



# OPERATIONAL GUIDANCE NOTE

## TURKEY

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## 1. Introduction

- 1.1** This document provides UK Border Agency caseowners 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. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *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 caseowners 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. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

**2.1** Caseowners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

**2.2** 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://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

### **2.3 Actors of protection**

**2.3.1** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also 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.

**2.3.2** The TNP (Turkish National Police), under the control of the Ministry of Interior, is responsible for security in large urban areas. The Jandarma (or Gendarmerie), a paramilitary force under the joint control of the Ministry of Interior and the military, is responsible for policing rural areas. The Jandarma is also responsible for specific border sectors where smuggling is common; however, the military had overall responsibility for border control.<sup>1</sup>

**2.3.3** Every province in Turkey has a Jandarma provincial command administering a number of Jandarma district commands. There are also numerous smaller units such as site and individual protection teams, prison protection teams, commando units and special operations teams as well as service and support elements established along with special requirements.<sup>2</sup>

**2.3.4** The TNP and Jandarma received specialized training in a number of areas, including human rights and counterterrorism. Thousands of security personnel received human rights training as part of their ongoing training during the year. According to the government, the military emphasized human rights in training for officers and non-commissioned officers. A total of 32 hours of human rights training is given to Jandarma officers, non-commissioned officers, and cadets.<sup>3</sup>

**2.3.5** The Jandarma reported that three personnel were investigated for excessive use of force during the year. The investigations were ongoing at year's end. A total of 68 Jandarma personnel were expelled for various reasons during the year. The TNP reported that, as of November, 71 judicial or administrative investigations were opened against TNP personnel for excessive use of force or mistreatment. One investigation resulted in a reprimand, and

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<sup>1</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>2</sup> COIS Turkey Country Report August 2010 (para 8.10) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>3</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

five resulted in a short-term block on promotions. Investigations were dropped in 32 incidents because there was "no need to punish." Investigations continued in 33 incidents at year's end.<sup>4</sup>

- 2.3.6** A civil defence force known as the village guards, concentrated in the southeast, was less professional and disciplined than other security forces. The village guards have been accused repeatedly in past years of drug trafficking, corruption, theft, rape, and other abuses. Impunity remained a serious problem. During the year the government reduced the number of village guards to 45,877 from 47,854 in 2009.<sup>5</sup>
- 2.3.7** Turkey's crime rate registered a major drop in 2010 when compared to the figures in 2006, according to data from the National Police Department. Although a rise in crime rates was feared in line with population growth rate figures in the country, the National Police Department's report has shown that there was actually a significant fall in the crime rate. The decrease in mugging cases was 37 percent, 39 percent for homicides, 43 percent for manslaughter or bodily harm caused by celebratory gunfire, 26 percent for workplace theft, 0.7 percent for burglary, 5 percent for pick pocketing and 8 percent for cases of bribery. Despite a record fall in a variety of crimes across the country, there have been increases in assault, sexual abuse and violation of intellectual and commercial rights between 2009 and 2010.<sup>6</sup>
- 2.3.8** An increase was also observed in the number of terrorist attacks against security personnel. While 6,831 individuals were arrested by police in connection to terror attacks in 2009, this figure rose to 7,047 in 2010. In police operations against terrorist organizations, police seized 268 kilograms of explosives, 197 hand grenades, 41 assault rifles, 85 guns and 10,256 bullets in 2010.<sup>7</sup>
- 2.3.9** According to the National Police Department's report, the rise in the level of education required of police and public services provided by police played a role in the declining rate of crime cases in Turkey. As part of the public services provided by police, 74,216 public meetings have been held in Turkey through which 1,065,072 citizens have been informed about various crimes and criminal activity.<sup>8</sup>
- 2.3.10** The fall in crime rates was also attributed to the installation of Mobile Electronic Systems Integration (MOBESE) cameras in 85 percent of areas in big cities in Turkey, making it possible for police to follow those involved in crimes. Thanks to the presence of cameras, allegations of torture and maltreatment at police stations have almost disappeared. A total of 85 percent of the 1,320 police stations in Turkey are monitored by security cameras.<sup>9</sup> However, according to Human Rights Watch police ill-treatment did remain a problem, particularly during street stops, demonstrations, and arrests although torture and ill-treatment in detention was less common.<sup>10</sup>
- 2.3.11** The government or its agents did not commit any politically motivated killings; however, security forces killed some persons during the year. The domestic nongovernmental organization (NGO) Human Rights Foundation (HRF) reported that security forces caused the deaths of several persons during demonstrations.

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<sup>4</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>5</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>6</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>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> 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>9</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>10</sup> Human Rights Watch, 'World Report 2011: Turkey' <http://www.hrw.org/en/world-report-2011/turkey>

## 2.4 Internal relocation.

- 2.4.1** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and 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, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.4.2** Very careful consideration must be given to whether internal relocation would be an effective 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 unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.4.3** The Republic of Turkey covers an area of approximately 783,562 square kilometres and an estimated population of 77,804,122. The capital city is Ankara, and there are 81 provinces consisting of Adana, Adiyaman, Afyonkarahisar, Agri, Aksaray, Amasya, Ankara, Antalya, Ardahan, Artvin, Aydin, Balikesir, Bartin, Batman, Bayburt, Bilecik, Bingol, Bitlis, Bolu, Burdur, Bursa, Canakkale, Cankiri, Corum, Denizli, Diyarbakir, Duzce, Edirne, Elazig, Erzincan, Erzurum, Eskisehir, Gaziantep, Giresun, Gumushane, Hakkari, Hatay, Icel (Mersin), Igdir, Isparta, Istanbul, Izmir, Kahramanmaras, Karabuk, Karaman, Kars, Kastamonu, Kayseri, Kilis, Kirikkale, Kirklareli, Kirsehir, Kocaeli, Konya, Kutahya, Malatya, Manisa, Mardin, Mugla, Mus, Nevsehir, Nigde, Ordu, Osmaniye, Rize, Sakarya, Samsun, Sanliurfa, Siirt, Sinop, Sirnak, Sivas, Tekirdag, Tokat, Trabzon, Tunceli, Usak, Van, Yalova, Yozgat, Zonguldak.<sup>11</sup>
- 2.4.4** 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 September 12 constitutional amendments state that only a judge may limit the freedom to travel and only in connection with a criminal investigation or prosecution. The government reduced substantially the number of roadway checkpoints in the southeast, where it maintained a heavy security presence. The government generally cooperated with the UNHCR and other humanitarian organizations to provide protection and assistance to internally displaced persons, refugees (recognized as such with certain geographical limitations on country of origin), returning refugees, asylum seekers awaiting resettlement to third countries, stateless persons, and other persons of concern.<sup>12</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.

## 2.5 Country guidance caselaw

**IK (Returnees- Records- IFA) Turkey CG [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004.** The IAT concluded that many of the individual risk factors

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<sup>11</sup> COIS Turkey Country Report August 2010 (paras 1.02-1.04)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>12</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

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

**A (Turkey) [2003] UKIAT 00034 Heard 12 May 2003, notified 28 July 2003**

The IAT considered several appeals concerning risk on return for Kurds involved with or suspected of involvement with separatists and concluded that:

- Torture continues to be endemic.
- The outlawing of HADEP on the basis it was closely linked to Kurdish rebels may arguably increase the risk of HADEP members and supporters being associated with the PKK. Ill treatment of non-prominent members of HADEP/DEHAP is not precluded by the evidence.
- The Turkish Governments attitudes towards the PKK has not changed since it renounced violence, altered its objectives and regrouped as KADEK. Anyone suspected of giving support/membership/shelter to the PKK, left wing radical organisations or militant Islamic groups are handed over to the Anti-Terror Branch and would face a real risk of persecution or breach of human rights.
- That the Tribunal in *Hayser* were correct in finding that there are no minimum number of factors which have to be satisfied before an individual comes under suspicion and none of these factors are necessarily of greater or less weight than any of the others, the assessment of risk should be a cumulative one but not all factors will be of equal significance. The factors referred to in **Hayser** were:

**a)** The level if any of the appellant's known or suspected involvement with a separatist organisation. Together with this must be assessed the basis upon which it is contended that the authorities knew of or might suspect such involvement.

**b)** Whether the appellant has ever been arrested or detained and if so in what circumstances. In this context it may be relevant to note how long ago such arrests or detentions took place, if it is the case that there appears to be no causal connection between them and the claimant's departure from Turkey, but otherwise it may be a factor of no particular significance.

**c)** Whether the circumstances of the appellant's past arrest(s) and detention(s) (if any) indicate that the authorities did in fact view him or her as a suspected separatist.

**d)** Whether the appellant was charged or placed on reporting conditions or now faces charges.

**e)** The degree of ill treatment to which the appellant was subjected in the past.

**f)** Whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP.

**g)** How long a period elapsed between the appellant's last arrest and detention and his or her departure from Turkey. In this regard it may of course be relevant to consider the evidence if any concerning what the appellant was in fact doing between the time of the last arrest and detention and departure from Turkey. It is a factor that is only likely to be of any particular relevance if there is a reasonably lengthy period between the two events without any ongoing problems being experienced on the part of the appellant from the authorities.

**h)** Whether in the period after the appellant's last arrest there is any evidence that he or she was kept under surveillance or monitored by the authorities.

**i)** Kurdish ethnicity.

**j)** Alevi faith.

**k)** Lack of a current up-to-date Turkish passport.

**l)** Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the appellant since he or she left Turkey.

**m)** Whether the appellant became an informer or was asked to become one.

**n)** Actual perceived political activities abroad in connection with a separatist organisation.

**o)** If the returnee is a military draft evader there will be some logical impact on his profile to those assessing him on his immediate return. Following Seper this alone is not a basis for a refugee or human rights claim.

The IAT emphasise the importance of avoiding treating this as a checklist. The claim must be assessed in the round as a consequence of careful scrutiny and assessment of the

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

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

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

**Sepet (FC) & Another (FC) [2003] UKHL 15** – The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgment dismissed the appellants' appeals. The House of Lords also asserted that in deciding whether an applicant would be persecuted for a convention reason it is necessary for the person considering the claim for asylum to assess carefully the real reason for the persecution which is an objective judgment of the reason that operates in the mind of the persecutor.

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

### **3. 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.

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

Instruction on considering the protection (asylum) claim and assessing credibility).

- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>
- 3.5 Credibility**
- 3.5.1** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners 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 Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched 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.
- 3.6 Involvement with Kurdish, left wing or Islamic terrorist groups or political parties.**
- 3.6.1** 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.
- 3.6.2 *Treatment.*** The Kurds, who constitute a large minority and are concentrated in the south-east, have long resented the fact that they have not been recognised as a separate ethnic group within Turkey and have been subjected to discriminatory policies including the banning until recently of the Kurdish language by the Turkish government. In 1984, the secessionist Kurdish Workers' Party (PKK) launched a violent guerilla campaign in the south-eastern provinces which led to a major counter-offensive by the government, including large-scale arrests of suspected Kurdish leaders and the imposition of martial law.<sup>13</sup>
- 3.6.3** On 11 December 2009 the Constitutional Court banned the DTP [Democratic Society Party – a Kurdish opposition party], ruling that the party had become a ‘focal point of activities against the indivisible unity of the state, the country and the nation’. The chair of the party, Ahmet Türk, and one other legislator were expelled from parliament and they and 35 other party members banned from joining any other political party for five years. The court verdict triggered protests across Turkey, in which there were a number of casualties. The EU [European Union] condemned the ruling. Most of the DTP MPs immediately joined the newly founded Peace and Democracy Party (Baris ve Demokrasi Partisi: BDP).<sup>14</sup>
- 3.6.4** During 2010 police raided dozens of Kurdish Peace and Democracy Party (BDP) offices, particularly in the southeast, and detained more than 1,000 BDP officials and members. Prosecutors also opened numerous investigations and trials against BDP members, mostly for alleged membership or support of the Union of Kurdistan Communities (KCK).

<sup>13</sup> COIS Turkey Country Report August 2010 (para 3.18) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>14</sup> COIS Turkey Country Report August 2010 (para 4.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Jandarma and police regularly harassed BDP members through verbal threats, arbitrary detentions at rallies, and detention at checkpoints. Security forces also regularly harassed villagers they believed were sympathetic to the BDP. Although security forces released some detainees within a short period, many faced trials, usually for supporting an illegal organization or inciting separatism.<sup>15</sup>

- 3.6.5** 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>16</sup>
- 3.6.6** The HRA asserted that several thousand political prisoners from all parts of the political spectrum existed, although the government does not distinguish them as such. The government claimed that alleged political prisoners were in fact charged with being members of, or assisting, terrorist organizations. According to the Ministry of Justice, from January 2010 to June 2010, 7,217 suspects were detained on terrorism-related charges. During the same period 1,553 terrorism cases were opened against 3,333 suspects. International humanitarian organizations were allowed access to alleged political prisoners, provided they could obtain permission from the Ministry of Justice. In practice, organizations rarely received permission.<sup>17</sup>
- 3.6.7** 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 has 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 has contributed to a climate of impunity. Prosecutions into allegations of torture are often conducted under article 256 ("excessive use of force") or article 86 ("intentional injury") of the Penal Code, which proscribe lighter sentences.<sup>18</sup>
- 3.6.8** The Jandarma report of 2010 indicated that the overall number of terrorist attacks decreased by 13 percent compared to 2009, but the number of gendarmerie soldiers killed or wounded by the PKK rose by 57 percent, mostly due to the PKK's increasing use of remotely-controlled landmines as opposed to direct armed attacks on military outposts or clashes with security forces, as 94 soldiers were killed in terrorism incidents in Jandarma controlled regions of Turkey in 2010, while 140 others were wounded.<sup>19</sup>
- 3.6.9** While violence has largely died down, a peace initiative launched by the Justice and Development Party (AKP) in 2009 has produced little progress, Kurdish leaders and rights groups say. In February, the PKK ended a six-month unilateral cease-fire and a month later fighters launched a rocket attack at a police station in the southeast.<sup>20</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.6.10 Conclusion** Although relatives of members or supporters of Kurdish, left wing or Islamic

<sup>15</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>16</sup> Human Rights Watch 'World Report 2011: Turkey' <http://www.hrw.org/en/world-report-2011/turkey>

<sup>17</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>18</sup> UN Committee Against Torture report November 2010  
<http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3.pdf>

<sup>19</sup> TR Defence 'Gendarmerie: Public safety incidents down 7%' <http://www.trdefence.com/2011/05/02/gendarmerie-public-safety-incidents-down-7/>

<sup>20</sup> Msnbc.com 'Pushed aside: Turkey's Kurds lose hope' 20 April 2011

[http://www.msnbc.msn.com/id/42645056/ns/world\\_news-europe/t/pushed-aside-turkeys-kurds-lose-hope/](http://www.msnbc.msn.com/id/42645056/ns/world_news-europe/t/pushed-aside-turkeys-kurds-lose-hope/)



terrorist groups or political parties may face some police harassment or discrimination this does not generally reach the level of persecution. Therefore applicants who apply only on the basis of a relative's involvement in an illegal organisation are unlikely to qualify for asylum or Humanitarian protection and such claims are likely to be clearly unfounded.

- 3.6.11** 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 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.
- 3.6.12** Case owners should note that members of these terrorist groups have been responsible or 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.

### **3.7 Kurdish ethnicity**

- 3.7.1** 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.
- 3.7.2 *Treatment.*** Kurds are the largest ethnic and linguistic minority in Turkey. The estimated numbers claimed by various sources range from 10 to 23 per cent of the population. Kurds speak Kurdish, which is divided into Kurmanci, Zaza and other dialects. The majority are Sunni Muslims, while a significant number are Alevis. Historically concentrated in eastern and south-eastern region of the country, where they constitute the overwhelming majority, large numbers have immigrated to urban areas in western Turkey.<sup>21</sup>
- 3.7.3** Millions of the country's citizens identified themselves as Kurds 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. In practice, children whose first language is Kurdish could not be taught in Kurdish in either private or public schools.<sup>22</sup>
- 3.7.4** Concessions by the government of Prime Minister Recep Tayyip Erdogan in 2009 made way for the first Kurdish national television station, and the government also permitted the teaching of Kurdish language classes in private universities (but not public ones). 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 raised a ruckus. Nationalists regard even the most basic Kurdish demand — that their language also be allowed in grade schools and at official settings where Kurds are involved — as treason.<sup>23</sup>
- 3.7.5** On April 11 2010, the political parties law was amended to allow campaigning in languages

<sup>21</sup> COIS Turkey Country Report August 2010 (para 19.04) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>22</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>23</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)

other than Turkish, including Kurdish. Several private television and radio stations were allowed to broadcast in languages other than Turkish, including Kurdish, Arabic, and Armenian, and newspapers published in Kurdish, Armenian, and Farsi were allowed to function without administrative obstacles.<sup>24</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.7.10 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.

### **3.8 Alevi religious faith**

**3.8.1** 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.

**3.8.2 Treatment** The Alevis are Turkey's largest religious minority community, comprising 15 to 25 percent of the population<sup>25</sup>, academics estimate that there are between 15 million to 20 million<sup>26</sup>, though they are not recognized as an official minority by the state. The Turkish government generally views the Alevis as heterodox Muslims, although many Sunni Muslims and some Alevis maintain that Alevis are not Muslims. Though not granted status as a religious minority, Alevis reportedly are able to practice their beliefs relatively freely. Nevertheless, the Alevis are still subject to some discriminatory state practices, though their situation has improved in recent years.<sup>27</sup>

**3.8.3** Alevis freely practiced their beliefs and built cem houses (places of gathering), although these have no legal status as places of worship and were often referred to as "cultural centers." Representatives of Alevi organizations maintained that they often faced obstacles when attempting to establish cem houses. They said there were approximately 100 cem houses in the country, which was an insufficient number to meet their needs. Alevis also charged there was bias in the Directorate of Religious Affairs (Diyamet), 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 does not pay for utilities in cem houses or other facilities not recognized by the government as places of worship, as it does for mosques affiliated with the Sunni majority. 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 religion.<sup>28</sup>

**3.8.4** During 2010, the government took steps to recognize and address the concerns of the Alevi population. The government held quarterly Alevi workshops aimed at addressing the concerns of the Alevi population. Some Alevi groups complained that these workshops did not address the needs of all Alevi groups, just those alleged to be close to the government.<sup>29</sup>

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<sup>24</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>25</sup> COIS Turkey Country Report August 2010 (para 18.14) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>26</sup> US State Department International Religious Freedom Report 2010: Turkey <http://www.state.gov/g/drl/rls/irf/2010/148991.htm>

<sup>27</sup> COIS Turkey Country Report August 2010 (para 18.14) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>28</sup> US State Department International Religious Freedom Report 2010: Turkey <http://www.state.gov/g/drl/rls/irf/2010/148991.htm>

<sup>29</sup> US State Department International Religious Freedom Report 2010: Turkey <http://www.state.gov/g/drl/rls/irf/2010/148991.htm>

See also: [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.8.9 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.

### 3.9 Military Service

**3.9.1** 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.

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

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

**3.9.3 Treatment** According to the constitution, 'National service is 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 is a service within the Armed Forces, and with uniform. Usually, those serving in special service are not sent on combat operations.<sup>30</sup>

**3.9.4** ABC news reported that up to one-fifth of Turkey's 72 million people are Kurds, meaning tens of thousands serve in the armed forces at any one time. Most Kurds in the military simply fulfil a rite of passage that opens the way to jobs and social acceptance. Some fight the PKK rebel group that claims to represent them. Some who turn professional rise to a high rank. The military did not immediately respond to inquiries and active duty soldiers are not allowed to speak to the media without permission. Several Kurds, all former conscripts, told The Associated Press that they were treated relatively well by the command, but ethnic jokes and slurs were a feature of barracks life that they had to endure, mostly in silence. Anecdotal evidence suggests the military is comfortable assigning

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<sup>30</sup> COIS Turkey Country Report August 2010 (para 9.01-9.04)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Kurdish soldiers to combat against the PKK.<sup>31</sup>

- 3.9.5** Draft evasion and desertion are punishable under the Law on Military Service and the Turkish Military Penal Code. Turkish law actually makes a distinction between evasion of military registration, evasion of medical examination, evasion of enlistment and desertion. According to Article 63 of the Penal Code, draft evasion is punishable (in peacetime) by imprisonment. Desertion is punishable under Articles 66-68 of the Penal Code with up to three years' imprisonment. Deserters who have fled abroad may be sentenced to up to five years' imprisonment, and up to ten years in case of aggravating circumstances (Article 67).<sup>32</sup>
- 3.9.6** In its national law, Turkey fails to recognize the right to conscientious objection and no civilian alternative is available. Conscientious objectors who have publicly stated their refusal to carry out military service have been subjected to criminal prosecution and imprisonment of up to three years. On release, they often receive new call-up papers, and the process is repeated. Turkey has failed to implement the 2006 ruling of the European Court of Human Rights that required Turkey to amend its legislation to prevent the 'civil death' of conscientious objectors repeatedly prosecuted and convicted for their refusal to carry out military service, found by the Court to be a violation of Article 3 of the European Convention on Human Rights (prohibition of degrading treatment).<sup>33</sup>
- 3.9.7** 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 are 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 are not allowed to travel abroad until they legalize their situation. War Resisters International (WRI) similarly indicates that draft evaders cannot leave Turkey, and that customs, immigration and police officers would be aware that they are evading military service.<sup>34</sup>
- 3.9.8** 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 are not required to show proof of military service in order to obtain a Turkish passport. However, a man who has 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 has been completed by writing yapmıştir (done) in this section. The word yapmamıştir (not done) might appear in the passport of a Turkish student studying abroad who has obtained a deferment of military service.<sup>35</sup>
- 3.9.9** In newer passports, the bar code is electronically linked to the holder's file, which includes information on his military service. As such, border control officials do not need to look inside a passport to determine whether a holder has completed his military service, as this information is 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>36</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.9.10 Conclusion** Although some Turkish citizens may on an individual level face some unequal

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<sup>31</sup> ABC News, Kurds Have Conflicted Role in Turkish Military, 6 August 2010,

<http://abcnews.go.com/International/wireStory?id=11339688>,

<sup>32</sup> COIS Turkey Country Report August 2010 (para 9.07-9.08)

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

<sup>33</sup> COIS Turkey Country Report August 2010 (para 9.10) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>34</sup> COIS Turkey Country Report August 2010 (para 9.09) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>35</sup> COIS Turkey Country Report August 2010 (para 9.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>36</sup> COIS Turkey Country Report August 2010 (para 9.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

treatment or discrimination within the military because of their political opinions, Kurdish ethnicity or Alevi faith, this discrimination is not systematic or sanctioned by the state and does not generally reach the level of persecution under the 1951 Refugee Convention or breach article 3 of the ECHR. Therefore it is unlikely that applicants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded. However, case owners should be aware that those who refuse to perform military service for the above reasons will be treated in the same way as those who refuse to perform military service due to conscientious objection.

### 3.9.11

In line with the House of Lords Judgement in **Sepet and Another** (see caselaw section 2.5 above), refusing to perform military service will not of itself give rise to a well founded fear of persecution within the meaning of the 1951 Convention. However, exceptional cases which are on a par with the facts of the **Ulke** case may need to be treated differently but this will only be the case where the individual concerned is able to demonstrate that they have such strong views that they would continue to refuse to perform military service at all costs and as a result suffer treatment described in the **Ulke** case which would amount to a breach of article 3. In such exceptional cases a grant of Humanitarian Protection may be appropriate. In addition, in cases where these exceptional circumstances are reached case owners should also consider as appropriate whether anything in an individual case indicates that the treatment may be made worse for a convention reason and if this is the case then a grant of asylum may be appropriate. Any cases that reach this exceptional level should be referred to a Senior Caseworker.

**3.9.12** However, 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 not usually reach the level of severity as experienced in **Ulke** and the majority of claimants will not qualify for a grant of Humanitarian Protection. Where claimants claim to be conscientious objectors or draft evaders but have claimed to have left Turkey legally, issues surrounding their credibility may need to be considered (please see paragraphs **3.12.7- 3.12.9**)

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

**3.10.1** Some applicants may make an asylum and/or human rights claim based on the Likelihood of facing ill-treatment amounting to persecution at the hands of the Turkish authorities for one or more of the reasons mentioned above in sections 3.6 – 3.10 due to their details being registered on one of the Turkish government's computerised record systems.

**3.10.2 Treatment** There are a number of different information systems in Turkey. The central information system is known as the GBTS (Genel Bilgi Toplama Sistemi – General Information Gathering System). This system lists extensive personal data such as information on arrest warrants, previous arrests, foreign travel restrictions, avoidance of military service, desertion, refusal to pay military tax and delays paying tax. Served sentences are as a rule removed from this information system and entered onto the database of criminal records.<sup>37</sup>

**3.10.3** Passport applicants in Turkey are subject to thorough investigation. Entries and exits of persons are recorded in the computer network and checked with criminal information. A draft Passport Law is in process, which foresees heavier sentences for illegal border crossings and a new type of Turkish passports more difficult to forge.<sup>38</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)

<sup>37</sup> COIS Turkey Country Report August 2010 (para 31.07 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>)

<sup>38</sup> COIS Turkey Country Report August 2010 (para 30.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

**Caselaw (section 2.5 above)**

**3.10.4 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 refer to the relevant sections in this OGN (sections 3.6- 3.10) to ascertain whether claimants will be at risk if they do come to the attention of the authorities.

**3.11 Journalists & Freedom of Expression**

**3.11.1** 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.

**3.11.2 Treatment** The law provides for freedom of speech and of the press; however, the government continued to limit these freedoms in significant numbers of cases. The EC stated in its November progress report that the law does not sufficiently guarantee freedom of expression and noted as particular concerns the high number of cases initiated against journalists, undue political pressure on the media, legal uncertainties, and frequent Web site bans.<sup>39</sup>

**3.11.3** The Human Rights Watch reported in their world report issued in 2011 that journalists and editors remained targets for prosecution. Legitimate news reporting on trials was deemed "attempting to influence a judicial process," reporting on criminal investigations was judged as "violating the secrecy of a criminal investigation," and news reports on the PKK was deemed "terrorist propaganda." Some editors and journalists faced scores of ongoing legal proceedings in 2010. The case of Vedat Kursun stands out among those convicted in 2010. The editor of Kurdish daily Azadiya Welat, Kursun received a 166-year prison sentence in May for 103 counts of "terrorist propaganda" and "membership" in the PKK. At the time of publication of the Human Rights Watch report he remained in prison pending an appeal.<sup>40</sup>

**3.11.4** Long-term restrictions on access to websites, including YouTube, continued. Leftist and pro-Kurdish political newspapers and journals were subject to arbitrary closure. In 2010 the European Court of Human Rights (ECtHR) condemned Turkey twice for using its Anti-Terror Law to ban publication of entire periodicals, saying the move was censorship that violated free expression. The court found Turkey had violated free expression in at least 10 other rulings in 2010.<sup>41</sup>

**3.11.5** Individuals in many cases could not criticize the state or government publicly without risk of criminal prosecution or investigation, and the government continued to restrict expression by persons 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 the role of the military, Islam, political Islam, Kurds, Alevis, and the history of the Turkish-Armenian conflict at the end of the Ottoman Empire. However, many who wrote or spoke on such topics, particularly those who criticized the military, the Kurdish problem, or the Armenian problem, risked investigation, albeit fewer than in previous years. The Turkish Publishers' Association (TPA) reported that serious restrictions on freedom of expression continued despite legal reforms related to the country's EU candidacy.<sup>42</sup>

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<sup>39</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>40</sup> Human rights watch world report 2011:Turkey <http://www.hrw.org/en/world-report-2011/turkey>

<sup>41</sup> Human rights watch world report 2011:Turkey <http://www.hrw.org/en/world-report-2011/turkey>

<sup>42</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

**3.11.6** In a study released in early April, the OSCE (Organization for Security and Co-operation in Europe) representative on freedom of the media, Dunja Mijatović, reported that fifty-seven journalists are currently in prison in Turkey, mostly on the basis of the country's anti-terrorism laws. With eleven more Turkish journalists also facing charges, the total number could soon double the records of Iran and China, each of which reportedly held thirty-four journalists in prison in December 2010. Indeed, Mijatović estimated that another 700-1000 proceedings against journalists remain ongoing.<sup>43</sup>

**3.11.7** During the year authorities continued to file numerous cases against publications under anti-terror laws. The HRF reported that the laws contain an overly broad definition of offences that allows ideologically and politically motivated prosecutions. There were at least 550 cases against the pro-Kurdish daily newspaper Ozgur Gundem under anti-terror laws. There were some convictions, but most cases remained open at year's end.<sup>44</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

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

### 3.11 Prison conditions

**3.12.1** 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.

**3.12.2** 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.

**3.12.3 Consideration.** Prison facilities remained inadequate, although conditions generally improved during the year, under funding and overcrowding were the major problems. As of October 27 2010, the Ministry of Justice reported the country had 371 prisons with a designed capacity of 114,220 holding a total of 121,102 inmates, 56,988 of whom were arrestees with ongoing trials. The Turkish General Staff (TGS) reported 25 military prisons with a capacity of 5,300 holding a total of 767 prisoners, 556 of whom were arrestees with trials in progress.<sup>45</sup>

**3.12.4** According to the Turkish Medical Doctors' Association, prisons were not adequately staffed with doctors, and psychologists were available only at some of the largest prisons. Several

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<sup>43</sup> Independent World Report 'Turkey; Journalism behind bars' 19 May 2011

<http://www.independentworldreport.com/2011/05/turkey-journalism-behind-bars/>

<sup>44</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>45</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

inmates claimed they were denied appropriate medical treatment for serious illness. The Human Rights Foundation (HRF) reported that 355 arrestees or convicts were denied access to proper health services during the year.<sup>46</sup>

**3.12.5** Detainees and convicts occasionally were held together. Juveniles were generally held in separate wards from adults. On July 25 2010, the government amended the anti-terror laws to prohibit prosecution of minors under the laws, reduce punishments for illegal demonstrations and meetings, and allow for the release of minors who had previously been tried and convicted under the laws. These amendments resulted in the release during the year of more than 200 minors and persons who had been convicted previously as juveniles. No data was provided by the Ministry of Justice at year's end (2010) as to the number of juveniles imprisoned in the country.<sup>47</sup>

**3.12.6** 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. Authorities at times investigated credible allegations of inhumane conditions but generally did not document the results of such investigations in a publicly accessible manner.<sup>48</sup>

**3.12.7** In late February and March (2010), members of parliament's Human Rights Investigation Commission (HRIC) were allowed to visit and observe military prisons for the first time. The HRIC produced two reports during the year that found conditions in those prisons satisfactory. The government permitted prison visits by representatives of some international organizations. Domestic human rights organizations and activists reported that they were not allowed to visit prisons during the year and that prison-monitoring boards composed of government officials and private persons were ineffective.<sup>49</sup>

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

#### **4. Discretionary Leave**

**4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

**4.2** With particular reference to Turkey the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

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

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be

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<sup>46</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>47</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>48</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>

<sup>49</sup> US State Department Human Rights Report 2010: Turkey <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>



returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Turkey. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

- 4.4.1** Applicants may claim they cannot return to Turkey due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** Health care is provided by public, semi-public, private and philanthropic organizations including the Ministry of Health (MOH), universities, the Ministry of Defence and private health professionals. Provincial Health Directorates (81 provinces) are responsible for service planning and provision at provincial level. Primary health care is provided through health centres, health posts, Maternal and Child Health (MCH) and Family Planning (FP) centres and tuberculosis dispensaries; municipalities play a role in environmental health and sanitation. The health financing system is also fragmented, with four explicit publicly funded insurance schemes as well as direct supply subsidies to MOH health facilities. Despite this, approximately 10-20% of the population is not covered by any of the existing statutory insurance schemes.<sup>50</sup>
- 4.4.3** The Health Transformation Program in Turkey, *Progress Report January 2009* stated that: "In the last 6 years 1.249 health facilities were opened. 402 of these are hospitals and side buildings. The number of patient beds added was 20,000. 80% of the patient rooms built in this period has private bathrooms and toilets. In 2002, the number of fully equipped intensive care beds was 869 and it has increased to 6.701 by January 2009".<sup>51</sup>
- 4.4.3** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

#### **5. Returns**

- 5.1** 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.
- 5.2** 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, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Turkey 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.
- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action

<sup>50</sup> COIS Turkey Country Report August 2010 (para 25.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>51</sup> COIS Turkey Country Report August 2010 (para 25.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

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. Turkey 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.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

Country Specific Litigation Team  
Immigration Group  
UK Border Agency  
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