

AT AUCKLAND

<b>Appellants:</b>	<b>AH (Turkey)</b>
<b>Before:</b>	A M Clayton (Member)
<b>Counsel for the Appellants:</b>	C Curtis
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	14 & 15 January 2015
<b>Date of Decision:</b>	28 April 2015

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**REFUGEE AND PROTECTION DECISION**

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**INTRODUCTION**

[1] These are appeals against decisions of a refugee and protection officer, declining to grant refugee status and/or protected person status to the appellants, a married couple in their forties from Turkey.

[2] The appellants are Alevi Kurds and the husband was, for four years, a party official in the socialist political party, *Cumhuriyet Halk Partisi* (CHP). The appellants claim they are at risk of serious harm including extensive discrimination by the Sunni-dominated Turkish government. The wife also fears returning to an environment where women are not respected and where she cannot express her anti-government views on social media. The central issue on appeal is whether the appellants' experience of discrimination against them as Alevis in Turkey amounts to serious harm.

[3] For the reasons which follow, the Tribunal finds that there is not a real chance of the appellants being seriously harmed upon return to Turkey. Their appeals are declined.

## **THE APPELLANTS' CASE**

[4] The Tribunal heard from the two appellants and, via telephone, from their 20-year-old son. While the refugee and protection officer declined to grant the appellants refugee status on 21 February 2014, their son was recognised as a refugee on that date. This was on the basis that he faced compulsory military service in Turkey, in circumstances where the Turkish army has been shown to perpetrate internationally proscribed acts, including against Kurds and Alevis.

### **Evidence of the Husband**

[5] The husband is an Alevi Kurd in his forties from Z city, Turkey. He has seven siblings; his parents have died. As Alevis, the family did not attend Friday mosque. Alevis believe in gender equality, the separation of politics and religion, and respect for other people's faiths.

[6] When he was young, the husband's parents owned an ABC business for some five or six years in a non-Alevi part of Z city. They did not open at Ramadan because they knew they would incur the anger of Sunni Muslims if they did. The ABC business was eventually shut down, the husband believes because the family was Alevi.

[7] After working in his parents' ABC business, the husband underwent compulsory military service and, later, set up a DEF business. When he was in his early twenties, he started attending anti-government demonstrations and joined the CHP, a left-wing political party.

[8] The demonstrations the husband attended were against the discrimination of Alevis and Kurds or were pro-union or pro-democracy. The Turkish police controlled the demonstrations with water cannon, tear gas, and batons. They would forcefully take demonstrators, and this included the husband, to the police station and obtain personal details and statements from them, warn them not to say anything against the government, often beat them up, and eventually release them. Although protestors could not be detained legally for more than 24 hours, the longest time the appellant was detained was for two days. Later when he was married, if he was detained for longer than a few hours, he would tell his wife he had been at the CHP office, to save her worrying about him.

[9] In 2001, in the course of his DEF business, the appellant tried to present to his bank a cheque he had been given by a customer. Discovering the cheque was

forged, he took court action against the person who had given him the cheque, but the judge determined that the husband himself had forged it. The husband believes this was because he was an Alevi Kurd. The husband appealed the initial sentence of two years' imprisonment and it was suspended for five years. The conviction itself was expunged after seven years and the appellant now has a clear police record in Turkey.

[10] Between 2001 and 2005 the husband served two terms (of two years each) as an elected member of one of twelve CHP boards. He was also elected as vice-president of his board. As a party official, he was required to register his name at the National Board of Elections. The CHP also had to give a list of its members to the government.

[11] As vice-president, the husband attended the CHP branch office almost daily (at times outside his normal work hours). His work included organising demonstrations. He became aware that he was under surveillance by plain-clothes police; he also became one of the first participants to be picked up at demonstrations and taken to the police station.

[12] After his second term as vice-president finished in 2005 and before he came to New Zealand in April 2007, the husband continued to participate in anti-government demonstrations, estimating that he participated in another 15 or 20 in that period. He was detained by the police on four or five of those occasions.

[13] The husband and wife do not want to continue living in the "medieval state" which they believe Turkey has become. The Turkish government is in league with Sunni clerics. Sunnis regard Alevis as infidels. The government incarcerates journalists and politicians, and Alevi thinkers and writers. The government has not declared the Islamic State of Iraq and al-Sham (ISIS) to be a terrorist group. There is still compulsory (Sunni) Muslim education in schools, despite the European Court of Human Rights finding that an alternative should be offered. The homes of Alevi people are sometimes 'marked' by Sunnis.

[14] From Turkey, the husband explored the possibility of going to Germany to work, but his brother who lives there was not able to sponsor him. In 2006, the wife's brother who lives in New Zealand offered the appellants work in his ABC business. The process of applying for visas took approximately a year and the appellants and their son arrived in New Zealand in April 2007.

[15] In June 2010, the husband returned to Turkey for two months, to visit his mother who was unwell at the time. The appellants' son visited Turkey from November 2012 to January 2013. During his stay, his cousin was badly beaten by police outside a *cemevi* (an Alevi place of worship).

[16] In September 2013 the work visas held by the husband and wife expired. In October 2013, their residence application was declined. On 8 October 2013 the couple and their son applied for refugee status. Their son was subsequently granted refugee status in June 2014; he is currently studying in the United Kingdom.

[17] The husband's three married sisters continue to live in Z city. They have never had jobs; employment is difficult enough for a male Alevi Kurd to obtain, let alone a female. The husband's two brothers and his brothers-in-law work in the construction industry but do not have permanent jobs. It is the practice of Turkish employers to fire and then re-hire their employees, to avoid them joining unions.

[18] The wife's two sisters remain in X city, her birthplace in Turkey. Her mother and one brother, who has been recognised as a refugee, have New Zealand residence status. Her brother lives here permanently and her mother comes to New Zealand every summer.

[19] The husband has attended one protest in New Zealand. If he were to return to Turkey, he would resume attending protests.

[20] A few days before the hearing, the husband discovered over the internet that two men he had known in the CHP had been accused by the police of organising an unpermitted protest. This was the sort of allegation for which he used to be detained. The police have continued to arrest his friends and sometimes they kill people at protests.

### **Evidence of the Wife**

[21] The wife is an Alevi Kurd born in X city. She and her husband came to New Zealand in 2007 to build a new life. The situation for women and for Alevi in general is getting worse in Turkey. The government is responsible for people being arrested and detained and dying in custody.

[22] As a woman, the wife believes she can have no real life in Turkey. While, by law, women do not need to cover themselves, those that do not are badly treated. The government discourages women from taking up employment and,

instead, encourages them to have more children. Women can take public transport and walk alone on the streets but only during daylight hours. Whereas the wife attends a gym in New Zealand, most of the gyms in Turkey are for males. There are public baths for women there but if she went for a run in shorts in Kabul, as she does here, she would be knifed by a man. Women would look down on her too, as she would be considered to be committing a sin.

[23] The wife wants the freedom and life she desires. She does not want to be humiliated and told to cover her face, her feet, her arms, or be told to obey men.

[24] The wife was sympathetic to her husband's political activities in Turkey. He was in a leadership group and he attended meetings at the CHP building almost every day. He attended protests and was assaulted by police but she never saw any bruises on him. She remembers him being detained once for two or three days but he did not tell her much about his detention. Once she saw him on television, at a demonstration.

[25] The wife remembers seeing plain-clothes policemen watching their home on three consecutive days. She and her husband knew they were following her husband because Alevi are always being followed.

[26] Since she has been in New Zealand, the wife has shared anti-Turkish government media reports on the private page of her Facebook. Recently she posted (from a critical perspective) articles about the government helping ISIS and about a 10-year-old girl being married, with people saying the Koran allows this. When there are elections in Turkey, the internet is closed down completely for four days.

[27] The night before the hearing, the wife discovered through Facebook that her husband's former CHP team had been investigated, and that its new group leader had been imprisoned for 11 years.

### **Evidence of the Son**

[28] The son was 12 years old when he left Turkey with his parents. His father was politically active in Turkey but he is not sure what he did. His father has told him since that he was detained by police. The son assumes this is why his parents were afraid and told him not to go near the windows and to pull the curtains in their home. Looking back, he realises that the reason he did not have many friends at school was because he is an Alevi Kurd.

[29] The son's parents told him they were coming to New Zealand for a better life; he believes they only told him this so as not to worry him. He plans never to return to Turkey, even if his parents are living there and even if he obtains New Zealand citizenship. He believes the lives of both his parents are at risk if they return to Turkey, because of his father's activities.

### **Material and Submissions Received**

[30] In addition to the Refugee Status Branch files in respect of the appellants, the Tribunal has received counsel's submissions in regard to refugee and protected person status (5 January 2015) plus country information (concerning, for the most part, Turkey's human rights record and the Turkish government's alleged support of ISIS jihadists), and statements from the appellants (both 1 January 2015).

### **ASSESSMENT**

[31] Under section 198 of the Immigration Act 2009 (the Act), on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellants as:

- (a) refugees under the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) (section 129 of the Act); and
- (b) protected persons under the 1984 Convention Against Torture (section 130 of the Act); and
- (c) protected persons under the 1966 International Covenant on Civil and Political Rights (section 131 of the Act).

[32] To determine whether the appellants are refugees or protected persons, it is necessary first to identify the facts against which that assessment is to be made. That requires consideration of the credibility of the appellants' accounts.

### **Credibility**

[33] The appellants gave generally consistent evidence concerning the husband's political activities and the fact that he was initially a member of the CHP and then vice-president of the Z city branch of the party between 2001 and 2005.

[34] The husband's evidence about being detained by the police at "every protest" he attended prior to 2005 was not corroborated by the evidence of his wife or son. It is accepted however, on the combined evidence of the family, that he participated in numerous anti-government demonstrations, that he was forcefully detained during some of those protests, and that his details were taken by the police.

[35] The husband's account of being the subject of surveillance from 2001 to 2005 is supported by his son only insofar as the son remembers his mother being fearful and telling him to keep away from the windows and close the curtains in their home. The wife's evidence was that she was aware of plain-clothes policemen monitoring the house on three consecutive days; the rest of the time she simply "knew" they were there. Extending the benefit of the doubt to the husband, it is accepted that he did experience some monitoring by police during his vice-presidency of the Z city branch of the CHP.

[36] The family's evidence of discrimination against them as Alevis is consistent with country information.

[37] The appellants' claims that, only days before the hearing, people associated with the CHP branch of which the husband had been vice-president, were detained, and one imprisoned for 11 years on a criminal charge, are unsupported by any third party source, as one might reasonably expect in association with a claim of that type.

#### *Facts as found*

[38] Given the assessment of the appellants' credibility above, the following facts are those against which their claims will be assessed: the appellants are nationals of Turkey and are Alevi Kurds; they have experienced discrimination as Alevis; the husband was involved in court action where he was accused of presenting a forged cheque and the resulting conviction has since been expunged from his police certificate; the husband was a member of the CHP from his early twenties and attended numerous anti-government demonstrations; he was vice-president of the Z city branch between 2001 and 2005 and experienced surveillance by police during that time; the husband visited his late mother in Turkey for two months in 2010; and the wife has posted some news articles critical of the Turkish government on her private Facebook page.

## The Refugee Convention

[39] Section 129(1) of the Act provides that:

A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.

[40] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[41] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## Assessment of the Claim to Refugee Status

[42] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[43] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008), at [57].

*Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to Turkey?*

[44] In order to make this assessment, the Tribunal has considered country information relating to the treatment of Alevi Kurds (more particularly Alevi, as this was the focus of the appellants' claims of discrimination). It has considered information regarding the rise of ISIS in certain areas of the Middle East and any impact that has on the Alevi minority in Turkey. It has also consulted country information concerning the treatment of CHP members and officials, demonstrators, women and internet users in Turkey.

#### *Alevi*

[45] In 2011 there were an estimated 77.8 million people in Turkey, 15 to 20 million of whom were believed to be Alevi (United States Department of State *July-December, 2010 International Religious Freedom Report – Turkey* (13 September 2011), section I).

[46] While the Alevi are a sizeable minority in the Turkish population, according to Binnaz Toprak in his report Open Society Foundation *Being Different in Turkey, Religion, Conservatism and Otherization* (2009) (the Toprak report), it is a long-known fact that Alevi do not express their identity, in order to protect themselves from prejudice and repression by the Sunni-dominated government and the majority of the population. The same article (at page 41 *et seq*) gives examples of this Alevi "invisibility", noting that: Alevi migrating from their villages to the city often change the names of their children to less plainly Alevi names; that people who have been friends or work colleagues for a long time are often surprised to find out eventually that their friend or colleague is Alevi; Sunni refuse, or are reluctant, to eat food prepared or meat butchered by an Alevi; often Alevi businessmen feel obliged to fast during Ramadan or attend Friday prayer so as not to lose customers; and women cover their heads so as not to stand out as an Alevi.

[47] The Minority Rights Group *Turkey: Alevi* (2008) notes too that "to avoid persecution, Alevi practice *taqiyya* (dissimulation)". The report continues:

Alevi harassed by Sunnis have seldom sought redress either from the police or the law courts since they believe the latter to be deeply prejudiced against them.

[48] It is a matter of record that Alevi places of worship (*cenevis*) do not receive state funding, whereas the far more numerous Sunni mosques do. The United

States Department of State *2013 Report on International Religious Freedom – Turkey* (28 July 2014) noted that:

Alevi leaders reported there were approximately 2,500 to 3,000 *cemevis* in the country, an insufficient number to meet their needs.

[49] It is clear that, despite the overall secularisation of Turkey, this has not led to the dissipation of prejudice against Alevi. As David Shankland (*The Alevis in Turkey* (Routledge Curzon, London, 2003) at page 24) states, Alevi are still “... a minority that has not acquired [the] equal status that it assumed or hoped would be possible”.

[50] [...]

[51] Further, while there is certainly evidence of societal and governmental discrimination, there are few recent reports of actual physical harm to Alevi Kurds in Turkey. Those that could be located by the Tribunal are: a German-Turkish Alevi Kurd who was playing soccer for a Turkish side left the country after a much-reported assault in early November 2014 (eg, *Hurriyet*, 4 November 2014; *Selin Girit*, 6 November 2014); a Kurdish Alevi family’s house was mobbed in July 2012 by angry villagers after the family complained about Sunni religious practices nearby (*Kurd Net*, 31 July 2012); an Istanbul Alevi *cenevi* was set on fire in August 2012 (*Bianet*, 24 August 2012); and, according to Soner Cagaptay (for the Washington Institute, 24 March 2014), each of the six people killed in the Gezi rallies of 2013 was either Alevi or Alawite (an aligned Syrian group). Cagaptay attributed the rallies, at least partially, to Alevi unrest against the incumbent Sunni-based AKP party.

[52] It is clear from the country information that Alevis continue to face discrimination in Turkey. Because it is not only rooted in religious difference, but is also a function of historical and political prejudice, this societal discrimination against Alevis is unlikely to be something that is easily dissipated, and there can be little doubt that the appellants will continue to encounter societal prejudice in Turkey in the future.

[53] Even acknowledging that reality, however, the Tribunal is unable to find that the appellants’ predicament is such that they have a well-founded fear of being persecuted. They may well face discrimination in the future in Turkey, but the state of “being persecuted” means something more. As explained in *Refugee Appeal No 2039* (12 February 1996) at [42]:

While anti-discrimination notions underlie the Convention, it is important to bear in mind that discrimination *per se* is not enough to establish a case for refugee status. A distinction must be drawn between a breach of human rights and persecution, a distinction we have drawn previously in other contexts. See, for example, *Refugee Appeal No. 37/91 Re MAU* (3 May 1992); *Refugee Appeal No. 72/92 Re MB* (12 August 1992) and *Refugee Appeal No. 1613/93 Re BR* (25 May 1995). Not every breach of a claimant's human rights constitutes persecution: UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* para 54:

Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g., serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities.

[54] In this regard, the appellants do not claim that they have been unable to practise their religion in Turkey. While there is plainly an officially-sanctioned disparity between the treatment of Sunni Muslim and Alevi faiths, particularly in terms of the funding of religious institutions, it cannot be said that the appellants were unable to practise their faith at all, or could not practise it without facing a real chance of suffering serious harm.

[55] Further, the Tribunal acknowledges the difficulties for Alevi in obtaining permanent employment in Turkey. However it is not claimed that the widespread practice of employers firing and re-hiring employees, in order to stop them from being able to join a union, is confined to Alevi and/or Kurd employees.

[56] As for the husband and wife themselves, both have previously had employment or self-employment in Turkey. The husband's family had an ABC business in a non-Alevi neighbourhood in Z city and, even though he says it eventually had to close for lack of custom, it ran for some five or six years in that neighbourhood. The husband was able to conduct business on his own account in Z city. In the past, the wife has been able to find employment commensurate with her skills [...].

[57] There is no evidence to corroborate the husband's claim that he was convicted of fraud only because he was an Alevi Kurd. Further, his conviction was evidently expunged during some form of general amnesty from which he was able to benefit, notwithstanding his faith and ethnicity.

[58] The appellants have found housing in the past. They have not complained of discrimination in the provision of health services. [...]

[59] In summary, while the appellants have encountered entrenched prejudices from Sunni Muslims, and have possibly suffered socio-economically as a result,

they have not encountered any form of serious harm which warrants being described as persecution.

#### *CHP members*

[60] The Tribunal turns to the prospect of harm to ordinary or senior members of the CHP. While many people were injured in election-related violence in 2004, the Tribunal could find only one report of injuries to CHP members during those elections: a member of the conservative AKP party was alleged to have opened fire on the local party headquarters of the CHP in Denizli, wounding 10 CHP members (Dawn.com, 29 March 2004).

[61] There are reports that CHP politicians were hurt during the 2013 protests at Gezi Park in Istanbul. However, it is unclear if they were targeted because of their membership of the CHP or were simply being treated in the same way as other protestors (Human Rights Watch *Turkey: End Police Violence at Protests* (3 June 2013)).

[62] During the run-up to the local elections in Turkey in March 2014, according to some sources, local offices of a number of political parties, including the CHP, were attacked (Constanze Letsch “Turkish local elections: AKP set for victory” *The Guardian* (30 March 2014); “Violence escalating ahead of local elections” *Hurriyet Daily News* (25 February 2014)). A local news source noted that “five local officials from the CHP were wounded in an attack by unknown people” during March 2014 (“Mayoral rivals warn of violence in Ankara” *Hurriyet Daily News* (25 March 2014)).

[63] Despite the fact that the husband was a CHP party official for four years, and was monitored as such during that time, the Tribunal determines that he is of no ongoing interest to the Turkish authorities. This is borne out by the fact that he left Turkey without difficulty in 2007 and that he returned there for a two-month period, again without event, in 2010. The Tribunal concludes that any risk to him, should he take up some degree of Alevi activism in Turkey upon his return, is entirely conjectural and does not give rise to a real chance of his being persecuted.

#### *Attendance at demonstrations*

[64] Amnesty International reported in June 2014 that “the government’s approach to demonstrations is as abusive as ever while impunity for police

violence is rampant” (Amnesty International *Turkey: Demonstrators on trial, police unpunished* (10 June 2014) (the Amnesty International report)):

Just in the last ten days, demonstrations across Turkey to mark the anniversary of the Gezi Park protests were banned and arbitrarily and brutally dispersed with tear gas, water cannons and beatings. The government must change course, allow peaceful protest and ensure accountability for police abuses.

Amnesty International’s report, *Adding injustice to injury: Gezi Park protests one year on*, examines developments following the small protest against the destruction of the park in central Istanbul which spiralled into nationwide anti-government demonstrations. It calls on the Turkish authorities to end impunity for human rights abuses by law enforcement officials and to guarantee the right to peaceful assembly.

[65] The “Gezi Park” demonstrations in both Istanbul and all over Turkey in June 2013 were the most significant nationwide protests in Turkey’s recent history. Eight thousand people were injured, four are said to have died as a direct result of police violence, and 5,500 protestors face prosecution for “organising, participating in or supporting the Gezi Park protests” (Amnesty International report). It is acknowledged from the ample country information that Turkish police are capable of using brutal force and of doing so with impunity.

[66] The husband has been able to take part in political life in Turkey in the past. He gave evidence that, following his participation in protests, he was detained on numerous occasions by police and physically abused. Nonetheless, it is not accepted that the husband was detained every time he protested, as he initially claimed; he did not report to his wife that he had been detained nor did he recount details of his detention to her (he says because he did not want to worry her). His wife never noticed any bruising on him. Nor does he claim to have ever suffered serious physical consequences or to have had to seek medical treatment after these detentions. He was always released without charge.

[67] The four deaths of civilians in June 2013 occurred in the context of mass protests across the country. Notwithstanding the government and police responses to those events (which were widely condemned internationally), political rallies continue to be held across Turkey. Even acknowledging the relative freedom with which Turkish police use force, simply being a demonstrator does not expose the husband to anything more than a remote or speculative risk of coming to serious harm should he attend demonstrations in the future.

### *Women*

[68] Despite equality between men and women being protected by Article 10 of the Turkish Constitution, in practice, economic and cultural equality has not yet been achieved. Recently, President Recep Tayyip Erdogan declared women to be unequal to men and stated that a woman's primary role was to be a mother (see Elahe Izadi "Turkey's president says women are not equal to men" *The Washington Post* (24 November 2014)). Nonetheless, while the President's comments are clearly discriminatory, the articles reporting them also suggest that women's rights activists have the ability to freely protest against such comments in a public forum.

[69] The wife says she does not wish to cover her hair in Turkey. Due to Turkey's official secularism, headscarves are in fact banned for women in the public service, parliamentarians, and those working on state premises. This ban has been extended to political and education institutions (including universities), and includes "mothers accompanying their children to school events" and lawyers and journalists at court (Immigration and Refugee Board of Canada "Turkey: Situation of women who wear headscarves" (20 May 2008)).

[70] There was an attempt in 2008 by the current ruling party (the AKP) to legislate to remove the headscarf ban for universities but this was met with mass protests and was annulled by the Constitutional Court as contrary to the principles of secularism ("Court annuls Turkish scarf reform" *BBC News* (5 June 2008)).

[71] The husband claims his wife cannot drive or take public transport freely in Turkey but there is no independent evidence that this is correct. The wife states that, while here in New Zealand she is able to run on the street with shorts on, she would be vilified for doing the same in Turkey. However, the ability to run on the streets in western-style exercise gear does not go to the core of the expression of a human right. While such a social prohibition may be seen as a form of discrimination, it does not rise to the level of persecution in the context of other freedoms enjoyed by women in Turkey.

### *Use of internet and social media*

[72] The wife claims to share articles critical of the government on her private Facebook page. The Tribunal acknowledges that the present Turkish government is taking increasingly restrictive measures with regard to criticism of it on social media or other web-based platforms.

[73] The Turkish President Recep Erdogan has described social media as “the worst menace to society” (see Adnan R Khan for Maclean’s (1 July 2013) [www.macleans.ca](http://www.macleans.ca)), and during the Gezi Park protests in 2013, it was reported that Facebook and Twitter were being closely monitored and blamed for inciting the unrest. The Amnesty International report (10 June 2014) referred to “random prosecutions of people posting opinions on social media during the [2013] protests”.

[74] Freedom House *The Struggle for Turkey’s Internet* (August 2014) [www.ecoi.net](http://www.ecoi.net) (the August 2014 Freedom House report) states that:

... as traditional punitive offline measures restricting freedom of speech have migrated more and more to the online sphere and new legislation has increased the government’s capacity to regulate content, Turkey has moved to the cutting edge of controlling online space (p3).

[75] In another of its reports, Freedom House *Freedom on the Net 2014 – Turkey* (4 December 2014) [www.refworld.org](http://www.refworld.org) (the December 2014 Freedom House report) noted “[a]s social media gained more prominence as a tool for activism, legal cases against Facebook and Twitter users has increased” (page 807). The same Freedom House report also notes that since the Gezi Park protests, “Turkish police and intelligence authorities have stepped up monitoring of social media” and that under a 2014 law amendment, internet service providers must store user data for a longer period and all data “must be made available to the TIB [telecommunications authority] upon request – and without the need for a court order” (page 812).

[76] While this means that intelligence authorities are potentially able to access private communications, none of the sources consulted by the Tribunal specifically addresses whether or not the Turkish authorities actively seek out people who post critical information or opinions on “private” social media sites or web platforms (in other words, where only individuals selected by the poster have access to the information posted). In the examples found of people who have faced charges relating to their online activity, all appear to have made their posts publicly available.

[77] What is clear from the country information is that while opinions critical of the Turkish government are available online within Turkey, and can be accessed by people there, there are increasing restrictions on the circulation of such material (see, in particular, the detailed December 2014 Freedom House report).

[78] One such device is the putting in place of blanket blocks for social media sites. The BBC reported recently that:

... a new internet law allows Turkey's telecommunications authority (TIB) to block any website without seeking a court ruling first, and without giving the website an opportunity first to remove the offending content" (Cagil Kasapoglu "Turkey social media ban raises censorship fears" *BBC News* (7 April 2015) [www.bbc.com](http://www.bbc.com)).

[79] However, at the same time, a recent BBC article says that "social media is heavily used by all sides of the [political] spectrum in Turkey to push their side of the argument" ("Anger over new powers for Turkish authorities online" *BBC News* (1 March 2015) [www.bbc.com](http://www.bbc.com)). A report by the International Press Institute (*Democracy at Risk: IPI Special Report on Turkey*, 31-32 (March 2015) [www.freemedia.at](http://www.freemedia.at)) says that "many people generally feel that the Internet, at least for the time being, is the only remaining space in Turkey that is free for open discourse" (March 2015, page 31).

[80] Similarly, a professor in media and communications at an Istanbul university stated recently that social media in Turkey is used "to get proper news; there are alternative critical voices [...]. There is opposition there which we cannot see in the mainstream media" (Asli Tunc, interviewed by Barcin Yinanc "Turks losing battle against government on social media" *Hurriyet Daily News* (23 March 2015) [www.hurriyetdailynews.com](http://www.hurriyetdailynews.com)). However, the professor notes that "there are constraints and legal limitations to control the [online] environment", and that while there are ways to bypass these constraints, the cases involving charges of insulting the president are also leading to self-censorship: "The government is giving the message; 'We are watching you; be careful [...]' Citizens are unfortunately losing the battle" (ibid).

[81] While certainly the Turkish authorities appear to be taking a relatively aggressive approach with regard to social media and other web platforms containing government criticism, their efforts do appear to be focussed on general censorship (for instance, increasing its powers to shut down websites), rather than charging or prosecuting domestic users. It appears that sharing opinion and uncensored media reports on the internet is pervasive in Turkey and, with its population of approximately 80 million people, the chance of the wife's private Facebook page being targeted by the authorities is so small as to be negligible.

### *ISIS*

[82] Counsel emphasises the threat of ISIS in countries neighbouring Turkey and refers to international commentators' criticism of the Turkish government "for a

Sunni Muslim bias in its foreign policy and for waking up late to the threat posed by radical jihadist groups' use of Turkish soil" (Human Rights Watch *Turkey's Human Rights Rollback* (September 2014)). The suggestion is that, with the rise of Sunni-based ISIS, the Alevi Shia minority in Turkey will be at an even greater risk than it is presently exposed to by the incumbent Sunni-oriented government.

[83] A number of Turkish and international newspaper articles provided by counsel concern the increased visibility of ISIS in and around Turkey. A *Washington Post* article, "In Turkey, a Late Crackdown on Islamist Fighters" (12 August 2014), stated that Turkey had "rolled out the red carpet" for ISIS, and that high-level ISIS jihadists had been treated in Turkish hospitals. It also reported that measures introduced by the Turkish government to detain suspected jihadists did not stop them "slipping through Turkish nets". A Daniel Pipes blog (18 June 2014) refers to a number of sources reporting Turkey's "active support" for ISIS. These include reports of retired Turkish soldiers fighting for ISIS (Turkish newspaper *Aydinlik* (7 July 2014)), of disaffected Turks joining ISIS in exchange for high wages, and the indoctrination of vulnerable recruits in Turkey.

[84] The Tribunal has traversed these materials presented by counsel. Without doubt, ISIS presents a threat in the Middle East, if it is to continue to increase in size and strength and spread geographically. However, any analysis of how it may operate in the future in Turkey and affect Alevi or Kurds there, is entirely speculative. The speculative prospect of ISIS posing a risk to Turkey and/or its non-Sunni minorities, now or in the immediate future, does not establish that the appellants will face a real chance of serious harm in Turkey owing to their religious beliefs and social practice. The risk to them of serious harm on these grounds is remote.

### **Conclusion on Claims to Refugee Status**

[85] In summary, the Tribunal finds that as Alevi Kurds the appellants do not face a real chance of encountering anything more than low-level discrimination in Turkey. There is no evidence that the existence of ISIS in Iraq and Syria can or will elevate that discrimination to a higher level.

[86] The Tribunal does not find that the husband will encounter difficulties expressing his political views other than a speculative risk of being caught up in the common police practice of rounding up protestors and taking their details. Despite his previous leadership role in a branch of the CHP, the husband is of no ongoing interest to the Turkish authorities.

[87] The Tribunal finds that the wife will not suffer any serious harm for failing to wear a headscarf. On the other hand, if she wears a headscarf in order to meet majority cultural and religious expectations or, for the same reasons, eschews public appearances in running gear, the modification she will need to make to her self-expression through her clothing is not serious harm. Further, her desire to share her views amongst her friends on political matters, particularly on women's issues, can be accommodated through her Facebook page with no real chance of serious harm.

[88] The Tribunal has considered the various characteristics of the appellants and finds that, even viewing their personal characteristics on a cumulative basis, objectively for each of them there is no real chance of being persecuted if returned to Turkey. Given that finding, the question of a Convention reason does not arise.

### **The Convention Against Torture**

[89] Section 130(1) of the Act provides that:

A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.

[90] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

[91] The appellants rely on the same evidence in support of their claims under the Convention Against Torture as they do in support of their claims under the Refugee Convention. For the reasons already given, and having taken into account all their circumstances, the Tribunal finds that there are no substantial grounds for believing they would be in danger of being subjected to torture if deported from New Zealand. Accordingly, the appellants are not protected persons under section 130(1) of the Act.

## The International Convention on Civil and Political Rights

[92] Section 131 of the Act provides that:

- (1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.
- ...
- (5) For the purposes of this section,—
  - (a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:
  - (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.
- (6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.

[93] Again, the appellants rely on the same evidence under this limb of the appeal as was advanced in respect of their refugee claim.

[94] Cruel treatment necessarily requires harm at a level of severity consistent with the harm inherent in “being persecuted”. This was discussed in *AC (Syria)* [2011] NZIPT 800035 at [70]-[90], particularly [81]-[86], and also in the decision of the Supreme Court in *Taunoa v Attorney General* [2008] 1 NZLR 429 in respect of the analogous provisions of the New Zealand Bill of Rights Act 1990.

[95] Even acknowledging persistent discrimination against Alevi in Turkish society, for the reasons given above, the Tribunal is satisfied that it is also the case that the evidence does not establish that the appellants are in danger of cruel treatment or arbitrary deprivation of life if they return to Turkey. Accordingly, they are not protected persons under section 131 of the Act.

## CONCLUSION

[96] For the foregoing reasons, the Tribunal finds that the appellants:

- (a) are not refugees within the meaning of the Refugee Convention;

- (b) are not protected persons within the meaning of the Convention Against Torture;
- (c) are not protected persons within the meaning of the Covenant on Civil and Political Rights.

[97] The appeals are dismissed.

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