found in **Sepet (FC) & Another (FC)** [2003] UKHL 15 (see below) that there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason. Therefore it is unlikely that applicants in this category would qualify for asylum or humanitarian protection and such claims are likely to be clearly unfounded.

3.10.15 The Immigration Appeal Tribunal (IAT) in **Faith Akan** [2002] (see below) concluded that conditions faced by a Turkish draft evader in a military prison would not be a breach of Article 3 of the ECHR. Therefore it is unlikely that applicants in this category would qualify for asylum or humanitarian protection and such claims are likely to be clearly unfounded.

Caselaw
Sepet (FC) & Another (FC) [2003] UKHL 15 - The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgement dismissed the appellants' appeals. The House of Lords found that there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

Faith Akan [2002] UKIAT 01111 - The appellant claimed that he did not want to undergo military service because he had a conscientious objection to serving as a result of his Kurdish ethnic origin and his political beliefs. The claim was largely based upon the conditions he would suffer as a draft evader if he were sentenced to serve a sentence at a house of correction. The IAT found ??we are prepared to believe that they more be more rigorous than those which may be applicable in a prison, but it is a far step from that to say that there is a real risk that such incarceration would breach Article 3. The IAT continued "?it is quite impossible for us to assume that the conditions would be such as would be breach Article 3."

IK (Turkey) [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004.
If a returnee is a draft evader he will be stopped at the immigration booth when the GBTS reveals this information, He will be transferred to the airport police station and the military will

will be transferred to the airport police station and the military will be informed so that he can be collected by them. It is again well-established jurisprudence that draft evaders as such will not qualify for international protection as a consequence of their treatment on and after return.

3.11 Prison conditions

3.11.1 Applicants may claim that they cannot return to Turkey due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Turkey are so poor as to amount to torture or inhuman treatment or punishment contrary to Article 3.

Treatment
3.11.2 According to the Minister for Justice, as at 23 May 2001 Turkey had 554 prisons: 513 closed institutions, 36 open prisons, one closed institution for women and children, one closed institution for young offenders and three "educational institutions" for juveniles. **[para 5.84]**

3.11.3 The US State Department (February 2004) reported that prison conditions remain poor. Under-funding and poor administration of penal facilities remains a problem. The Human Rights Foundation of Turkey maintained that the Government provided insufficient funding for prison food, resulting in poor-quality meals. According to HRF, food sold at prison shops was too expensive for most inmates, and there was a lack of potable water. **[para 5.85]**

3.11.4 Until late 2000, prisons were run on the ward system and most prisoners lived in 30-100 person wards. However, a number of prisons are being converted into cellular F-type prisons and new F-type prisons are being built. The F-type design more closely resembled prisons found in most developed countries; according to the Government, the F-type prisons were consistent with the Council of Europe?s Committee to Prevent Torture?s recommendations. However human rights groups and prisoners' groups claimed that prison authorities isolate F-type inmates from each other and controlled prisoners' access to water, food, electricity, and toilets. **[para 5.93]** There have been a number of protests and hunger strikes by prisoners against F-type prisons, mostly by groups and prisoners associated with terrorist organisations. **[para 5.94- 5.96]**

3.11.5 The European Commission reported that with regard to the prison system the situation has improved significantly since 1999. Institutions such as the Enforcement Judges and Monitoring Boards have been set up and a number of recommendations of the CPT have been implemented. **[para 5.86]**

3.11.6 The ministry of justice, the General Directorate of Prisons and the parliamentary Human Rights Committee regularly inspected prisons and issued reports. **[para 5.105]** The Government permits prison visits by representatives of some international organisations, such as the European Committee for the Prevention of Torture (CPT). **[para 5.107]** The CPT visit in March and September 2002 found that F-type prisons they visited possessed numerous facilities including workshops, a gymnasium, an outdoor playing field and a library. However, it also found that practically all prisoners held under the Law to Fight Terrorism were refusing to take up the offer of communal activities. **[para 5.98]** The CPT's delegation heard no allegations of recent ill-treatment of prisoners in Sincan F-type prison. **[para 5.99]**

3.11.7 The 131 Monitoring Boards continued to carry out inspections. Their work focuses on living conditions, health, food, education and the rehabilitation of prisoners. In the period

January to August 2004 the Monitoring Boards made 1,193 recommendations, of which 451 were acted upon. **[para 5.103]**

Conclusion
3.11.8 In order to reach Article 3 threshold, conditions of detention have to reach a minimum level of severity. Several of the following would have to be present for significant duration in order for the suffering to the reach the minimum level of severity; Excessive levels of overcrowding, solitary confinement (segregation and isolation), sleep deprivation, complete absence of exercise, absence of sanitation, absence of ventilation, continuous surveillance, absence of medical treatment, mal-nourishment, vermin infestations and absence of natural light.

3.11.9 Although there are some areas of concern with conditions in the Turkish prison system, in particular with regard to solitary confinement (segregation and isolation), lack of exercise and constant surveillance of inmates within F-type prisons, these conditions are unlikely to reach the minimum level of severity required to reach the Article 3 threshold.

4.1 Discretionary Leave
4.2 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave).

4.3 With particular reference to Turkey the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should not imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL-see the API on Discretionary Leave.

Unaccompanied minors
4.4 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where there are adequate reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

4.5 Unaccompanied minors without a family to return to should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

Medical Treatment in Turkey
4.6 Applicants may claim they cannot return to Turkey due to a lack of specific medical treatment. See the IDI on Medical Treatment, which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.7 In the World Health Organisation's 'World Health Report 2000' Turkey's health system ranked 70th (out of 191 countries) in the world. The United Nations Development Programme reports that 99% of the population of Turkey had in 1999 access to essential drugs. **[para 5.135]**

4.8 If the patient has contributed to a social security scheme, his or her cost of treatment will be met. A person who has not made social security contributions and who does not have his/her own financial means and can show that he/she is penniless, is provided with free treatment by the State. **[para 5.137]**

4.9 Treatment for psychiatric problems, including depression, is available in Turkey. Hacettepe University Hospital Psychiatric

available in Turkey. Hacettepe University Hospital Psychiatric Dept. confirms that antipsychotic and antidepressant medication is available in Turkey. **[para 5.140]**

4.10 The United Nations Programme on HIV/AIDS reported that "At the end of 2002, Turkey had a cumulative total of 1,515 reported HIV/AIDS cases. 1.98% are among children under 15 and 33% are among women?To ensure blood safety, commercial blood donation has been fully abolished. The government ensures that all HIV infected patients receive antiretroviral treatment." **[para 5.143]**

4.11 The Foreign and Commonwealth Office contacted Hacettepe University, Ankara, which provides world-standard treatment for HIV and AIDS, in December 2001. The University confirmed that such drugs such as thyroxine, sequinavir, D4T, 3TC, acyclovir, zirtek, diflucon and metoclopramide, or their substitutes, are available in Turkey. **[para 5.144]**

Conclusion
4.12 The Article 3 threshold will not be reached in the great majority of cases and a grant of Discretionary Leave will usually not be appropriate. However, where a caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 (or Article 8), a grant of Discretionary Leave will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Other Issues

GBTS computer system
5.1 In Turkey detention is carried out by the security forces whereas arrest is a court decision. Nonetheless the police can detain a person on their initiative but have to inform the Public Prosecutor's Office within 24 hours. **[para 5.52]**

5.2 According to figures obtained from the Human Rights Association of Turkey (IHD) large numbers of Turkish citizens are detained by the police but never arrested. **[para 5.55]**

5.3 There are a number of different information systems in Turkey. The central information system is known as the GBTS (Genel Bilgi Toplama Sistemi - General Information Gathering System). This system lists extensive personal data such as information on arrest warrants, previous arrests, foreign travel restrictions, avoidance of military service, desertion, refusal to pay military tax and delays paying tax. Served sentences are as a rule removed from this information system and entered onto the database of criminal records (Adli Sicil). **[para 5.56]**

5.4 According to information provided by the Turkish Ministry of Interior in September 2003 the GBTS is operated by the Anti - Smuggling Intelligence and Data Collection Department of the Turkish National Police. The Ministry of the Interior further state that "In the GBT system records of the following are kept as a general rule:

i) Persons who have committed a crime but have not been caught
ii) Persons who have committed serious crimes such as organised crime, smuggling, drugs related crimes, terrorism, unlawful seizure, murder, fraud;
iii) Persons who have search warrants issued including those who have an arrest warrant issued ?in absentia?;
iv) Persons who are barred from public service
v) Missing persons
vi) Persons of responsibility within political parties who have been convicted of crimes defined in the Political Parties Law No.2908.

article 4/4;
vii) Stolen, lost, appropriated motor vehicles, firearms, identification documents. **[para 5.57]**

5.5 The records of persons who have committed the above-mentioned crimes are retained even if they have already served their sentences. **[para 5.58]**

5.6 According to the Turkish Ministry of the Interior, records are erased from the system under the following circumstances:

i) Upon the death of a person convicted of a crime by a court;
ii) As soon as a court decision of non-pursuit, acquittal or expiry of time limitation reaches the Turkish National Police (TNP) regarding a person who was previously registered in the GBTS;
iii) In case of a crime other than those listed above, when the person is caught;
iv) In case of stolen/lost/appropriated property, when the property in question is found. [para 5.59]

5.7 Only the latest warrant of arrest is held on file. The others are cancelled. Information about convicted persons is stored at the Judicial Registry Office (Adli Sicil Mudurlukleri), rather then on the GBTS. [para 5.60]

5.8 Only records of people who are under judicial proceedings or judicial examination are kept on the GBTS. No records of people are kept on the system who are detained and subsequently released by the security forces. **[para 5.61]**

Caselaw

IK (Turkey) [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004.
The IAT found that the computerised GBT system comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. "Arrests" as comprised in the GBTS require some court intervention, and must be distinguished from "detentions" by the security forces followed by release without charge. The GBTS is fairly widely accessible and is in particular available to the border police at booths in Istanbul airport, and elsewhere in Turkey to the security forces.
In addition, there is border control information collated by the national police (Department for Foreigners, Borders and Asylum) recording past legal arrivals and departures of Turkish citizens, and information about people prohibited from entering Turkey as a result of their activities abroad, collated by MIT. The Judicial Record Directorate keeps judicial records on sentences served by convicted persons, separate from GBTS. The system is known as "Adli Sicil." It is unlikely that this system would be directly accessible at border control in addition to the information in the GBTS.""

6.Returns

6.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.

6.2 Turkish nationals may return voluntarily to any region of Turkey at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Turkey. The programme was established in 2001,

and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Turkish nationals wishing to avail themselves of this opportunity for assisted return to Turkey should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

7. Additional Sources

[1] Human Rights Watch World Report (13 January 2005)

[2] Freedom House Countries at the Crossroads 2005: Turkey. (January 2005)

Asylum and Appeals Policy Directorate
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