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OPERATIONAL GUIDANCE NOTE

TURKEY

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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 that province. It must be read in conjunction with the COI Service Turkey Country of Origin Information Report October 2005 and any COI Service Turkey Country of Origin Information Bulletins at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2** This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting 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 3 on main categories of claims.
- 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** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** The Constitution 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.¹ Following the 3 November 2002 elections, the Justice and Development Party (AKP) won an overwhelming victory and thus a majority in parliament.² The Prime Minister is Recep Tayyip Erdoğan and the President is Ahmet Necdet Sezer.³
- 2.2** Since 1984 the Turkish authorities have been engaged in a violent guerrilla war against the Kurdistan Workers Party (PKK).⁴ During 2004 both the Government and the PKK committed human rights abuses against non-combatants in the southeast. According to the military, 18 civilians, 62 members of the security forces, and 79 terrorists died during 2004 as a result of armed clashes.⁵
- 2.3** The security situation in the southeast, which had gradually improved since 1999 become more precarious in recent years following the resumption of violence by the PKK. The level of violence has increased and armed clashes between the security forces and armed groups occur frequently leading to casualties including mortalities on the both sides. Although the state of emergency rule has been lifted, a number of security measures, such as roadblocks and checkpoints, have been reinstated in some provinces of the Southeast. This situation has had an impact on the lives of the population and there are concerns that as part of the conflict the security forces sometimes respond inappropriately.⁶
- 2.4** The principle of an independent judiciary is enshrined in the Turkish constitution however it is undermined by several other constitutional provisions.⁷ During 2004 the judiciary was sometimes subject to outside influences and there were allegations of judicial corruption.⁸ In addition lengthy trials remained a problem and convictions of security officials accused of torture remained rare. When security force personnel were convicted the courts generally issued light sentences. In politically sensitive cases, the judiciary continued to reflect a legal structure that favours State interests over individual rights.⁹
- 2.5** The legal system does not discriminate in law or in practice against any ethnic, religious or linguistic minorities.¹⁰ The new Code of Criminal Procedure provides that defendants and witnesses who cannot speak the Turkish language are to be provided with an interpreter free of charge. However, concerns have been expressed that as there are currently no interpreters trained in legal interpretation between Turkish and other languages used in Turkey, there may be difficulties in ensuring adequate standards of accuracy.¹¹

¹ COIS Turkey Country Report 2005 para 5.15

² COIS Turkey Country Report 2005 para 4.31

³ COIS Turkey Country Report 2005 para 5.14 - 5.15

⁴ COIS Turkey Country Report 2005 para 4.07- 4.09

⁵ COIS Turkey Country Report 2005 para 6.255

⁶ COIS Turkey Country Report 2005 para 6.251

⁷ COIS Turkey Country Report 2005 para 5.40

⁸ COIS Turkey Country Report 2005 para 5.41

⁹ COIS Turkey Country Report 2005 para 6.07

¹⁰ COIS Turkey Country Report 2005 para 5.45

¹¹ COIS Turkey Country Report 2005 para 5.44

- 2.6** The European Commission reported in 2005 that the judicial system had been further strengthened with the adoption of structural reforms and important progress was made with the entry into force on 1 June 2005 of the Penal Code, the Code of Criminal Procedure, the Law on Enforcement of Sentences and the Law on the Establishment of the regional Courts of Appeal.
- 2.7** The adoption of a new Code of Criminal Procedure represented a major step forward as it introduced the concept of cross examination of witnesses during trials, (which did not previously exist in the Turkish legal system) and provided judges with the power to return incomplete indictments. Under the new Code, criminal investigations must be carried out by a judicial police force under the authority of the public prosecutor. The Chief Public Prosecutor will be responsible for preparing annual evaluation reports on the judicial police under his command. The Code introduces the requirement that certain trials are to be recorded on audio and video tape. Judges and prosecutors throughout Turkey have received training on the Code.¹²
- 2.8** The European commission reported in November 2005 that the six important pieces of legislation recommended in the Commission's 2004 report have now entered into force. However, the pace of change slowed in 2005 and implementation of the reforms remained uneven. The EC acknowledged that significant efforts still needed to be made in the area of fundamental freedoms and human rights, particularly freedom of expression, women's rights, religious freedoms, trade union rights, cultural rights and the further strengthening of the fight against torture and ill-treatment.¹³
- 2.9** The Government generally respected the human rights of its citizens during 2004 however, although there were significant improvements in a number of areas, serious problems remained. Security forces continued to use arbitrary arrest and detention (although the number of such incidents declined) and torture, beatings, and other abuses by security forces remained widespread.¹⁴ Security forces most commonly tortured leftists and Kurdish rights activists.¹⁵
- 2.10** However, the European Commission reported in 2005 that although reports of torture and ill-treatment are still frequent, the broad assessment of international and Turkish NGOs, as well as experts on the ground, such as lawyers and forensic doctors, is that incidences of torture are diminishing.¹⁶ According to these sources, severe forms of torture and ill-treatment are now rarely used and reports of ill-treatment in places of detention are less frequent than in the past. However, reports of ill-treatment outside of detention centres are still common, in particular, during the transportation of detainees, or in the context of demonstrations.¹⁷

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 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.

¹² COIS Turkey Country Report 2005 para 5.34

¹³ COIS Turkey Country Report 2005 para 6.01

¹⁴ COIS Turkey Country Report 2005 para 6.07

¹⁵ COIS Turkey Country Report 2005 para 6.24

¹⁶ COIS Turkey Country Report 2005 para 6.19

¹⁷ COIS Turkey Country Report 2005 para 6.20

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant 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 claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant 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)
- 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)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 Involvement with Kurdish, left wing or Islamic terrorist groups or political parties.

- 3.6.1** Most claimants will claim asylum 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. Claimants may also claim that this ill-treatment will breach article 3 of the European Convention on Human Rights (ECHR).
- 3.6.2 *Treatment*** The Government generally respected the human rights of its citizens during 2004 however, although there were significant improvements in a number of areas, serious problems remained. Security forces continued to use arbitrary arrest and detention (although the number of such incidents declined) and torture, beatings, and other abuses by security forces remained widespread.¹⁸ Security forces most commonly tortured leftists and Kurdish rights activists.¹⁹
- 3.6.3** However, the European Commission reported in 2005 that although reports of torture and ill-treatment are still frequent, the broad assessment of international and Turkish NGOs, as well as experts on the ground, such as lawyers and forensic doctors, is that incidences of torture are diminishing.²⁰ According to these sources, severe forms of torture and ill-treatment are now rarely used and reports of ill-treatment in places of detention are less frequent than in the past. However, reports of ill-treatment outside of detention centres are still common, in particular, during the transportation of detainees, or in the context of demonstrations.²¹
- 3.6.2** Members of the PKK like members of militant left-wing or Islamist organisations face criminal prosecution by the authorities.²² (The PKK is a proscribed organisation in the UK and appears on the EU terrorist list).²³ The Human Rights Association (HRA) of Turkey

¹⁸ COIS Turkey Country Report 2005 para 6.07

¹⁹ COIS Turkey Country Report 2005 para 6.24

²⁰ COIS Turkey Country Report 2005 para 6.19

²¹ COIS Turkey Country Report 2005 para 6.20

²² COIS Turkey Country Report 2005 para 6.369

²³ COIS Turkey Country Report 2005 para 6.251

estimated that in 2004 there were approximately 6,000 to 7,000 political prisoners, including leftists, rightists and Islamists. Of these, approximately 1,500 were alleged members of Hizbullah or other radical Islamist political organizations. The Government claimed that alleged political prisoners were in fact charged with being members of, or assisting, terrorist organizations. According to the Government, there were 4,508 convicts and detainees held on terrorism charges at the end of 2004.²⁴

- 3.6.4** The security forces' actions against persons suspected of taking part in marginal low-level activities for illegal organisations can be quite unpredictable. Handing out of leaflets could trigger detention, ill-treatment and criminal prosecution one day, and go without any sanctions the next day. Although regional differences seem to play a role, it would be difficult to see a pattern as to how security-forces would sanction certain behaviour in a certain city or area. Professor Şeref Ünal, the former state secretary at the Ministry of Justice commented that caselaw in cases of marginal activities (handing-out of leaflets, spreading of propaganda and so forth) varied extremely. A person being found in possession of PKK pamphlets might be acquitted by one court while another court could sentence him to two or three years in prison.²⁵
- 3.6.5** The Human Rights Foundation reported that several persons had been arrested in 2004 for handing-out PKK leaflets. Before the amendment of paragraph 169 of the Criminal Code (support for illegal organisations) this paragraph was frequently applied in such proceedings. Now, some state prosecutors tend to apply paragraph 168 (membership of an illegal organisation). However, according to the Human Rights Foundation most of the accused in such proceedings are acquitted.²⁶
- 3.6.6** The pro-Kurdish HADEP [People's Democracy Party], was established in 1994 as a successor to the successively banned HEP, DEP and ÖZDEP political parties. Although HADEP had no direct ties with the PKK, it relied largely on the same supporters and the Turkish authorities regarded HADEP as the PKK's political wing and therefore viewed it with suspicion.²⁷ In March 2003 Turkey's constitutional court banned HADEP for alleged links with rebel groups. HADEP did not stand in last November's 2002 elections, but its candidates stood under the umbrella of the Democratic People's Party (DEHAP).²⁸
- 3.6.7** DEHAP was a pro-Kurdish alliance between the People's Democracy Party (HADEP), the Toil Party (EMEP) and the Socialist Democracy Party (SDP). It was formed partly to pre-empt moves by the courts to ban HADEP.²⁹
- 3.6.8** During 2004, the police raided dozens of DEHAP offices, particularly in the southeast, and detained hundreds of DEHAP officials and members. Jandarma and police regularly harassed DEHAP members, through verbal threats, arbitrary arrests at rallies, and detention at checkpoints. Security forces also regularly harassed villagers they believed were sympathetic to DEHAP.³⁰ Although the security forces released most detainees within a short period, many faced trials, usually for supporting an illegal organisation, inciting separatism, or other for violations of the law.³¹
- 3.6.9** However the head of DEHAP in Diyarbakır pointed out that during 2004 the attitude of the authorities in the province of Diyarbakır towards his party had become 'more relaxed'. He described the harassment by the authorities as less brutal and as more subtle. Instead of raiding party-offices and detaining officials, the authorities would rather erect administrative obstacles and delay or reject permissions for public activities.³²

²⁴ COIS Turkey Country Report 2005 para 6.367

²⁵ COIS Turkey Country Report 2005 para 6.371

²⁶ COIS Turkey Country Report 2005 para 6.372

²⁷ COIS Turkey Country Report 2005 para 6.228

²⁸ COIS Turkey Country Report 2005 para 6.231

²⁹ COIS Turkey Country Report 2005 para 6.233

³⁰ COIS Turkey Country Report 2005 para 6.237

³¹ COIS Turkey Country Report 2005 para 6.238

³² COIS Turkey Country Report 2005 para 6.240

- 3.6.10** In May 2004, State Security Courts in Van and Erzurum acquitted DEHAP President Tuncer Bakirhan on charges of separatism and spreading terrorist propaganda in public speeches. The courts determined that Bakirhan's comments did not encourage violence and were within the realm of legally protected speech.³³
- 3.6.11** In August 2005, the pro-Kurdish online newspaper *KurdishMedia* reported that DEHAP had decided to join the Democratic Society Movement, or DTH, which is led by Kurdish activist Leyla Zana. DEHAP announced its decision to dissolve as prosecutors attempted to close down the party, accusing it of being a focal point for separatist activities and having ties to Kurdish guerrillas.³⁴
- 3.6.12 *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.
- 3.6.13 *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.
- 3.6.14** In the case of claimants who claim to be low-level sympathisers or suspected activist of one of these separatist 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 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 Muhtar in the new location.
- 3.6.15** However, if the claimant is a higher-profile activist, or suspected activist of one of these separatist groups and for example has or is being prosecuted for separatist 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

3.6.16 *Caselaw*

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

³³ COIS Turkey Country Report 2005 para 6.236

³⁴ para 6.244

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).

3.6.17 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.

- 3.6.18** 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, though 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 mistreatment contrary to Article 3 and a grant of asylum or Humanitarian Protection in such cases may be appropriate.
- 3.6.19** In addition caseworkers should note that the PKK as well as left wing and Islamic terrorists groups have been responsible for serious human rights abuses, some of which amount to war crimes. The PKK is also a proscribed organisation in the UK. If it is accepted that the claimant was an active member or combatant for a terrorist group and has been involved in such actions, then caseworkers should consider whether to apply one of the exclusion clauses. Caseworkers 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 claim asylum based on ill treatment amounting to persecution at the hands of the Turkish authorities due to a relatives involvement at either at a high or low level with Kurdish, left wing or Islamic terrorist groups or political parties. Claimants may also claim that this ill-treatment will breach article 3 of the European Convention on Human Rights (ECHR).
- 3.7.2** It is likely that relatives of suspected PKK members are kept under observation by the authorities or questioned and interrogated for instance about the whereabouts of their fugitive relatives, and also because they could as often as not be potential suspects themselves. In many cases the Turkish authorities assume that some relatives of PKK supporters harbour sympathies for the party.³⁵
- 3.7.3** The head of DEHAP in Diyarbakır stated that relatives of members of illegal organisations sometimes faced harassment, such as repeated questioning by the police, intimidation, verbal assaults, beating, detention and arrest. The level of harassment would often depend on the degree of kinship and on the rank of the respective relative in the PKK. However, it is difficult to detect a pattern on how relatives of PKK militants are dealt with as it depends on the circumstances and on the law-enforcement officials in charge. Any person having a relative within the PKK should expect some attention from the authorities without becoming automatically subject to harassment or persecution.³⁶
- 3.7.4** Countless people in Turkey have one or more relatives in the PKK, left wing or Islamic terrorist groups without having any significant problems with the authorities as a result.³⁷ If the authorities are convinced that relatives of suspected PKK members do not have any links to the PKK they are not persecuted.³⁸
- 3.7.5** 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,

³⁵ COIS Turkey Country Report 2005 para 6.374

³⁶ COIS Turkey Country Report 2005 para 6.373

³⁷ COIS Turkey Country Report 2005 para 6.375

³⁸ COIS Turkey Country Report 2005 para 6.376

in certain cases, relatives of HADEP/DEHAP/DTH members who are active at local level are closely watched by the State because of their relatives' activities.³⁹

3.7.6 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.

3.7.7 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.

3.7.8 Where claimants cite family members who are known to be active or suspected of supporting a separatist group, the harassment experienced may be directly connected to the fact that the claimant lives in an area where PKK or other separatist 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 in a localised nature where the claimant and family may be seen as troublemakers. However in such circumstances, provided the 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 Muhtar in the new location.

3.7.9 Caselaw

See para 3.6.16 above for caselaw details

3.7.10 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 are likely to be clearly unfounded.

3.8 Kurdish ethnicity

3.8.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their Kurdish ethnicity. Claimants may also claim that this ill-treatment will breach article 3 of the European Convention on Human Rights (ECHR).

3.8.2 Treatment There are no official statistics on the number of Kurds living in Turkey as national censuses do not take account of people's ethnic origins however, estimates, range from between 12 and 15 million. The Kurds live mainly in the South-East, although many of

³⁹ COIS Turkey Country Report 2005 para 6.232

them have left the region as part of the drift to the towns and also because of the armed conflict between the authorities and the PKK.⁴⁰

- 3.8.3** The Turkish government does not persecute Kurds solely because they are Kurds. All Turkish citizens including the Kurds have equal access to public institutions such as health care and the authorities responsible for issuing official documents.⁴¹ However, Kurds who publicly or politically asserted their Kurdish ethnic identity or publicly espoused using Kurdish in the public domain risked public censure, harassment, or prosecution.⁴² (see section 3.6 above) Harassment of Kurdish groups and political parties is still common among the general population and it also remains illegal to carry out political campaigning in any language other than Turkish.⁴³
- 3.8.4** Broadcasting on both radio and TV in non-Turkish languages, including Kurdish dialects, began on 7 June 2004 on the state-owned national broadcaster TRT and private language courses in Kurdish opened across Turkey in 2004, including in Van, Batman and Sanliurfa.⁴⁴
- 3.8.5** However, the teaching of Kurdish suffered a serious setback in August 2005 when the owners of the existing courses decided to close the 5 remaining schools. The decision to close down these courses was motivated by several factors, including a lack of financial resources and restrictions concerning, in particular, the curriculum, the appointment of teachers, the timetable and the attendees. More generally, the course owners claimed that the demand for such courses is limited, particularly as it is necessary to pay for them.⁴⁵
- 3.8.6** The European Commission 2005 report stated that notwithstanding a greater tolerance for the use of languages other than Turkish, the exercise of cultural rights is still precarious. No local broadcasting in Kurdish has yet been authorised, Kurdish language courses have closed down and politicians continue to be convicted for using the Kurdish language in certain contexts. Turkey continues to adopt a restrictive approach to minorities and cultural rights.⁴⁶
- 3.8.7** **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.
- 3.8.9** **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.
- 3.8.10** 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

⁴⁰ COIS Turkey Country Report 2005 para 6.209

⁴¹ COIS Turkey Country Report 2005 para 6.212

⁴² COIS Turkey Country Report 2005 para 6.208

⁴³ COIS Turkey Country Report 2005 para 6.214

⁴⁴ COIS Turkey Country Report 2005 para 6.214

⁴⁵ COIS Turkey Country Report 2005 para 6.223

⁴⁶ COIS Turkey Country Report 2005 para 6.213

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 Muhtar in the new location. Where Kurdish ethnicity is cited in conjunction with other aggravating factors, such as draft evasion or separatist activity then caseworkers should consider the viability of internal relocation in line with the guidance provided in the appropriate sections of this OGN.

3.8.11 *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.

[2002] UKIAT 06624 IAT decision notified 19 February 2003 The appellant stated that he had suffered persecution and harassment since his school days because of his Kurdish ethnicity and his Alevi religious faith. 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.

3.8.12 *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 claim asylum based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their Alevi religious faith. Claimants may also claim that this ill-treatment will breach article 3 of the European Convention on Human Rights (ECHR).

3.9.2 *Treatment* Estimates on the number of Alevis in Turkey range from between 5 – 20 million.⁴⁷ Alevis are followers of a belief system that incorporates aspects of both Shia and Sunni Islam and also draws on the traditions of other religions found in Anatolia. Alevi rituals 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.⁴⁸

3.9.3 Alevis freely practise their beliefs in Turkey and are able to build 'Cem houses' (places of gathering) and in April 2003 the previously banned Union of Alevi and Bektashi Associations was granted legal status, which allowed it to pursue its activities.⁴⁹ However, many Alevis allege discrimination in the Government's failure to include any of their doctrines or beliefs in religious instruction classes in public schools, which reflect Sunni Muslim doctrines. They also claim that there is a bias in the Diyanet (Directorate for Religious Affairs), which views Alevis as a cultural rather than religious group; the Diyanet does not allocate specific funds for Alevi activities or religious leadership. During a September 2004 visit to Germany, Prime Minister Erdogan told reporters that 'Alevism is not a religion' and said Alevi Cem houses are 'culture houses' rather than 'temples'.⁵⁰

3.9.4 The European Commission reported in 2005 that Alevis continue not to be officially recognised as a religious community and they are not officially represented in the Diyanet.

⁴⁷ COIS Turkey Country Report 2005 para 6.131

⁴⁸ COIS Turkey Country Report 2005 para 6.129

⁴⁹ COIS Turkey Country Report 2005 para 6.133

⁵⁰ COIS Turkey Country Report 2005 para 6.130

Alevi still experience difficulties in opening places of worship which have no legal status and they receive no funding from the authorities.⁵¹

3.9.5 Alevi children are subject to compulsory Sunni religious instruction in schools, which fails to acknowledge Alevism. However, in February 2005, the Ministry of Education indicated that Alevism and other faiths such as Christianity and Judaism would be included in compulsory religious education from next year.⁵²

3.9.6 ***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.

3.9.7 ***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. 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.

3.9.8 A claimant of the Alevi faith is unlikely to encounter ill-treatment by the authorities amounting to persecution solely on the grounds of their religious beliefs. 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 Muhtar in the new location. Where Alevi beliefs are cited in conjunction with other aggravating factors, such as draft evasion or separatist activity then caseworkers should consider the viability of internal relocation using the guidance provided in the appropriate sections of this OGN.

3.9.9 Caselaw

[2002] UKIAT 06624 IAT decision notified 19/02/2003 The appellant stated that he had suffered persecution and harassment since his school days because of his Kurdish ethnicity and his Alevi religious faith. 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.

3.9.10 ***Conclusion*** Although Turkish citizens belonging to the Alevi religious faith may face some unequal treatment or discrimination with 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

⁵¹ COIS Turkey Country Report 2005 para 6.135

⁵² COIS Turkey Country Report 2005 para 6.135

- 3.10.1** Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their evasion of military service. Claimants may also claim that this ill-treatment will breach article 3 of the European Convention on Human Rights (ECHR).
- 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 from other soldiers within the armed forces or
 - (ii) They are conscientious objectors and refuse to perform military service on moral or religious grounds.
 - (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 is obliged to carry out military service.⁵³ The standard length of military service is 15 months although some conscripts may serve less.⁵⁴ According to Article 35 of the Military Act No.1111 (1927) a number of provisions allow people liable to military service to defer their service, principally for educational reasons⁵⁵
- 3.10.4** 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.⁵⁶
- 3.10.5** Punishments in cases relating to evasion of military service (including desertion) take place in military prisons if the sentence is six months or less and in normal prisons if the sentence is more than six months. As a rule, the sentence is first enforced and then the conscript completes the remainder of his military service. In the case of desertion enforcement of the judgement may be deferred at the suggestion of the officers of the relevant military division until after military service has been completed.⁵⁷
- 3.10.6** The Turkish armed forces operate a harsh regime. Non-commissioned officers and lieutenants in particular occasionally beat conscripts as a means of disciplining them. The use of insults – again by NCOs and lieutenants – to conscripts is a fairly regular occurrence. Harassment and discrimination by fellow soldiers or non-commissioned officers does occur, depending in particular on the attitude of the local commander.⁵⁸
- 3.10.7** However, it is not possible to say that any single group suffers systematic discrimination with the Turkish armed forces. According to Turkish human rights organisations and former soldiers, in many cases the problems stem from conflicts between conscripts themselves.⁵⁹ There is no systematic discrimination against Kurdish or left wing conscripts. At the level of the unit in which conscripts serve, the situation is very often dependent on the individual commander.⁶⁰
- 3.10.8** The right to conscientious objection is not legally recognized in Turkey.⁶¹ Therefore any conscientious objector refusing military service is viewed by military criminal law as a straight forward case of draft evasion. The person concerned is accordingly sentenced as described above, in precisely the same way as all other draft evaders, under article 63 of

⁵³ COIS Turkey Country Report 2005 para 5.140

⁵⁴ COIS Turkey Country Report 2005 para 5.141

⁵⁵ COIS Turkey Country Report 2005 para 5.143- 5.145

⁵⁶ COIS Turkey Country Report 2005 para 5.146

⁵⁷ COIS Turkey Country Report 2005 para 5.148

⁵⁸ COIS Turkey Country Report 2005 para 5.161

⁵⁹ COIS Turkey Country Report 2005 para 5.161

⁶⁰ COIS Turkey Country Report 2005 para 5.162

⁶¹ COIS Turkey Country Report 2005 para 5.149

the Military Criminal Code. The individual conscripts' motives for non-compliance with the military service obligation are not taken into account consideration in sentencing, so that refusal for reasons of principle attracts neither a heavier nor a lighter sentence.⁶²

3.10.9 Sufficiency of protection 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. Sufficiency of protection will be available to applicants whose claims are based on discrimination and abuse suffered within a particular unit of the military.

3.10.10 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 Muhktar 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 feasible.

3.10.11 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.

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 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 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."

3.10.12 Conclusion Although some Turkish citizens may face some unequal treatment or discrimination within the military from other soldiers because of their political opinions, Kurdish ethnicity, or Alevi faith, 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 would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

3.10.13 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, 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.

3.10.14 The Immigration Appeal Tribunal in **Faith Akan [2002]** (see above) 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.

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

⁶² COIS Turkey Country Report 2005 para 5.152

- 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.⁶³ 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.
- 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.⁶⁴
- 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. Foreign establishments cannot use this system in any way whatsoever.⁶⁵
- 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.⁶⁶
- 3.11.6** Information about convicted persons and served sentences are stored at the Judicial Registry Office (Adli Sicil Mudurlukleri), rather than on the GBTS.⁶⁷ In September 2005, the British Embassy in Ankara judged it unlikely that a national networked Muhtar computer system exists, and so the capacity for individuals to be randomly detected by local Muhtars is clearly limited.⁶⁸
- 3.11.7 *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.
- 3.11.8 *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

⁶³ COIS Turkey Country Report 2005 para 5.79

⁶⁴ COIS Turkey Country Report 2005 para 5.78

⁶⁵ COIS Turkey Country Report 2005 para 5.89

⁶⁶ COIS Turkey Country Report 2005 para 5.89

⁶⁷ COIS Turkey Country Report 2005 para 5.79 & 5.83

⁶⁸ COIS Turkey Country Report 2005 para 5.28 & 5.29

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.

- 3.11.9** 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.

3.11.10 Case law

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.

- 3.11.11 Conclusion** The GBTS records information on outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military 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 systems 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. Caseworkers should refer to the relevant sections in this OGN (sections 3.6-2.10) 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** According to official sources, in May 2005 there were 58,670 persons in prisons and detention houses. Of these, 31,812 were convicted prisoners and 26,858 were

prisoners detained on remand. By May 2005, 14,431 prisoners had been released as a result of changes to the law brought about by the adoption of the new Penal Code.⁶⁹

- 3.12.3** The Government made significant improvements in the system in 2004 and the country's best prisons maintained high standards however, conditions in most prisons remained poor, with under-funding, overcrowding, and insufficient staff training being common problems. The Human Rights Foundation reported that the Government provided insufficient funds for prison food, resulting in poor-quality meals; food sold at prison shops was too expensive for most inmates, and there was a lack of potable water in some prisons. According to the Medical Association, there were insufficient doctors, and psychologists were only available at some of the largest prisons. Some inmates claimed they were denied appropriate medical treatment for serious illness.⁷⁰
- 3.12.4** The European commission reported in 2005 that there has been significant progress in prison conditions in Turkey in recent years, but there was a need to continue expanding best practice to all prisons throughout the country as some remain overcrowded and under-resourced.⁷¹ The prison system has continued to improve although isolation in high security prisons remains a serious problem. The training of enforcement judges has, to date, been inadequate.⁷²
- 3.12.5** A major development was the adoption of the new Law on the Execution of Sentences in December 2004. Despite some shortcomings, the Law and its secondary legislation – notably the Law on the Establishment of Probation Centres, adopted in July 2005 – introduces modern concepts such as community service and probation into Turkish law. A regulation on the rules and procedures for visiting convicts and detainees was published in June 2005. A number of rehabilitation, cultural, social and educational activities are ongoing in prisons.⁷³
- 3.12.6** Men and women were held separately; most female prisoners were held in the women's section of a prison. Despite the existence of separate juvenile facilities, at times juveniles and adults were held in adjacent wards with mutual access. According to the Government, detainees and convicts were held either in separate facilities or in separate sections of the same facility. However, some observers reported that detainees and convicts were sometimes held together.⁷⁴
- 3.12.7** As recorded in the International Helsinki Federation (IHF) report of June 2005 human rights organizations protested the conditions imposed in prisons, mainly maximum-security facilities (E-Type and F-Type prisons for persons tried or convicted at former State Security Courts). The HRA reported that eleven inmates committed suicide in prisons, and six persons killed themselves by setting fire to themselves, a common form of protest. Another person died due to the so-called 'death fast', another form of protest by political prisoners. Nine prisoners died reportedly due to the prevention or neglect of medical treatment, and five others were killed by other inmates. The prevention of the treatment of prisoners with fatal or serious medical condition was a common problem.⁷⁵
- 3.12.8** The Ministry of Justice, the General Directorate of Prisons, and the parliamentary Human Rights Committee regularly inspected prisons and issued reports. Prison Monitoring Boards – five-person visiting committees composed of nongovernmental experts such as doctors and lawyers – also conducted inspections.⁷⁶
- 3.12.9** The Government also permitted prison visits by representatives of some international organizations, such as the CPT; however, domestic nongovernmental organizations

⁶⁹ COIS Turkey Country Report 2005 para 5.115

⁷⁰ COIS Turkey Country Report 2005 para 5.119

⁷¹ COIS Turkey Country Report 2005 para 5.115

⁷² COIS Turkey Country Report 2005 para 5.116

⁷³ COIS Turkey Country Report 2005 para 5.114

⁷⁴ COIS Turkey Country Report 2005 para 5.121

⁷⁵ COIS Turkey Country Report 2005 para 5.126

⁷⁶ COIS Turkey Country Report 2005 para 5.135

(NGOs) did not have access to prisons. The CPT visited in March 2004, and conducted ongoing consultations with the Government. Requests by the CPT to visit prisons were routinely granted. International humanitarian organizations were allowed access to 'political' prisoners, provided they could obtain permission from the Ministry of Justice. With the exception of the CPT, which generally had good access, such organisations were seldom granted permission in practice.⁷⁷

3.12.10 Conclusion Whilst prison conditions in Turkey are poor with overcrowding and poor food being a particular problem conditions are unlikely to reach the Article 3 threshold. Therefore even where 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.

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 API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave

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 without a family to return to, or where there are no adequate reception, care or support arrangements, 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.

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 which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 Turkey is ranked 94th in the 2005 Human Development Report, with an Human Development Index (HDI) value of 0.750. The HDI is a composite index measuring average achievement in three basic dimensions of human development—a long and healthy life, knowledge and a decent standard of living.⁷⁸

Cost of treatment

4.4.3 If the patient has contributed to a social security scheme (SSK, BAG KUR, EMEKLI or SANDIGI), his or her cost of treatment will be met. A person who has not made social

⁷⁷ COIS Turkey Country Report 2005 para 5.136

⁷⁸ COIS Turkey Country Report 2005 para 5.166

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.⁷⁹

Mental health

- 4.4.4** As recorded in the World Health Organisation's (WHO) Department of Mental Health and Substance Dependence Mental Health Atlas 2005 after being approved by a mental health board as a chronic mental health patient, a patient can benefit from the social security services. Mental health is part of the primary health care system. Actual treatment of severe mental health is available at the primary level.⁸⁰
- 4.4.5** The WHO Mental Health Atlas 2005 further states that there are 1.3 psychiatric beds per 10,000 population, one neurosurgeon, one neurologist, one psychologist and one social worker per 100,000 population.⁸¹
- 4.4.6** The Foreign and Commonwealth Office contacted Hacettepe University Hospital Psychiatric Department in April 2002 and confirmed that anti-psychotic and anti-depressant medication is available in Turkey.⁸² The WHO Mental Health Atlas 2005 recorded that a large number of therapeutic drugs are generally available at the primary health care level.⁸³
- 4.4.7 Case law.**

DE (Turkey) [2005] UKAIT 00148 promulgated 21 October 2005. Suicide, availability of psychiatric treatment. The Tribunal held that adequate mental health facilities and treatment are available in Turkey. (paras 60 & 61)

HIV/AIDS

- 4.4.8** The United Nations Programme on HIV/AIDS reported in December 2003 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 anti-retroviral treatment.⁸⁴
- 4.4.9** In December 2001 the Foreign and Commonwealth Office contacted Hacettepe University, Ankara, which provides world-standard treatment for HIV and AIDS. The University confirmed that such drugs such as thyroxine, sequinavir, D4T, 3TC, acyclovir, zirtek, diflucon and metoclopramide, or their substitutes, are available in Turkey.⁸⁵
- 4.4.10** Where a caseworker 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.
- 5.2** 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

⁷⁹ COIS Turkey Country Report 2005 para 5.168

⁸⁰ COIS Turkey Country Report 2005 para 5.170

⁸¹ COIS Turkey Country Report 2005 para 5.171

⁸² COIS Turkey Country Report 2005 para 5.172

⁸³ COIS Turkey Country Report 2005 para 5.173

⁸⁴ COIS Turkey Country Report 2005 para 5.174

⁸⁵ COIS Turkey Country Report 2005 para 5.176

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.

6. List of source documents

- Home Office Country of Origin Information Service (COIS) Turkey Country of Origin Information Report published in December 2005 at:
http://www.homeoffice.gov.uk/rds/country_reports.html

Asylum and Appeals Policy Directorate
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