



# OPERATIONAL GUIDANCE NOTE

## TURKEY

### CONTENTS

<b>1. Introduction</b>	<b>1.1 – 1.4</b>
<b>2. Country Assessment</b>	<b>2.1</b>
<a href="#">Actors of Protection</a>	2.2
<a href="#">Internal Relocation</a>	2.3
<a href="#">Country Guidance Caselaw</a>	2.4
<b>3. Main categories of claims</b>	<b>3.1 – 3.8</b>
<a href="#">Involvement with Kurdish, Left Wing or Islamic Terrorist Groups or Political Parties</a>	3.9
<a href="#">Kurdish Ethnicity</a>	3.10
<a href="#">Alevi Religious Faith</a>	3.11
<a href="#">Military Service</a>	3.12
<a href="#">Individuals Whose Details Appear on the Turkish Authorities Records Systems</a>	3.13
<a href="#">Journalists and Freedom of Expression</a>	3.14
<a href="#">Prison Conditions</a>	3.15
<b>4. <a href="#">Minors claiming in their own right</a></b>	<b>4.1 – 4.3</b>
<b>5. <a href="#">Medical treatment</a></b>	<b>5.1 – 5.5</b>
<b>6. <a href="#">Returns</a></b>	<b>6.1 – 6.5</b>

## 1 Introduction

- 1.1** This document provides UK Border Agency (UKBA) caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of Turkey, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseworkers must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian

Protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.

- 1.4** If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2 Country Assessment**

- 2.1** Caseworkers should refer the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohdreport.readandcomment.com/read-and-download-the-report/>

## **2.2 Actors of Protection**

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.2.2** Civilian authorities maintained effective control of the security forces. The Turkish National Party (TNP), under the control of the Ministry of Interior, is responsible for security in large urban areas. The Jandarma is responsible for specific border sectors where smuggling is common, although the military has overall responsibility for border control and overall external security. Village guards, who report to the Jandarma, are a civil defence force that assisted the state in fighting the armed opposition in the Southeast.<sup>1</sup>
- 2.2.3** The TNP and Jandarma received specialised training in areas, including human

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<sup>1</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

rights and counterterrorism. Thousands of security personnel received human rights training during 2012. According to the government, the military emphasized human rights in training for both regular and non-commissioned officers. During 2012 105,854 Jandarma officers and 1,250 public order personnel received human rights training. In addition 673 TNP personnel received 32 hours of human rights training and 8,446 riot police received 106 hours of training, including on human rights.<sup>2</sup>

- 2.2.4** As of 1 October 2012, authorities dismissed 236 Turkish General Staff personnel for disciplinary and moral reasons but none for excessive use of force. As of 8 October 2012, the TNP reported that 870 investigations were opened against TNP personnel for excessive use of force, with 674 indictments. Authorities did not dismiss any Jandarma for excessive use of force, although they were investigating three cases at the end of 2012.<sup>3</sup>
- 2.2.5** Village guards, a civilian force that reports to the Jandarma, were less professional and disciplined than other security forces and were accused in past years of attacking civilians, destroying homes and property, drug trafficking, corruption, theft, rape and other abuses. Kurdish activists insisted their disbandment. According to the Jandarma, the number of village guards increased to 45,861 from 45,081 in 2011, a reversal from the downward trend in the size of the force in previous years. Seven non-specific complaints were filed against the guards and Kurdish and human rights organisations continued to criticize the guards for violations and previous cases of impunity.<sup>4</sup>
- 2.2.6** Impunity remained a problem in Turkey. The government investigated reports of abuse by security forces, but the number of arrests and prosecutions was low and convictions remained rare, although the number increased from previous years.<sup>5</sup>
- 2.2.7** In Istanbul, crime rates have been considerably lower in recent years as a result of successful policing and law enforcement operations and by the use of MOBESE (Integrated Mobile Electronic System (CCTV)). MOBESE is a “City Information and Security System” enacted under the city’s Security Department with the support of the Governorship. With approximately 600 modern cameras installed throughout the city, public services and administrative functions continue to improve, further decreasing crime rates.<sup>6</sup>
- 2.2.8** According to the National Police Department’s report, the rise in the level of education played a role in the declining rate of crime cases in Turkey. The National Police Department also noted that one of the main reasons behind the fall in crime rate was the fact that the police and the public were more informed about crimes and criminals. As part of the public services offered by police, 74,216 public meetings had been held in Turkey through which 1,065,072

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<sup>2</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>3</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>4</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>5</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>6</sup> Turkey 2013 Crime and Safety Report <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=13800>

citizens had been informed about various crimes and criminal activity.<sup>7</sup>

- 2.2.9** Turkey became a European Union (EU) candidate in 1999 and, in line with EU requirements, went onto introduce substantial human rights and economic reforms. The death penalty was abolished, tougher measures were brought in against torture and the Penal Code was overhauled. Reforms were introduced in the areas of women's rights and Kurdish culture, language, education and broadcasting. Partly in a bid to improve its chances of EU membership, the government began to ease restrictions on the use of Kurdish language from 2003 onwards. As part of a new "Kurdish initiative" launched in 2009, it pledged to extend linguistic and cultural rights and to reduce the military presence in the mainly Kurdish southeast of the country. However, fighting has still continued. A Kurdish Workers Party (PKK) terrorist organisation offered in July 2010 to consider a ceasefire if the government were to extend Kurdish civil rights were met with an official refusal to respond to "terrorist" statements.<sup>8</sup>
- 2.2.10** According to Amnesty International Annual Report 2012, clashes between the PKK and the armed forces increased. In October 2011, a major military intervention was launched into northern Iraq, targeting PKK bases and displacing hundreds of civilians from their villages. In December 2011, 35 civilians were killed, when a Turkish warplane bombed a group of civilians in the district of Uludere near the border with Iraq.<sup>9</sup>
- 2.2.11** According to Human Rights Watch, Annual Report 2012, police violence against demonstrators was still a serious problem in Turkey and required more resolute action from the government. The authorities covered the problem by investigating demonstrators for resisting police dispersal, joining unlawful demonstrations or terrorist propaganda, rather than investigating allegations of police abuse or senior officers for the conduct of officers under their authority. In 2011, there were also reports that police beat detainees during arrest.<sup>10</sup>
- 2.2.12** The government or its agents did not commit politically motivated killings in 2012. However, hundreds of security personnel, members of the PKK and civilians were killed in the three-decade-old conflict with the PKK. Government sources indicated that the number of civilian and security personnel deaths decreased from 2011 while the number of alleged terrorists killed increased. The International Crisis Group estimated that 711 citizens were killed in the conflict from June 2011 to August 2012, concluding it was the most violent year for the country's PKK conflict since 1999.<sup>11</sup>
- 2.2.13** The law provides for an independent judiciary. However, the judiciary was occasionally subject to outside influence. Broad authority granted to prosecutors and judges, as well as their inclination to protect the state over the individual,

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<sup>7</sup> Today's Zaman 'Turkey Sees Record Drop In Crime Rate, Police Report Shows' 3 May 2011

<http://www.todayszaman.com/news-242733-turkey-sees-record-drop-in-crime-rate-police-report-shows.html>

<sup>8</sup> BBC News – Turkey Country Profile – Overview – 21 June 2012

<http://www.bbc.co.uk/news/world-europe-17988453>

<sup>9</sup> Amnesty International – Annual Report 2012 – Accessed in July 2012

<http://www.amnesty.org/en/region/turkey/report-2012>

<sup>10</sup> Human Rights Watch (HRW) – World Report 2012 – Date accessed 29 July 2012

<http://www.hrw.org/world-report-2012/world-report-2012-turkey>

<sup>11</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

contributed to inconsistent and uncertain application of criminal laws. The law prohibits the government from issuing orders or recommendations concerning the exercise of judicial power.<sup>12</sup>

- 2.2.14** In practice, critics asserted that the government used its influence among judges and prosecutors to ensure the election of exclusive candidates to the High Council of Judges and Prosecutors (HSYK). The HSYK selects judges and prosecutors for the country's courts and is responsible for court oversight. The constitution provides tenure for judges, but the HSYK controls the careers of judges and prosecutors through appointments, transfers, promotions, expulsions and reprimands.<sup>13</sup>

## **2.3 Internal Relocation**

- 2.3.1** Caseworkers must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.3.2** Very careful consideration must be given to whether internal relocation would be an viable way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.3.3** The constitution provides for freedom of movement within the country, foreign travel, emigration and repatriation. However, at times the government limited these rights in practice. The government increasingly co-operated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organisations while providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers awaiting resettlement to third countries, stateless persons and other persons of concern. While the

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<sup>12</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/documents/organization/204558.pdf>

<sup>13</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/documents/organization/204558.pdf>

government signed the 1951 UN Refugee Convention and its 1967 protocol, it ratified the protocol with a geographic limitation recognizing the rights granted in the convention only for refugees from Europe. While most asylum seekers are therefore not considered refugees under the law, the government granted temporary asylum to all non-European asylum seekers who met the definition of a refugee as defined in the 1951 convention.<sup>14</sup> It may be practical for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Turkey where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.

## 2.4 Country Guidance Caselaw

### [Supreme Court. RT \(Zimbabwe\) & others v Secretary of State for the Home Department \[2012\] UKSC 38 \(25 July 2012\)](#)

The Supreme Court ruled that the rationale of the decision in [HJ \(Iran\)](#) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

[Savda v Turkey. European Court of Human Rights \(12 June 2012\)](#). In this case the European Court of Human Rights held, unanimously, that there had been violations of Article 3 (prohibition of degrading treatment) and 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights; and a violation of Article 6(1) of the Convention on account of the lack of independence and impartiality of the military court.

The case concerned the failure to recognise the right to conscientious objection, which would enable refusals to carry out military service to be legitimised in Turkey. The Court reiterated that the system of compulsory military service in force in Turkey allowed for no exceptions on grounds of conscience and resulted in heavy criminal sanctions being imposed on those who refused to comply. Such a system failed to strike a proper balance between the general interest of society and that of conscientious objectors. The penalties, sanctions, convictions and prosecutions imposed on conscientious objectors, when no measures were provided to take account of the requirements of their consciences and convictions, could not be regarded as necessary in a democratic society.

[Ulke v Turkey European Court of Human Rights Chamber Judgement \(24 January 2006\)](#) The appellant refused to do his military service on the ground of conscientious objection. After being sentenced to 6 months imprisonment and a fine for desertion, he was ordered to enlist for military service. Between March

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<sup>14</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/documents/organization/204558.pdf>

1997 and November 1998, he was convicted on 8 occasions of 'persistent disobedience' on account of his refusal to wear a military uniform and was also convicted on 2 occasions of desertion because he failed to rejoin his regiment. In total he served 701 days imprisonment because of these convictions. The European Court, in a Chamber Judgement held unanimously that there had been a violation of Article 3 (prohibition of inhuman degrading treatment because the treatment under consideration caused Mr Ulke severe pain and suffering which went beyond the normal element of humiliation inherent in any criminal sentence or detention.

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

**[IK \(Returnees - Records – IFA\) Turkey CG \[2004\] UKIAT 00312](#)** In this country guidance case the Tribunal found:

1. The computerised GBT system has a defined and limited ambit. It 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.
2. In addition, there is border control information collated by the national police (Department for Foreigners, Borders and Asylum) recording past legal arrivals and departures of Turkish citizens, and information about people prohibited from entering Turkey as a result of their activities abroad, collated by MIT.
3. 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.
4. The Nufus registration system comprises details of age, residence, marriage, death, parents' and children's details, and religious status. It may also include arrest warrants and if any of the people listed have been stripped of nationality. There is no evidence that it is directly available at border control.
5. If a person is held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.
6. If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation.

7. It will be for an Adjudicator in each case to assess what questions are likely to be asked during such investigation and how a returnee would respond without being required to lie. The ambit of the likely questioning depends upon the circumstances of each case.
8. The escalation of the violence following the ending of the PKK ceasefire reinforces our view that the risk to a Kurdish returnee of ill treatment by the authorities may be greater if his home area is in an area of conflict in Turkey than it would be elsewhere.
9. The Turkish Government is taking action in legislative and structural terms to address the human rights problems that present a serious obstacle to its membership of the EU. It has made its zero tolerance policy towards torture clear. However the use of torture is long and deep-seated in the security forces and it will take time and continued and determined effort to bring it under control in practice. It is premature to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention as per [A \(Turkey\)](#) requires material revision on the present evidence. However the situation will require review as further evidence becomes available. For the time being as in the past, each case must be assessed on its own merits from the individual's own history and the relevant risk factors as described in paragraph 46 of [A \(Turkey\)](#).
10. Many of the individual risk factors described in A (Turkey) 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.
11. A young, fit, unmarried person, leaving his home area and seeking unofficial employment in a big city, may not feel the need to register with the local Mukhtar, at least at the outset. Many do not. However, given the range of basic activities for which a certificate of residence is needed, and which depend upon such registration, we conclude that it would in most normal circumstances be unduly harsh to expect a person to live without appropriate registration for any material time, as a requirement for avoiding persecution. This does not necessarily preclude the viability of internal relocation for the reasons described in sub paragraph 13 below.
12. 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.
13. 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. 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.
14. This determination updates and replaces the 7 decisions listed below, in the light of further evidence and argument, and now comprises the Tribunal's current country guidance on the issues described.



- (a) [HO \(National Records\) Turkey CG \[2004\] UKIAT 00038.](#)
- (b) [SA \(GBTS records\) Turkey CG \[2004\] UKIAT 00177.](#)
- (c) [LT \(Internal flight – Registration system\) Turkey CG \[2004\] UKIAT 00175.](#)
- (d) [AG \(GBTS, "tab" and other records\) Turkey CG \[2004\] UKIAT 00168.](#)
- (e) [KK \(GBTS – Other information systems – McDowall\) Turkey CG \[2004\] UKIAT 00177](#)
- (f) [MS \(GBTS information at borders\) Turkey \[2004\] UKIAT 00192.](#)
- (g) [CE \(KK confirmed – McDowall report\) Turkey CG \[2004\] UKIAT 00233.](#)

#### **IA HC KD RO HG (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034**

The Tribunal 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 [2002] UKIAT 07083 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 emphasised 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).

**Sepet (FC) & Another (FC) [2003] UKHL 15** The House of Lords found that refugee status should be accorded to those who refused to undertake compulsory military service on the grounds that such service would or might require him to commit atrocities of gross human rights abuses or participate in a conflict condemned by the international community or where refusal to serve would earn grossly excessive or disproportionate punishment. But the applicants in this case could not bring themselves within any of those categories. There was no reasonable likelihood that the applicants would have been required to engage in military action contrary to basic rules of human conduct, whether against Kurds or anyone else. Nor did they have an objection to military service of any kind or an objection based on religious belief.

The treatment which they would receive if they were returned to Turkey would not be persecution for one or more of the Convention reasons. Those who refused to perform military service in Turkey (including Kurds) were not subject to disproportionate or excessive punishment in law or in fact and were liable to prosecution and punishment irrespective of the reasons for their refusal.

It was not a breach of human rights in the (then) state of international law for countries not to recognise a right of conscientious objection to compulsory military service and not to provide a non-combatant alternative to it. It was necessary for the person considering a claim for asylum to assess carefully the real reason for the persecution. The reason was the reason which operated in the mind of the persecutor and not the reason which the victim believed to be the reason for the persecution.

### **3 Main Categories of Claims**

**3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Turkey. Where appropriate it provides

guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)').
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UKBA instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))

### **Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR**

- 3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

### **Other severe humanitarian conditions and general levels of violence**

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into

account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.

- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

### **Credibility**

- 3.8** 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 'Section 4 – Making the Decision in the Asylum Instruction [‘Considering the asylum claim and assessing credibility’](#). Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UKBA file. In all other cases, the caseworkers should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.9 Involvement with Kurdish, Left Wing or Islamic Terrorist Groups or Political Parties**

- 3.9.1** Applicants may make an asylum and/or human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their involvement (or a family members involvement) at either a high or low level with illegal Kurdish, left wing or Islamic terrorists groups or Kurdish, left wing or Islamic political parties.
- 3.9.2 Treatment.** Citizens of Kurdish origin constituted a large ethnic and linguistic group. More than 15 million of the country's citizens identified themselves as of Kurdish origin and spoke Kurdish dialects. Kurds who publicly or politically asserted their Kurdish identity or promoted using Kurdish in the public domain risked censure, harassment or prosecution, although significantly less so than in previous years.<sup>15</sup>
- 3.9.3** As Turkey's biggest Kurdish-majority city and province, Diyarbakır is critical to any examination of the country's Kurdish problem and of the insurgent PKK. According to the International Crisis Group in their report, Turkey's Kurdish Impasse: The View From Diyarbakir of 30 November 2012, the armed conflict has deteriorated in the past year and a half to its worst level in over a decade,

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<sup>15</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/documents/organization/204558.pdf>

with increased political friction and violence leading to the deaths of at least 870 people since June 2011.<sup>16</sup>

- 3.9.4** The International Crisis Group states that across the political spectrum in Diyarbakir, there is a shared desire for a government strategy to resolve the chronic issues of Turkey's Kurdish problem which includes official recognition of Kurdish identity, the right to education, fairer political representation, decentralisation and an end to all forms of discrimination in the laws and constitution. They also demand legal reform to end mass arrests and lengthy pre-trial detentions of non-violent activists on terrorism charges. Control of Diyarbakir is contested on many levels. The state wants to stay in charge, directing its influence through the Ankara-appointed Governor and control over-budget, policing, education, health and infrastructure development. The municipality, in the hands of legal pro-PKK parties since 1999, most recently the Peace and Democracy Party (BDP), is gathering more power against considerable obstacles. The Justice and Development Party (AKP) that rules nationally has ushered in a more progressive approach to police, but this has not stopped confrontations and defused local hostility. According to the International Crisis Group, Turkey as a whole, and Kurdish speaking cities like Diyarbakir in particular, require a coherent, informed debate on decentralisation and a strategy to implement it.<sup>17</sup>
- 3.9.5** During 2012 police routinely detained demonstrators for a few hours at a time, and human rights organisations claimed this practice sharply increased from previous years. In 2010 the government began trying cases against thousands of persons alleged to be members or supporters of the Kurdistan Communities Union (KCK), a part of the political organisation of the PKK terrorist group. The BDP and human rights organisations claimed that, over a three-year period, authorities detained approximately 20,000 persons, of whom they arrested 8,000 and approximately 4,000 remained detained awaiting trial, including 32 elected mayors, hundreds of political party officials and numerous journalists and human rights activists. Arrests and hearings continued throughout 2012, with judges normally rejecting defendants' requests for conditional release, permission to dispute the validity of the charges and permission for the defendants to use their mother tongue. Arrests and indictments continued at the end of 2012.<sup>18</sup>
- 3.9.6** Following the PKK ceasefire declaration and subsequent decrease of clashes between the PKK and the security forces in 2010, violence escalated again significantly in 2011 with fatalities on both sides. There were also significant Kurdish civilian fatalities as a result of the attacks and upheaval within these communities continued, particularly in the south-east of the country and near the Iraq border. During an air raid in December 2011 near the Turkey-Iraq border, 35 Kurdish civilians were killed. The government stated that the attacks were

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<sup>16</sup> International Crisis Group – Turkey's Kurdish Impasse: The View From Diyarbakir – 30 November 2012 [http://www.crisisgroup.org/~media/Files/europe/turkey-cyprus/turkey/222-turkeys-kurdish-impasse-the-view-from-diyarbakir.pdf](http://www.crisisgroup.org/~/media/Files/europe/turkey-cyprus/turkey/222-turkeys-kurdish-impasse-the-view-from-diyarbakir.pdf)

<sup>17</sup> International Crisis Group – Turkey's Kurdish Impasse: The View From Diyarbakir – 30 November 2012 <http://www.crisisgroup.org/~media/Files/europe/turkey-cyprus/turkey/222-turkeys-kurdish-impasse-the-view-from-diyarbakir.pdf>

<sup>18</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

targeting armed PKK forces and passed on official condolences to the bereaved families.<sup>19</sup>

- 3.9.7** In addition, Kurdish officials and activists, most of them allegedly associated with the KCK and the PKK, continued to be arrested. In August 2011, 98 former Mayors and eight other politicians were arrested because they had stipulated better conditions for Abdullah Öcalan, the imprisoned ex-PKK leader. An estimated 9,000 individuals have been arrested since 2009 for alleged links to the KCK. In Spring 2011, trials of another 153 Kurds in custody resumed. The defendants in the Diyarbakir Heavy Penal Court asked to conduct their defence in Kurdish, but this was denied by the Court.<sup>20</sup>
- 3.9.8** The law provides for freedom of assembly. However, the government selectively restricted meetings to designated sites or dates and banned demonstrations outright particularly if they were concerned with sensitive issues or were critical of the government. There were confirmed and/or credible reports that police beat, abused, or harassed demonstrators during 2012. A report by the main opposition Republican People's Party (CHP), sourced to the Human Rights Foundation (HRF), the Human Rights Association (HRA) and the Migration Foundation, stated that four persons were killed and 555 wounded during demonstrations through November 2012. According to the CHP report, police detained 46,529 persons and arrested 1,831 involved in demonstrations through November 2012 a significant increase from 2011. The Jandarma reported that it detained 72 persons and later released them in 10 different demonstrations during 2012. The detentions varied in length from several hours to several days.<sup>21</sup>
- 3.9.9** Diyarbakir Mayor Osman Baydemir continued to face multiple administrative, civil, and criminal charges and investigations for use of the Kurdish language, spreading terrorist propaganda and promoting terrorism. During 2011 prosecutors opened 13 new investigations or cases against Baydemir. Most of the cases involved Baydemir's expression of his political views or speaking Kurdish at public events. During 2011 he received at least two acquittals and four convictions but he remained in his position as Mayor. Many cases and appeals were pending at the end of 2011. Inconsistent Court decisions regarding the use of languages other than Turkish was prevalent throughout the country. However, the wide availability of satellite dishes and cable television allowed access to foreign broadcasts, including several Kurdish-language private channels. In addition to Turkish, the High Board of Radio and Television allowed radio and television stations to broadcast in Arabic, Armenian, Assyrian, Bosnian, Circassian, Laz and Kurdish during 2011.<sup>22</sup>
- 3.9.10** The Courts continued to use terrorism laws to prosecute hundreds of demonstrators deemed to be PKK supporters as if they were the group's armed militants. Most spent prolonged periods in pre-trial detention and those convicted received long prison sentences.<sup>23</sup>

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<sup>19</sup> UNHCR Refworld – State of the World's Minorities and Indigenous Peoples 2012 – Turkey 28 June 2012 <http://www.unhcr.org/refworld/country,,,TUR,,4fedb3eb3c,0.html>

<sup>20</sup> UNHCR Refworld – State of the World's Minorities and Indigenous Peoples 2012 – Turkey 28 June 2012 <http://www.unhcr.org/refworld/country,,,TUR,,4fedb3eb3c,0.html>

<sup>21</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/documents/organization/204558.pdf>

<sup>22</sup> US State Department Turkey Country Report on Human Rights Practices 2011 Published 25 May 2012 Section 2 <http://www.state.gov/documents/organization/186624.pdf>

<sup>23</sup> Human Rights Watch (HRW) - World Report 2011: Turkey' <http://www.hrw.org/en/world-report-2011/turkey>

- 3.9.11** The law does not provide a separate category for political prisoners. The HRA asserted that there were several thousand political prisoners from across the political spectrum, including journalists, political party officials and academics. The government stated that those alleged to be political prisoners were in fact charged with being members of, or assisting, terrorist organisations. Consistent with the broad definition of terrorism and threats to national security, prosecutors often did not distinguish between persons who incited violence, those who supported the use of violence by the PKK or those who rejected violence but sympathized with some or all of the political goals of the Kurdish nationalist movement. According to the Ministry of Justice, as of 31 December 2012, there were 4,446 persons detained and 3,699 convicted on terrorism charges.<sup>24</sup>
- 3.9.12** The U.N Committee Against Torture, in their report of November 2010, stated they had grave concerns about numerous, ongoing and consistent allegations concerning the use of torture, particularly in unofficial places of detention. These allegations come despite the State providing information that combating torture and ill-treatment has been a “priority item” and despite the fact that there had been a decrease in the number of reports on torture and other forms of cruel, inhuman or degrading treatment and punishment in official places of detention. The Committee was also concerned by the absence of prompt, thorough, independent and effective investigations into allegations of torture committed by security and law enforcement officers. Many law enforcement officers found guilty of ill-treatment receive only suspended sentences, which had contributed to a climate of impunity. Prosecutions into allegations of torture were often conducted under Article 256 (“excessive use of force”) or Article 86 (“intentional injury”) of the Penal Code, which proscribe lighter sentences.<sup>25</sup> Following its November 2010 review of Turkey, the United Nations Committee against Torture raised concerns about the failure to investigate “numerous, ongoing and consistent allegations concerning the use of torture” and asked Turkey to report again in a year regarding steps taken to address the problems identified. In September 2011 Turkey ratified the Optional Protocol to the UN Convention against Torture.<sup>26</sup>

**See also: Actors of Protection (section 2.3 above)**

**Internal Relocation (section 2.4 above)**

**Caselaw (section 2.5 above)**

- 3.9.13 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 there is no evidence to suggest that this, in general will reach the level of persecution. However, each case must be considered on its individual facts.
- 3.9.14** The Turkish government has made changes to its legislation and has committed to a policy of combating torture and ill treatment. However, whilst there has been a decrease in the number of reported instances of torture and other forms of

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<sup>24</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/documents/organization/204558.pdf>

<sup>25</sup> UN Committee Against Torture report November 2010 <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3.pdf>

<sup>26</sup> HRW – World Report 2012 – Turkey <http://www.hrw.org/world-report-2012/world-report-2012-turkey>

cruel, inhuman or degrading treatment instances of mistreatment still occur. Those who are accepted as being in leading roles, or otherwise significantly involved with Kurdish, left wing or Islamic terrorist groups or political parties are likely to face prosecution for activities against the state and may also experience mistreatment by the security forces amounting to persecution or a breach of Article 3 of the ECHR. If it is accepted that the claimant is, or is suspected of being a high profile member/activist of a separatist group and has or is being prosecuted by the authorities for separatist activity then there may be a real risk of persecution or ill treatment contrary to Article 3 and a grant of asylum or Humanitarian Protection in such cases may be appropriate.

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

### **3.10 Kurdish Ethnicity**

- 3.10.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Turkish authorities due to their Kurdish ethnicity.

- 3.10.2 Treatment.** Restrictions remained on use of languages other than Turkish in political and public life. Children whose first language was Kurdish could not be taught fully in Kurdish in either private or public schools. However, with the introduction of the new “4+4+4” education system in September 2012, Kurdish was taught as an elective course in the fifth grade, to be expanded into the next higher grade each year after that. At least three universities offered Kurdish language programs. The Kurdish inmates who conducted a hunger strike from 12 September to 18 November 2012 demanded, among other things, the right to use their mother tongue in schooling, courtroom defence and local government administration.<sup>27</sup>

- 3.10.3** Fighting between security forces and the terrorist organisation PKK, which began in 1984 and continued during 2011, resulted in hundreds of thousands of citizens, the vast majority of whom were Kurds, living as Internally Displaced Persons in the country. The Internal Displacement Monitoring Centre reported as many as 1.2 million, while some human rights groups put the number significantly higher.<sup>28</sup>

- 3.10.4** The government’s “democratic opening,” announced in summer 2009 to address the minority rights of Kurds in Turkey, did not progress. Ground-breaking negotiations between the state and the armed, outlawed PKK to reach a settlement to end the ongoing conflict collapsed. In July 2011 violence escalated with the PKK stepping up attacks on the military and police, and the Turkish government in August 2011 launching the first aerial bombardment of PKK bases

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<sup>27</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/documents/organization/204558.pdf>

<sup>28</sup> US State Department Turkey Country Report on Human Rights Practices 2011 Published 25 May 2012 Section 2 <http://www.state.gov/documents/organization/186624.pdf>



in Iraqi Kurdistan since 2008. Among a rising number of attacks on civilians were two on 2 September 2011: an Ankara bombing by the Kurdistan Freedom Falcons (TAK)—a PKK-linked group—which killed three and a PKK attack on a car that killed four women in Siirt. The non-resolution of the Kurdish issue remains the single greatest obstacle to progress on human rights in Turkey.<sup>29</sup>

- 3.10.5** Following the general election of 12 June 2012 and the re-election of Prime Minister Recep Tayyip Erdogan's AKP government pledged to embark on a complete revision of the 1982 Constitution<sup>30</sup> through consensus and negotiation with the opposition, parties outside of Parliament, the media, NGOs, with academics and with anyone who had something to say. Changes to the Constitution were crucial for Turkey's minorities, since only three minority groups were currently recognised, namely Armenians, Greeks and Jews. The others, including Alevis, Kurds and Roma, remain excluded. Even recognised minorities continue to face discrimination and the Parliament Conciliation Commission had been set up to work on revising the Constitution. Representatives of minority groups had begun to push for their cultural, linguistic and civil and political rights to be incorporated in the new Constitution and to be recognised as equal citizens.
- 3.10.6** On a more positive note, on 12 June 2012 Al Jazeera reported that Turkey had announced plans to allow schools to teach the Kurdish language as an elective subject. The article stated that this was a step towards reconciliation but some Kurdish minority activists argued this did not go far enough. The report stated that Recep Tayyip Erdogan told his ruling party members in Parliament that if enough students came together, Kurdish could be taken as an elective lesson. Erdogan told Parliament the measure was 'a historic step'. The government was trying to stop decades of fighting with Kurdish fighters seeking autonomy in the largely Kurdish southeast. The teaching of Kurdish had long been banned in schools on the grounds that it could divide the country along ethnic lines.<sup>31</sup>
- 3.10.7** According to a BBC News Report of 23 November 2011, Recep Tayyip Erdogan, has apologised for the killing of more than 13,000 Kurds by the Turkish military in the late 1930s. He was the first Turkish leader to make the apology for the killings that occurred when the army crushed a Kurdish rebellion in Dersim, using aerial bombings and poison gas. The unexpected apology came at a time of tension between Turkey and its minority Kurdish population. The killings took place between 1936 and 1939 when the Kurdish population of the south-eastern region of Dersim - now known as Tunceli - resisted the efforts of the newly formed Turkish republic to exert its authority there. The CHP was in office at the time of the Dersim operation and has been shaken by an internal debate sparked by one of its own deputies, who was from the area and called on the party to acknowledge its responsibility for the killings. Mr Erdogan's apology appeared to be part of a war of words with the leader of the CHP, Kemal Kilicdaroglu, whose family had strong links with Tunceli. Mr Erdogan's government has made some attempt to win over Turkey's large Kurdish minority, which lives mainly in the south-east of Turkey, by improving their legal and cultural rights and has also taken a tough stance towards the Kurdish insurgency and its supporters, with

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<sup>29</sup> HRW –World Report 2012 <http://www.hrw.org/world-report-2012/world-report-2012-turkey>

<sup>30</sup> HRW - World Report 2012 <http://www.hrw.org/print/world-report-2012/world-report-2012-turkey>

<sup>31</sup> Al Jazeera – Turkey to Allow Kurdish Lessons in Schools 12 June 2012

<http://www.aljazeera.com/news/europe/2012/06/2012612133656956705.html> Accessed 27 July 2012

hundreds of Kurdish activists arrested in recent months.<sup>32</sup>

- 3.10.8** According to an article in the New York Times, For Kurds in Turkey, Autonomy in Music, 1 June 2011, concessions by the government of Recep Tayyip Erdogan in 2009 made way for the first Kurdish national television station. Token gestures, they made front-page headlines: first because they were signals to the outside world that a democratic state run by an Islamic leader will not automatically become xenophobic or tribalist, and second because even small steps toward acknowledging Kurdish culture can provoke political firestorms inside the country. Turkish nationalists were very displeased as even the most basic Kurdish demand was seen as treason.<sup>33</sup>
- 3.10.9** Inconsistent Court decisions regarding the use of languages other than Turkish were prevalent throughout the country.<sup>34</sup> The country had active privately owned print media. Hundreds of private newspapers spanning the political spectrum appeared in numerous languages, including Kurdish, Armenian, Arabic, English and Farsi. However, authorities routinely censored media with pro-Kurdish or leftist content, particularly in the Southeast, by confiscating materials or temporarily closing down the media source. The government's close business relationships with various media conglomerates further limited media independence and encouraged a climate of self-censorship.<sup>35</sup>

**See also: Actors of Protection (section 2.3 above)**

**Internal Relocation (section 2.4 above)**

**Caselaw (section 2.5 above)**

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

### **3.11 Alevi Religious Faith**

- 3.11.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Turkish authorities due to their Alevi religious faith.
- 3.11.2 Treatment** Academics estimate that there were between 15 million to 20 million Alevi in Turkey. The Turkish government generally viewed the Alevi as heterodox Muslims and did not financially support their religious worship. A few

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<sup>32</sup> BBC News: Turkey PM Erdogan Apologises for 1930s Kurdish Killings – 23 November 2011  
<http://www.bbc.co.uk/news/world-europe-15857429>

<sup>33</sup> The New York Times 'For Kurds in Turkey, Autonomy in Music' 1 June 2011  
[http://www.nytimes.com/2011/06/05/arts/turkeys-kurds-slowly-build-cultural-autonomy.html?pagewanted=2&\\_r=2](http://www.nytimes.com/2011/06/05/arts/turkeys-kurds-slowly-build-cultural-autonomy.html?pagewanted=2&_r=2)

<sup>34</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013  
Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>35</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013  
Section 2 <http://www.state.gov/documents/organization/204558.pdf>

religious groups, such as the Baha'i, Alevi and Yezidi were unable to state their religious identity on their national identity cards because their religions were not amongst the available options. Despite a 2006 regulation allowing persons to leave the religious identity section of their identity cards blank or change the religious identity section by written application, the government continued to restrict applicants' choice of religion.<sup>36</sup>

- 3.11.3** The 2011 ECHR ruling that suggested (but did not mandate) omitting any reference to religion on national identity cards was not implemented by the end of 2011. The ruling was in response to a case brought by an Alevi man who wished to list "Alevi" as his religion. There were reports that local officials harassed persons who converted from Islam to another religion when they sought to amend their identity cards. Some non-Muslims maintained that listing their religious affiliation on the cards exposed them to discrimination and harassment.<sup>37</sup>
- 3.11.4** According to UNHCR, Alevis continued to suffer discrimination and societal abuse on a number of levels and were not generally accepted in the Turkish society. Public employees and government officials expressed "prejudice" towards Alevis through words or actions such as blessing an Alevi construction site with Sunni prayers or ignoring requests to fix roads in Alevi areas. Unemployment and difficulty finding jobs were also reported to be issues for Alevis because of their identity in both the public and private sector. Some did not disclose their Alevi identity in public, but some names and birthplaces could indicate that they were Alevi. The 2011 Organisation for Security and Co-operation for Europe (OSCE) Report noted that the Alevi community was not "officially recognised" by the Turkish state and were "rejected" the label of "minority" but wanted similar rights and freedom that applied to recognised minority groups.<sup>38</sup>
- 3.11.5** However, according to UNHCR, the Turkish government had noted on several occasions the need to take action to "limit the discrimination suffered by the Alevi community". State leaders have sought warmer relations with Alevi leaders and paid numerous visits to Alevi worship houses (cemevis), including a landmark visit by President Abdullah Gul to a cemevi in the predominantly Alevi city of Tunceli in 2009. In 2011, the government took the bold step of formally apologising for the 1937 Dersim massacre, an acknowledgement of the government's killing of thousands of predominantly Alevi tribesmen in the southeastern town of Dersim. However, although discussions about Alevi rights, both community and individual, had been taking place, the authorities, including the local and national governments and the police, were "still not ready to defend Alevi rights".<sup>39</sup>
- 3.11.6** After coming into power in 2007, the AKP initiated a dialogue with the Alevi community called the "Alevi Opening," which was "still ongoing". The AKP

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<sup>36</sup> US Department of State International Religious Freedom Turkey 2012  
<http://www.state.gov/documents/organization/193083.pdf>.

<sup>37</sup> US Department of State International Religious Freedom Turkey 2012  
<http://www.state.gov/documents/organization/193083.pdf>.

<sup>38</sup> UNHCR Refworld – Turkey: Treatment of Alevis by Society and Government Authorities – Date accessed 25 July 2012

<http://www.unhcr.org/refworld/topic,464db4f52,46a719552,4fead9552,0,...html>

<sup>39</sup> UNHCR Refworld – Turkey: Treatment of Alevis by Society and Government Authorities – June 2012  
<http://www.unhcr.org/refworld/topic,464db4f52,46a719552,4fead9552,0,...html>

government organised a series of workshops between the government and Alevi stakeholders as part of the Alevi Opening. According to a Turkish Studies article, the goal of the seven workshops, held between June 2009 and January 2010, was to determine the policy parameters for Alevi demands. Some Alevi groups reportedly considered the Alevi Opening as political “manipulation” and accused the Alevis supporting it of aligning themselves with the government.<sup>40</sup>

- 3.11.7** Alevis freely practiced their beliefs and built cem houses (places of gathering), although these had no legal status as places of worship. Representatives of Alevi organisations maintained that they often faced obstacles when attempting to establish cem houses. They said there were approximately 1,000 cem houses in the country, which was an insufficient number to meet their needs. Alevis also charged there was bias in the Diyanet (Directorate of Religious Affairs), which did not allocate specific funds for Alevi activities or religious leadership. The Diyanet budget was reserved for the majority Sunni community, covering the salaries of imams and other costs. The government did not pay for utilities in cem houses or other facilities not recognised by the government as places of worship, as it did for mosques affiliated with the Sunni majority. Some local municipalities granted free utilities to cem houses. On 1 November 2011 an Ankara Court decided a local cem house was entitled to be recognised as a legal house of worship. Some Alevi groups wanted cem houses brought under the authority of the Diyanet, while others feared that such a step would bring too much government control over their religious practices.<sup>41</sup>
- 3.11.8** According to the European Commission (EC), *cem* houses were not officially recognised and Alevis experienced difficulties in establishing new places of worship. Alevis were concerned by the marking of many houses of Alevi citizens in a number of provinces and by incidents against them. Complaints were submitted to the prosecutors’ offices by Alevi associations and judicial and administrative investigations are continuing. A demand to open a *cem* house in the Parliament was rejected on the grounds that Alevi MPs could go to the mosque. Several commemoration ceremonies by Alevis were prevented by police, some through the use of force as was a demonstration against the closure of the Madimak Court case. Some Alevis encountered job discrimination in the civil service and Alevis and non-Muslim religious communities had to pay electricity and water bills, whereas the State budget covers such expenses for mosques. Legal framework in line with the ECHR has yet to be established to ensure that all non-Muslim religious communities and the Alevi community can function without unnecessary restrictions.<sup>42</sup>
- 3.11.9** Alevi children received the same compulsory religious education as all Muslim students and many Alevis alleged discrimination in the government’s failure to include any of their distinct doctrines or beliefs in religious instruction classes in public schools. A 2007 ECHR decision allowed an Alevi parent to request that his daughter be exempted from her school’s compulsory religious education. However, parents faced difficulties obtaining these exemptions. During 2011, Alevis had nearly 20 Court cases pending against the Ministry of Education alleging discrimination. Material on Alevis was incorporated into the religious

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<sup>40</sup> UNHCR Refworld – Turkey: Treatment of Alevis by Society and Government Authorities – June 2012  
<http://www.unhcr.org/refworld/topic,464db4f52,46a719552,4fead9552,0,,,html>

<sup>41</sup> US State Department International Religious Freedom 2011 Turkey  
<http://www.state.gov/documents/organization/193083.pdf>

<sup>42</sup> European Commission Turkey 2012 Progress Report 10 October 2012  
[http://www.ecoi.net/file\\_upload/1226\\_1350307669\\_turkey-rapport-2012-en.pdf](http://www.ecoi.net/file_upload/1226_1350307669_turkey-rapport-2012-en.pdf)

course curriculum after the ECHR decision, but many Alevi believed it to be inadequate and, in some cases, incorrect.<sup>43</sup>

**See also: Actors of Protection (section 2.3 above)**

**Internal Relocation (section 2.4 above)**

**Caselaw (section 2.5 above)**

**3.11.10 Conclusion** A claimant of the Alevi faith is unlikely to encounter ill-treatment by the authorities amounting to persecution solely on the grounds of religious belief. In cases where membership of the Alevi faith is cited as the sole basis of claim, internal relocation to another such area to escape this threat is viable. Turkish citizens belonging to the Alevi religious faith may face some unequal treatment or discrimination within Turkey this does not generally reach the level of persecution. Therefore it is unlikely that applicants in this category whose claims are based solely on persecution due to their belonging to the Alevi religious faith would qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

### **3.12 Military Service**

**3.12.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Turkish authorities due to their evasion of military service.

**3.12.2** Claimants will usually claim that they cannot perform military service for one or more of the following reasons:

- Due to their political opinions, Kurdish ethnicity, or Alevi faith they will face persecution within the armed forces from other soldiers or officers.
- They are conscientious objectors (either for political, religious or moral grounds) and that their refusal to perform military service will lead to persecution from the state
- In addition some claimants will claim that they cannot return to Turkey as the very fact that 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

**3.12.3 Treatment** According to the constitution, 'National service was the right and duty of every Turk' (Article 72). Under Military Law No. 1111, men's liability for military service started in the year they turned 20. Liability continued to the age of 41, except on grounds of health or disability. Women were not conscripted and could join the armed forces only after attending military school. Length of service was 15 months for private soldiers and non commissioned officers (NCOs) and 12 months for reserve officers. Students could defer conscription until they had completed higher or vocational education. There was no provision for conscientious objectors. University graduates may perform 6 months' military service, or 12 months if they are trained to become reserve officers. Certain professional groups (doctors, teachers, civil servants) may be permitted to perform special service. However, this special service was a service within the

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<sup>43</sup> US State Department International Religious Freedom Report 2011: Turkey  
<http://www.state.gov/documents/organization/193083.pdf>

Armed Forces, and with uniform. Usually, those serving in special service were not sent on combat operations.<sup>44</sup>

- 3.12.4** Amnesty International, in their Public Statement – Turkey: Time to Recognise Right to Conscientious Objection June 2012 welcomed the latest judgment to come out of the ECHR on the right to conscientious objection in Turkey. The Court unanimously ruled that conscientious objector and human rights defender Halil Savda’s right not to be ‘subjected to torture or to inhuman or degrading treatment or punishment’, the right to a fair trial and the right to ‘freedom of thought, conscience and religion’ had been violated. This is the fourth time in less than a year that the ECHR found Turkey to have violated the right to conscientious objection, following the landmark ruling in July 2011 in the case of Bayatyan v.Armenia in which, for the first time, the Court found the refusal to recognize the right to conscientious objection to military service to be a violation of Article 9 of the Convention. Turkey is the only Council of Europe country where the right to conscientious objection is not legally recognized.<sup>45</sup>
- 3.12.5** There were reports of abuses of religious freedom in the country, including the imprisonment of an individual for his religious beliefs. Due to Jehovah Witnesses’ stance as conscientious objectors to military service, members continued to face difficulties. According to Jehovah Witnesses officials, members faced prosecution and fines for their refusal to serve in the military. On 22 November 2011, the ECHR found that the country violated the right to a fair trial and freedom of religion, conscience and thought in the case of Yunus Ercep brought by the Jehovah Witnesses community. The Jehovah Witnesses had an additional application with the ECHR in the case of Fethi Demirtas, which remained pending at the end of 2011.<sup>46</sup>
- 3.12.6** According to Amnesty International 2012, no progress was made in recognizing the right to conscientious objection to military service in domestic law or to end the repeated prosecution of conscientious objectors for their refusal to perform military service. In November 2011, the ECHR found that Turkey’s refusal to grant a civilian alternative to military service violated the right to freedom of thought, conscience and religion in the case of Ercep v. Turkey. People who publicly supported the right to conscientious objection continued to be prosecuted. Conscientious objector İnan Süver remained in prison due to multiple convictions for his refusal to perform military service until December 2011, when he was conditionally released.<sup>47</sup>
- 3.12.7** Turkey and Azerbaijan were the only two signatories of the ECHR that had not decriminalised conscientious objection from military service. Other signatories’ legislation allowed conscientious objectors to perform alternative civilian services.

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<sup>44</sup> Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2008 Turkey [http://www.child-soldiers.org/library/global-reports?root\\_id=159&directory\\_id=216](http://www.child-soldiers.org/library/global-reports?root_id=159&directory_id=216)  
War Resisters International - Military, Undated <http://www.wri-irg.org/co/rtba/turkey.htm>

<sup>45</sup> Amnesty International Public Statement – Turkey: Time to Recognise Right to Conscientious Objection – June 2012 <http://www.amnesty.org/fr/library/asset/EUR44/010/2012/fr/a446bbd0-4a3d-4813-a103-fdadfb1134ae/eur440102012en.pdf>

<sup>46</sup> US State Department International Religious Freedom Report 2011: Turkey <http://www.state.gov/documents/organization/193083.pdf>

<sup>47</sup> Amnesty International – Annual Report 2012 – Accessed in July 2012 <http://www.amnesty.org/en/region/turkey/report-2012>

The frequent imprisonment of conscientious objectors had resulted in Turkey being in violation of rulings by the ECHR.<sup>48</sup>

- 3.12.8** In February 2012, Bariş Görmez, a 33-year-old Jehovah Witness who had been imprisoned since 2007, having been charged 13 times for “disobedience of orders” for being a conscientious objector, was acquitted of all charges for his conscientious objection and released from a Turkish military prison. Also, in March 2012, a Turkish military Court ruled that conscientious objection should be recognized, citing ECHR rulings against Turkey and Armenia on conscientious objectors and the religious freedom provision of the Turkish constitution. Reportedly, the Turkish Parliament was discussing options for legally recognizing conscientious objection and offering alternatives to military service.<sup>49</sup>
- 3.12.9** According to a July 2008 Ministry of Justice decree, police required a Court warrant before they could arrest or detain deserters. Therefore, conscientious objectors no longer could be arrested at a military recruitment office. If an objector refused conscription, or to wear a military uniform, these acts were treated under the Military Criminal Code as a refusal to obey orders and may initiate a cycle of prosecution and imprisonment. Conscientious objectors in Turkey fell mainly into two groups: pacifists who refuse any form of compulsory state service, including civilian service, and Jehovah Witnesses, who rejected military service but were willing to serve in an alternative capacity that was strictly civilian.<sup>50</sup>
- 3.12.10** According to BBC News Turkish men could only escape military service if they were ill, disabled or homosexual. There were no specific laws against homosexuality in Turkey but openly gay men were not welcome in the army. They had to “prove” their homosexuality and obtain a pink certificate in order to avoid military service. A retired general, Armagan Kuloglu, stated that openly gay men in the army would cause “disciplinary problems” and would be impractical creating the need for “separate facilities, separate dormitories, showers and training areas.” Doctors were coming under immense pressure from their commanders to diagnose homosexuality, and they obeyed, even though there really were no diagnostic tools to determine sexual orientation.<sup>51</sup>
- 3.12.11** In 6 May 2010 correspondence with the Research Directorate, an official at the Embassy of the Republic of Turkey in Ottawa stated that male Turkish citizens were required to report to the military draft branches between 1 January and 31 October of the year of their twentieth birthday for the process of ‘final’ military draft inspection. According to the Official, draft evaders were not allowed to travel abroad until they legalised their situation. War Resisters International (WRI) similarly indicates that draft evaders could not leave Turkey, and that customs, immigration and police officers would be aware that they were evading

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<sup>48</sup> Southeast European Times – Date accessed 24 July 2012

Government Shelves Reform of Policy on Conscientious Objectors – 30 November 2011

[http://turkey.setimes.com/en\\_GB/articles/ses/articles/features/departments/national/2011/11/30/feature-01](http://turkey.setimes.com/en_GB/articles/ses/articles/features/departments/national/2011/11/30/feature-01)

<sup>49</sup> United States Commission on International Religious Freedom – Countries of Particular Concern – Turkey

<http://www.unhcr.org/refworld/country,,,TUR,,4f71a67011,0.html>

<sup>50</sup> United States Commission on International Religious Freedom – Countries of Particular Concern – Turkey

<http://www.unhcr.org/refworld/country,,,TUR,,4f71a67011,0.html>

<sup>51</sup> BBC News – Proving You’re Gay to the Turkish Army – 26 March 2012

<http://www.bbc.co.uk/news/magazine-17474967?print=true>

military service.<sup>52</sup>

- 3.12.12** In order to obtain a new passport, Turkish men between the ages of 20 and 38 years must demonstrate compliance with the country's military service law. Men over the mandatory military service age were not required to show proof of military service in order to obtain a Turkish passport. However, a man who had completed his military service must submit a 'Document of Completion of Military Service' in order to obtain a passport; a passport officer might indicate that military service had been completed by writing yapmiştir (done) in this section. The word yapmamiştir (not done) might appear in the passport of a Turkish student studying abroad who has obtained a deferment of military service.<sup>53</sup>
- 3.12.13** In newer passports, the bar code was electronically linked to the holder's file, which includes information on his military service. As such, border control officials did not need to look inside a passport to determine whether a holder had completed his military service, as this information was available electronically. The Consular Official added that if a person was found to be avoiding military service, he may be detained by border control officials.<sup>54</sup>

**See also: Actors of Protection (section 2.3 above)**

**Internal Relocation (section 2.4 above)**

**Caselaw (section 2.5 above)**

- 3.12.14 Conclusion.** Although some Turkish citizens may on an individual level face some unequal treatment or discrimination within the military because of their political opinions, Kurdish ethnicity or Alevi faith, this discrimination is not systematic or sanctioned by the state and does not generally reach the level of persecution under the 1951 Refugee Convention or breach Article 3 of the ECHR.
- 3.12.15** The House of Lords in the case of Sepet (FC) & Another (FC) [2003] UKHL 15 found that in general those who refused to perform military service in Turkey (including Kurds) were not subject to disproportionate or excessive punishment in law or in fact and were liable to prosecution and punishment irrespective of the

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<sup>52</sup> Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa, Canada. Turkey: Compulsory military service; procedures followed by government authorities when a person evades conscription, including the type of documents issued and the offices involved; whether draft evaders are permitted to leave the country; consequences of draft evasion and conscientious objection, Dated 21 May 2010

[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=452970&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452970&l=e)

<sup>53</sup> Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa, Canada. Turkey: Whether the section in the Turkish passport pertaining to military service is left blank or has a horizontal line to indicate the holder has been granted a deferment of military service for academic purposes; whether this section contains a military registration number (TC Kimlik No.) that is cross-checked in a computer database by Turkish authorities at ports of entry; if so, whether this database contains detailed reasons for the deferment. TUR103062.E – 24 February

<http://www.unhcr.org/refworld/type,QUERYRESPONSE,,TUR,4a7040a023,0.html>

<sup>54</sup> Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa, Canada. Turkey: Whether the section in the Turkish passport pertaining to military service is left blank or has a horizontal line to indicate the holder has been granted a deferment of military service for academic purposes; whether this section contains a military registration number (TC Kimlik No.) that is cross-checked in a computer database by Turkish authorities at ports of entry; if so, whether this database contains detailed reasons for the deferment. TUR103062.E – 24 February

<http://www.unhcr.org/refworld/type,QUERYRESPONSE,,TUR,4a7040a023,0.html>



reasons for their refusal. Therefore it is unlikely that in the majority of cases, the consequence of a claimant's general 'unwillingness to serve' in the armed forces or objection to enter a 'combat zone' will be such that they would qualify for asylum or Humanitarian Protection.

**3.12.16** As regards conscientious objectors to military service, the European Court of Human Rights (ECtHR) has found on a number of occasions - for example [Savda v Turkey](#) - that the system of compulsory military service in force in Turkey allows for no exceptions on grounds of conscience and has resulted in heavy criminal sanctions being imposed on those who refused to comply. Such a system failed to strike a proper balance between the general interest of society and that of conscientious objectors. The penalties, sanctions, convictions and prosecutions imposed on conscientious objectors, when no measures were provided to take account of the requirements of their consciences and convictions, could not be regarded as necessary in a democratic society. In the case of [Ulke v Turkey](#) the ECtHR noted the lack of an effective legal framework in Turkey for dealing with conscientious objectors meant that such individuals ran the risk of being subjected to an interminable series of prosecutions and criminal convictions for life. It found that this punishment was disproportionate to the aim of ensuring that military service was performed and appeared more calculated to repressing the individuals intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will. The Court took into account the cumulative effects of the criminal convictions, the constant alteration between prosecution and imprisonment and the gravity and repetitive nature of the treatment inflicted.

**3.12.17** Case owners must therefore assess carefully the reason for the claimant's refusal to perform military service. Where an individual is able to demonstrate that it is for reasons of of their conscience and conviction, then the rationale of the decision in [HJ \(Iran\)](#) applies and the individual cannot be expected to modify their beliefs in order to avoid persecution. In such cases a grant of Humanitarian Protection may be appropriate. In addition, case owners should also consider whether the Turkish authorities would perceive the refusal to perform military service as being for a Refugee Convention reason. If this is the case then a grant of asylum rather than Humanitarian Protection would be appropriate.

### **3.13 Individuals whose details appear on the Turkish Authorities' records systems.**

**3.13.1** Some applicants may base their claim for asylum in full or in part on the consequence of their details being registered on one of the Turkish government's computerised record systems.

**3.13.2 Treatment.** Turkey has a central information system, known as the Genel Bilgi Toplama Sistemi (General Information Gathering System), usually abbreviated as GBTS. The system stores various personal data. For instance, it contains information on outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion or refusal to perform military service and tax arrears. Sentences which have been served are in principle removed from the system and entered into the nationally accessible Judicial Records (Adli Sicil).<sup>55</sup>

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<sup>55</sup> Netherlands, The: Ministry of Foreign Affairs, Turkey/Military Service, dated 1 July 2001,

**3.13.3** The US Department of State has observed that the constitution of Turkey provides for freedom of movement within the country, foreign travel and emigration, but that these rights were at times limited. A citizen's freedom to leave the country could be restricted "in the case of a national emergency, civic obligations (e.g., military service) or criminal investigation or prosecution". In June 2010, Turkey released new biometric passports which each have an embedded computer chip containing details about the passport-holder. While the new passports may streamline procedures, procedures for screening persons on departure from Turkey were in place prior to the introduction of biometric passports.<sup>56</sup>

**See also: Actors of Protection (section 2.3 above)**

**Internal Relocation (section 2.4 above)**

**Caselaw (section 2.5 above)**

**3.13.4 Conclusion.** The GBTS records information on arrest warrants, previous arrests, foreign travel restrictions, avoidance of military service, desertion, refusal to pay tax and delays in paying tax. The GBTS is available to the police at all sea and airports. Those who appear on the GBTS computer system are likely to come to the attention of the authorities. However the majority of those on the system are wanted for criminal acts and there is no evidence to suggest that simply appearing on the system means that a claimant will face ill-treatment or persecution. Case owners should consider each case on its individual merits and also refer to the findings in the country guidance case of [JK \(Returnees - Records – IFA\) Turkey CG \[2004\] UKIAT 00312](#).

### **3.14 Journalists & Freedom of Expression**

**3.14.1** Applicants may make an asylum and/or human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities as a result of being a journalist or due to persecution as a result of restriction of their freedom of expression.

**3.14.2 Treatment.** International and domestic human rights organisations noted particular concern over the overly broad definition of terrorism under the anti-terror law and the disproportionate use of the anti-terror law by authorities against members of the press, academics and student and members of the political opposition and Kurdish activist community. Human rights monitors also emphasized that the Penal Code contains multiple articles that directly restricts press freedom and free speech, including provisions on praising a crime or criminal, inciting the population to enmity or hatred and denigration and protecting public order. Authorities indicted journalists for protecting the confidentiality of sources and investigations; attempting to influence the judiciary;

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<http://www.unhcr.org/refworld/publisher,NMFA,..467010bd2.0.html>

Date accessed 11 January 2013

<sup>56</sup> Australian Government

Country Advice Turkey – TUR38464 – Person of Interest – Obtaining a passport for departing', 24 March 2011

[http://www.ecoi.net/file\\_upload/1788\\_1339520415\\_tur38464.pdf](http://www.ecoi.net/file_upload/1788_1339520415_tur38464.pdf)

insulting the Turkish nation, the founder of the Turkish Republic, Mustafa Kemal Atatürk, the republic and organs and institutions of the state and discouraging individuals from doing their military service.<sup>57</sup>

- 3.14.3** The Third Judicial Reform Package contained reforms allowing authorities to suspend or abandon the prosecution of journalists accused of propaganda on behalf of terrorist organisations and also provided for the release of media personnel accused of belonging to or “collaborating” with outlawed organisations. The package also requires judges to justify in writing why authorities must keep detained suspect in detention before trial.<sup>58</sup>
- 3.14.4** A large number of prosecutions were brought which threatened individuals’ right to freedom of expression. In particular, critical journalists, Kurdish political activists, and others risked unfair prosecution when speaking out on the situation of Kurds in Turkey, or criticizing the armed forces. In addition to prosecutions brought under various articles of the Penal Code, a vast number of cases threatening freedom of expression were brought under anti-terrorism legislation. Threats of violence against prominent outspoken individuals continued. In November 2011 new regulations came into force raising further concerns regarding the arbitrary restriction of websites.<sup>59</sup>
- 3.14.5** The Penal Code and anti-terror law retain multiple articles that restrict freedom of the press and the Internet. Authorities imprisoned scores of journalists who remained incarcerated at the end of 2012, most charged under anti-terror laws or for connections to an illegal organisation. As a result of the Third Judicial Reform Package, the publication of approximately 400 books was no longer prohibited. Journalists, academics and authors reported self-censorship was common because individuals in many cases were afraid that criticizing the state or government publicly could result in civil or criminal suits/investigations. Political leaders, including the prime minister, sued their critics for defamation. The government harassed and prosecuted persons sympathetic to some religious, political and Kurdish nationalist or cultural viewpoints. Authorities detained thousands of persons, including many students, during legal demonstrations and charged many under anti-terror laws, significantly limiting freedom of assembly.<sup>60</sup>
- 3.14.6** Individuals in many cases could not criticize the state or government publicly without risk of civil or criminal suits or investigation and the government continued to restrict expression by individuals sympathetic to some religious, political and Kurdish nationalist or cultural viewpoints. Active debates on human rights and government policies continued in the public sphere, particularly on problems relating to political Islam, Kurds and the history of the Turkish-Armenian conflict at the end of the Ottoman Empire. Government critics and human rights associations acknowledged that open debate was far more accepted than it was a decade ago. However, many who wrote or spoke on such topics risked investigation and some reported exercising self-censorship.<sup>61</sup>

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<sup>57</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/documents/organization/204558.pdf>

<sup>58</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/documents/organization/204558.pdf>

<sup>59</sup> Amnesty International – Annual Report 2012 – Accessed in July 2012 <http://www.amnesty.org/en/region/turkey/report-2012>

<sup>60</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Introduction <http://www.state.gov/documents/organization/204558.pdf>

<sup>61</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013

- 3.14.7** In August 2011 the government revised a plan to impose obligatory filtering packages on all internet users and delayed implementation of optional filtering packages, following forceful public opposition in Turkey and by international bodies, including the OSCE and the Council of Europe. However, the practice of blocking an estimated 15,000 websites in Turkey—most of which have pornographic content but some of which are restricted for pro-Kurdish or other political content by order of the Telecommunications Ministry and Court decisions—raised concerns about restrictions on the right to freedom of expression and access to information.<sup>62</sup>
- 3.14.8** While the last decade has demonstrated momentum in Turkey for increasingly open debate on even controversial issues, Turkey's laws, prosecutors, judges and politicians were still behind. Turkey's overbroad definition of terrorism still allowed for arbitrary imposition of the harshest terrorism charges against individuals about whom there was little evidence of logistical or material support for terrorism or of involvement in plotting violent activities. Prosecutors frequently prosecute individuals for non-violent speeches and writings. Politicians sued their critics for criminal defamation. Courts convict with insufficient consideration for the obligation to protect freedom of expression. A comprehensive review of all existing laws that restrict freedom of expression was overdue.<sup>63</sup>
- 3.14.9** The government maintained extensive restrictions on Internet access. The Internet law allowed the government to prohibit a Web site if there was sufficient suspicion that the site was committing any of eight crimes: insulting Atatürk; engaging in obscenity, prostitution or gambling; or encouraging suicide, sexual abuse of children, drug abuse or provision of substances dangerous to health. Upon receiving a complaint or as a result of personal observations, a prosecutor may request that a judge prohibit access to the offending site or, in an urgent situation, the Telecommunication Internet Presidency (TIB) may prohibit access while the complaint is examined. In either case, a judge must rule on the matter within 24 hours. Following a judicial decision to uphold the complaint, the Internet service provider (ISP) must block access within 24 hours. If the judge does not approve the block, the prosecutor must ensure access is restored. ISP administrators may face a penalty ranging from six months' to two years' imprisonment for failing to comply with a judicial order. The law also allowed people who believed a Web site violates their personal rights to request the TIB to order the ISP to remove the offensive content. The anti-terror law and other sections of the Penal Code were also used to block Web sites.<sup>64</sup>

**See also: Actors of Protection (section 2.3 above)**

**Internal Relocation (section 2.4 above)**

**Caselaw (section 2.5 above)**

- 3.14.10 Conclusion** The law does provide for freedom of speech and of the press; however, the government continued to limit these freedoms in a significant

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Section 2 <http://www.state.gov/documents/organization/204558.pdf>

<sup>62</sup> HRW - World Report 2012: Turkey <http://www.hrw.org/print/world-report-2012/world-report-2012-turkey>

<sup>63</sup> HRW - World Report 2012: Turkey <http://www.hrw.org/print/world-report-2012/world-report-2012-turkey>

<sup>64</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013  
Section 2 <http://www.state.gov/documents/organization/204558.pdf>

numbers of cases. Whilst legal reforms are in place related to Turkey's EU candidacy, for journalists the military, Kurds and political Islam are highly-sensitive topics, coverage of which can lead to arrest and prosecution. In some instances the treatment for such can be unduly harsh and punishment can involve lengthy sentences of imprisonment. Each case must be decided on its individual facts to determine whether a particular applicant is at risk and Case owners must be satisfied that individuals claiming persecution on this basis are able to demonstrate that they will be known to the authorities as having been, or perceived to have been, engaged in such activities and that this activity will attract disproportionate punishment. In such instances a grant of asylum may be appropriate.

### **3.15 Prison Conditions**

- 3.15.1** Applicants may claim that they cannot return to Turkey due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Turkey are so poor as to amount to torture or inhuman treatment or punishment.
- 3.15.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.
- 3.15.3** **Consideration** Prison facilities remained inadequate and did not meet international standards. Underfunding was a problem and overcrowding was also problematic, although human rights organisations noted significant improvement following the passage of the Third Judicial Package in July 2012. This package of legal reforms contained a number of provisions amending administrative procedures, enforcement, criminal and bankruptcy law. According to official government statistics, approximately 20,000 persons were released from jail because of Third Judicial Package reforms regarding releases pending trial or the redefinition of crimes.<sup>65</sup>
- 3.15.4** The Council of Europe's Committee for the Prevention of Torture (CPT) made an informal visit to the country on 21-28 June 2012 to examine the Pozanti allegations and prison fires. The CPT also raised issues related to the situation of PKK leader Abdullah Ocalan and other prisoners held at Imrali high-security closed prison. The CPT had not released its report on the visit by the end of 2012. In response to the visit, authorities issued a document to all central and provincial police units that emphasized the need to avoid mistreatment and excessive use of force.<sup>66</sup>
- 3.15.5** As of 31 December 2012, the Ministry of Justice reported the country had 373 prisons with a designed capacity of 141,775 that held 136,020 inmates, including 31,707 persons in pre-trial detention and 104,313 who had been convicted. The

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<sup>65</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>66</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

military reported that 25 military prisons with a capacity of 5,300 inmates held 56 prisoners and 671 detainees. Authorities occasionally held detainees together with convicts as well as juveniles with adults. They sometimes held inmates convicted of non-violent, speech-related offences in high-security prisons.<sup>67</sup>

- 3.15.6** As of 31 May 2012, 4,609 women were in prison, including 1,818 in pre-trial detention. As of 8 October 2012, there were 1,917 children in prison, including 1,518 in pre-trial detention. There were 693 children in prisons specifically for juveniles while 1,224 were in adult prisons in private wards. Human rights activists noted that children were not fully separated from adults in all prisons.<sup>68</sup>
- 3.15.7** Prisoners and detainees had reasonable access to visitors and were permitted religious observance. Authorities permitted prisoners and detainees to see a judge once a month, although there was no prison ombudsman institution. Authorities, at times, investigated credible allegations of inhumane conditions but generally did not document the results of such investigations in a publicly accessible manner or take actions to hold perpetrators accountable.<sup>69</sup>
- 3.15.8** The Parliament's Human Rights Investigation Commission (HRIC) reported open authorisation to visit and observe military prisons. The HRIC visited 11 civilian prisons and two military prisons during 2012. The government permitted prison visits by representatives of some international and domestic human rights organisations, including journalists' groups and European Union parliamentary delegations.<sup>70</sup>
- 3.15.9** While overcrowding remained an issue, human rights organisations noted significant improvement following the 5 July 2012 passage of the Third Judicial Package, which contained a number of provisions amending administrative procedures, enforcement, criminal and bankruptcy law. During 2012 prison employees began receiving five months of training before they started duty. In addition, in September 2012 the government, in conjunction with the European Union, completed a program that trained over 18,000 prison employees on providing professional, effective and efficient prison services.<sup>71</sup>
- 3.15.10 Conclusion.** Whilst prison conditions in Turkey are inadequate with under funding and overcrowding the main problems, conditions are unlikely to reach Article 3 threshold. Therefore, even where applicants 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 their particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment

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<sup>67</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>68</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>69</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>70</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

<sup>71</sup> US State Department Turkey Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204558.pdf>

does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

#### **4 Minors claiming in their own right**

- 4.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to and it is appropriate for the minor to return to them; or (b) there are adequate alternative reception and care arrangements. Caseworkers should refer to the Asylum Instruction: [Processing an Asylum Application from a Child](#), which is the main guidance document on UASC return consideration.
- 4.2** Caseworkers should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).
- 4.3** At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Turkey. Those who cannot be returned should be considered for leave as a UASC as set out in the relevant [Asylum Instruction](#).

#### **5. Medical treatment**

- 5.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).
- 5.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are

recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.

- 5.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 5.5** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make 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. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.
- 6. Returns**
- 6.1** There is no policy which precludes the enforced return to Turkey of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 6.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [Chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 6.4** Turkish nationals may return voluntarily to any region of Turkey at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 6.5** The AVR scheme is implemented on behalf of UKBA by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Turkey. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Turkish nationals wishing to avail themselves of this opportunity for assisted return to Turkey should be put in contact with Refugee Action. Details can be found on Refugee Action's web site at: [www.choices-avr.org.uk](http://www.choices-avr.org.uk).



**Country Specific Litigation Team  
Operational Policy and Rules Unit  
Operational Systems Management  
Home Office**

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