

0903361 [2009] RRTA 1018 (1 October 2009)

DECISION RECORD

RRT CASE NUMBER: 0903361

DIAC REFERENCE(S): CLF2009/33129

COUNTRY OF REFERENCE: Turkey

TRIBUNAL MEMBER: Ann O'Toole

DATE: 1 October 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Turkey, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal on 9 July 2009 and 31 August 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Turkish and English languages.
21. The applicant was represented in relation to the review by his registered migration agent.
22. The applicant arrived in Australia as the holder of a Student visa permitting a stay for approximately twelve months. He travelled on a Turkish passport which was issued in Turkey. In his protection visa application he made the following claims:
 - For several years prior to 2007 he lived at three different places. He does not provide details of where he lived from that point on until he came to Australia. In relation to his employment details he stated that he was unemployed until mid 2007 and from then until shortly before he departed he was employed as a musician.
 - As to why he left his country he stated that he was on the run while he was living in Turkey. "I am ethnically Kurdish by religion as Alevi. Most of Kurdish youth are always under pressure and taken to custody for torture. I have been taken to custody by police for interrogation. During that time I have been forced to do spy regarding two Kurdish youth who crating (sic) violents (sic). I have never involved such a issues (sic) regarding violents (sic). During interrogation I have been tortured and also I have been threatened (sic) by Turkish authority. My family also was under pressure because of me. So I have to leave my family and leave to other city in Turkey. I hide myself for curten (illegible) years to protect myself and my family. Eventually (sic) I find the way to leave my country for my future.
 - My fear is if I go back to Turkey I will be taken to custody. And after will be tortured. Most of Kurdish youth have been taken to custody, tortured and been killed. Even some of Kurdish – Alevis been taken from their parents home for interrogation. However those youth never back. Because they have been killed. I do not want to be killed. I want to live like a human."
 - The Turkish police, right wing groups and the Turkish secret service will harm him if he returns.
 - "I have different ideological and political views ...we are being isolated from other Turkish society ...if I go back the police checking my birth certificate they will find out where I come from ...one of the hard part was I have been offered a spy job from Turkish police. I did not do whatever they offer me. This makes me guilty".

23. The delegate wrote to the applicant, inviting him to an interview on a specific date. The applicant was asked to phone the delegate to confirm his attendance at the interview. The applicant did not phone the delegate and did not attend the interview.

Application for Review

24. The Tribunal received the following documents:
- Applicant's dated statutory declaration
 - Advisor's dated submissions
 - Dated letter from Organisation X

Applicant's statutory declaration

25. The applicant stated as follows:

1. I was born in Istanbul, Turkey, on [date].
2. I am a Kurd and Alevi Muslim.
3. I fear that if I were returned to Turkey I would be persecuted due to my ethnicity, religion and political opinion.

My Family Background

4. My family consists of my father, mother, two brothers, one sister and myself. My family were farmers until 1978, when they moved to Istanbul to escape conflict and harassment from the police and Jandarma. When my family came to Istanbul, they were unemployed and homeless. Later my father found work as a casual labourer.

Discrimination against me as a child

5. In [year], I started studying at the [name] public school in [location]. At school I met with many people from different backgrounds, the majority were Sunni Muslims. My teacher forced me to practice Sunni practices, including fasting and praying. In the month of Ramadan I was not allowed to eat, even though I was not fasting. These customs were different to the Alevi traditions I had learned from my family. Being a Kurdish Alevi in Turkey was a problem because we were treated differently. I hid my background when people asked me because we were often denigrated by the Sunni community. I heard that in Sunni mosques that it was said whoever kills five Alevis will go to heaven and have 40 virgins.
6. We had to attend "Cem" sessions – a way of praying for Alevis in secret. I participated in them because we were not granted any place by the government to practice our religion and we were always harassed by other people in the community.

Arrest and Torture of my brother [Person X], in [year]

7. In [year], my brothers became actively involved in activities to promote Kurdish language and Alevi values. They taught drama and guitar in a "Free Art workshop". They also played traditional instruments. I often attended these workshops in order to learn how to play the guitar.
8. In late [year], these workshops were ceased after police raided and ransacked the place where the workshops were held. My eldest brother, [Person X], and his friends were detained. Police denied that they detained them but we lost contact with our brother for [several] days. We were worried about them and my mother was deeply affected and crying all the time. My brother came back with marks of torture. He was in a bad condition. On the night that my brother came home, the door knocked. My mother did not want to answer because she was deeply traumatised. The police said they would break down the door if it nobody opened it. They rushed into the house and started moving the furniture, carpet and other household items, they picked up the Kurdish books from the bookshelf, they ransacked the house and broke everything including pictures of my parent. They left the house, swearing and shouting. The house was a mess. My father tried to stop them but the police officers assaulted him as he tried to stop them. We were all frightened. We were so scared of having a similar incident repeated on another night that we preferred to stay silent and not let the media know about it.

9. (no words)

My early involvement with Kurdish politics

10. In 1993, 36 Alevi intellectuals and journalists and a Dutch journalist were burned to death in Sivas by Sunni fundamentalists. Alevis were openly targeted by those Sunni fundamentalists after that. My mother did not let me leave the house and we were all worried. The young Kurdish Alevi people organised meetings in houses in our neighbourhood. The purpose of these meetings was to prepare for the even that a similar attack on Kurdish people might occur in Istanbul and to discuss broader political issues. I decided to join them because I was part of Kurdish-Alevi community and shared their culture. We promoted our culture in these meetings, and were told what to do in case of an attack. Every week we had meetings in different houses. I was [age] at the time.
11. In [date], I was sitting in a café with my Alevi-Kurdish friends in [location]. Two people approached us and they said they were police officers but they were wearing plain clothes. They saw some books and magazines supporting Kurdish people's rights on the table. They told us to stand up and line up in front of the window. They wanted to check our identity cards. I and some of my friends did not have our identity cards. The police said something like, "you do not even deserve to live in our country, and if you keep being involved in this you will not have long to live." They took the eldest of us, [Person B], to the police car. The police just smacked me and sent me away. I did not even tell my family anything about this incident because I was scared of ending up like my brother. My friend [Person B] was tortured and became disabled from the torture. He later sought asylum in [Country Z].

Further persecution against my family members for their ethnicity and political involvement

12. In [year], I started studying at [name] high school. I wanted to go to university to provide a good future for myself and for my family. Again, I hid my Kurdish-Alevi background and my leftist political opinion from other people. Some members of the youth group of the Nationalist Movement Party (Milliyetçi Hareket Partisi) knew of my background. It was enough for them to know where my hometown was. I tried to focus on my classes and my education.
13. In [year], the Turkish intelligence actively persecuted Kurdish-Alevis. Kurds and Alevis were frequently detained in secret and suddenly disappeared. Hundreds of people disappeared. Some of them were later found in local government cemeteries where homeless were put in. There were torture marks on their bodies. Even though there were many witnesses, the government still denied those killings. My cousin, [Person C], was taken into custody because he was accused by the police of being a member of the Revolutionary People's Liberation Party-Front (DHKP-C). The police forced him to sign a statement that he was a member of this organisation and he was given a [number] year prison sentence. While he was detained, he was tortured extensively, and his testicles were burst. In fear that this would also occur to my family members, my parents arranged for my brother to stay at a relative's house.
14. My cousin, [Person D], had been staying with in our family home for three years after he fled police persecution in [location] in [year] and to work in Istanbul. In [year], he suddenly disappeared. We searched for him extensively but we could not find him. We thought that he had probably been killed in detention. We were waiting hopelessly. My father had difficulty telling his brother what had happened to my cousin for a long time because my cousin had been in my father's custody at the time he disappeared. When my father told my, uncle, my uncle also came to Istanbul to search for my cousin, but we could not find him.
15. After some time, our family heard from someone that my cousin was alive and living as a guerrilla in Eastern Turkey and that he had been involved in an organisation, TKP-ML/TIKKO, which supported Kurdish people's rights, while he was living with us in Istanbul. Finding out about the role that my cousin played in part inspired me to become more involved in fighting for the rights of Kurdish people.

Persecution at school for my Kurdish ethnicity and political involvement

16. In [year], I learned that Nationalist Movement Party Youth students heard about my brother's political involvement and that they were looking for me. As soon as I heard this I tried to run away. Before I even reached the gates of the school, two people stopped me. The friends of my attackers came and there was six to seven people. One of them introduced himself as the leader of the group, and hit me on my head. They surrounded me and they all beat me.
17. One of the teachers that saw the incident helped me to go to the principal's office, but I could not even walk properly. I told the principal to lodge a complaint and told him to call the police but our principal

was part of the Nationalist Movement Party. He told me that keeping quiet was the best option for me if I wanted to keep on going with my studies.

18. When I went home, I was in a very bad condition and my [description of injury] I did not go to school for a week. Afterwards, I continued to be harassed, and I was forced to buy the magazines of the Nationalist Movement Party. In the meantime, I was distributing “[name]” magazine, which was a Socialist publication. It was illegal to distribute such publications. I was very fearful of being detected by the police and being detained and tortured by them. The trauma I experienced from being beaten made me not want to go to school. That year was the peak year in the fight between Kurds and Turks, and especially was the peak year for PKK activity. I was very traumatised at that time and decided to leave school. I told my family about my intentions, they did not want me to leave school but they agreed to let me leave school even though they wanted me to stay.

Further involvement in pro-Kurdish politics

19. In [year], I read about Kurdish language and values. I learned how to play the guitar at [Organisation S]. After a while, I began working as a volunteer at the centre, I did not want to be paid, I just wanted to serve our culture. My family was closely involved with the centre. My cousins, [Person E] and [Person F] were in a band, [name], which played “protest” music. Another cousin of mine, [Person G] was the leader of the [group] at the centre.
20. The [Organisation S] was often investigated by the police without any reason. People were taken into custody. In [year] and [year], in Turkey, many people who had been taken into custody went missing. Most of these people were Alevi and Kurdish. From time to time, dead bodies of missing people were found on the street. The Cumartesi Anneleri, (‘Saturday mothers’), a group that met every Saturday in Istanbul to protest protested to encourage the government to find the murderers and bring them to justice. [Organisation S] tried to help the Saturday mothers protest. The protests were peaceful but the police still harassed us. We were subject to harassment from police, such as arrests, beatings, threats and insults. From time to time, the police hit the Saturday mothers and whoever supported them with batons. The aim of this beating was to end the protests. The protest occurred in front of the [location]. The police were present every week. The protests continued so that each week there were more mothers and more police and more harassment by the police.
21. Despite police pressure as an organisation, we did not give up on the struggle to support those of Alevi and Kurdish background and the Saturday mothers.
22. I sang and played guitar in two musical groups; “[name]” and “[name]”. These groups played Alevi and Kurdish music. There were many socialist groups supporting both the [Organisation S] and the band as well and the band brought these people together.
23. In [year], our groups performed a number of concert at the [Organisation S] and elsewhere. As the concerts brought Alevi and Kurdish people together there were always many police present but because of the likely reaction of the crowd, we were not questioned and detained by the police when they attended these concerts.

Problems related to my military service

24. In [year], when I was [age], I was called for military service. I realised that my ethnic identity would cause me a problem during my military service. The problems I feared that I would encounter during military service caused me to run away to avoid military service. For three months, I stayed with a friend in a suburb called [name] in Istanbul I occasionally visited my family and parents at night.
25. One night in [date], I tried to visit my parents’ house. While I was visit, police came to my parents’ house. They put handcuffs on me and took me to a car outside the house. I asked to see a warrant but the police refused to show me one. My parents feared that I would be tortured or killed so they borrowed a neighbour’s car and followed me to the army recruitment office in [location]. The same night, the army sent me to the [name] training base.
26. At the [name] training base, one of the officers found out my identity and made me take off my clothes in front of hundreds of soldiers. I was hit by the same army officer. I will never forget that day. It was so shameful for me.
27. For four weeks I was prohibited from using the telephone so I did not communicate with my family. When my family rang [name] training base, they were told that I was in the exercise area. My family did not believe them and came to [the base] When my parents came to the army office, the army told my family that they could not see me because I was doing army exercises. My parents stayed in

[location] overnight and returned the next day and asked to see me. The army officers said that it was still not possible to see me.

28. After four weeks, they found that I was a musician and sent me to [location] in the social activity centre for the army. I was not given a break between being moved from one base to another, even though most others were.
29. In [year], while I was still at [location], I found out my cousin, [Person D], who went missing in [year] was killed in [name] province. I had not heard from him since he went missing in [year] I tried to attend his funeral and requested permission from the army officer. I was not given permission to attend but the other soldiers actually put more pressure on me. I was given extra work, and make to work longer hours which stopped me from sleeping. I was also physically harassed.
30. In [year], when my cousin was killed, everyone at the [location] knew that I was Kurdish and Alevi. There were radical nationalists in the army. They constantly abused me and would not let me sleep at night. They took me to the kitchen to make me work at night. Their aim was to harm me psychologically. I resisted these attempts to harass me. I fought with one of the fascists radical Turkish army members when he was swearing at me. I hit him and injured him. After the fight, some of the army members from radical Turkish groups covered me with a blanket when I was sleeping and began to beat me. When I complained to my superiors, I was blamed for the incident and, as a punishment, I was sent from [location] to [location], where more problematic soldiers are often sent.
31. In [year], while I was at [location], I tried to hide my ethnic identity but I was not successful. I found out that one of the army members at [location] was Alevi. When we found a quiet area, we tried to sing our cultural songs but some of the radical Turkish army members heard us. They swore at us and told us to “shut up” We tried to take with the person who swore at us but we ended up fighting them. As a result of the fight, one of the other army members, whom I was fighting, [was injured]. That same night, one of the army officers came in and told me that because I had no respect for the other party that I would be penalised with [number] years’ gaol. He prepared a statement that stated that I disobeyed my superiors’ instructions. He tried to make me sign the statement but I refused to sign it. When I did not sign the statement, the army officer hit me. There were two witnesses to this incident. They were both Alevi and Kurdish. Despite that these witnesses protested that I was in the right during the fight, I was put in the army gaol for [number] days. While I was in detention, I was tortured by the guards. I was put in a *falaka* and made to undress. A high pressure hose was blasted at me. I was woken up every ten minutes during my sleep and tried to destroy my psychological state. They also tried to provoke me to resist them but I just tried to stay calm and tried not create any problems.
32. During my army service, I did not see my parents. Most people in the army were granted permission to leave but I was never granted this permission. I was not even allowed to use my annual one month’s leave to go home. On another occasion, one of the officers hit me on the head and fractured my skull again. During those eighteen months I tried to run away twice but was unsuccessful.
33. I finished my army duty at the end of [year] When I returned home, my family found that I was traumatised and depressed. They took me to see a psychiatrist. I was diagnosed with depression. I was given medication to treat this.

Further involvement with the [Organisation S]

34. In [year], I participated with [Organisation S] in a cultural festival organised at [location] At this festival, Alevi, Kurds and socialists congregate. The festival was under police observation. At that festival there was music, conferences, theatre. I was with my cousins, [Person E] and [Person G]. As we were close to [name] province, we visited some of our family members in their village at [location]. I stayed at my father’s family home in [location]. Soon after I arrived at [location], I noticed that some people were observing us from vehicles near the house. I suspected that these people were plain-clothed police as they were not known to any of the villagers. I believe that the police followed us from the festival.
35. While I was staying at my father’s home in the village in [name] province, one of my cousins received a telephone call from the intercity bus terminal and was told that a parcel was waiting for him to collect at the bus terminal. My cousins went to collect the parcel. I was ill so I did not go to pick up the parcel. The rest of the family waited for them but they never returned. They were not answering their mobile telephones. At midnight, the Jandarma knocked on our door at the village. Several Jandarma entered and told us not to move. They looked around and took our things out. They took me into one

of the rooms and interrogated me. The Jandarma did not find anything but they told me that I had to remain in the village.

36. We later discovered that when my cousins collected the parcel, they did not know what was in it. Police stopped them while they were carrying the parcel. They were taken into custody and they found out that the parcel had a typewriter and binoculars and other things. The police claimed that my cousins were helping an illegal socialist party and they were convicted and sentenced to [number] years gaol.
37. I went with my aunty to her home in [location] I was afraid, so I did not go to stay with my family. Instead, I went to [name] province and stayed with one of my friends for about seven months. My friend found jobs for me at building sites. I only informed my family that I was healthy, that I could not go home and that I was staying in [location] When I found out that the situation was calm at home, I tried to communicate with my parents regularly. I contacted [Organisation S] in Istanbul and asked them if anyone was looking for me or if police were looking for me. They said nobody was looking for me so I returned to Istanbul. [Organisation S] asked me to join them.

Return to Istanbul and work with [Organisation S]

38. In [year], I started receiving training in using [programs] to produce a [publication] and pamphlets for [Organisation S]. During this time, I was actively involved in the publication and the distribution of the newspaper.
39. In [year], I started guitar tutoring and performed music in order to earn an income. Most of the day, however, I was preparing [pamphlets and posters], at [Organisation S]. I was staying with friends at the cultural centre and with my parents.
40. In [year], I became involved with a group of which [Person H], my cousin, was a member. With [Person H], I took part in unauthorised protest meetings during *Newroz* (Kurdish Spring Festival) that were banned by authorities. I helped organise these protests with my cousin and other members of the group. *Newroz* used to be banned by the Turkish authorities. Now the Turkish government has tried to appropriate *Newroz* as a Turkish festival and take away ownership of the festival from Kurdish people.
41. Our aim was to mount a banner in the suburb of [location], a suburb of Istanbul, in a place where everyone could see. Around eight o'clock in the evening, with a group that gather in the square of [location], we started shouting slogans. While I was opening the banner with my cousin, we noticed shootings from unknown directions. [Person H] was [shot]. Because of the shooting, people started scattering. We ran away from the scene. We managed to hide in a house of a person who read our publications who also lived in [location] On the same night, a doctor who was a member of our political group performed an operation on [Person H] and removed the bullet from my cousin's [body] Following the incident, we stayed with our friend for three days. We could not notify anyone such as the police or ambulance as we might have been arrested, detained and even killed. My cousin, because of the risk to his life, later sought protection from [Country Y] authorities. I preferred to remain in Turkey, where I was born and not to leave my parents and family alone. I was born in Turkey and grew up in Turkey and felt part of it despite the religious and ethnic pressures on us.
42. I later discovered that police raided our family house and harassed my father and mother because of me. There were a number of unmarked police cars around the front of my parents' building. I received an offer from a friend with whom I had already stayed in [location] He asked me to play music in the evenings in a tea garden. I used this opportunity to go to [location]. I kept my address secret from everyone including my parents. I worked there for one summer. Later, with help of my friend, I managed to find a job in [location] as an unofficial security guard for a construction site. I also stayed in the basement of the construction site. Until the end of [year], I continued living in [location] and [location] I heard from my parents that the police were frequently coming and going to my family's home in Istanbul asking about me. I was very scared of being arrested so I did not have the courage to go to Istanbul.

Arrest and Torture

43. In the beginning of [year], an Armenian journalist, '[name]', who ran a small leftwing publication called [name], was killed in front of the newspaper building as part of a trap set up by the government secret authorities. I was sympathetic to him so I attended his funeral in Istanbul and took part in the march that took place at his funeral on [date]. There was a group of people from [Organisation S] also at the funeral. After the funeral, I went to the [location] We assessed the significance of the latest incidents. From the telephone at the centre, I called my parents and told them that I was going to spend

the night at home and see my parents after being away for two years. I was very homesick. On the same night, at about eight o'clock, I left the [location], a suburb in Istanbul, and went to the bus stop about 100 metres away to wait for the bus to come. Suddenly, a white car, which was [model] stopped in front of me. Three people came out of the car very quickly. They grabbed me and attempted to put me into the car. I started screaming and sought help from the people waiting in the bus stop. For fear of being killed in detention, I screamed my name. I said "My name is [applicant's name], they will take me away and they will kill me."

44. While I was in the car, my hands were tied and I was blindfolded. In the car I was insulted and hit occasionally. I was taken out of the car while I was still blindfolded. Two people held my arms and dragged me somewhere. I did not know where it was because I was blindfolded. They allowed me to sit on a chair and they started questioning me. They asked me which organisations I was working with, which political faction I was supporting, whom I was with and they even asked for the names of the people that I did not know. When I told them that I never knew these names, one of them said, "In the morning, you will tell me everything". They said I was a good boy, that they liked me. They said, "do not risk your life" They told me that all of my friends were supporting them and that I was the only remaining person resisting them. I repeated that I did not understand what they were saying and they started torturing me. They put me on a *falaka* and beat the soles of my feet. I was hit on the head with a hard object. I lost consciousness. I passed out and do not remember the rest. They were hitting me on different parts of my body with something like a bag. I was given electric shocks through my penis and my ear. I was screaming and they were laughing. They were happy to see me suffering. At one stage, they put a cigarette between my lips and pretended to take pity on me. They pretended they were going to stop torturing and said it's not worth it for us to continue. However, they continued. I cannot recall how long it lasted but I estimate that it was approximately three days that I was there.
45. They stopped torturing me when they were not getting what they wanted from me. They let me sit on a chair. They told me to remove the blindfold from my eyes. When I opened my eyes, there were two people sitting in front of me. They said, 'let's make a deal with you for your future and your *Ailen* [family members or parents]'. They asked me to work with them from that time onwards and they said, "if you agree, you will benefit from this deal". I told them that I did not understand them what they were saying and asked them to speak to me in a clear manner. They asked me, "You were going to the [location], what sort of activities were you planning?" They asked me to stay in constant contact with them and report to them what was going on there. They asked me to spy for them. They said that they would release me and take me to the place of my choice with their car. They asked me to meet them at a particular shopping centre at a certain time and to tell them my decision. I nodded to indicate that I accepted their proposal. They called a taxi for me and two officers entered the taxi with me. The taxi let me out at an area close to my house. When I went home, I was exhausted and my mother was in shop when saw me.
46. She said that my family had not slept for three days and said they had searched for me at all the hospitals and police stations. She was very thankful to God that I had returned home alive. Later, my father, elder brothers and relatives were advised of my return. That day was the happiest day for my family members. All of my close relatives and friends were told that I was back. On that night, I was with friends and relatives. They asked what happened to me. I just told them that I was tortured but that I did not know who did it and that I was brought home in a tax. I did not mention anything about the proposal that was made to me. I thought about whether to accept the proposal everyday. I was in agony. I did not know what to do. I was getting worse as the time to accept the proposal came closer. I was depressed. I was unable to communicate with my family members and close relatives. I had the feeling that people were following me while I was in the street. Sometimes, I went to cafes or quiet corners.
47. I went to the meeting point at the date and time I was told to attend. I had a meeting with them. I told them that I accepted their offer but that I would not start for two months. They told me that I was under supervision and monitoring. They asked me to notify them if I even found out a little thing. They said we are going to meet every fifteen days in the same location. We had another meeting after fifteen days. I started searching for ways I could leave the country. I explained the situation that I was in to my parents and I sought their opinion. They said, to save my life, I should do whatever I needed. I disclosed the situation I was in to a few friends that I trusted. They asked me to participate in the [name] organisation. They said the branches of this organisation could send me out of the country. When I explained this to my elder brother and my parents, they opposed. They said, if you live one month in each city, it would take 87 months. They said I could survive if I made music in different locations. They asked me to go away but to notify them about my health.

In Hiding

48. In [date], I took my guitar and left Istanbul. I went to [location]. I lived off the money that my parents gave me. I started to become familiar with the area and the people. I stayed in [different locations]. I remained there until [date]. I used the name [Person I]. When I was on the stage in [location], I was sacked because I sang a song in Kurdish and had to change cities. In [date], I went to [location] and played music under the name [Person I]. I was tutoring privately at different locations. I notified my parents about my health every month. I found out from my parents that different people were coming to their home and asking about me. This made me more concerned. My parents made a plan to get me out of the country but that I had to have a high school diploma. With the help of a teacher that I knew in [location], I sat for a high school education test and managed to get a high school diploma. I explained this to my parents.

Arrangements to depart Turkey

49. In [date], as tourism was very popular in [location], I went to visit my friend in [location]. After I stayed in [location], I spoke to my parents. They told me that my relatives in [Country Y] would help me with the funds that I needed to apply for a student visa. They said that they were trying to organise my passport to send me out of the country. The news made me very happy. I believed that I was going to live like a human.
50. When I contacted my parents, they told me that they had organised the required funds and my father had already commenced the procedure to obtain a passport for me. He told me he paid money in order to have the passport issued in my name. In [date], when I spoke to my father, he said he had obtained a passport in that month. He said that I had to be in Istanbul in that month. I contacted my father irregularly during that time. My father already commenced the procedure for applying for a student visa. He said that I needed to be in Istanbul at the end of [date]. Towards the end of [date], I found out that a friend of mine was travelling to Istanbul in his own car. This friend was travelling to his parents' house for the New Year. We left [location] on [date].
51. My father brought me a visa application form to sign I signed this form on [date]. My father took this form with him after I signed it.
52. When I returned to Istanbul, I started staying with a friend in [location]. My friend did not want me to leave Turkey. He encouraged me to go to a human rights organisation, [name], in [location] and report what had happened to me to this organisation. This organisation told me that I had to do some sort of media release or publication about what had happened to me. I thought that doing this would put my family members in a very difficult situation. I still became a member of this organisation.
53. In the meantime, my family was assisting me to apply for a visa. I met my father on [date] at the hospital, which was the day scheduled for the medical examination. I did not know what documents were provided to the Department of Immigration and Citizenship. I do not know if they were correct as I did not see them. On [date], I found out from my father that my visa was granted. I received a passport with my visa. I left Turkey on [date]. I was scared and apprehensive about being arrested at the airport but encountered no difficulties at the airport.

My application for a Protection Visa

54. I applied for a Protection Visa on [date]. At the time I lodged the application, I was living with a man, [Person J], at [address]. I estimate that I stayed at this address from [date] to [date]. From [date], I stayed [name] in the city. I stayed there for about three weeks. I did not know how long I was going to stay at this place, so I did not inform the Department of Immigration and Citizenship that I was staying there. I intended to inform them of my new details when I found more permanent accommodation. While I was looking for more permanent accommodation, I expected [Person J] to inform me if I received any correspondence from the Department of Immigration and Citizenship.
55. From around [date], I began living at [address] with the assistance of the [organisation]. On [date], I completed a Form 929 during an appointment for advice at the [organisation]. On about [date], I sent this form to the Department of Immigration and Citizenship.
56. On [date], [Person J], telephoned me and told me that he had found a note to say that there was a letter for me at [location] post office. On [date], [Person J] telephoned me and told me that he had been to the [location] Post Office and had collected two letters for me from the Department of Immigration and Citizenship. He explained to me the content of the letters on the telephone. This was the first that I heard about these letters from the Department of Immigration and Citizenship.

57. For these reasons, I did not respond to the Department of Immigration and Citizenship's invitation to an interview. I am extremely disappointed that I was not able to fully express my claims to the Department of Immigration and Citizenship.

Ongoing police interest in my whereabouts

58. On [date], my elder sister, [Person K], telephoned me. She told me that on that day, a uniformed police officer had come to my parents' house and that my mother had been taken to the police station.

59. Later that day, my sister telephoned me and said that my mother was home and that I could telephone her. I telephoned my mother. She told me that the police came to her house and told her that there was an allegation against me and asked her for my whereabouts. She told me that, later, she was taken to the police station and interrogated. She told me that she was kept at the police station for three to four hours. She was not beaten or tortured at the police station. She told me that this was because she had recently undergone an operation on her goitre. She told me that before she returned home, the police said that they would visit her again.

60. My father was in [location] at the time my mother was questioned. He has been living there for one or two months in order to stay out of Istanbul because he anticipated that there may be consequences for him after he assisted me to obtain a passport and leave Turkey.

What I fear would happen to me if I returned to Turkey

61. I was persecuted in Turkey because of my race, religious beliefs and my political opinion. I was outcast and tortured in Turkey because of my race, religion and political activities. I love my country. I did my best to stay there. It was the soil I was born on. I never wanted to leave it but had no other choice. What I defend is people to live in harmony and brotherhood regardless of their race, religion, language but within human rights norms. This right was taken from me. I had to leave the country that I lived in. I am now seeking protection from the Australian government.

Advisor's submissions

26. The advisor submitted that the applicant will face persecution if he returns to Turkey and refers to the claim set out in the applicant's statutory declaration. The advisor stated that the applicant would be persecuted by the Turkish authorities for the following reasons:

- His political opinion, including his involvement in Kurdish separatist groups
- His ethnicity as Kurd
- His religion as an Alevi Muslim, and
- A combination of the above.

27. The advisor submitted that there is abundant country information from reliable sources indicating that the applicant's fear of persecution for these reasons is well founded. The advisor also provides details of country information relating to the situation of Kurds in Turkey and the persecution of politically active Kurds.

28. The advisor submitted that the applicant's political activities increase the risk of persecution if he returns to Turkey. The advisor submitted that the applicant's involvement in Organisation S and in a number of protests have already brought him to the adverse attention of the Turkish authorities.

29. The advisor submitted that the applicant is a credible, honest person whose claims are genuine. The advisor submitted that the applicant has not fabricated any claims nor attempted to advance any issue solely to enhance his application for Protection visa.

Letter from Organisation X

30. The letter states that the applicant is known to the organization and that he is ethnically Kurdish; that he is a musician who experienced difficulties in his country; that he has given free music lessons and participated in concerts. The letter stated that the organization supports the applicant and 'would like him to be considered as a Kurdish musician who has faced pressure due to difference of his ethnic and politic beliefs in Turkey'

Tribunal Hearing

31. The applicant, accompanied by his adviser attended the Tribunal.
32. The applicant told the Tribunal that he is one of four children. He has two brothers and one sister. He is the youngest child. His sister and brothers lives on the outskirts of Istanbul. He told the Tribunal that his father was a labourer and that he stopped working about ten years ago. He receives a pension. His mother did not work.
33. The applicant told the Tribunal that he had to leave high school the 1990s. Some years later he finished high school at a different institution. He studied for his high school diploma at a location which is about six hours from his home.
34. The applicant told the Tribunal that he was involved in political activities from the age of 14. He said he and others met at a specific location and engaged in many activities. At the centre they held concerts and film days. The centre was involved in the promotion of Kurdish culture. He said the films they watched were political films. The applicant told the Tribunal that he does not speak a lot of the Kurdish language. He said he had an interest in learning the language but he could not do so in Istanbul. He said his parents did not encourage their children to learn Kurdish. He said his brothers speak a little Kurdish also.
35. The applicant told the Tribunal that he took up the guitar in the early 1990s. He is playing for an organisation in Australia and he also teaches.
36. I asked the applicant about his employment history in Turkey prior to coming to Australia. He said he worked as a musician and on building sites. He said he was initially contacted at the end of one year to commence his military service but he escaped. He was located by the Army and from the following year he did his military service.
37. He told the Tribunal that he did a course in the early 2000s. He also told the Tribunal that he worked for a named publication. The publication has its office in Istanbul. The applicant stated that if the Tribunal were to make enquiries about his employment at that the publication, they would be reluctant to confirm that as they are frequently troubled by the police.
38. I mentioned to the applicant that the Tribunal would be making enquiries overseas about his employment references which were attached to his tourist visa application. The applicant stated that most of the documentation for the tourist visa was organised by his father. The applicant stated that what he had said in his statutory declaration in his protection visa application is the truth. The applicant told the Tribunal that since coming to Australia he has enrolled in a course in Australia and is due to finish that course later this year.

39. I asked the applicant if he is wanted by the police in Turkey. He said the police took his mother in for questioning recently I asked if this was the first time that his family had been spoken to since his departure from Turkey. He said that was correct. I asked the applicant why the authorities allowed him to leave Turkey He stated that if the police had any complaints or information at the time he left they probably would have detained him. He said he changed his appearance on the day of his departure.
40. I asked the applicant if he had ever worked in a specific workplace playing music in Istanbul. He said he did so in a particular year I mentioned to the applicant that a statement attached to his tourist visa application indicated that he worked five days per week playing music at that workplace for a number of years. The applicant stated that his father organised all the documentation and he only worked at that place in a specific year. He said he guessed that a lot of the information provided for his tourist visa application in relation to his employment was probably untrue. He said he thought he worked there for about one year. He said he worked three to four days per week. I asked if he was experiencing any problems from the police at that time. He said he was only playing there two hours per night and it was not a Kurdish workplace. He said he worked at the publication for a specific number of years. I asked if he had worked for a company called “[name of company]” He said he had not. I mentioned that his tourist visa application indicated that he had commenced work at that company in the mid 2000s and had continued in that employment until he left Turkey. He said he never worked for them.
41. I asked the applicant how he managed to get a police clearance document from the Turkish authorities prior to leaving Turkey. He said he thought his father bribed someone. I asked if he had ever been convicted of any offence. He said he was taken into custody but never went to court. I asked when he was first taken into custody. He said it was in the 1990s when a struggle between the police and protesters took place. He said people were protesting about their missing relatives. He said he was taken into police custody. I mentioned to the applicant that he had not referred to being taken into custody at that time in his statutory declaration.
42. I asked the applicant if he was with anyone on that occasion. He said he was with his cousin and some friends. He provided his cousin’s name to the Tribunal. I asked how many people were detained. He said at least 20 people were taken away on a bus. About 200 people were protesting. He and the persons detained were taken to a named Police Station. He said they were beaten and held for three to four hours. I asked what the police said to them. He said they just beat them. He said there were also seven or eight elderly women taken into custody. He said they were related to missing persons. I asked if he was protesting about missing persons. He said he was not.
43. I asked him to describe the protest. He stated that on a particular day of the week at about 12.00 or 12.30 a group of people got together. They were holding pictures of loved ones who were missing. He said the protestors were usually silent and when the police came people dispersed. He said thousands of people were missing at that time.
44. The applicant told the Tribunal that as a young student he distributed a socialist publication which is published weekly. He said the publication is now banned. He said the publication was not only of interest to Kurds but to other persons of socialist views. He said the publication was trying to teach communist ideology. I asked why he was attracted to the publication He said most Alevi Kurds support this outlook because of

their oppression over the years. He said the Alevi Kurds have a lot of problems in Turkey. I asked who supplied the publications to him. He said his cousins, who were involved in the organisation, gave them to him. He said he gave them to other Kurds who attended the same school as him. He said his school was dominated by Fascists. He said he left school because he had been harassed. He said about 10 or 15 of his fellow students who were Alevi Kurds were also targeted. He started at that school several years earlier but because the harassment was so extreme he felt he had to leave. I asked if other boys had left the school. He said some did. He said he did not know what happened to the others.

45. He said he joined the Organisation S around that time. He said there were about 200 to 300 Kurds involved in the organisation. He stopped going there when he did his military service. He said he finished his military service but he did not return to Organisation S. He said he spent a lot of time at home because he was traumatised by the treatment he had received while doing his military service. He said he only went out about once or twice a week until the following year.
46. He said that he went to a festival at a named location. He said he participated with the Organisation S at that cultural festival. He went there with his cousins. He said his cousins were playing music at the festival. He did not play because he was not prepared.
47. I referred the applicant to paragraph 31 of his statutory declaration and asked what the word 'falaka' meant. He stated that refers to the torture of tying one's feet together and hitting the soles with a wooden object. The applicant told the Tribunal that after he left the army he was traumatised and depressed. He was treated for depression at a hospital in Istanbul. He was on medication for three or four months. I asked if he had seen a doctor since coming to Australia. He said he saw a psychologist. The adviser stated that he would forward a report to the Tribunal. The applicant stated that the psychologist said she would refer him to somebody else. He said he saw the psychologist in a specific month. I asked why he went in that month. He said he was advised at that time that he could see a psychologist. He told her he was having nightmares and sleeping problems and that he was also losing weight. He said since coming to Australia he lost 14 to 15 kilos. He said he feels very lonely and has no money. He said his father had to borrow a lot of money to send him to Australia.
48. I asked the applicant if his brother, Person A, was still active politically. He said he stopped his activities in the late 1990s because he has a family. I asked how many times he had been arrested. He said he was detained for several days on one occasion and was arrested on other occasions. He said he could not remember exactly when he was last arrested. In relation to his other brother, he was also involved in the same organisation. The applicant said he was not that active.
49. I referred the applicant to paragraph 38 of his statutory declaration where he referred to the production of a publication and pamphlets for Organisation S. I asked the applicant if Organisation S paid the publication to make the brochures. He said they were all connected with one another. I asked what the brochure said. He said they advertised events or explained various things. They produced about eight per month. I asked who printed the brochures. He said the publication had a printer. The applicant stated that he worked varied hours at the publication and sometimes he worked seven days per week. I asked when he went to Organisation S. He said he usually went there after

working at the publication. He said it was like a club. People could sleep there if they wished. I asked if the police had ever closed it down. He said they did in one particular year. They shut down the stage. He said from time to time they close it down for three to four days at a time and then allow it to open again.

50. The Tribunal adjourned the hearing until another day.
51. The Tribunal received a copy of a psychological assessment relating to the applicant and dated earlier this year (Folio 80 RRT file). The document stated that the applicant was seen by a psychologist on a specific date. The psychologist assessed the applicant as showing and displaying a range of symptoms associated with depression including a 'depressed mood, high level of emotionality and irritability, poor and disturbed sleep and low motivation and drive.'

Resumed hearing

52. The applicant, accompanied by his advisor, attended the Tribunal.
53. I asked the applicant if he had any other meetings with a psychologist. He stated that he only saw the psychologist on one occasion. He said he went to the building again but the psychologist was not there. I asked if he was still attending Organisation X in Australia. He said he is in touch with the director of the organisation and he goes there from time to time. He is still teaching music to students.
54. He said he has not spoken to his parents because they left Istanbul and went to live in another location after the police had questioned his mother.
55. I asked the applicant why he thought the police allowed him to leave the country if they were looking for him. He said not all police are after him. He believed the secret police are interested in him. He said there is one section of the police department which deals with people who are believed to be active in the political arena. He said nobody knew he was going overseas.
56. I asked when he first became involved with Organisation S. He said he started going there in the mid 1990s and continued until when he started his military service. He returned to the centre after he finished his military service. He said he used to go most days. He last went there on a regular basis in one year. He went back once several years later just before he was detained by people he believed to be the secret police. I asked the applicant if he could name the manager at that centre. He said there is no manager. They just have a management committee. He said there is a lady called Person L. He stated that his cousin Person F was very involved with the committee.
57. I mentioned to the applicant that the Tribunal had asked the Department of Foreign Affairs to contact the conference centre, and their enquiries indicated that nobody had heard of the applicant. I told the applicant that other persons with the same surname were known to the centre, but not the applicant. The applicant stated that they would not disclose his name. I mentioned to the applicant that it was his evidence that he was very active at this centre and asked why they could not remember him. I asked the applicant what kind of activities he did at that centre. He said he photographed events, prepared brochures, played music and provided information about events. I asked what

kind of political activities he was involved in. He said that going to that centre is regarded as being political.

58. I asked the applicant if he belonged to any political party. He said he supported the TKPML, which is a Communist political Marxist-Leninist group. He said he was not a member but a sympathiser. I asked how he showed his support and sympathy. He said he was involved in the group in the early 2000s. He said after that time he was working on construction sites and playing music to earn a living. He said he then ran away. He stated that a festival called Newroz, which is a Kurdish Spring festival, was banned by the authorities. He said he was involved with a group which included his cousin Person H. He said a group including his cousin and friends, organised an illegal demonstration. The applicant was living at home at that time. The group decided to protest at the Square in a suburb of Istanbul. He said they arrived at the designated area at 8 pm. The applicant stated that it was an illegal demonstration and the intention was to put up a poster that said 'Long Live Newroz' in the Kurdish language. He said he did not know who prepared the poster. One of his friends brought it there. While they were trying to put it on a wall in the square, they heard some shots. They could not see anybody with guns but the applicant's cousin Person H was shot. The applicant said they could not take him to the hospital so they went to a fellow supporter's house. He called a Kurdish doctor who treated the bullet wound.
59. I asked the applicant when his cousin went to Country Y He said he went a few months after he had been shot. He said he is currently in Country T. The applicant stated that his brothers have not been involved in political activities since the mid 1990s He said they had not had any problems with the police in the last few years. He said he is the only member of his immediate family who has been targeted because he was the most active. He said his cousins are also active. He named his cousins who have the same surname. They are Person F, Person M and Person N. He said they are on the run somewhere in Turkey. He said the only one he has been in contact with about three or four months ago, was Person F. He told Person F that he was in Australia and Person F was happy for him. Person F offered to send a fax in support of the applicant's case. The applicant stated that the Tribunal could Google Person F and would see that he is active in Kurdish music and also in relation to the human rights situation in Turkey. The applicant referred to reports he had provided to the Tribunal relating to his cousin Person D, who was involved with the MKP (Folio 62 RRT file) and another report relating to Person G (Folio 60-61 RRT file).
60. The applicant stated that Turkey at present is trying to join the EU so they are covering up what is happening to the Kurds. He stated that they have started a Kurdish TV station but they continue to arrest people for speaking Kurdish on the streets. I asked the applicant how the police knew he was involved in the protest the mid 2000s. He said he did not know and perhaps they called someone who gave them his name. I asked the applicant if the group had met after the demonstration to check that everyone was safe. He said he saw a few of them but not all of them. He said they communicated by phone. I asked how many others were wanted by the police. He said he had no idea. I asked how long after the protest did the police raid his family home. He said it was 2-3 weeks later.
61. In relation to the funeral, the applicant stated that he was keen to attend that funeral. I asked why he would risk going to the funeral if the police were looking for him. He said at that time there was a woman in his life and he also wanted to see her. He said

they attended the funeral together. I asked why he would go to a public event and risk exposing himself. I said I could understand why he would want to secretly enter Istanbul to see his parents and his girlfriend. He said there were thousands at the funeral and he wanted to give his support. He said he did not attract any attention. I asked how long he spent at the centre after attending the funeral. He said he was there 3-4 hours, perhaps more. His girlfriend was with him. He said he did not want her to leave the centre with him because he had a feeling something might happen.

62. Three men came out of a car and he believed they were secret police. They drove for 20-25 minutes and took him to a place which seemed to be a basement. I asked the applicant what he could tell them. He said they asked him about names he did not recognise. They later asked him about his cousin Person F. I asked if they told him how they got his name. He said they did not. I asked what else they thought he could tell them. He said they asked a lot of questions about the cultural centre and the party he belonged to. I asked which party was that. He said it is called the TYPML. He said it now has a new name the MKP, which is a Maoist Communist party. He said nobody is sure who the leader is. It is a very secretive group. I asked what else the police asked him. He said they wanted him to spy and to keep them informed as to what was happening in the party. They wanted to know who was behind the party and what activities they were planning. I asked what activities had taken place since then. He said he did not know. He said generally there are demonstrations in Turkey, but he did not know what was happening for the next 3-5 months, as he did not go to any more meetings. He said it also took him some time to recover from the beatings he had received while detained. He said he avoided the group and the centre.
63. He said he went to a meeting at the tea gardens in the following month, to speak to one of the police officers involved in his abduction. He told the police officer that he could start working for them in about two months, in an effort to gain more time. He said the police officer had to accept this because the applicant had suffered injuries from the torture and he would have to explain to his friends what happened to him, because it was evident that he had been assaulted. He said his head was 'broken'. He said they used bags to beat him and carried out other methods of torture.
64. I asked when he last met with the secret police. He said it was in a specific month. I asked when they went to his home to look for him. He said it was several months later. The applicant said he had two meetings several months before with the secret police and was due to meet again in several months. He said they had his phone number. I asked when they last phoned him. He said they did not phone him because he closed his account and threw away the phone just before the scheduled meeting.
65. I mentioned to the applicant that the Tribunal had made enquiries with Person O about the applicant working for him. I mentioned that Person O stated that the applicant had worked for him from a specific time. The applicant said that that was not possible because he was living elsewhere and was playing music there. The applicant said he was using a false name, Person I. I asked how he came up with this name. He said he has a friend with that family name.
66. The applicant stated that if he returns to Turkey he will be arrested if they catch him. He said he has no idea what they will do to him, but he fears the worst. I asked if there was anything else he would like to tell the Tribunal. He said he has thought about life and how pleasant it is to live in a place where people can live in harmony. He said that

is not possible in Turkey He said he wants to live a life where he can be useful to other people. I asked if he had done anything for the Kurdish cause since coming to Australia. He said his health and psychological state were not good and he has not been able to do anything. He said if he remained in Australia he would really like to raise money to help educate poor people in Turkey.

67. I asked the applicant if he had any problems with the interpreter during the hearing and he said he did not.
68. I mentioned to the applicant and his advisor that it might be useful if the applicant could obtain some statements corroborating his claims. I also mentioned that perhaps a full psychological report might be useful given the applicant's claims to have suffered torture and trauma in Turkey The advisor stated that he would endeavour to get the Tribunal more evidence and would let the Tribunal know how long he anticipated that would take.

Post hearing material

69. The Tribunal received the following documents from the applicant's advisor :
 - Recently dated psychological assessment report of applicant (Folios 104-107).
 - Letter from applicant's cousin, Person F, and an English translation (Folio 102-103).
 - Letter from applicant's brother, Person A, and English translation (Folio 102).
70. Person R, Psychologist, stated that the applicant had been referred to the Health Centre by his advisor for assessment and short term counselling "in relation to possible presence of psychopathology due to experiences of torture and trauma in the past and a request by Refugee Review Tribunal member for a psychological assessment to determine possible causes of his vagueness at the Tribunal hearings and inability to provide a clear account of what has happened to him prior to arrival to Australia." The applicant attended the psychologist's rooms on a specific date. The psychologist provided details of her qualifications and experience and also the tests carried out during the consultation. She said that the applicant cooperated with the assessment procedure but at times appeared to be visibly tense and uncomfortable. An interpreter assisted.
71. The report contained the following information :
 - "[The applicant] reported a long history of anxiety and depression in relation to experiences of trauma and persecution in his country of origin, Turkey. He related that he was a member of the Alevi and Kurdish ethnic and religious groups. [He] related that his family and friends had experienced persecution and been attacked by the Police and Turkish Security Agencies since he was a young man and that one of his cousins had been killed by them due to political activities. He related that he was a member of [Organisation S] since [year] and that this group and its members had faced investigation and persecution by Turkish Police. [He] stated that in addition to being harassed he was then persecuted when he tried to flee military service and was brought back to the military base due to his religious and cultural affiliations whereby he was stripped naked and beaten before other soldiers as well as tortured.
 - [He] related that when he then continued to become actively involved with [Organisation S] via publication and distribution of [publication] and pamphlets and that he was forced into hiding in [year] when his relatives were arrested and a cousin shot by the authorities, and it

was around this time that he first developed anxiety symptoms. He reported that he lived in hiding in fear of his life and that despite this he was abducted in [year] by the authorities when he attended the funeral of a well known left wing journalist. He related that he was interrogated and tortured for about [several] days by the Turkish authorities, and that this torture took the form of being beaten severely and having electric shocks to his genitals and ears. [He] indicated that his symptoms of fear, anxiety and anger worsened after this episode and that upon his release he lived in hiding to ensure that he did not get arrested again. ...[he] stated that he is sick with worry about what would happen to him if he was deported and returned to Turkey and that he has well founded fears of being killed by Turkish Intelligence Agencies based on his experiences in the past. He added that life in Australia has not been easy as he has had accommodation issues and is living with little income here, however despite this would never return to Turkey willingly...

- He appeared irritable in response to some questions and it appeared that he had difficulty recounting events that led to him to come to Australia. When questioned on this issue, he related that he finds interviews quite difficult as he feels under pressure and that they trigger memory of interrogations that he has been through and that they make him feel quite uncomfortable...
- “In relation to symptoms of distress, [he] related that he feels tense, anxious and distressed most of the time and that he copes with his feelings by shutting himself off from other people. He related that he finds social situations difficult nowadays and that he is fearful of confrontation with other people and to cope with this he avoids people. When I asked if he has been able to make friends in his [type] classes, he responded that he does not talk to anyone and finds it hard to relate to people, only socialising with fellow Kurdish people who have been formerly involved in political activities and who live in [Australia] now.
- [Further information contained in the report deleted in accordance with s431 of the Migration Act]
- If returned to Turkey I believe that he would most likely deteriorate psychologically as he would be exposed directly to sources of his trauma and if he is right in saying that his family home has been searched and that the authorities are looking for him, return to a place where he may be re-exposed to torture and trauma is likely to exacerbate his condition and lead to worst outcomes....
- It is my professional opinion that [his] presentation is consistent with a person who has experienced significant trauma, associated with violence, and that he is experiencing clinically significant levels of distress, which appear to have resulted with torture, trauma and ongoing persecution from Turkish authorities, in the absence of any other stressors or pre-existing history of mental health problems. He reported a healthy and happy childhood overall...”.

72. The applicant’s brother, Person A, stated that he has been detained and questioned regarding his brother’s whereabouts. He was also questioned about his cousins Person F, Person H, Person M and Person N. He stated that members of his family had for years been harassed and persecuted by the Turkish authorities. He stated that his mother was also detained and interrogated for hours in relation to the applicant. Person F stated that the family has been active throughout the years and that many members of the family expressed their ideals through music and art. He stated that the applicant has been subjected to police oppression and violence. He stated the applicant was involved not only in playing music but in other actions including posting posters and involvement in printing.

73. The Tribunal received a statement from Person Q. He stated that he has lived in Australia for many years and was granted refugee status because of unfortunate events which had occurred in Turkey. He remembered the applicant as a young musician in Turkey who took part in Kurdish activities. He supports the applicant's claims (folio 109).

Independent country information

74. The US State Department summarised the current situation of Kurds in Turkey in its most recent report as follows:

'The law provides a single nationality designation for all citizens and does not recognize ethnic groups as national, racial, or ethnic minorities. Citizens of Kurdish origin constituted a large ethnic and linguistic group. Millions of the country's citizens identified themselves as Kurds and spoke Kurdish. Kurds who publicly or politically asserted their Kurdish identity or publicly espoused using Kurdish in the public domain risked censure, harassment, or prosecution.' (US State Department, *Country Reports on Human Rights Practices for 2007* in relation to Turkey, Section 5, Discrimination, Societal Abuses, and Trafficking in Persons - National/Racial/Ethnic Minorities)

... in the current security situation even villagers believed to be sympathetic to a pro-Kurdish political party like the DTP can face arbitrary detention and prosecution for supporting an illegal organisation or inciting separatism (US State Department, *Country Reports on Human Rights Practices for 2007* in relation to Turkey, Section 3, Respect for Political Rights: The Right of Citizens to Change their Government).

75. In a research response prepared in January 2004 the Research Directorate of the Canadian Immigration and Refugee Board noted that:

'An Asylum Aid report, written by a delegation responsible for an investigation conducted in 2000 on the situation of Kurds in Turkey, indicated that Kurds are at risk of arbitrary detention by the security forces because they are suspected of supporting the Kurdish national movement (Feb. 2001, 15). Kurds in shanty towns, who are always under heavy surveillance, are probably at greatest risk (Asylum Aid Feb. 2001, 15). According to that report, 20 to 40 per cent of Kurds living in one area of Istanbul had not registered in their place of residence, even though they are required by law to do so when they move (ibid., 16). They refuse to register for fear of being harassed by the police, but they must then face the consequences of that refusal, namely, not having access to various social services that are available only to those who have registered (ibid. 17).

Over 95 per cent of people detained by the police in Turkey are released without charge, indicating a high rate of arbitrary detention, particularly for Kurds and Alevis (emphasis added by Tribunal) (ibid., 17-18). If charges are not laid, detainees have no proof of their detention (ibid., 18).

The Asylum Aid report indicated that almost all displaced Kurds know someone who has been tortured (ibid., 19). *Country Reports 2002* indicated that, in the southeast of the country, a predominantly Kurdish region (31 Mar. 2003, Sec. 1.a), only 5 to 20 per cent of people who were tortured reported the torture, because they feared retaliation or believed that a complaint would be futile (31 Mar. 2003, Sec. 1.c).

In a report dated 27 May 2003, the United Nations Committee Against Torture concluded that, despite the high number of complaints of torture or ill-treatment by the security forces, the state rarely prosecutes the offenders (para. 5). Furthermore, the punishment is often non-existent or minimal, the proceedings are lengthy, and officers accused of torture are rarely suspended from duty during the investigation (United Nations 27 May 2003, para. 5). Of 577 police officers accused of torture between 1995 and 1999, only 10, or 1.7 per cent, were convicted (Asylum Aid Feb. 2001, 24).' (Research Directorate, Immigration and Refugee Board of Canada, 'Turkey: Authorities with whom Kurds in Istanbul could file a complaint of harassment or extortion by nationalists or the police; the protection offered to such complainants', 29 January 2004, TUR42377.FE)

In an Asylum Aid report which was prepared by David McDowall in 2002 he said:

With regard to the 'predictable consequences' referred to by McDowall, the US State Department said in its most recent report that the security forces continued to torture, beat and otherwise abuse persons

and that human rights organisations reported a rise in cases of torture and abuse during the year. It noted that in a report published in July 2007 Amnesty International had said that a 'culture of impunity' allowed police and Jandarma to escape accountability for torture (US State Department, *Country Reports on Human Rights Practices for 2007* in relation to Turkey, Section 1.c, Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment). Human Rights Watch likewise reported in its *World Report 2008* in relation to Turkey that:

'Ill-treatment appeared to be on the rise in 2007 and was regularly reported as occurring during arrest, outside places of official detention, and in the context of demonstrations, as well as in detention centers. This trend was further exacerbated by the passing in June of a new police law granting wide-ranging powers of stop and search. After the new law came into force, cases of police brutality were also reported in the context of the routine identity checks permitted in the new law. ...

Turkish courts are notoriously lenient towards members of the security forces who are charged with abuse or misconduct, contributing to impunity and the persistence of torture and the resort to lethal force. Many allegations of torture or killings in disputed circumstances never reach the courts and are not investigated' (Human Rights Watch, *World Report 2008* in relation to Turkey)

FINDINGS AND REASONS

76. The applicant claims to be a citizen of Turkey. A copy of the applicant's passport was provided to the Tribunal and the Tribunal is satisfied that the applicant is a citizen of Turkey.
77. The applicant claims that he was persecuted in Turkey because of his Kurdish ethnicity, his religion and his political opinion. He claims that from a very young age he was targeted because he is a Kurd. He claims that he suffered serious harm while doing his military service. He claims that after he left his military service, he was involved in various activities which attracted adverse attention from the secret police in Turkey. He claims that he was detained and physically assaulted for long periods of time by the secret police. He claims that he went into hiding and managed to avoid detention. He claims that his father obtained false documentation so he could come to study in Australia. He claims that if he returns to Turkey he will be arrested and will suffer serious harm.
78. The Tribunal has taken into account the applicant's claims in his protection visa application, the documents he provided to the Department, his evidence before the Tribunal, documents provided to the Tribunal, his advisor's submissions and the detailed psychological report recently provided to the Tribunal. In assessing the applicant's Convention claims, the Tribunal is required to consider whether his fear is well founded and whether the treatment he fears amounts to persecution for a Convention reason.
79. The applicant appeared before the Tribunal on two occasions. He was questioned at length by the Tribunal. The Tribunal found the applicant to be a credible witness who delivered his evidence in a forthright manner. The Tribunal mentioned to the applicant that it had made enquiries overseas in relation to evidence he had provided about his activities at the Organisation S and these enquiries indicated that he was not known at Organisation S. The applicant stated that no information was provided about him because the person at Organisation S might be trying to protect the applicant. The Tribunal finds it plausible that since the applicant did have a political profile in Turkey, that the person spoken to may have been suspicious and in fear of revealing any information about the applicant. The Tribunal was also concerned about the applicant's

psychological state as it was apparent during the Tribunal hearings that he was at times withdrawn and appeared to be detached. The Tribunal accepts the psychologist's report that the applicant is suffering major psychological problems due to his experiences in Turkey. The Tribunal accepts that the applicant is in fact suffering from Post Traumatic Stress Disorder and that he will need ongoing psychiatric and psychological attention for some time. The Tribunal can understand why the applicant would find the process of being questioned by the Tribunal to be difficult and that giving evidence about his unpleasant experiences would force the applicant to recall memories he had probably tried to suppress over the years. The Tribunal found the psychological report to be of great assistance in helping the Tribunal to understand the applicant's demeanour during the Tribunal hearings.

80. The Tribunal accepts that the applicant is an Alevi Kurd and that he was involved in various activities in relation to the rights of Kurdish people in Turkey. The Tribunal also notes the letter of support provided by Organisation X. The Tribunal accepts that the applicant suffered harm during his time at school and that he suffered serious harm during his period of national service. The Tribunal accepts that he became involved in various cultural and political activities relating to the Kurdish people after he finished his military service. The Tribunal accepts that the applicant suffered depression for some time after he had completed his military service and that this depression was brought on by the harsh treatment he experienced during his military service.
81. In the present application, the Tribunal is satisfied that the applicant has a well founded fear of persecution for reasons of his ethnicity, religion and political opinion and sets out its reasons below.

Persecution

82. The Tribunal is satisfied that the applicant was assaulted as a teenager and was seriously harmed while he did his military service and when he was detained by the authorities. The Tribunal is satisfied that the applicant's brothers and cousins were also involved in political activities over the years and that his cousin Person D was involved with the MKP and that he was killed by the authorities. The Tribunal is satisfied that the applicant's father arranged for his departure, using false references so that the applicant could come to Australia to study. The Tribunal checked out some of those references which proved to be false. Based on the evidence before it, and country information set out above, the Tribunal is satisfied that the harm feared by the applicant will at least constitute significant physical harassment of the person or significant ill treatment of the person (s.91(R)(2)(b) and (c) of the Act). Accordingly, the Tribunal is satisfied that the harm the applicant fears is sufficiently serious to constitute persecution for the purposes of the Refugees' Convention.

Convention Ground

83. The Tribunal is satisfied that the applicant is an Alevi Kurd who was politically and culturally active in Turkey over many years. The Tribunal accepts that the applicant was the subject of serious harm on more than one occasion because of his ethnicity and his political profile. The Tribunal accepts that the applicant attended the Cultural Centre and was also active in producing pamphlets and photographing events. The Tribunal is satisfied that the essential and significant reasons the applicant may be targeted for persecution would be for his ethnicity and political opinion. The Tribunal

is satisfied that s.91(R)(1)(a) of the Act is satisfied. Accordingly, the Tribunal is satisfied the applicant may be persecuted for a Convention reason.

Well Founded Fear

84. The question now for the Tribunal to consider is whether the applicant has a real chance of being subjected to the persecution feared. A real chance is not a remote chance; there needs to be a real substantial basis that an applicant would be subjected to the persecution feared. After reviewing the applicant's evidence to the Department and before the Tribunal, the psychologist's detailed report, the witnesses' evidence and the country information available to the Tribunal, the Tribunal accepts that the applicant has been involved in cultural and political activities in Turkey. The Tribunal also accepts that the applicant was harmed and detained because of his activities and his Kurdish ethnicity. The Tribunal is satisfied that should the applicant return to Turkey, he could be detained and subjected to interrogation and mistreatment. Based on all of the above, the Tribunal cannot exclude the possibility the applicant could be seriously harmed by the Turkish authorities as one that is remote, insubstantial or far-fetched. The Tribunal is satisfied that there is a real substantial basis for finding the applicant would be persecuted for a Convention reason in Turkey, should he return in the reasonably foreseeable future. The Tribunal is satisfied that the applicant's fear is well founded for the purposes of the Convention.

Relocation

85. The Tribunal is of the view that relocation is not a viable option in this matter. The Tribunal accepts that the applicant would be targeted wherever he tries to live in Turkey. The Tribunal is of the view that relocation to a different area of the country to avoid the risk of persecution is not reasonable in all the circumstances.
86. Accordingly, the Tribunal is satisfied that the applicant has a well founded fear of persecution for a Convention reason in Turkey.

CONCLUSIONS

87. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

88. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. PRRRNM</p>
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