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OPERATIONAL GUIDANCE NOTE

TURKEY

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Turkey and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Turkey Country of Origin Information at:
- http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it 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.

Source documents

- 1.5** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** The law provides citizens with the right to change their government peacefully, and citizens generally exercised this right in practice through periodic free and fair elections held on the basis of universal suffrage. However, the government restricted the activities of some political parties and leaders. Legislative authority is vested in the Turkish Grand National Assembly (TGNA). The TGNA is composed of 550 deputies. Parliamentary elections are held every five years.¹ The latest parliamentary elections were held on 22 July 2007. The results were as follows: the ruling Justice and Development Party (AKP) were re-elected with 46.5% of the vote and have 341 seats. The Republican People's Party (CHP) gained 20.9% of the votes, giving it 112 seats. The Nationalist Action Party (MHP) gained 14.3%, giving it 70 seats. The independents took 26 seats, a large part of them being from the Party for a Democratic Society (DTP), the Kurdish party. Following the parliamentary elections, AKP candidate and former Foreign Minister, Abdullah Gul was elected President by the new parliament on 28 August 2007.²
- 2.2** Prior to the general election, the Turkish military intervened directly in the political arena by voicing opposition to the ruling AKP government. The military perceived the appointment of Abdullah Gul, an important Islamic political personality, as a presidential candidate to be a threat to Turkey's secular character and that it would weaken the power of the military. The AKP government embarked on plans for a new constitution to replace that put in place under the military regime in 1982. Since the elections, some of the main developments include the signing off of amendments to the Constitution in February 2008 which most notably allows the wearing of headscarves in universities; and an increase of military activity on the border with Iraq, including a brief cross-border ground operation in February, targeting PKK terrorist camps.³
- 2.3** On 14 March 2008, the Chief Prosecutor of the Appeals Court filed a law suit at the Constitutional Court for closure of the governing AK party, accusing them of violating secular principles by trying to introduce Islamic rule. The chief prosecutor believed the party wanted to replace Turkey's strictly secular system with sharia law. This was triggered by the government's decision to allow female university students to wear the headscarf, seen as an Islamist symbol. On 31 March, the Constitutional Court ruled unanimously that the case was admissible. It was reported in July that the Court had rejected the attempt to close the party.⁴
- 2.4** Domestic and international terrorist groups have targeted Turkish nationals and foreigners for more than 40 years. Terrorist groups that operate in Turkey include Kurdish separatist, Marxist-Leninist, radical Islamist and pro-Chechen groups.⁵ Since 1984 the Turkish authorities have been engaged in a violent conflict against the most prominent among the terrorist groups, the Kurdistan Workers Party (PKK), also known as KADEK and, more recently, KHK or Kongra-Gel. The PKK is primarily a separatist movement that advocates armed struggle both at home and abroad, to achieve an independent Kurdish state slicing through south east Turkey, Syria, Iraq and Iran. (The PKK is a proscribed terrorist organisation in the UK). The PKK's armed operations in south-eastern Turkey, starting in 1984, involved attacks on civilians and military targets. The PKK has been guilty of human rights violations in rural parts of the south-east and also in other areas. The European Commission 2007 report noted a further deterioration of the situation in terms of attacks by the PKK and other terrorist groups in 2007. Several hundred terrorist attacks have been recorded since the beginning of the year causing multiple casualties.⁶

¹ COI Turkey Country Report September 2008

² FCO Country Profile 3 April 2008

³ FCO Country Profile 3 April 2008 and COI Turkey Country Report September 2008

⁴ COI Turkey Country Report September 2008

⁵ US State Country report on Terrorism 2007

⁶ COI Turkey Country Report September 2008

- 2.5** On 3 October 2005, the EU opened negotiations with Turkey for full membership. The opening of negotiations was possible because the Government drove forward, through 9 packages of legislative and constitutional amendments, a range of necessary reforms designed to meet the Copenhagen political criteria – including the abolition of the death penalty, new protections against torture, greater freedom of expression, and increased respect for minorities. After a turbulent year of parliamentary and presidential elections in 2007, the European Commission's Annual Report for 2007 noted that Turkey urgently needs to renew its reform momentum. It further noted that more work needs to be done implementing legislation across many key areas including anti-corruption and judicial reform, and detailed how Turkey needs to consolidate its work in the cultural and fundamental rights and freedoms of all groups in Turkey, including minority groups.⁷
- 2.6** The law provides for an independent judiciary but the judiciary was reported to be occasionally subject to outside influence and corruption. Some government and military officers at times undermined the judiciary's independence, and the overly close relationship of judges and prosecutors continued to hinder the right to a fair trial. Excessively long trials were a problem.⁸ The European Commission reported in 2007 some progress on the operation of the judicial system. For example, the implementation of adopted legislation and modernisation of information technology which had led to increased efficiency. During 2007, 864 judges and 476 prosecutors were appointed and funds were planned to increase to €865 million by the end of 2007. However, concerns remained regarding the independence and impartiality of the judiciary.⁹
- 2.7** The UN Working Group on Arbitrary Detention reported in 2006 that the entry into force in June 2005 of the new Criminal Code and Criminal Procedure Code, as well as many connected laws, had strengthened the safeguards against arbitrary detention. The new criminal procedure law established limitations on the duration of police custody and remand detention of persons awaiting trial and judgement.¹⁰ Human rights organisations documented a rise in cases of torture, beating and abuse by security forces in 2007; the number of arrests and prosecutions in these cases was low compared with the number of incidents and convictions remained rare.¹¹ The European Commission reported in November 2007 that the legislative safeguards introduced by the zero tolerance policy on torture continued to have positive effects. The downward trend in the number of reported cases of torture and ill-treatment was confirmed and the reforms regarding access to lawyers had shown positive results. However, cases of torture and ill-treatment were still being reported, especially during arrest and outside detention centres. The fight against impunity of human rights violations remains an area of concern.¹²

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 that may raise issues covered by the Asylum Instructions 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 relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.

⁷ FCO Country Profile April 2008

⁸ USSD 2007

⁹ European Commission Annual Report 2007

¹⁰ UKBA Fact Finding Mission Turkey 23.07.08

¹¹ USSD 2007

¹² European Commission Progress Report 6 November 2007

- 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 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 Asylum Instruction on Considering the Asylum 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 below or on the individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:
- <http://www.bia.homeoffice.gov.uk/policyandlaw/>
- 3.6 Involvement with Kurdish, left wing or Islamic terrorist groups or political parties.**
- 3.6.1** Most claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their involvement at either a high or low level with illegal Kurdish, left wing or Islamic terrorist groups or Kurdish, left wing or Islamic political parties.
- 3.6.2 *Treatment*** Since 1984 the Turkish authorities have been engaged in a violent conflict against the Kurdistan Workers Party (PKK). The PKK is primarily a separatist movement that has sought an independent Kurdish state in southeast Turkey. The PKK, along with its aliases KADEK and Kongra Gele is a proscribed terrorist organisation in the UK. Teyrebaz Azadiye Kurdistan, TAK or Kurdistan Freedom Falcons, is also a proscribed terrorist organisation. In addition there are also a number of left wing and Islamic terrorist organisations operating in Turkey that have been responsible for violent attacks against the state.¹³
- 3.6.3** The European Commission reported a further deterioration of the situation in terms of attacks by the PKK and other terrorist groups in 2007. Several hundred terrorist attacks were recorded since the beginning of 2007 causing multiple casualties. On 22 May 2007, a suicide bombing in Ankara claimed the lives of 9 people. There was an increase of terrorist attacks targeting civilians throughout the whole country. As part of the fight against terrorism, three security zones were established from June to December 2007, covering parts of three provinces along the border with Iraq. Strict security measures were applied in these zones, including restrictions on access. The escalation in PKK attacks in late 2007 increased the pressure on Turkey to strike at the PKK's bases in northern Iraq. On 17 October 2007, the Government was authorised to intervene militarily in northern Iraq. Starting in December 2007, the Turkish military launched a series of air raids against PKK positions in northern Iraq. Through 2007 and early 2008, the Turkish security forces arrested 48 Turkish Islamists with alleged links to foreign militants on suspicion of planning major terrorist attacks inside Turkey.¹⁴
- 3.6.4** The Human Rights Association (HRA) estimated that there were several thousand political prisoners, including leftists, rightists, and Islamists. The government claimed that alleged political prisoners were in fact charged with being members of, or assisting, terrorist

¹³ COI Turkey Country Report September 2008 (Annex B)

¹⁴ COI Turkey Country Report September 2008

organisations. According to the government, 2,232 convicts were being held in prison on terrorism charges through September 2007. International humanitarian organisations were allowed access to 'political' prisoners, provided they could obtain permission from the Ministry of Justice. In practice organisations were rarely granted such permission.¹⁵

- 3.6.5** The government has introduced a number of reforms to protect detainees from torture and ill-treatment. It took two significant steps to open up police stations to independent monitoring. Firstly, it signed the Optional Protocol to the United Nations Convention against Torture and, secondly, the countrywide network of human rights boards began to make visits to police stations, as an interim measure until a permanent monitoring system could be established based on commitments under the Protocol. The EC reported that, overall, the Turkish legal framework included a comprehensive set of safeguards against torture and ill-treatment and that cases of torture and ill-treatment had declined. However, concerns remained regarding cases outside detention centres, human rights violations in the Southeast and the problem of impunity.¹⁶
- 3.6.6** During 2007 incidents of torture and abuse remained a problem. Because detention periods had been reduced, the most severe methods of torture and abuse had for the most part been eliminated but incidents of ill-treatment during police/gendarmerie custody continued. Courts rarely convicted security officials accused of torture and tended to issue light sentences when they did convict. Human rights activists, attorneys, and physicians who treated victims in 2007 said that because of increased punishments for torture and abuse, police who abused prisoners often did so outside of police detention centres to avoid detection. Human rights activists maintained that those arrested for ordinary crimes were as likely to suffer torture and ill treatment in detention as those arrested for political offences, although they were less likely to report abuse. Observers said security officials sometimes tortured political detainees to intimidate them and send a warning to others with similar political views and allegedly tortured ordinary suspects to obtain a confession.¹⁷
- 3.6.7** The pro-Kurdish People's Democracy Party (HADEP), was established in 1994 as a successor to the successively banned HEP, DEP and ÖZDEP. HADEP campaigned for greater cultural rights for Kurds and a peaceful solution to the Kurdish issue. It never resorted to nor supported violence. However, the Turkish authorities regarded HADEP as the PKK's political wing. In March 2003 HADEP was banned by the Constitutional Court. In response its successor the Democratic People Party (DEHAP) was formed. However, legal proceedings against DEHAP on charges of separatism were instigated by the Constitutional Court and remained ongoing at the end of 2006.¹⁸ On 17 August 2005, DEHAP joined the Democratic Society Movement, or DTH (now known as the Democratic Society Party (DTP)).¹⁹
- 3.6.8** Human rights organisations reported an intensification of speech-related prosecutions and harassment of DTP officials during 2007. Officials of the DTP, which stood as independent and gained 22 seats in the elections, were repeatedly convicted for speech-related offences during 2007. The police raided dozens of DTP offices, particularly in the southeast, and detained hundreds of DTP officials and members. Prosecutors opened scores of investigations and trials against DTP members. The number of prosecutions was significantly higher than in previous years, lending credence to suggestions that concerted efforts were being made to block their political activity and restrict their freedom of assembly in an election year. The closure of the DTP was still pending before the Constitutional Court.²⁰
- 3.6.9** **Sufficiency of protection** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

¹⁵ USSD 2007 Section 1(e)

¹⁶ COI Turkey Country Report September 2008

¹⁷ USSD 2007 Section 1(c)

¹⁸ USSD 2007 Section 3

¹⁹ COI Turkey Country Report September 2008 Annex B

²⁰ Human Rights Watch Annual Report 2007 and USSD 2007

3.6.10 Internal relocation Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. The differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.

3.6.11 In the case of claimants who claim to be low-level sympathisers or suspected activists of one of these separatist/terrorist groups there are certain categories for whom internal relocation would be a viable option. For example, even if the claimant claims to have experienced arrests, questionings and possibly ill-treatment by the authorities in his own locality, because of his suspected separatist/terrorist activities, if he has never been prosecuted by the authorities internal relocation may still be a viable alternative in accordance with **IK**. It is unlikely that there would be any real risk that such a claimant would attract adverse attention from the authorities resulting in persecution within the meaning of the 1951 Convention or under the ECHR, even if he registered with the Mukhtar in the new location.

3.6.12 However, if the claimant is a higher-profile activist, or suspected activist of one of these separatist/terrorist groups and for example has or is being prosecuted for separatist/terrorist activities, or has an outstanding arrest warrant then internal relocation may not be feasible since the need to register with the Mukhtar in the new location would inevitably give rise to further adverse attention from the authorities in the new location

3.6.13 Caselaw

IK (Returnees- Records- IFA) Turkey CG [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004. The IAT 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 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).

3.6.14 Conclusion The Immigration Appeal Tribunal in **A (Turkey) (2003)** and **IK (Turkey) (2004)** 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. However, in light of the significant reduction in reports of torture and the wide-ranging legislative changes to improve human rights that have taken place in the last few years, the findings on torture and the criteria for assessing state mistreatment as set out in these cases are not automatically applicable to the situation for those affiliated to Kurdish, left wing, or Islamic terrorist group or political parties. Those simply presenting themselves as affiliates of one of these groups having never previously come to the adverse attention of the authorities or who are otherwise low-profile supporters are likely to be liable for questioning and/or routine prosecution but not persecution or treatment in breach of Article 3. The grant of asylum or Humanitarian Protection in such cases is therefore unlikely to be appropriate.

3.6.15 The Turkish government has made significant legislative changes to improve the human rights situation in recent years and is committed to a policy of zero tolerance of torture. Nevertheless, although there have been significant improvements in the human rights situation, abuses and mistreatment still occur. Those who are accepted as being in leading roles or otherwise significantly involved with Kurdish, left wing or Islamic terrorist groups or

political parties are likely to face prosecution for activities against the state and may also experience mistreatment by the security forces amounting to persecution or a breach of Article 3 of the ECHR. If it is accepted that the claimant is, or is suspected of being a high profile member/activist of a separatist group and has or is being prosecuted by the authorities for separatist activity then there may be a real risk of persecution or ill-treatment contrary to Article 3 and a grant of asylum or Humanitarian Protection in such cases may be appropriate.

3.6.16 Case owners should note that members of these terrorist groups have been responsible for numerous serious human rights abuses. If it is accepted that a claimant was an active operational member or combatant for any Kurdish, Left-wing or Islamic terrorist organisation and the evidence suggests he/she has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

3.7 Family connections with Kurdish, left wing or Islamic terrorist groups or political parties.

3.7.1 Many claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to a relative's involvement at either at a high or low level with Kurdish, left wing or Islamic terrorist groups or political parties.

3.7.2 Treatment Relatives of members of Kurdish political parties need not fear persecution by the Turkish authorities solely because one or more of their relatives is a member of any party. However, in certain cases, first or second degree relatives of HADEP/DEHAP/DTH members who are active at local level are closely watched by the State because of their relatives' activities.²¹

3.7.3 Sufficiency of protection As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.7.4 Internal relocation Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. The differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.

3.7.5 Where claimants cite family members who are known to be active or suspected of supporting a separatist/terrorist group, the harassment experienced may be directly connected to the fact that the claimant lives in an area where PKK or other separatist/terrorist groups are known to be active and where members of the claimant's family are known to the authorities as supporters or sympathisers. Simply sharing the same surname as a relation who is a known or suspected member of a separatist group may give rise to adverse interest from the authorities of a localised nature where the claimant and family may be seen as troublemakers. However in such circumstances, provided the

²¹ COI Turkey Country Report September 2008

claimant has no outstanding arrest warrants and has not personally been prosecuted for an offence, internal relocation to another area would be a viable alternative in accordance with **IK**. It is unlikely that there would be any real risk that such a claimant would attract adverse attention from the authorities resulting in persecution within the meaning of the 1951 Convention or under the ECHR, regardless of his identity or family background, even if he registered with the Mukhtar in the new location.

3.7.6 **Caselaw**

See para 3.6.13 above for caselaw details

3.7.7 Conclusion Although relatives of members or supporters of Kurdish, left wing or Islamic terrorist groups or political parties 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.

3.8 **Kurdish ethnicity**

3.8.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their Kurdish ethnicity.

3.8.2 Treatment Kurds are the largest ethnic and linguistic minority in Turkey, comprising 10-23% of the population according to differing reports. Kurds speak Kurdish, which is divided into Kurmanci, Zaza and other dialects. The majority are Sunni Muslims, while a significant number are Alevis. Historically concentrated in the eastern and south-eastern region of the country, where they constitute the overwhelming majority, large numbers have migrated to urban areas in western Turkey. Kurds continue to face systematic marginalisation. Around 30,000 people have been killed in fighting between the Turkish military and the PKK since 1984, and over 1 million people remain displaced in south-eastern Turkey.²²

3.8.3 It was reported in 2007 that millions of the country's citizens identified themselves as Kurds and spoke Kurdish and many members of parliament and senior government officials were Kurds. However, Kurds who publicly or politically asserted their Kurdish identity or publicly espoused using Kurdish in the public domain risked censure, harassment, or prosecution. Prime Minister Erdogan stated that there were 5 Kurdish-origin ministers in his cabinet and 75 Kurdish-origin MPs in AKP's parliamentary group.²³

3.8.4 The constitutional and legislative changes made in recent years in the field of human rights and fundamental freedoms have helped to give the Kurds greater freedom of expression, freedom of assembly and freedom of association. However, in practice, such freedoms are still severely curtailed. Kurdish students have been arrested and/or expelled from university for having signed petitions or demonstrated in support of the teaching of Kurdish in universities. However, in some cases, those who have expressed their Kurdish identity by peaceful means have been acquitted. Parents are now permitted by law to give their children Kurdish first names, even though a circular prohibits them from choosing names incorporating the letters Q, W or X, which exist in the Kurdish language but not in the Turkish alphabet.²⁴

3.8.5 Following legal changes to broadcasting rights and the launch of national broadcasting in Kurdish in 2004, there are now 4 local radio and TV stations broadcasting in Kurdish. However, time restrictions apply, with the exception of films and music programmes. All broadcasts, except songs, must be subtitled or translated into Turkish. Educational programmes teaching the Kurdish language are not allowed.²⁵ The private Kurdish language courses launched in 2004 closed down in 2005 due to 'lack of demand'. However,

²² COI Turkey Country Report September 2008

²³ COI Turkey Country Report September 2008

²⁴ COI Turkey Country Report September 2008

²⁵ COI Turkey Country Report September 2008

unaffordable course fees and restrictions on curriculum and participation were considered to be contributory factors. The constitution currently states that only Turkish can be used as a mother tongue in schools, and political campaigning in languages other than Turkish is still illegal.²⁶

3.8.6 Sufficiency of protection As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.8.7 Internal relocation Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. The differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.

3.8.8 A claimant of Kurdish ethnicity is unlikely to encounter ill-treatment by the authorities amounting to persecution solely on the grounds of their ethnicity. In cases where Kurdish ethnicity is cited as the sole basis of claim, internal relocation to another area to escape this threat is viable. It is unlikely that there would be any real risk that such a claimant would attract adverse attention from the authorities resulting in persecution within the meaning of the 1951 Convention or under the ECHR, even if he registered with the Mukhtar in the new location. Where Kurdish ethnicity is cited in conjunction with other aggravating factors, such as draft evasion or separatist/terrorist activity then case owners should consider the viability of internal relocation in line with the guidance provided in the appropriate sections of this OGN.

3.8.9 Caselaw

IK (Returnees- Records- IFA) Turkey CG [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004 As regards expert witness reports on Kurdish issues the IAT found that the expert witness Mr. McDowell cannot be considered as an independent expert but rather has his own strong personal views, and acts in effect as an informed advocate.

3.8.10 Conclusion Although Turkish citizens of Kurdish ethnic origin may face some unequal treatment or discrimination both from the authorities and the general population this does not generally reach the level of persecution or breach article 3 of the ECHR. Therefore it is unlikely that applicants in this category whose claims are based solely on persecution due to their Kurdish ethnicity would qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

3.9 Alevi religious faith

3.9.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their Alevi religious faith.

3.9.2 Treatment In addition to the country's Sunni Muslim majority, there are an estimated 12 to 20 million Alevis who are followers of a belief system that incorporates aspects of both Shi'a and Sunni Islam and draws on the traditions of other religions found in Anatolia as well.

²⁶ COI Turkey Country Report September 2008

Some Alevis practise rituals that include men and women worshipping together through oratory, poetry, and dance. The Government considers Alevism a heterodox Muslim sect; however, some Alevis and radical Sunnis maintain Alevis are not Muslims.²⁷

- 3.9.3** Alevis are able to freely practise their beliefs and build 'Cem houses' (places of gathering). However, Alevis face difficulties opening their places of worship. Cem houses are not recognised as places of worship by the Diyanet (the directorate for religious affairs) and receive no funding from the authorities. Many Alevis allege discrimination in the Government's failure to include any of their doctrines or beliefs in religious instruction classes in public schools.²⁸
- 3.9.4** **Sufficiency of protection** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.9.5** **Internal relocation** Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.
- 3.9.6** A claimant of the Alevi faith is unlikely to encounter ill-treatment by the authorities amounting to persecution solely on the grounds of religious belief. In cases where membership of the Alevi faith is cited as the sole basis of claim, internal relocation to another area to escape this threat is viable. It is unlikely that there would be any real risk that such a claimant would attract adverse attention from the authorities resulting in persecution within the meaning of the 1951 Convention or under the ECHR, even if he registered with the Mukhtar in the new location. Where Alevi beliefs are cited in conjunction with other aggravating factors, such as draft evasion or separatist/terrorist activity then case owners should consider the viability of internal relocation using the guidance provided in the appropriate sections of this OGN.
- 3.9.7** **Conclusion** Although Turkish citizens belonging to the Alevi religious faith may face some unequal treatment or discrimination within Turkey this does not generally reach the level of persecution. Therefore it is unlikely that applicants in this category whose claims are based solely on persecution due to their Kurdish ethnicity would qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.
- 3.10** **Military service**
- 3.10.1** Some claimants may apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their evasion of military service.
- 3.10.2** Claimants will usually claim that they cannot perform military service for one or more of the following reasons:
- (i) Due to their political opinions, Kurdish ethnicity, or Alevi faith they will face persecution within the armed forces from other soldiers or officers.

²⁷ COI Turkey Country Report September 2008

²⁸ COI Turkey Country Report September 2008

(ii) They are conscientious objectors (either for political, religious, or moral grounds) and that their refusal to perform military service will lead to persecution from the state.
 (iii) In addition some claimants will claim that they cannot return to Turkey as 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.

- 3.10.3 *Treatment*** According to Article 1 of the Military Act No.1111(1927) every male Turkish citizen between the ages of 19 and 40 is obliged to carry out military service. The length of military service is 15 months. University graduates may perform 8 month's military service, or 12 months if trained to become reserve officers. Men who have not fulfilled their military service by the age of 40 and who have not been legally exempt from service, may still be called up after the age of 40. Different military service regulations apply for Turkish citizens who are living abroad. They can postpone their service up to the age of 38, for a period of three years at a time. Turkish citizens living abroad may also partially buy themselves out of military service by paying a sum of 5,112 Euros. However, in this case they still need to perform a one-month military service.²⁹
- 3.10.4** According to Article 63 of the Penal Code, draft evasion is punishable (in peacetime) by imprisonment. Sentences range from one month to ten years on a scale determined by the length of time reporting/arrest overdue and whether the draft evader reported voluntarily. Draft evasion and desertion in Turkey are widespread. The exact number of draft evaders is not known, but the number is estimated to be approximately 350,000. Draft evasion and desertion are punishable under the Law on Military Service and the Turkish Military Penal Code.³⁰
- 3.10.5** The War Resisters International 2005 document stated that there were regular reports of Kurdish conscripts in particular being subjected to discriminatory treatment especially when they are suspected of having separatist sympathies. The War Resisters International 2005 document further noted that all conscripts may be sent to serve in South Eastern Turkey as postings are usually decided at random by computer. There is a sizeable group of conscripts of Kurdish origin who refuse to perform military service because they do not want to fight against their own people. Many Kurdish draft evaders have applied for asylum abroad.³¹
- 3.10.6** The right to conscientious objection is not legally recognised in Turkey. Conscientious objectors may be punished under Article 63 of the Turkish Military Penal Code for avoiding military service. The European Commission 2007 report stated that there had been no progress regarding conscientious objection. Turkey had not yet complied with the judgment of the ECtHR *Ülke v Turkey* and adopt legislation that would prevent repetitive prosecutions and convictions of those who refuse to perform military service for conscientious or religious reasons. The military had also failed to comply with the order to pay 11,000 euros compensation to Osman Murat Ülke for mistreatment he received when he conscientiously objected to military service.³²
- 3.10.7 *Sufficiency of protection*** There is no systematic state discrimination of any group within the military. Sufficiency of protection will be available to applicants whose claims are based on discrimination and abuse suffered within a particular unit.
- 3.10.8 *Internal relocation*** If the claimant has an outstanding arrest warrant or has been prosecuted for draft evasion, then internal relocation followed by registry with a new Mukhtar would continue to bring the claimant to the adverse attention of the authorities. Therefore, relocation to a different area of the country to escape this threat is not reasonable.

²⁹ COI Turkey Country Report September 2008

³⁰ COI Turkey Country Report September 2008

³¹ COI Turkey Country Report September 2008

³² COI Turkey Country Report September 2008

3.10.9 Caselaw

Ulke v Turkey European Court of Human Rights Chamber Judgement (24 January 2005) The appellant refused to do his military service on the ground of conscientious objection. After being sentenced to 6 months imprisonment and a fine for desertion, he was ordered to enlist for military service. Between March 1997 and November 1998, he was convicted on 8 occasions of 'persistent disobedience' on account of his refusal to wear a military uniform and was also convicted on 2 occasions of desertion because he failed to rejoin his regiment. In total he served 701 days imprisonment because of these convictions. The European Court, in a Chamber Judgement held unanimously that there had been a violation of Article 3 (prohibition of inhuman degrading treatment because the treatment under consideration caused Mr Ulke severe pain and suffering which went beyond the normal element of humiliation inherent in any criminal sentence or detention.

In reaching this decision the court noted the lack of an effective legal framework in Turkey for dealing with conscientious objectors which meant that such individuals ran the risk of being subjected to an interminable series of prosecutions and criminal convictions for life. It found that this punishment was disproportionate to the aim of ensuring that military service was performed and appeared more calculated to repressing the individuals intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will.. The court took into account the cumulative effects of the criminal convictions, the constant alteration between prosecution and imprisonment and the gravity and repetitive nature of the treatment inflicted

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 judgment dismissed the appellants' appeals. The House of Lords also asserted that in deciding whether an applicant would be persecuted for a convention reason it is necessary for the person considering the claim for asylum to assess carefully the real reason for the persecution which is an objective judgment of the reason that operates in the mind of the persecutor.

IK (Returnees- Records- IFA) Turkey CG [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 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.

Faith Akcan [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 may 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."

3.10.10 Conclusion Although some Turkish citizens may on an individual level face some unequal treatment or discrimination within the military because of their political opinions, Kurdish ethnicity, or Alevi faith, this discrimination is not systematic or sanctioned by the state and does not generally reach the level of persecution under the 1951 Refugee Convention or breach 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. However, case owners should be aware that those who refuse to perform military service for the above reasons will be treated in the same way as those who refuse to perform military service due to conscientious objection. (See section below)

3.10.11 Conscientious objectors

The House of Lords found in **Sepet (FC) & Another (FC) [2003] UKHL 15** (see above) that there is no internationally recognised right to object to military service on grounds of conscience. As with the two claimants in the Sepet and Bulbul case, it is unlikely that

Turkish claimants, who claim to be in fear of punishment for evading military service would qualify for asylum since they would not be able to demonstrate that the punishment for draft evasion would amount to persecution under one or more of the three criteria identified by Lord Bingham and because it is unlikely that they will be able to show that any punishment, were it to be persecutory, would be carried out by the Turkish state for a convention reason (i.e. that the decision by the state to inflict such a persecutory punishment was for political, religious or other convention ground reasons).

3.10.12 The case of **Ulke v Turkey (ECtHR)** was an **extreme** example of draft evasion. The ECtHR held that it was the cumulative factors, (specified below), that were found to have caused the claimant severe pain and suffering which went beyond the normal element of humiliation inherent in any criminal sentence or detention amounting to degrading treatment within the meaning of Article 3 ECHR. Forcing him to live a clandestine life amounting to a 'civil death' was held to be incompatible with the punishment regime of a democratic society.

3.10.13 The cumulative factors were:

- Ulke was a conscientious objector who had a history of conscientious objection. Since 1993, (2 years before he was called up for service), he became an active member of the Association of Opponents of War (SKD) and later from 1994 to 1998 was Chairman of Izmir Association of Opponents of War, (ISKD).
- He was first called up for military service in August 1995, but refused to perform military service on grounds that he had firm pacifist convictions and he burned his call up papers in public at a press conference.
- The numerous criminal prosecutions: (Namely: 8 separate prosecutions and convictions for 'persistent disobedience' for refusing to wear a uniform and two prosecutions and convictions for desertion).
- The cumulative effects of the criminal convictions, namely 701 days of imprisonment, and the constant alterations between prosecutions and terms of imprisonment.
- The repetitive nature of the punishment. (Namely, on each occasion, on release from prison, being escorted back to the regiment, whereupon refusal to perform military service, or to wear a uniform lead to another conviction and transfer to prison.)
- The lack of an effective legal framework for dealing conscientious objectors and the possibility of a risk of being subjected to an interminable series of prosecutions and convictions for life for refusing to perform compulsory military service, leading to a 'civil death'.

3.10.14 Despite the ECtHR judgment in the case of **Ulke**, this does not impact on the House of Lords judgment in **Sepet and Bulbul**, which confirmed that punishment for refusing to perform military service will not of itself give rise to a well founded fear of persecution within the meaning of the 1951 Convention.

3.10.15 However, exceptional cases which are on a par with the facts of the Ulke case may need to be treated differently but this will only be the case where the individual concerned is able to demonstrate that they have such strong views that they would continue to refuse to perform military service at all costs and as a result suffer treatment as described in the Ulke case which would amount to a breach of article 3. In such exceptional cases a grant of Humanitarian Protection may be appropriate. In addition, in cases where these exceptional circumstances are reached case owners should also consider as appropriate whether anything in an individual case indicates that the treatment is made worse for a convention reason and if this is the case then a grant of asylum may be appropriate. Any cases that reach this exceptional level should be referred to a Senior Caseworker.

3.10.16 However, in the majority of cases, the consequences of a claimants general 'unwillingness to serve' in the armed forces or objection to enter a 'combat zone' will not usually reach the level of severity as experienced in Ulke and the majority of claimants will not qualify for a grant of Humanitarian Protection. For further guidance on conscientious objection please refer to the Asylum Instruction on 'Military Service and Conscientious Objection'.

3.10.17 Punishment suffered by draft evaders

Prison conditions in Turkey, though poor have not been found to breach Article 3 of the ECHR and generally speaking the punishment for draft evasion or desertion is not considered so disproportionate as to amount to a real risk of a breach of Article 3 ECHR. Therefore it is unlikely that claimants who are draft evaders would generally qualify for asylum or Humanitarian Protection under Article 3 ECHR and such claims are likely to be clearly unfounded. **Fatih Akcan [2002]** (see above).

3.11 Individuals whose details appear on the Turkish authorities' records systems.

3.11.1 Most claimants will claim that the likelihood of facing ill-treatment at the hands of the Turkish authorities for one or more of the reasons mentioned above in sections 3.6-3.10 will be increased due to their details being registered on the one of the Turkish government's computerised record systems.

3.11.2 Treatment 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. In **IK** (para 133) the IAT with reference to a letter dated September 2003 from Omer Aydin (A Senior Officer in Turkey, in the Department of Anti-Smuggling and Organised Crime, which runs the GBT system) confirmed that the Turkish Authorities make distinctions between what constitutes an arrest and a detention. "Arrests" require some court intervention or decision as opposed to "detentions" which are carried out by the security forces followed by release without charge; it is only "arrests" that would be recorded on the GBT system. This letter also states that GBT records of people who are acquitted or whose cases are being abated as a result of decisions made not to prosecute due to time limitations (under the statute of limitations) are erased as soon as the decision reaches the security forces.³³

3.11.3 In addition to the GBTS central information system, the various security forces each have their own information systems. They include the registers of the police, the anti-terrorist department, the gendarmerie and the military secret service etc.³⁴

3.11.4 The GBTS is governed by the Trafficking Intelligence and Information Gathering Directorate attached to the Ministry of Internal Affairs. While the customs officers stationed at international ports and borders cannot use the GBTS system, law enforcement units such as the police and the gendarmes can use the GBTS and police units stationed at all land, air and sea borders are able to use the system.³⁵

3.11.5 According to the Ministry of Internal Affairs the offence of leaving the country through illegal means can only be detected when the offenders are captured abroad. It is impossible to know who left the country through illegal means in Turkey and therefore no records are kept in relation to such matters. Records relating to individuals who are being prosecuted or are subject to investigation are kept in the GBT system however, records relating to individuals who are been taken into custody and subsequently released without charge are not registered on the GBTS. The details of draft evaders are also registered in the GBTS.³⁶

3.11.6 Only the latest warrant of arrest is held on file. The others are cancelled. Information about convicted persons and served sentences are stored at the Judicial Registry Office (Adli Sicil Mudurlukleri), rather than on the GBTS.³⁷

³³ COI Turkey Country Report September 2008

³⁴ COI Turkey Country Report September 2008

³⁵ COI Turkey Country Report September 2008

³⁶ COI Turkey Country Report September 2008

³⁷ COI Turkey Country Report September 2008

3.11.7 In September 2005 officials from the British Embassy visited two Mukhtars' offices in north eastern Turkey and found that both offices were very basically equipped and there was no evidence of any kind of computer equipment. In one village, local people reported that they had been without electricity for a year.³⁸ The Istanbul Security Directorate is currently running a Mukhtar computer project which aims to eventually administer the work of all Mukhtars from one centre. The project began in early 2005 and should be completed by early 2007. One hundred of the 956 Mukhtars in Istanbul are currently using the system.³⁹

3.11.8 Sufficiency of protection As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.11.9 Internal relocation Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. The differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.

3.11.10 If there are serious reasons for believing that GBT records are being maintained about a claimant, then internal relocation within Turkey would not be a feasible option as registering with a Mukhtar in a new location could give rise to further adverse attention from the authorities. Moreover such claimants would be apprehended at the port of entry into Turkey as soon as their GBT records become known.

3.11.11 Caselaw

IK (Returnees- Records- IFA) Turkey CG [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.

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 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.

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.

3.11.12 Conclusion The GBTS records information on outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military

³⁸ COI Turkey Country Report September 2008

³⁹ COI Turkey Country Report September 2008

service and tax arrears. However, it does not contain records of those who have been simply detained by the police and released without being formally arrested or charged. The Adli Sicil system keeps a record of past sentences served. The GBTS is available to the police at all sea and airports while the Adli Sicil system is not. Those who appear on the GBTS computer system are likely to come to the attention of the authorities. However, the majority of those on the system are wanted for criminal acts and there is no evidence to suggest that simply appearing on the system means that a claimant will face ill-treatment or persecution. Case owners should refer to the relevant sections in this OGN (sections 3.6-3.10) to ascertain whether claimants will be at risk if they do come to the attention of the Turkish authorities.

3.12 Prison conditions

3.12.1 Claimants 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 the Turkey are so poor as to amount to torture or inhuman treatment or punishment.

3.12.2 *Treatment* Following a visit to Turkey in December 2005, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported in September 2006 that whilst hardly any complaints were received of ill-treatment of prisoners by staff at the F-type establishments visited, it had heard numerous allegations of ill-treatment of inmates by staff at Adana E-type Prison. The ill-treatment alleged related for the most part to slaps, punches and kicks, as well as verbal abuse; however, some allegations of falaka were also received. The general picture of E-type prisons was of an establishment in which a very strict code of behaviour was enforced, with any breach likely to meet with physical chastisement. The CPT made no criticism of material conditions of F-type prisons and their most recent visit confirmed these prisons to be of a good standard. However, it stressed the need to develop communal activities for prisoners outside their living units. Directors of F-type prisons maintained that the limited number of staff at their disposal was a major obstacle to developing such activities. Serious problems remained regarding availability of health-care and training of prison doctors.⁴⁰

3.12.3 It was reported in July 2008 that punishment institutions and prisons were inspected by monitoring councils which included representatives of civil society organisations. Visits were allowed in some provinces but not others. Delegations carried out visits to detention centres with or without notice, every month. Detention Centres within the General Command of Gendarmerie that were not of the required standard were closed and temporary prisons were used instead, bringing 2,456 temporary prisons up to standard. During 2007, the government also permitted prison visits by representatives of some international organisations, such as the European Committee to Prevent Torture although the extent to which such visits occurred during the year was unclear.⁴¹

3.12.4 The UN Report of the Working Group on Arbitrary Detention Addendum 2007 noted that since 1997, the prison infrastructure had undergone substantial renewal; since 1995, 475 new prisons had been established. The International Centre for Prison Studies stated that in 2007 the number of establishments/institutions was 458. The official capacity of the prison system was 90,558 while the occupancy level was 105.5%. The UN Working Group reported that both the criminal justice system and the penitentiary system were well organised, well administered and well funded. Courts similarly conveyed the impression that the Government allocated adequate resources. As a result delays in criminal proceedings were generally limited and duration of trials reasonable.

3.12.5 It was reported that prison conditions in 2007 had generally improved but facilities remained inadequate. Underfunding, overcrowding, and insufficient staff training were problems. At the end of 2007, the Ministry of Justice reported that Turkey had 391 prisons with a capacity of 92,497 and with a total of 90,837 inmates. The inmates comprised 37,608 convicts and 53,229 arrestees awaiting trial. According to the medical association, there

⁴⁰ COI Turkey Country Report September 2008

⁴¹ COI Turkey Country Report September 2008

were insufficient doctors, and psychologists were available only at some of the largest prisons. Some inmates claimed they were denied appropriate medical treatment for serious illness. Despite the existence of separate juvenile facilities, at times juveniles and adults were held in adjacent wards with mutual access. Some observers reported that detainees and convicts were sometimes held together. Occasionally inmates convicted for non-violent, speech related offences were held in high-security prisons. The government permitted prison visits by representatives of some international organisations such as the CPT, but not domestic NGOs.⁴²

3.12.6 Human rights organisations documented a rise in cases of torture, beating and abuse by security forces in 2007; the number of arrests and prosecutions in these cases was reportedly low compared with the number of incidents and convictions remained rare.⁴³ The European Commission reported in November 2007 that the legislative safeguards introduced by the zero tolerance policy on torture continued to have positive effects. The downward trend in the number of reported cases of torture and ill-treatment was confirmed and the reforms regarding access to lawyers had shown positive results. However, cases of torture and ill-treatment were still being reported, especially during arrest and outside detention centres. The fight against impunity of human rights violations remained an area of concern. The improvement of the physical infrastructure of prisons as well as the training of staff continued. Outstanding problems included: overcrowding, lack of consistent implementation of provisions regarding communal activities, restrictions on prisoners' correspondence, and inadequate health/psychiatric resources. Furthermore civil and military prisons were not open to monitoring by independent national bodies, pending the ratification of the Optional Protocol to the UN Convention against Torture.⁴⁴

3.12.7 In 2008, a judge from the International Affairs Department of Prisons and Detention Facilities said that prison officers were now trained at four main training centres, rather than in-service as previously, and Human Rights training was provided to newly recruited staff as part of the core curriculum. Further increases in the prison services budget as a result of the new Code of Prison Workshops no.4301 had led to improvements in terms of prisoner rehabilitation, improved food, reduction of overcrowding and renovation or construction of prison buildings. He added that the numbers of allegations of mistreatment had declined and are very rare compared to before 1998.⁴⁵

3.12.8 An official from the Foreign Relations and European Union Department, Ministry of Interior said that most complaints of mistreatment were against police officials in detention centres. Measures taken by the Ministry to ensure human rights sensitive policing services included: legal reforms such as increased punishment for police officials committing violations; activities to improve the infrastructure of police detention centres, such as the provision of 24 hour monitoring and CCTV recording equipment in all detention centres; and the creation of a human rights based culture in police institutions. At the end of 2006, 300,000 police officers had undertaken human rights awareness training. The Director General, Directorate of EU coordination, Justice Ministry said there might be incidents of alleged mistreatment of detainees, but no systematic abuse. The Chairman of the Human Rights Association stated that in the past detainees had been subject to severe levels of mistreatment but these had virtually stopped. The numbers of cases of mistreatment fluctuated depending on circumstances. For example, after legal reforms were put in place in 2004 there was an increase in the number reported. While he felt the government had failed to implement its 'zero tolerance policy', increases at particular points did not indicate an increase in the number of cases of mistreatment; rather it reflected people feeling more encouraged to make complaints.⁴⁶

3.12.9 Conclusion Whilst prison conditions in Turkey are poor with overcrowding in ordinary prisons and the isolation of inmates in high security E-type prisons being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where

⁴² COI Country Report Turkey September 2008

⁴³ USSD 2007

⁴⁴ COI Turkey Country Report September 2008

⁴⁵ Report of UKBA Turkey Fact Finding Mission 11-20 February 2008

⁴⁶ Report of UKBA Turkey Fact Finding Mission 11-20 February 2008

claimants can demonstrate a real risk of imprisonment on return to Turkey a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where, in an individual case, treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate.

4.1 Discretionary Leave

4.1 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 Asylum Instruction on Discretionary Leave). Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 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 related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR

4.3 Minors claiming in their own right

4.3.1 Minors who have not been granted asylum or Humanitarian Protection can only be returned where they have family to return to or there are adequate reception, care or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care or support arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are not adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to Turkey due to a lack of specific medical treatment. See the IDI on Medical Treatment (IDIs Ch 1, Section 8) which sets out in detail the requirements for Article 3 and/or 8 to be engaged and Asylum Instructions 'Discretionary Leave' and 'ECHR'.

4.4.2 The World Health Organisation's (WHO) 'European health for all database (HFA-DB)', last updated in July 2008, recorded the presence of 1,205 hospitals with a bed capacity of 196,667 in 2006. The database also informed that there were 158.98 people per physician. In addition mental health treatment is part of the primary health care system. Disability benefits are available to individuals with mental disorders and actual treatment for severe mental health is available at the primary level in some provinces. Regular training for primary health care officials in the mental health field is present. The Ministry of Health operates 8 mental health hospitals in 7 different provinces. There are two private mental health hospitals in Istanbul. The government reported that it operated 45 boarding care centres and 2 day care centres that provided services to physically and mentally challenged individuals. A report in January 2008 recorded that there was virtually no social care or community care provision for the mentally ill in Turkey. Anti-psychotic and anti-depressant medication is widely available in Turkey. The number of HIV patients registered in Turkey

by the end of 2004 was less than 2,000. The rate of increase for reported cases has been more or less constant over the last three years, about 190 reported new cases annually.⁴⁷

4.4.3 It was reported in June 2007 that in general, access to health care had improved since 2004 with radical changes in the provision side. In the past, the Social Insurance Organisation (SSK) had its own hospitals with restricted access to its members and in many cases low standard facilities. In 2005, as part of ongoing reforms, the competence of these facilities was transferred to the Ministry of Health (MoH) and all MoH hospitals were opened to the SSK members increasing the opportunities of access. Access to prescriptions was also improved after allowing SSK enrolees to obtain pharmaceuticals from private pharmacies. In the past, SSK members were only allowed to buy pharmaceuticals from their hospitals' pharmacies. Also the Green Card Scheme for the poor had previously only covered in-patient care, thereby excluding outpatient care and prescriptions. In 2005 the scheme was extended to cover all health care expenditures easing access of the poorest members of society.⁴⁸

4.4.4 The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 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. Where the claim includes dependent family members, their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2.1 Nationals of Turkey may return voluntarily to any region of Turkey at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or:

www.iomlondon.org.

6. List of source documents

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⁴⁷ COI Turkey Country Report September 2008

⁴⁸ COI Turkey Country Report September 2008

- Terrorism Act 2006 Statutory Instrument 2006 No. 1919
<http://www.opsi.gov.uk/SI/si2006/20061919.htm>
- US State Turkey Country Report on Human Rights Practices 2007
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