IK (Returnees - Records – IFA) Turkey CG [2004] UKIAT 00312

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 6, 7, 8 & 19 October 2004
Date Signed: November 2004
Date Determination Notified: 2 December 2004

Before:

Mr S L Batiste (Vice-President)
Mr J Perkins (Vice-President)
Mr S J Widdup

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

[ ]
Respondent

DETERMINATION AND REASONS

For the Appellant: Ms L Giovannetti, Counsel, instructed by Treasury Solicitors.
For the Respondent: Mr E Grieves, Counsel, instructed by Messrs Sheikh & Co.

A summary of our conclusions appears at the end of the determination

History of this Appeal

1. The Respondent is a citizen of Turkey. The Appellant appeals, with permission, against the determination of an Adjudicator, Ms Sarvanjan Kaler, promulgated on 20 September 2002, allowing the Respondent's appeal against the Appellant's decision on 7 December 2001 to issue removal directions and refuse asylum. The Tribunal allowed the Appellant's appeal on 2 June 2003, but that determination was quashed on 12 March 2004 on appeal to the Court of Appeal and, with the consent of the parties, the appeal was remitted to a differently constituted Tribunal for reconsideration, in the light of the then new country guidance by the Tribunal in **A (Turkey) CG [2003] UKIAT 00034**.

2. The appeal was listed for rehearing by the Tribunal on 28 July 2004. It was then adjourned because, on the day, Mr Grieves produced a new report from Mr McDowall concerning the scope of the records kept by the authorities at Istanbul Airport, and the Respondent's Representative requested time to consider it. Mr Grieves then asked if the Tribunal would grant permission to call Mr McDowall to give oral evidence. We agreed. He also asked for permission to approach other expert witnesses to see if they would agree to give oral evidence. We agreed to this also. Subsequently, with the agreement of the parties, this appeal was linked for hearing with six other appeals, in which Messrs Sheikh & Co acted for the claimants, making 7 in all. Prior to hearing, the Appellant granted leave to the claimants in three of these appeals, and later we adjourned one other appeal (in which Mr Grieves was not involved) for hearing separately by a different Tribunal. The two additional appeals in the event heard by us were

    1. HX/27475/2002 AO
    2. AS/06367/2004 MA

3. The Claimants are the appellants in AO and MA. By reason of the respective dates of the determinations under appeal, the lead appeal of IK, and the appeal of AO are not subject to the "error of law" limitation on appeals to the Tribunal, under the Nationality, Immigration and Asylum Act 2002. MA however was determined in 2004, and is. Separate determinations will be issued in each appeal, but this is the lead determination, in which we deal in detail with the objective evidence and general submissions as a whole with the intention of providing country guidance, as well as dealing with the specific circumstances of the lead appeal.

Facts of this Appeal

4. The Respondent is an Alevi Kurd from a village in Karamanmaras in the southeast of Turkey. He was a sympathiser of the PKK and supplied them with food. Two of his cousins joined the PKK in 1992. They were subsequently captured and convicted of terrorist offences in 1995 and sentenced to life imprisonment. This triggered specific interest by the authorities in the Respondent's family. The Respondent was arrested, questioned and beaten by the authorities on two occasions in 1997.

5. On the first occasion, on 14 October 1997, the village was attacked by TIM, a special private security force. They took all the young people, including the Respondent, to the police station. The Respondent was asked if he was a supporter of the PKK, which he denied, and if he was Kurdish, which he could not deny. They kicked and punched him. They administered electric shocks through his feet. They verbally abused him. They tied a plastic bag around his head and threatened to strangle him. They took off his clothes and laid him on the concrete floor with others and subjected them to cold water pressure hosing. They put hot boiled eggs under their armpits and made them stand like that for some time. Their feet were burned with cigarettes. They were kept for four days and then released without charge.

6. On 4 December 1997, the Respondent's uncle and brother-in-law were attacked by village guards whilst taking the livestock to pasture outside the village. The guards shot at them and the uncle was shot in the shoulder. There is some uncertainty about precisely why and how the uncle was shot. It may be, as suggested in a local newspaper report that this had something to do with an order from the gendarmes a week earlier to evacuate the village, presumably as part of the clearance policy practised by the authorities in that area at that time. It may also be, as suggested in another newspaper report that it related to a curfew on the villagers from leaving the village confines. Indeed these two matters may well be inter-connected. There is also some suggestion that he might have been used as a human shield. At all events, it would appear from the reports and various statements supplied by the Respondent and members of his family, that many of the villagers did evacuate the village, but some 20 households remained in defiance of the order, of which nine households were part of the Respondent's wider family.

7. The uncle complained about this shooting incident to the local prosecutor and then became the focus of pressure from the security forces to prevent him from pursuing his complaint, leading to his leaving the area and ultimately coming to the UK where he was granted asylum.

8. On 18 December 1997, the military took all the young males of the village, including the Respondent, to the mountains. They threatened to kill everyone. The Respondent asked why and was hit with a gun. He was asked about his uncle and about people in Europe. He was ordered to find his uncle within two days. They hit other villagers also. After this incident the military forces came frequently to the village. His father therefore sent him on 25 December 1997 to Istanbul, to a family friend. The Respondent, who was then 18 and using a false identity, was found a job in a factory in Istanbul. For the next four years he worked and slept in the factory without experiencing any problems from the authorities. However, in September 2001, some two years after he was due for compulsory military service, the military, having at some point in time found out about his whereabouts, asked the factory owner about him, using his real name. The owner said that there was no one of that name working in the factory and did not provide them with any information about the Respondent. He warned the Respondent and asked him to leave the factory. The Respondent went to stay with a friend and telephoned his father to tell him what had happened. His father confirmed that the military were looking for him in the village also. Arrangements were made for the Respondent to leave Turkey illegally in a lorry. He arrived in the UK on 5 October 2001. He was discovered in a lorry and claimed asylum.

9. Although the Appellant challenged the Respondent's credibility, the Adjudicator concluded that he was consistent and clear about what happened to prompt his departure from Turkey. The Adjudicator accepted his claim that he had assisted the PKK at the lowest level in 1997, and that he had been detained twice for short periods. These detentions appear to have been justified and were not just

the arbitrary targeting of a Kurd. The Respondent had assisted the PKK and the authorities wished to question him. The detention and questioning was justified, but not the ill-treatment that occurred during it. However this was not the reason why the Respondent left Turkey. He had lived safely in Istanbul for many years without difficulty under an assumed name. He left when the military came to look for him to undertake his compulsory military service. The Adjudicator then assessed the question of risk on return on the evidence available at the time of the hearing in September 2002. Her conclusions in paragraph 19 of the determination were as follows.

> "The relevant question is whether he would as of today be at risk of persecution were he to be returned. This [Respondent] has by his own account been released without charge and has not come to the attention of the authorities for many years since. I am satisfied that he has been detained and questioned on suspicion of assisting the PKK. The reports show that computerised records are kept by the authorities, and so this fact is likely to be discovered by the authorities at the airport, even though he has not been charged with any offences. Suspicion of sympathies with and assisting the PKK is enough to place him at risk on return to Turkey, and he is not one of those returnees who would simply be questioned and released. Paragraph 5.85 of the CIPU states that the Dutch Ministry of Foreign Affairs notes that PKK sympathisers "risk being insulted, threatened, maltreated or tortured during questioning"."

10. The original grounds of appeal were drafted to reflect the Tribunal's country guidance in **Polat [2002] UKIAT 04332**, which was overtaken, as we have stated, by the subsequent Tribunal country guidance in A Turkey. The grounds of appeal by the Appellant were therefore amended, with the consent of the Tribunal, to read as follows.

> "The Adjudicator erred in reaching the conclusion that the Respondent has a well founded fear of persecution on return to Turkey, and that, for the same reasons, the Respondent's appeal under Article 3 ECHR should be allowed (see paragraphs 19-25 of her determination). The Adjudicator's reasoning is inadequate in this regard, most particularly in the following respects:
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> (i) having found, as she was entitled to do, that computerised records are kept by the authorities, the Adjudicator concluded that the fact that the Appellant had twice been detained and questioned would be discovered by the authorities at the airport. However, she identified no material capable of supporting the conclusion that brief detentions of the sort described by the Respondent would be recorded on computerised records and revealed by checks at the airport;
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> (ii) moreover, the Adjudicator failed to give adequate consideration to the question of whether there existed "reasonable grounds for believing" or "a real risk" that the Respondent would face persecution or treatment in

breach of Article 3 ECHR if checks at the airport did reveal that he had twice been detained, some five years previously, in the circumstances he described. In this respect it was significant that the Respondent had stated (as to the first detention) "….TIM forces (special private security forces) attacked the village. They took all young people to the police station. I was one of them….". As to the second detention, the Respondent stated "on 18 December 1997 the military took all young males to the mountains". On both occasions the Respondent was amongst those released without charge."

The Country Guidance of the Tribunal - A (Turkey)

11. The Tribunal regularly reviews the risk to returnees in the context of new objective evidence relating to Turkey as it arises, and periodically undertakes more comprehensive reviews in which all relevant material to date is fully argued before a full legal panel. The last comprehensive review by the Tribunal was in **A (Turkey)**, which was promulgated on 28 July 2003. It noted that:

> "7. The background evidence is that torture continues to be endemic in Turkey. Thus we find the following in the US State Department report for 2003 at pages 1-2:
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> > "Security forces continued to commit unlawful killings, including deaths due to excessive use of force and torture. Torture, beatings and other abuses by security forces remained widespread, although the number of reported cases declined. There were reports that police and Jandarma often employed torture and abuse detainees during incommunicado detention and interrogation. The lack of universal and immediate access to an attorney, long detention periods for those held for political crimes, and the culture of impunity were major factors in the commission of torture by police and security forces. The rarity of convictions and the light sentences imposed on police and other security officials full killings and torture continued to foster a climate of impunity."
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> 8. Again at paragraph 6.1 of the April 2003 CIPU report (this is the current report of the one to which we shall refer) the following is stated:
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> > "There have been numerous reports by human rights organisations of systematic use of torture by security forces, deaths in police custody, disappearances and extrajudicial executions."
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> At paragraph 6.2 is recorded the view of the UN's Special Rapporteur following a visit to Turkey in 1998 that the practice of torture in numerous places around country might well deserve the categorisation of systematic in the sense of being a pervasive technique of law enforcement agencies for the purpose of investigation, securing confessions and intimidation."

12. The Tribunal in **A (Turkey)**, when reviewing this evidence noted that Turkey had made a formal application to become a full member of the European Community in 1987 and in December 1999 had been given official status as a candidate for European Union membership. In order to meet membership requirements there was a need to improve its record on human rights. In order to pave the way for EU membership, the Tribunal in **A (Turkey)** noted that on 3 October 2001 Turkey completed a significant legislative overhaul comprising a package of 34 amendments to the constitution. On 3 August 2002 it approved a package of the democratic reforms including the end to the death penalty in peacetime; TV and radio broadcast being allowed in languages other than Turkish; Kurdish dialects to be taught in special courses in private schools; an easing of restrictions on public demonstrations and association; allowing 48-hour notification to the authorities; and an end to penalties for written, vocal or pictorial criticism of state institutions, including the Armed Forces. However the Tribunal also noted that the European Commission in its "Regular Report on Turkey's Progress towards Accession" of October 2002, whilst welcoming the reforms, nevertheless concluded that Turkey did not fully meet the political criteria for EU membership for a variety of important reasons, including the fight against torture and ill-treatment, the situation of persons in prison for expressing non-violent opinions and compliance with the decisions of the European Court of Human Rights. The Tribunal therefore concluded as follows.

> "13. From this, we conclude that there have been steps in the right direction in improving human rights in Turkey, though we consider there is some force in the point made by Mr Grieves that there have been no significant signs of implementation of the reforms which have little benefit to individuals potentially at risk."

13. The Tribunal then went on to consider the specific situation of risk on return to Turkey in the following terms.

> "23. With these background matters in mind we move on to consider the specific situation of risk on return to Turkey. Mr Grieves argued that this was the essential point at which if problems were going to occur they would occur. He based this upon the existence of the central information system usually abbreviated as GBTS, which is available to the Turkish state….. It is said that the system stores various personal data, including information on outstanding arrest warrants, previous arrests restrictions on travel abroad, possible draft evasion or refusal to perform military service and tax arrears. Sentences which have been served are in principle removed from the system and entered in the national accessible judicial records…… [Reference was then made to the relevant paragraphs in the then current CIPU report concerning the treatment of returned asylum seekers.]
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> 25. In the light of this evidence, Mr Deller (for the Secretary of State) very helpfully made it clear that he accepted that the computer system exists as recorded and that interrogations at the border take place. He also accepted that if there was reason for a person to get into the hands of the Anti-Terror Branch then there was a risk of torture….

42. It will be clear from our assessment of the general issues above that we agree that there is a real risk that any history a person has of previous arrests, outstanding arrest warrants, criminal records or judicial preliminary enquiries or investigations by the police or Jandarma will be contained on the GBTS computer system. The typical returned Turkish asylum seeker will be travelling either on no documents or one-way emergency travel documents, which we accept may place the authorities on notice that they return as someone who has sought asylum and has been unsuccessful. If however the claimant holds a current valid Turkish passport it is significantly less likely that this perception will arise.

43. Assuming possession of only a temporary travel document, it is likely that the returnee will be detained for interrogation at the point of entry while enquiries are carried out by them because they are identified as being a failed asylum seeker who may therefore have a history, or if the GBTS computer records reveal information regarded as relevant.

14. On this basis, the Tribunal in **A (Turkey)** identified the potential risk factors to be taken into account. It concluded as follows.

"46. The following are the factors which inexhaustively we consider to be material in giving rise to potential suspicion in the minds of the authorities concerning a particular claimant.

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

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

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

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

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

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

g) How long a period elapsed between the appellant's last arrest and detention and his or her departure from Turkey. In this regard it may of course be relevant to consider the evidence if any concerning what the appellant was in fact doing between the time of the last arrest and detention and departure from Turkey. It is a factor that is only likely to be of any particular

relevance if there is a reasonably lengthy period between the two events without any ongoing problems being experienced on the part of the appellant from the authorities.
h) Whether in the period after the appellant's last arrest there is any evidence that he or she was kept under surveillance or monitored by the authorities.
i) Kurdish ethnicity.
j) Alevi faith.
k) Lack of a current up-to-date Turkish passport.
l) Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the appellant since he or she left Turkey.
m) Whether the appellant became an informer or was asked to become one.
n) Actual perceived political activities abroad in connection with a separatist organisation.
o) If the returnee is a military draft evader there will be some logical impact on his profile to those assessing him on his immediate return. Following Sepet of course this alone is not a basis for a refugee or human rights claim.

47. We cannot emphasise too strongly the importance of avoiding treating these factors as some kind of checklist. Assessment of the claim must be in the round bearing in mind the matters set out above as a consequence of a careful scrutiny and assessment of the evidence. The central issue as always is the question of the real risk on return of ill treatment amounting to persecution or breach of a person's Article 3 rights. The existing political and human rights context overall is also a matter of significance as will be seen from our assessment of the particular appeals in our determinations of those below. The particular circumstances that prevail today may not be in existence in 6 months time for all we know."

Subsequent Developments in the Country Guidance of the Tribunal

15. The availability to the authorities of information about a specific individual is an integral element of the risk assessment, as stated by the Tribunal in paragraph 46(a) of **A (Turkey)** above. As failed asylum seekers are returned to Istanbul Airport that is the first point at which the available information will be checked and for this reason it has in recent years become the focus of the risk assessment, as was argued by Mr Grieves in **A (Turkey**).

16. However, in early 2004 some new evidence emerged about the scope of the records held on the GBTS, which suggested that they might be more limited than had hitherto been assumed. It has been known, since the Netherlands Government report of July 2001, and this was accepted in **A (Turkey)**, that essentially only personal data relating to outstanding arrests warrants, previous arrests, restrictions on travel abroad, possible draft evasion or refusal to perform military service, and tax arrears would be recorded on GBTS. However

evidence came to light in 2004 that for the first time drew a distinction between "arrests", which in the Turkish context require a court decision, and "detentions" by the security forces without court sanction or charge. This was not something new in the sense that some change had taken place in Turkey, but was rather a correction of a long-standing misunderstanding about what an "arrest" meant in the context of Turkey and the GBTS. As there is well established objective evidence that the large majority of detentions (sometimes put as high as 90%) are relatively brief and end in release without charge or court appearance, this new evidence is potentially significant.

17. This question and others relating to it have been addressed in recent months by the Tribunal in a variety of determinations, as new evidence and opinions have emerged and been considered. The relevant aspects of the recent Tribunal country guidance can in broad terms be summarised as follows:

    1. **HO (National records) Turkey CG [2004] UKIAT 00038**. On 4 February 2004, this was the first Tribunal case to consider in detail the new evidence of the distinction between arrests and detentions in the GBTS, and held it to be reliable. It also concluded that there could be other records or personal knowledge by individual security personnel in a returnee's home area that might expose him there to greater risk than at the airport or elsewhere in Turkey, and thus the issue of internal relocation might assume importance.
    2. **SA (GBTS records) Turkey CG [2004] UKIAT 00229.** On 31 March 2004, the Tribunal considered an opinion from Mr McDowall that either GBTS covered a much wider range of security interest or the security forces operated another computerised screening system including recourse to individual police and gendarmerie stations across Turkey. The Tribunal concluded that Mr McDowall, though knowledgeable on Turkish matters, acted not as an independent expert but as an advocate and his unsupported opinions should be seen in that light. This concern about Mr McDowell's objectivity has been expressed also for some time by several other Tribunals, for example in **MO (McDowall Reviewed – Objectivity) Turkey CG [2002]UKIAT 02583**, promulgated on 12 July 2002. The Tribunal in **SA (Turkey)** accepted the evidence in the CIPU report at 5.71 that

        > "The Turkish Intelligence Agency, MIT, allegedly keeps close tabs on political activities against Turkey. With manpower constraints, routine surveillance by the MIT seems to concentrate on leading figures. Information on people of lower rank is apparently obtained by chance".

        It did not accept however that this record, which essentially related to activities outside Turkey, meant that there would be computerised records available at Istanbul airport apart from GBTS of persons who had been detained and released without charge within Turkey. The Tribunal did not accept either Mr McDowall's opinion that a person registering with a Mukhtar in a new area, outside his home area, would be at real risk of material ill-treatment

as a result of information available in his home area on such matters as detentions and releases without charge. Having said that, the Tribunal acknowledged that there was limited evidence before it on the subject of other records systems or on what happened in relation to records when a person registered with the Mukhtar in a new area.

3. **LT (Internal flight – Registration system) Turkey CG [2004] UKIAT 00175**, which concluded on 10 May 2004 that if a person was able to pass safely through Istanbul Airport, but might be at real risk from other records in his home area, there could be a viable internal flight option elsewhere in Turkey. It also noted evidence that large numbers of Turkish citizens lived in Turkey without registering with the local Mukhtar and that it would not in the absence of specific factors be unduly harsh to expect a returning failed asylum seeker to do so.
4. **AG (GBTS, "tab" and other records) Turkey CG [2004] UKIAT 00168**. On 12 May 2004, the Tribunal assessed written evidence from the Swiss Organisation for Refugees (SWOR), Ms Sheri Laizer and Mr Kanat concerning record files kept by the security forces known as "tab records". It concluded that the various security forces may each have their own information systems and accepted that if an individual is "sought" by the anti-terror police or by the state, there will be some information about it at the airport. It would also be likely to be in the GBTS. There were also lists of wanted people and photographs in the border police booths at the airport. There may also be information about "undesirables," which explained why Ms Laizer was refused entry into Turkey in 1998. However it concluded there was no evidence that records of mere detentions in south-east Turkey would be available at Istanbul Airport.
5. **KK (GBTS – Other information systems – McDowall) Turkey CG [2004] UKIAT 00177**. On 14 June 2004, the Tribunal further reviewed the evidence of SWOR and of Mr McDowall, and considered an article from Zaman On-Line and concluded that this evidence did not undermine the conclusions in **O (Turkey)**, which should be followed. It assessment of an internet article by Zaman On-Line was expressed in the following terms

   > "The Zaman On-Line article dated 1 February 2004 refers to a single computer system which will replace all records kept by the police and gendarmerie. This article gives the name of the system as "Information Collection System". This article states that under the single on-line system all records of police and gendarmerie in provinces would be abolished and the new on-line system will be used. The document entitled Project for Police Information Systems of April 2002 also makes reference to a police computer network but gives it a different name – "Police Computer Network and Information System". Those documents must be referring to one of the same computing

system - since both articles referred to one system to cover the police departments. If this is the case, then the Zaman On-Line article makes it clear that only criminal records would be collected into the single system. The inference therefore is that mere detentions would not be collected into the single on-line system."

6. **MS (GBTS information at borders) Turkey [2004] UKIAT 00192**. The Tribunal considered reports from Mr Kanat, a Turkish defence lawyer, Ms Sheri Laizer and Mr McDowall, and concluded that

   "It seems to us to be clear….. that the computers that are at the airports are the GBTS computers and the information they contain is what is in the GBTS records. It is also plain that there are other less formal records that are maintained but that these will not be looked at unless somebody is placed into custody. There is no suggestion that people are being picked up at the airport because of these information files."

7. **CE (KK confirmed – McDowall report) Turkey CG UKIAT [2004] 00233.** The Tribunal reviewed and approved LT, KK and MS in light of further evidence, including a new report by Mr McDowall.

18. We have the benefit of substantially more, and more recent, evidence than was before the various panels of the Tribunal in the above cases and the benefits of more wide-ranging and fuller argument. There have also been other developments that must be taken into account including the ending of the PKK cease fire followed by escalating violence in southeast Turkey, greater recognition of the threat posed by Al Qaeda following the two bombings in Turkey in November 2003, and the new 2004 EC assessment of human rights developments in Turkey published during the course of our hearing. Accordingly this determination is intended to update and replace the 7 decisions listed above and to set out the Tribunal's current country guidance on the issues covered in it.

The Evidence

19. The documentary evidence placed before us comprises the following.

1. The Tribunal bundles in the 3 extant appeals before us.
2. The Home Office objective bundle from Ms Giovannetti.
3. Volumes I and II comprising objective evidence and case law from Mr Grieves.
4. Volumes III and IV comprising case specific material from Mr Grieves
5. Statement by Denise Graf and statement of truth relating to it by Cecile Porter.
6. Supplemental statement by Levent Kanat re registration.
7. Press articles relating to report of Ulya Ucpinar.
8. Communication from the EU Commission to the Council and the Parliament.

9. Regular Report of 2004 by the Commission on Turkey's progress towards accession.
10. Various written submissions by Mr Grieves on the generic and specific issues arising.
11. Various written submissions by Ms Giovannetti on the generic and specific issues arising
12. Written statements from Mr Y Karadogan and Mrs O Golovtchouk concerning Nufus records, produced after the 3rd day of hearing, in response to submissions by Ms Giovannetti.
13. A paper by Mr Norton on Nufus records.

20. We should make clear that we have taken all the documentary and oral evidence and submissions before us into account in our conclusions, even if we do not mention everything specifically. We should record that on the fourth day of the hearing, when we moved from hearing generic submissions to those relating to the specific individual appeals, Mr Grieves sought to introduce a further bundle of documents comprising some Adjudicator determinations relating to the various of the Respondent's relatives who have sought and been granted asylum in the UK, some of which post dated the Adjudicator's decision in this appeal. Ms Giovannetti objected to the late production of this bundle on the basis that it would prejudice her, in that time would be required to assess what was said in each determination and its relevance to this appeal. Mr Grieves then asked for an adjournment. We refused Mr Grieves' applications both that we should accept this late bundle and that we adjourn the hearing to give Ms Giovannetti additional time. In reaching these conclusions, we note that both representatives have had ample notice of this appeal and ample time to prepare thoroughly. Mr Grieves suggested that he had only considered in detail the specific bundle relevant to this appeal after he had prepared the generic bundles. We do not accept that this is a satisfactory explanation, bearing in mind that this appeal was originally listed to be heard on its own, without identification as being for country guidance, as far back as 28 July 2004. It was adjourned to enable Mr Grieves to produce oral expert evidence. There was no suggestion then that the case specific material was incomplete. In any event since then there has been ample opportunity for Mr Grieves to produce all the relevant evidence, if he had addressed his mind to it in a timely fashion. The appeal was adjourned part-heard on 8 October until 20 October and this offered another opportunity to him to produce further evidence if necessary. His failure to do so until well into the fourth and final day of the hearing meant that Ms Giovannetti would be severely prejudiced in the presentation of her submissions. We have also taken into account the fact that if material evidence was required in this appeal from relatives of the Respondent, other than those who actually attended at the hearing of his appeal before the Adjudicator, they should have attended then to give such evidence and be tested on it. Finally we had regard to Mr Grieves summary of what he sought to rely upon from these documents and concluded that it would unlikely to make any material difference to the outcome of this appeal. We could assess from the evidence before us for ourselves the size of the Respondent's village and a number of his relatives who lived there. Also we would consider it normal that the authorities would make enquiries as to the

whereabouts of a young man from a village in southeast Turkey who suddenly disappeared, particularly if he would soon be due for conscription. We therefore concluded that the overriding objective under the Immigration and Asylum Appeals (Procedure) Rules 2003 of ensuring the just, timely and effective disposal of this appeal in the interests of the parties and the wider public interest would not be met by any further adjournment at that late stage or by the admission of the additional documents by Mr Grieves.

21. As previously indicated, the Tribunal granted permission to adduce oral evidence from expert witnesses. This originally related to Mr David McDowall, Ms Sheri Laizer and Mr Kerim Yildiz. However, Mr Grieves subsequently, in a note dated 22 September 2004, informed the Tribunal he would not call Mr McDowall, whose evidence would mainly be second hand, or Ms Laizer, who was not available, though they have supplied written statements that are before us. He did wish to call Mr Yildiz, and additionally wished to call Mr Orhan Dil and Mr Levent Kanat. Permission was granted accordingly. However in the event only Mr Kanat gave oral evidence. Some time was lost on the first day of the hearing (though it was subsequently made up) due to the initial lack of an interpreter and the hearing of Mr Kanat's oral evidence took considerably longer than was originally anticipated. Mr Dil, though available on the first day, was unable to stay and Mr Grieves did not inform us of this until it was too late to do anything about it. Mr Yildiz was taken ill in Poland and was unable to attend. However we had full reports from them, and as Ms Giovannetti indicated that she did not wish to cross-examine either of them, nothing of material substance has been lost by their absence. We should add that we also have received within the papers written reports from a number of other people with some knowledge and/or expertise to which we shall refer later. We have assessed the weight to be given to the evidence of each of the experts in line with the approach described by the Tribunal in the cases of **SK Croatia CG UKIAT [2002]** and **GH Iraq CG [2004] UKIAT 00248**, which we adopt.

22. In SK Croatia, a legal panel chaired by its then President, Collins J, stated

> "The tribunal is accustomed to being served with reports of experts. We have to say that many have their own points of view, which their reports seek to justify. The whole point of the country reports is to bring together all relevant material. From them, the tribunal will reach its own conclusions about the situation in the country and then will see whether the facts found in relation to the individual before it establish to the required standard a real risk of persecution or of treatment which breaches his or her human rights. Further, the tribunal builds up its own expertise in relation to the limited number of countries from which asylum seekers come. Naturally, an expert's report can assist, but we do not accept that heavy reliance is or should be placed upon such reports. All will depend on the nature of the report and the particular expert. Furthermore, it is rare for such experts to be called to give evidence or for their views to be tested. We were fortunate in *S* to have had called before us two experts who were truly knowledgeable and who had no particular axes to grind. We have reports from experts in

the present case, which we shall of course take into account and we will decide what weight should be accorded to their views.

23. In **GH (Iraq)**, the Tribunal drew an important distinction, which we also adopt, between an "expert" and an "independent expert".

> "48. An expert witness is in a privileged position because he is able to give evidence relying on hearsay and to give his opinion based on his area of expertise drawing on such hearsay evidence as well as his personal knowledge. But the weight to be accorded to such evidence depends upon demonstrable impartiality and objectivity in addition to the requisite expertise in his subject. If the witness is partial, so that he becomes an advocate for the person commissioning his report, or shows a lack of objectivity in his approach to the body of evidence on which he draws to form his opinions, then the weight to be given to his opinion as an expert witness will be substantially diminished if not altogether eroded. Nevertheless, such testimony may remain of value on a factual basis arising from the witness's expert knowledge even where the weight to be given to expressed opinions is so reduced or eroded.

The Generic Issues

24. The Tribunal is grateful to both Mr Grieves (who by agreement opened the proceedings) and Ms Giovannetti (who replied) for the detailed and thorough written submissions provided by them prior to the first day of the hearing, subsequent to the third day, and finally on two further matters in response to Tribunal questions raised on the fourth day. This has assisted us in identifying the areas where there is agreement between parties and in focusing upon and refining the material issues for our decision. In our view, the broad generic issues raised in this appeal can conveniently (though not necessarily in the precise terms and order set out in the written submissions) be summarised as follows.

1. What is the ambit and accessibility of the information system/s maintained by the authorities in Turkey?
2. In what circumstances is there a real risk that a returnee to Istanbul airport will be placed in the non-routine investigation stream and be subject to detailed questioning?
3. If a person faces non-routine investigation what should he be expected to say when questioned and what further information is reasonably likely to be accessed in this process?
4. Does the guidance of the Tribunal in A (Turkey) require review in the light of subsequent developments?
5. Should an individual (and his family) be expected to live in Turkey without registration with the local Mukhtar in order to avoid persecution.
6. Is there an internal relocation option for a person who is at real risk of persecution by the authorities in his or her home area?

What is the ambit and accessibility of the information system/s maintained by the authorities in Turkey?

25. This is the issue on which the new line of jurisprudence began with HO Turkey concerning the scope of the GBT computer system in Turkey. Both representatives acknowledged that there was some difficulty, arising from lack of clear evidence in areas where there was no credible statement by the Turkish government, in gauging the nature and extent of the record keeping systems maintained in Turkey. The sources quoted by some of the experts are quite limited in number and appear to "echo" around various of the opinions submitted to us. Such difficulty has been compounded by the very different ways in which some experts and some of the material before us have used the term "GBTS". Some have described it as a specific, defined and relatively transparent computer system. Other uses of the term appear to have ranged up to using it to describe all computer based information held by the Turkish government. The terms "tab" and "information record" have also been used in a variety of different ways to cover different secret and possibly illegal information, held by the Turkish state. We shall return to this shortly.

26. In support of his submissions, Mr Grieves has relied upon written/oral evidence from a number of people, most of them having been actively involved as human rights advocates for some years. They are

    1. Levent Kanat, a Turkish human rights lawyer of 13 years standing and a Board Member of the Human Rights Association in Turkey.
    2. Dr Haruk Gerger, a Turkish academic, specialising in political science and international politics, who has written a number of books and has received a variety of awards for his human rights activities. He spoke out against the military after the 1980 military coup and has not taught in a university in Turkey since then.
    3. Ulya Ucpinar, a human rights lawyer in Turkey with extensive experience.
    4. Denise Graf, now a Swiss based employee of Amnesty International, who has researched on Turkey for some 20 years and is or was involved with the Swiss Organisation to the Aid of Refugees (SOAR).
    5. Tahir Elci, a Turkish human rights lawyer who is on the Turkish Board of Amnesty International.
    6. Kerim Yildiz, the founder and Executive Director of Kurdish Human Rights Project in London.
    7. Orhan Dil, a Turkish asylum seeker, who was granted 4 years exceptional leave to remain in the UK and is awaiting the outcome of his application for indefinite leave to remain. Between 1990-1991, whilst undertaking his compulsory military service, he worked at a gendarme station in Erzurum province. He does not claim to be an expert, but rather describes what he then saw.
    8. Sheri Laizer, a UK writer and journalist, specialising in Turkish/Kurdish human rights issues.

9. David McDowall, a UK writer on Middle East affairs with a particular interest in Kurds who has written many reports on behalf of asylum seekers.

27. As already mentioned, for various reasons, we only heard oral evidence from Mr Kanat but have taken the written evidence from all these people into account along with the other material documentary evidence before us. In doing so we have recognised that they all (Mr Dil apart) are human rights activists. That is not intended in any derogatory sense, as Mr Grieves at one point suggested it might, but it does reflect potentially on their objectivity and the difference between an expert and an independent expert. In that light we have carefully assessed the merits of the opinions they have offered.

28. We should mention, because it was raised by Mr Grieves during the course of Mr Kanat's oral evidence on the first day of the hearing, that there were some limited difficulties over interpretation. The interpreter on that day, who came at very short notice to fill a gap caused by an administrative oversight at the IAT, informed us that she was not familiar with some of the technical terms used by Mr Kanat. We monitored the situation with great care and concluded that this caused no material difficulty in our full understanding of the evidence he gave.

29. As we have mentioned, when we came to compare the evidence relating to the record systems in Turkey it rapidly became apparent that there were considerable inconsistencies in the evidence placed before us. Mr Yildiz in his statement acknowledged that parts of the material appeared contradictory, but ascribed this as a "direct result of the lack of comprehensive information made publicly available regarding the GBT system". On careful scrutiny of the evidence as a whole we accept that many of these inconsistencies reflect the use of different terminology to describe what is in part rather opaque information gathering systems, though for the reasons we shall describe we do not consider that there is a lack of publicly available information about the GBTS component of it. Thus Mr Kanat for example, spoke of a variety of different systems (such as GBTS, tab and information systems created at various levels by the security forces, judicial records, exit and entry passport records, NUFUS records, and records of the activities of Turks overseas and of non-Turks with perceived anti-Turkish sentiments). Mr Kanat also stated that all this information is gathered and computerised centrally under the aegis of the KIHBI. Others, such as Ms Ucpinar and Mr Elci appear to believe that all the information is recorded on the GBTS. Dr Gerger takes a somewhat different view and talks of there being not a single GBT system, but three different layered GBT systems, each layer of data storage including distinctive details about a person, progressing from basic data at level 1 to much more comprehensive information at the higher levels. Ms Graf states that the GBTS is a defined and accessible computer system but other information is held elsewhere. Other evidence suggests that part of the information gathered remains paper-based at local level.

30. Ms Giovannetti argued that the GBTS is a clearly defined system, and stated the Home Office position on other information gathering as follows.

> "We accept that the intelligence services in Turkey will collect and collate information about certain individuals. We say there is no satisfactory evidence that demonstrates any reasonable likelihood what information is kept, about which individuals, who holds it, and who it is made accessible to. There is a big issue in Turkey at the moment about the very fact that such information is compiled and held. Mr Kanat's evidence made that clear and also that the state has no right to hold the information he described about individuals. He routinely referred to it as a tab. We do not accept there is any evidence to demonstrate any reasonable likelihood there is a system called the tab system, which is a single information source accessible by computer or otherwise to anyone outside the intelligence services. With regard to the list in Mr Grieves' skeleton argument paragraph 140, we accept that it is reasonably likely that the anti terror branch of the police and the MIT would have access to this information as a matter of common sense. Anything beyond that is speculation. There is no cogent evidence that the security information is available to the border police at passport control or to the police at the police station attached to the airport."

31. Mr Grieves took a dual approach on this issue. On one hand, he adopted the position described by Mr Kanat in his oral evidence to the effect that this information is very comprehensive and relates to potentially millions of Turkish citizens, and is now combined with the GBTS in a central and fully computerised information centre run by the Ministry of the Interior called KIHBI. Mr Kanat referred to all the secret information generically as "tab" records. He said it is available in a limited form in immigration booths at the airport and in full at the airport police station, to which returnees in the non-routine stream will be sent for questioning. On the other hand, if we were to conclude that Mr Kanat was wrong on this, and this information is not available in a computerised form at the immigration booths or the airport police station, Mr Grieves submitted that during the course of extended questioning at the police station it is reasonably likely that appropriate enquiries could and would be made either to the anti terror police or to the authorities in the returnee's home area, when any relevant information will be produced, be it computerised or not.

32. To resolve these matters we have assessed the evidence before us. There is in our view clear, credible and compelling evidence that the GBTS is a well defined and relatively accessible computer database maintained by the Anti Smuggling and Organised Crime Department within the Ministry of the Interior. It contains essentially the information described in the Netherlands report and accepted by the Tribunal in **A (Turkey)** as being "outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion or refusal to perform military service and tax arrears". We also see no good reason to dispute the clarification from the Turkish authorities that this must be read subject to the previously unappreciated distinction between "arrests" and "detentions." This clarification and the description of the full scope of the

GBTS is spelled out in somewhat idiosyncratic English in a letter dated 3 September 2003 from Omer Aydin, a senior officer in the Department of Anti-Smuggling and Organised Crime, which runs the GBT system. It appears in Volume I Tab 1 and states

> "1. In the GBT system, records of following are being kept as a general rule: records of people who committed crime but have not been caught: those who committed serious crimes like organised crime, smuggling crimes, drug-related crimes, terror related crimes, unlawful seizure, murder, fraudulent trade: people who have search warrants about or arrest warrants in their default: people who were barred from public services, missing persons: association management committee members who are found guilty according to article 4/4 of Associations Law 2908: records of motor vehicles which are stolen or missed or unlawfully seized: records related to firearms and records of documents which prove identity.
>
> 2. Records for people who are found guilty and sentenced of above crimes are kept until their death. Likewise, records of people who are acquitted or cases against them are being abated as a result of decisions made not to prosecute or time limitations, are erased as soon as the decision reaches the security forces. In other crimes, the records of criminals being kept, are erased after the person's capture and the records of stolen or missed goods are deleted after the items are being found.
>
> 3. Records of people who committed crimes mentioned in clause 1 are kept even if they spend their time.
>
> 4. In the GBT system, only the most recent arrest warrants are taken into board and the rest are voided.
>
> 5. Information about people who are convicted are kept by Judicial Record Directorate which is different than GBT system.
>
> 6. In our country detention is carried out by the security forces whereas arrest is a court decision. Nonetheless the police can detain a person on their initiative but has to inform the public prosecutor's office within 24 hours.
>
> 7. Only records of people who are under judicial proceedings or judicial examination by the judiciary are being kept in the GBT system. No records of people are being kept in the system, who are detained and released by the security forces."

33. The is confirmed by the evidence of Denise Graf of Amnesty International in Switzerland. She states that the GBTS database can be searched by representatives of Turks in Turkey and abroad to see what information is stored against their names. Indeed she says that that the Swiss Refugee Service regularly carries out such research. Ms Graf states that

> "During my 20 years activity on Turkey, I have come across only one case of a person whose record has been found on the GBTS computer yet regarding who there was no arrest warrant and who has never been convicted of an offence in court. So in general I would agree with the

view of the directorate that the GBTS computer focuses on individuals who are the subject of arrest warrants."

34. This evidence about the GBTS comes from a direct and authoritative source from within the relevant Department, speaking on the record of matters within his knowledge. It is confirmed by Ms Graf of Amnesty International from her own practical experience and that of others within the Swiss Refugee Service. Whilst we are surprised that the other human rights workers who have given written/oral evidence to us have not said the same, nevertheless we accept this evidence of the limited scope of the GBTS, and indeed its relative transparency.

35. If then that is the actual scope of the GBTS, what then is the evidence of what lies beyond it? Mr Grieves gave us translations of four newspaper articles, which support in part the opinions expressed by Ms Ucpinar and Mr Kanat. There is an article in the Radikal newspaper of 13 June 2001. It covers a speech by Assistant Professor Dr Vahit Bicak. He is also a human rights activist and a long-time friend of Mr Kanat. He, according to Mr Kanat, lectures on Security Law at the Police Academy where he meets many senior police officers. Dr Bicak is reported as saying that

> "The intelligence services are able to gather information in relation to the issue was such as individual's personalities, their financial status, their way of life, their past, social status, individuals they interact with and locations, and that information is kept as confidential records."

The report also states that the Turkish authorities are entitled at law to undertake the tapping of telephone, fax, computer messages and letters. We also have a report from the Evrensel newspaper of 10 June 2003 to the effect that when the Turkish Prime Minister, Mr Erdogan, was heckled at a conference by two students who were then detained, he disclosed soon afterwards to the media what was said to be their "GBT records" which showed that they had "a stain in their past records. However despite that they have neither been detained nor arrested." Next we have been given an article from the Radikal newspaper of 18 April 2003 to the effect that the police do not delete from their own records, judicial records which have been pardoned but keep them on the files of individuals to assist security investigations. The article suggests that some 1.5 million people have been registered by the police with a record since the military coup of 12 September 1989. The final article, also from the Radikal newspaper, is from 14 February 1999. It states that 90 percent of people detained by the police are released as a result of clean GBTS records. It also suggests that there is a record of individual detentions maintained in a detention book at the police station involved.

36. We would observe at this point that this material and the incidents described are somewhat limited in range but are relied upon to a considerable extent by various of the experts for key aspects in their evidence.

37. The broadest view was taken by Mr Kanat. Indeed it is fair to say that some of his oral evidence to us went beyond his written evidence and appeared to take Mr Grieves by surprise, in that he had to amend his very detailed written

submissions to take account of it. In essence, Mr Kanat described a deep and pervasive culture of information gathering about its citizens undertaken by the Turkish Government as a result of having experienced three military coups in 80 years. He took the view that every record kept by any branch of the authorities over very many years had now been fully computerised centrally by KIHBI, which is an information centre where the Ministry of the Interior of Turkey gathers and keeps information from various departments on its citizens. This information comes from mainly three different organisations – GBTS (which is maintained by the Department dealing with smuggling and organised crime), the Gendarmerie, and the National Intelligence Department (MIT). It also included information from the Courts about people who were wanted or arrested; tab records which covered all previous detentions and family members (extending to cousins) who had been imprisoned or punished; entries and exits from passport control; information records about a person and his family's closeness to a political party, their activities, movements and economic situation, and the people they associate with. All this information goes into the KIHBI computer system, which is accessible from the computer terminals at the airports and land borders. It can be accessed in passport booths, although the border police at passport control are only responsible for checking the information about the passport. If further questioning is required the person is handed over to the police at the police station attached to the airport.

38. Mr Kanat insisted that his detailed information was certain and not speculative. He was pressed at various times both by Mr Grieves and Ms Giovannetti to explain the sources of his information, especially about the breadth of the computer records and their availability at the airport. He offered the following.

    1. Much of what he said was common knowledge in Turkey.
    2. He had acted as a human rights lawyer and activist for many years and relied upon his own observations, and those of his colleagues.
    3. He had had a meeting with Mr Omer Aydin on the GBTS.
    4. Mr Vahit Bicak, who was a lecturer on security law at the Police Academy, was an old friend from law school. He let him from time to time and discussed these issues with him.
    5. There were reports in the media.

39. Although a part of what Mr Kanat had to say was reflected in the evidence of others, his very broad oral evidence about the extent of the integration of information at KIHBI and its full availability on computer at the airports and elsewhere was not. Despite many attempts to elicit more specific sourcing for this information, he did not provide it. We do not consider that this was the result of any problems of interpretation, because similar difficulties arose on the second day of the hearing when there was a different and extremely experienced interpreter with whom there were no interpretation difficulties at all, be it on technical terms or otherwise. We consider that a lawyer of many years experience like Mr Kanat should readily understand our need for proper sourcing of definite information and the distinction to be made between speculation and certainty. Unfortunately we formed the view that Mr Kanat did not, and appeared to us to treat relatively limited information as being

supportive of his general preconceptions, when in reality and on fuller enquiry it was not.

40. Thus, if everything that Mr Kanat had to say is common knowledge, we would have expected fuller evidence of it in the other reports of the experts and elsewhere. Equally, the limited examples he cited from his own experience did not, in our judgement, support the broad assumptions he derived from them. One of the few specific examples quoted by him related to an incident in July 2003 when a client of his, of Turkish origins who lived in Düsseldorf in Germany and who was involved in political activities there, asked for his assistance in returning to Turkey for a holiday. He asked Mr Kanat to be available at Ankara airport to assist him if necessary. On the date of his return, Mr Kanat went to the airport and presented his letter of authority from the client. In due course he was allowed to walk through to the passport booth, when his client had arrived. Mr Kanat said that he was able to see the computer screen used by the border policeman and saw on it information such as that his client had been detained on 21 March 1991 by the Elazig Security Department because of Nevroz activities. Mr Kanat said that the border policeman said "Yes that's OK. This is a tab record. You can take your client and go". This was the most specific source cited by Mr Kanat for his view that all records of all detentions everywhere in the country about all people detained are computerised and available to the border police at the airport passport booths. We consider there are some obvious difficulties with this proposition. First, his client was not a typical case. He was himself concerned that his political activities abroad might lead to his being picked out on return. This would be broadly consistent with other evidence that there could be detailed records maintained at the airport relating to expatriate Turks, and indeed non-Turks, if they were known to the Turkish authorities for perceived anti-Turkish activities abroad. Second, his decision to ask Mr Kanat to appear at the airport to assist him if necessary and, for this purpose, to provide him with a signed letter of authority, whilst apparently not unusual in Turkey, must nevertheless have indicated to the authorities prior to the client's actual arrival at the passport booth, that there might be something for them to investigate and to seek further information. Finally we note that notwithstanding the information revealed on the computer screen, the client was allowed to walk through the airport with Mr Kanat without difficulty. Though we do not know the history of this individual, this example does not appear to be consistent with Mr Kanat's evidence that policemen at passport booths were only responsible for checking information about passports, and that further inquiries would be made after transfer of the individual to the police station if any concern was aroused from the tab record.

41. We also consider that the press articles produced to us, including the references to Mr Bicak's comments, do not support Mr Kanat's wider conclusions. Nor do the observations by Mr Aydin as described in his letter quoted above correspond with Mr Kanat's view that Mr Aydin had confirmed his wider conclusions. Indeed it appeared from Mr Kanat's testimony that the focus of their meeting was his objection to spent convictions appearing in the GBTS. We also note that the joint written report of 20 September 2004, submitted by Mr Kanat together

with the chairman of the Human Rights Association, Mr Husnu Ondul who is also a lawyer, is more circumspect in its conclusions. It states for example

> "12. We think that the police officers that conduct the detention procedure at the airport could have knowledge of the unofficial tab records about the individual, apart from the GBTS records".

We do not consider that this difference can be satisfactorily explained away, as Mr Kanat sought to do by saying that the joint report used the official language of the Association. For these reasons we do not give weight to the opinions expressed by Mr Kanat that are not reflected in other evidence or supported by specific sourcing.

42. Dr Gerger confirms that the GBTS comprises the matters that we have described above as detailed by Mr Aydin, but also states that:

> "In fact, technically, it would not be correct to speak of a single GBT system as there are three different GBD [sic] systems, each layer of data storage scheme includes distinctive details about a person. The first level only contains a basic set of data. For example, a record of an evasion of military service (draft evasion) does not show up in this system. Officials in the ordinary police stations only have access to this level of data storage and records. For more detail they need to refer the case to central authorities, who have access to the higher levels which contain more information including previous detentions that have not been followed by legal action."
>
> "Previous detentions where there has been no further action or criminal charges are the most worrying feature of the system. In that sense, it contains data which is profoundly political in nature and hence of an extrajudicial character."

43. Dr Gerger cites as the source for his latter view the example of the student, Mehtap Yurtluk, who heckled the Turkish Prime Minister during a speech. We have already referred to a press account of this incident, which apparently received very wide coverage in the media. Dr Gerger interviewed Ms Yurtluk himself and was told that she had been detained on several occasions during protests against the Turkish higher education system that none of these had ever resulted in criminal or other proceedings being brought against her. He therefore concluded that the GBTS must contain information about detentions without judicial involvement and can be accessed at short notice. He also states that the outcome of a GBTS search is unpredictable as there is no "universal, common, internalised behaviour by the security agencies". Nor is there a legally sanctioned, practically respected procedure.

44. It appears to us that Dr Gerger is in effect saying here is that the security services at high levels in Turkey collect additional information beyond that contained in the GBTS (as we have accepted it is defined) and this is accessible to security officers on the ground on a selective basis. This appears to us to be broadly in line with what Ms Giovannetti accepted on behalf of the Appellant. Indeed, we would expect the security detail attached to the Turkish Prime Minister to have access to the highest level of information.

45. This additional secret information, which some refer to generically as "tab" or "information" records, would appear to include information about at least some detentions that have not involved judicial intervention. By way of examples, Dr Gerger has identified the case of the young student who was detained in a number of protests against the Turkish university system. Mr Kanat has identified the expatriate Turk from Düsseldorf, who was involved in political activities there, and which produced a record on return of a previous determination in Turkey.

46. This view is also reflected and extended in the evidence of the other experts such as Mr Elci. Ms Ucpinar describes a newspaper report about a student at an army college who was expelled three months before graduation because a security investigation showed that his father used to be a member of the teachers' association that was closed during the period of military rule, and his elder brother was a member of the teachers' union. She also relied upon the case of the student who heckled the Prime Minister.

47. Ms Graf states that the various branches of the security services maintain records other than the GBTS. They are secret and it is not possible to get information about them. She maintains that they are not centralised but are easily accessible from across the country when inquiries are made. Thus certain asylum seekers living in Switzerland are wanted by the Turkish police without being recorded in the GBTS system.

48. It seems clear that some further information is collected about some people. The more difficult issue is how far this further record keeping extends. Mr Grieves has invited us to accept the evidence of Mr Kanat and others that the Turkish state has a voracious appetite for information about its citizens arising from its history, as meaning that it keeps and maintains secret and illegal information in great detail on a very large number of its citizens.

49. Dr Gerger identified a report in the national newspaper Hurriyet of 10 March 2004, publishing a directive sent by the 2nd Armoured Brigade to certain military headquarters and top civilian administrators demanding that local authorities provide intelligence on certain people and groups, such as separatists, leftists, thinkers and writers, philosophical societies, minorities and those who are inclined to perceive themselves as members of minorities, certain radio and TV stations, Internet chat groups, artistic societies, pro-Americans and supporters of the European Union.

50. Mr Kanat also referred to the Hurriyet article and gave evidence that a tab record would be opened on every individual who had ever been detained for a political reason as perceived by the Turkish authorities, and every member of his family extending even to maternal cousins. The record would include information about their economic situation, where they go, where they come from, who they see, any family involvement with HADEP etc. He suggested that this information would be kept locally in the individual's home area and

would be transferred to any new area, upon registration with the local Mukhtar there. Moreover records would be sent from the local area to KIHBI to be included in their central computer system.

51. Mr Elci considers that records of detentions without judicial intervention are maintained. Both Mr Kanat and Ms Ucpinar referred to the press report quoting Dr Bicak to the effect that "information is collected by intelligence units on individual's characters, economic circumstances, lifestyles, backgrounds, social status, contacts, and whereabouts."

52. We do not consider that the evidence from Mr McDowall adds anything material. Mr Grieves told us he was not called to give oral evidence because what he had to say was mainly second hand. We agree with this judgment. As the Tribunal has held on various occasions, Mr McDowall cannot be considered as an "independent expert" but rather has his own strong personal views, and acts in effect as an informed advocate. Indeed he himself effectively acknowledges that in his statement of 25 July 2004 where he states "Incidentally I never claim to be an expert and it would be an arrogance for me to do so. I only wish to be judged by the quality of what I say".

53. Mr Yildiz uses the term GBTS generically. Subject to that, he states that where a person detained is alleged to have been politically active or is otherwise perceived as an opponent of the state, it is the practice for their detentions to be placed on the GBTS, which can be accessed by the police.

54. Mr Yildiz also produced what he said was a copy of extracts allegedly from a notebook kept by a member of the JITEM (the intelligence branch of the Jandarma) in the 1990s, demonstrating the extent of the information gathered by a single official in a particular area. It had been obtained via a news agency in the context of preparation of a case against Turkey in the ECHR. Mr Yildiz said it related to the years 1997 to 1999. We have no credible provenance for this document. It appears to have been written in part on diary paper from as early as 1994 (not 1997). There are 21 pages only. If it is a genuine document, we have either been given only selective extracts or alternatively this individual did not actually maintain much of a record of his activities over the three or six years the record was allegedly kept. Thus we do not consider that much weight could be given to this document on its own. Nevertheless we have taken it into account as an illustration of the broader evidence that the authorities collect, at a local level at least, a wide variety of information but we note it does not reveal what use was made of that information, or what weight was given to it. Some of it relates to a review of the prosecution of policemen and soldiers in respect of an incident in an E-type prison on 24 September 1996. Other parts relate to people against whom arrest warrants were issued or prosecutions undertaken, voting patterns in certain areas, and a ragbag of information about a variety of people, with some individuals, such as the lawyer Abdullah Akin, appearing on a number of occasions.

55. Of potentially more general interest is the written statement by Mr Dil, who describes the sort of information he saw recorded at a local Jandarma gendarme station on a card index system in the period 1990/1991, whilst he was serving there during his period of conscription. Again we have some reservations about this evidence. Mr Dil is not an expert witness but in effect a witness of fact. The statement offered is not a contemporaneous note of his observations but arose from evidence given in support of his sister's successful asylum appeal in June 2004. He himself came to the UK as an asylum seeker in 1995 and was granted exceptional leave to remain under a backlog clearance scheme in 1999. He has now applied for indefinite leave to remain. It is stated in the determination of his sister's appeal that he comes from a well known family in Kayseri of Alevi Kurds and supporters of revolutionary left wing politics. Yet it appears nevertheless that he was posted to a gendarme station in Oltu Town in Erzurum, which on the face of it is somewhat surprising. He explains that because of his background he was not trusted with secret work but was an "ordinary" gendarme performing routine tasks. However he sometimes helped the "clerks" who were trusted and chatted to them. As a result of this he picked up some information about the record keeping system. Despite our reservations about his evidence for the above reasons, we nevertheless found what he had to say was informative and much in line with the conclusions we formed from the general evidence.

56. His account was set in the early 1990s when the records in the gendarme station were not computerised. However there is no good evidence before us to show that subsequent computerisation, insofar as it occurred, did not reflect the established pattern of the existing manual records.

57. Mr Dil differentiated between different levels of information, which were kept in different rooms according to their importance and degree of security. Thus documents with a high degree of national security were kept locked in the room of the Commander. Documents relating to people who were accused and brought before the Prosecutor or where a court order was made against them were kept in a filing cabinet in the Commander's room. Administrative documents and "less important security documents" were kept in the administration room where the clerks worked. This included a list of "suspected and ne'er-do-well (delinquent) persons" that was typed and kept up to date and was readily available in the clerk's room. This list comprised many types of things, including suspected crimes and suspected political crimes, when there was no proof. Anyone suspected of giving support to a banned organisation would be put on the list. There was a list of banned books in the Jandarma station. People suspected of reading banned material could be put on the list. If an incident happened in the area, then the Jandarma would detain and investigate suspects on their list.

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58. Mr Dil described the record keeping system in some detail and made a clear distinction between information about the "suspected and ne'er-do-wells" on the one hand, and people who were accused, and for whom there was a prosecutor's decision made or court order issued, on the other.

59. The latter were maintained on a colour coded filing system in the stations. It distinguished between petty criminals, draft evaders, smuggling and "forest" (sic) crimes, and political offences. Details were sent to the central system in Ankara and to the provincial gendarme HQ. There were strict rules about when these files had to be destroyed. A name would only appear on a card in this system if a person was brought before the prosecutor or there was a court order. This system sounds remarkably similar to the GBTS and in our judgement corroborates the evidence of Mr Aydin and Ms Graf. In effect the new computerised system reflected the structure and rules of the old card system, as we would have expected in the absence of good evidence to the contrary.

60. The other information, such as about the "suspected and ne'er-do-wells" was maintained at the station where it was gathered. It was not routinely sent to Ankara or to the provincial gendarme HQ. However, a summary was available on request from another police or gendarme station, or government office, e.g. if a person was seeking a job as a policeman, or was applying for a firearms licence, or wanted to sell alcohol in a restaurant. If an enquiry was made, a gendarme would look at the relevant file and make a recommendation. If a person came to the adverse attention of the authorities in another city details could be exchanged. A list could also be taken when gendarmes were going to make random identity checks.

61. Additionally Mr Dil said that relevant information could be sent to the tax authorities or to the Civil Registry Office e.g. to request a marker be placed on the NUFUS file to the effect that "If this person comes to obtain a new NUFUS card, contact the police." He did no say in what circumstances this would be done, but logic suggests that it would arise if a person about whom there is material suspicion has disappeared from his home area without explanation.

62. What conclusions then do we draw from all this evidence?

GBTS

63. As we have said we accept the evidence of Mr Aydin, corroborated by Ms Graf as accurately describing the defined and limited ambit of the GBTS system. It does not include detentions by the security forces that have not resulted in some form of court intervention. We also accept the evidence (and this has not been disputed by either representative before us), that the GBTS is fairly widely accessible and is in particular available to the border police in the immigration control booths at Istanbul airport as described in **A (Turkey)**. Nor is there any reason to suppose that it would not also be relatively widely available elsewhere in Turkey to those in the security forces with access to a computer terminal. Dr Gerger, of whom we shall say more later, indeed confirms that it is a digital data storage system that is nationality accessible and can be retrieved by the police, Jandarma, border security guards, and by the mobile security personnel with laptop or handheld computers. This would be the logical computerised embodiment of the regulated system described by Mr Dil. We therefore accept

this evidence and conclude that the GBTS would appear to be the basic information tool of various arms of the Turkish security forces.

Other Information Systems

64. Of course this leaves open further issues about what other information systems there are, and what may be available or accessible to specific branches of the Turkish authorities, and in what circumstances. We have been urged by Ms Giovannetti, when considering these wider issues that may not be so clearly defined in the evidence, to use common sense and avoid speculation. Mr Grieves reminded us of the low standard of proof that is applicable in asylum and associated human rights cases.

Border Control Information

65. Using this recommended approach, we put it to Ms Giovannetti that, on the evidence before us, there would logically be two other information systems, independent of GBTS, available in the immigration booths at Istanbul airport. The first is the record maintained of all legal arrivals and departures to and from Turkey by Turkish citizens. The second is a list of undesirable aliens to be denied entry to Turkey, and of expatriate Turks, whom the authorities had identified as being involved in anti Turkish activities abroad. The evidence before us suggests that such records are indeed kept. The IND Home Office Fact Finding Mission report states -

> "2.2.5 The national police (Department for Foreigners, Borders and Asylum) are responsible for carrying out passport and other checks on all those entering and leaving Turkey. They are supported by a sophisticated computer system that records and links the arrival and departure of all nationals. On both arrival and departure the names of all passengers are automatically run for a computer to establish whether amongst other things the individual is on the list of people to be prohibited from entering the country or prevented from leaving the country for reasons of, for example, tax evasion or committing a crime.

66. In part, such as in relation to people to be prevented from leaving Turkey, this refers to GBTS but it also goes beyond the ambit of that database and indicates that other systems are accessed. Records of legal arrivals and departures are not kept on GBTS. Nor are the names of people prohibited from entering Turkey. If such records are kept, and common sense suggests that they are, in Turkey as in most other countries, it must be for a purpose that is best served by having those records available at the immigration booths at the points of entry. As noted in **AG Turkey** and confirmed in her own addendum statement of April 2004**,** Ms Laizer was refused entry to Turkey in 1998 at Istanbul Airport. There has been speculation about the basis of this refusal but in our view it simply confirms that some record is also kept beyond the GBTS of those whom the Turkish authorities regard rightly or wrongly as "undesirable aliens". Ms Laizer suggests that some 55 other non-Turks were included in the GBTS along with her. We do not accept that there is any credible evidence that the GBTS has itself been extended to include non-resident non-Turks, but we consider it very likely that a list of "undesirable aliens" is made available on the border police

computers. It is also reasonably likely, given the evidence that the perceived anti-Turkish political activities of some Turkish expatriates living abroad are monitored by the Turkish authorities, that records of this will be included with the records of "undesirables" from abroad and may well include relevant extracts from their "history" in Turkey. Again the main point of keeping such a record would be to have it available in an accessible form at the border posts and in particular at the airports.

67. Thus we conclude that, in addition to the information on the GBTS, there is information available at the border control point, collated by the national police (Department for Foreigners, Borders and Asylum) recording past legal arrivals and departures of Turkish citizens. We put this to Ms Giovannetti and she agreed. In addition we conclude that the names of people prohibited from entering Turkey as a result of their activities abroad will be available at border points and again Ms Giovannetti agreed. This information relating to activity from abroad could in practical terms come only come from information gathered by MIT and passed on by them to the border guards

68. In our view this reconciles the personal experience of Ms Laizer, and the information seen by Mr Kanat on the computer screen in the immigration booth about his client in July 2003, especially when by his very presence he will have signalled in advance to the authorities that there might be some potential cause for concern about this individual.

Nufus Records

69. Next, records of individuals are maintained under the national Nufus registration system. There are two main types. The Nufus Cuzdani is the national identity card. There is also the Nufus Kayit Ornegi (population register extract), which is available from a computer database on request and upon payment of a small fee. Mr Yasar Karadogan, a British citizen of Turkish origin recently obtained a copy of his own extract. He explained in a letter that the basic extract could be obtained by an individual, or his immediate family members (being parents or siblings). It comprised details of age, residence, marriage, death, parents' and children's details, and religious status. Several copies of such documents have been supplied to us. This information was broadly confirmed in a statement by Mr J D Norton, the Director of the Centre for Turkish Studies at Durham University. We see no reason to doubt this evidence. Mr Karadogan also indicated that the full entry on the register included arrest warrants and if people were stripped of nationality, but the authorities were reluctant to supply this further information. We see no good reason to doubt this either, as this would be a logical place to record such information. We note however that the extracts supplied to us do not include information about anyone beyond immediate family members. Nor is there any evidence that this information is available directly at immigration booths at the airport. For the sake of completeness, we should add that there is also a certificate, apparently linked to Nufus, called the Ikametgah Belgesi. It shows a person's place of residence to which official correspondence is sent, and must be produced if seeking to replace a lost ID card.

70. We would also accept that it is possible that if a person is of material adverse interest to the authorities in his home area but has not been charged with any offence, and disappears from sight without registering his residence elsewhere, then a marker could be placed on his NUFUS file to alert the authorities to inform the police if he applies for a new NUFUS card.

Judicial Records

71. We also accept the evidence, to which Mr Aydin made brief reference in his letter quoted above and is mentioned also elsewhere, that the Judicial Record Directorate keeps judicial records on sentences served by convicted persons, separate from GBTS. This is confirmed by Dr Gerger. He names the system as "Adli Sicil." We consider it unlikely on the evidence before us and given the scope of GBTS on material matters, that there is any good reason why this separate system would also be accessible at immigration booths at point of entry.

"Tab" Records

72. Thus far, we consider the evidence of record keeping systems to be reasonably clear. However there is a greyer area beyond this. Mr Grieves has pointed out that Turkey has a number of security organisations, which logically must collect information relevant to their activities. These comprise the police, the anti-terror branch of the police, the Jandarma, Jitem (the intelligence branch of the Jandarma), the military police, the military/special forces, and MIT (the Turkish Intelligence Service).

73. What then do we make this? There is no dispute that some information about individuals who have come to the adverse attention of the authorities is kept by a variety of organisations in Turkey, which includes systems such as GBTS, border control information, Nufus and judicial records to which we have already referred. There are also records on individuals kept in local police and Jandarma stations and by the local Mukhtar. This information would appear to be in part on computer and in part in documentary form. We also accept that MIT and the anti-terrorist police would have and be able to access a further computerised system or systems that common sense suggests will include information about individuals of actual or potential concern to them. It will comprise information generated by themselves from their own activities and possibly information collected from other available information systems.

74. It is difficult to assess, on the evidence presently before us, the precise extent that this information is maintained on a central computer system. Mr Kanat's evidence offers the extreme view that effectively all information of the most detailed nature gathered anywhere about potentially millions of individuals are kept and maintained by KIHBI. In our judgment, his evidence and sourcing did not sustain that proposition and the evidence as a whole falls well short of establishing that.

75. We accept that the Turkish authorities do in general seek and collate quite detailed information about people they considered to be of adverse interest to them. That information will be at its greatest in the area where they lived, and particularly so if they lived in any of the areas of conflict in the south and east of Turkey that were covered by the former state of emergency. That after all is where the Turkish state focused its efforts and resources in combating separatism and where a wide range of first hand material of widely varying degrees of materiality would be obtained and assessed. It is also where there may be personal recollections by members of the security forces about particular individuals and their circumstances. Such information may be in part computerised and in part documentary.

76. We accept that some of that information will be transferred for inclusion in other record systems as relevant. It is likely that some will be passed on, possibly to KIHBI, for use by the anti terror police and MIT to supplement their own information. This would, in out judgement, be reasonably likely to include detentions of persons who were considered to be of material significance by the security forces even if they were thereafter released without judicial involvement. We do not consider that the data collected by the anti terror police and MIT would be reasonably likely to be directly accessible to people outside those services, by reason of the need to maintain security, its overall sensitivity, and its inherent illegality.

77. However whether the records are transferred to a central computer system or not, and whether they are maintained locally in a computerised form that might be accessible elsewhere in Turkey or not, we accept that if a person is detained either in the airport police station after arrival or subsequently elsewhere in Turkey, and the circumstances justify it, some further inquiry beyond the information in the GBTS could be made of the authorities in his local area about him. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.

78. On this basis, we consider that the starting point in any enquiry into risk on return should normally begin, not with the airport on return but with whether the claimant would be at any real risk of persecution or a breach of Article 3 in his home area as a consequence of his material history there. If the answer to that is "no", then the claim cannot normally succeed, unless of course the risk arises from or is aggravated by other factors, such as his material activities abroad or in other parts of Turkey. Any real risk would arise only from a person's material history, to borrow Mr Grieves' expression, and this history will in most normal circumstances be at its most extensive in the individual's home area. If on the other hand the answer to that question is "yes", then the separate question of internal relocation elsewhere in Turkey (and the question of risk of return to Istanbul airport which turns on similar principles) has to be considered on the basis of whether there are particular factors in the home area creating greater risk of ill-treatment there, that would not give rise to the same degree of risk at the airport or elsewhere. We shall return to this subject later.

In what circumstances is there a real risk that a Returnee to Istanbul Airport will be placed in the non-routine investigation stream and be subject to detailed questioning?

79. The procedure facing returnees at Istanbul Airport (which is where returnees are sent by the UK Government) is that on arrival a person must present himself to an immigration control booth staffed by the border police. There is a computer terminal at each booth and the details of each person are keyed in by the border policeman from the travel documents. Dependant on the view taken by the border policeman, the returnee will either be allowed to proceed through the terminal without further ado, or will be transferred to the police station attached to the Airport for further questioning, which will typically take between 6 to 9 hours. Our view of the present evidence, and this reflects the long established jurisprudence of the Tribunal, is that there is no real risk during this period of questioning of ill-treatment crossing the high threshold required to constitute persecution or a breach of Article 3. However if as a result of information derived from such questioning or from any further enquiries undertaken by them, the police decide to transfer a returnee for further enquiries by the anti-terror police or possibly by MIT, it will be during this third phase of the process that the prospect of material ill-treatment arises. The CIPU report at 6.242 states the risk in these terms.

> "At the anti-terrorist unit of the police, the suspect being subjected to torture or mistreatment cannot be excluded".

80. That torture "cannot be excluded" is not the same as "real risk", but we shall consider this issue later. At all events, the question of whether and why a returnee will be stopped in the first instance at the immigration booth and sent for more detailed questioning at the airport police station is potentially significant and must be answered.

81. If a returnee is a draft evader he will be stopped at the immigration booth when the GBTS reveals this information. He will be transferred to the airport police station and the military will be informed so that he can be collected by them. It is again well-established jurisprudence that draft evaders as such will not qualify for international protection as a consequence of their treatment on and after return.

82. As to other returnees, we conclude there is no good reason on the evidence before us, in answering this general question to depart from the general thrust of the conclusions of the Tribunal in paragraph 42 of **A (Turkey),** which we have already quoted. Thus if a returnee is travelling on a one-way emergency travel document (and no failed asylum seeker will be returned to Turkey by the British government without appropriate travel documentation), or if there is no border control record of a legal departure from Turkey, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation. This is so stated in the CIPU report at 6.242. It does not automatically follow that this would happen. For example it may be that when the emergency travel documents were issued by the Turkish Embassy in London, some preliminary enquiries would have

been made and the Turkish authorities would be satisfied that the returnee is no interest to them. However there is a real risk of transfer.

83. Additionally, even when the returnee is travelling on his own legitimate passport with a proper Turkish exit stamp, if there is an entry on the databases available at the passport booth, which comprises the GBTS and the border control information, that is sufficiently significant to warrant further inquiries, there is again a reasonable likelihood that the returnee will be transferred for such further enquiries to the airport police station. Again it is not automatic. We note in this context the specific example quoted to us by Mr Kanat of the expatriate Turk from Düsseldorf returning in 2003 for a holiday in Turkey, whose record at the immigration control booth showed a detention on 21 March 1991 because of Newroz activities in Elazig. In that case, he was waved through without being referred for further questioning. We consider that the mere fact of some such entry on the database will not necessarily incur further questioning unless it is considered significant.

If a person faces non-routine investigation what should he be expected to say when questioned and what further information is reasonably likely to be accessed in this process?

84. The CIPU Report at 6.242 describes the nature of the questioning at the airport police station as mostly involving:

> "Establishment or checking personal details; reasons and period of exit from Turkey; reason for the asylum application; reasons for any refusal of the asylum application; any criminal record and past record at home and abroad including drug offences; possible contact with illegal organisations abroad. However, if there are no suspicions, as a rule after an average of 6 to 9 hours they are released."

85. Clearly further information may arise from the questioning of a returnee by the police in the airport police station. Mr Grieves submitted that a person should not be expected to lie to the authorities during questioning in order to avoid persecution. Ms Giovannetti in her written reply stated the Home Office position as follows.

> "The Secretary of State accepts that an individual detained and transferred to the airport police station would be interrogated and that it is reasonably likely that further checks would be carried out. However, the nature and extent of such interrogation and checks is likely to be related to the reason that the individual was stopped. So, for example, a person who does not have valid documents is likely to be questioned in order to establish his identity. An individual who is thought to have left on false documents is likely to be questioned about how and from whom he obtained them.
>
> The Secretary of State does not suggest (and never has suggested) that Adjudicators should simply proceed on the basis that individual can lie about his background and circumstances. The right approach is to assess what questions are likely to be asked of the individual and what his responses are likely to be. "

86. We agree with the approach described by Ms Giovannetti. It will be for an Adjudicator in each case to assess what questions are likely to be asked and how a returnee would respond without being required to lie. The examples given by Ms Giovannetti above are examples only. Where and whether the questioning goes beyond the ambit of questioning described above, depends upon the circumstances of each case.

87. We have already dealt with the separate question of what further information is reasonably likely to be accessed by the police at the airport police station when considering the accessibility of information. As we have said, the evidence before us does not suggest in our view that any additional information system will be directly available at the police station beyond the GBTS and the border control records. We consider however that if unresolved doubts remain from questioning the returnee it is reasonably likely that further enquiries will be made as appropriate in the circumstances and any new information arising as a result will be assessed on its merits.

Does the Guidance of the Tribunal in A (Turkey) require review in the light of subsequent developments?

88. It has been put to us that there have been three material developments affecting the assessment of risk on return since **A (Turkey)** that require evaluation.

Al Qaeda

89. The first, raised by Mr Grieves, is the Al Qaeda sponsored terrorist attacks in Istanbul in November 2003 raised the state of security awareness and alertness in Turkey. We do not however agree that this has materially changed the overall security situation. Turkey has always had particular difficulties with terrorism of various kinds to which it has vigorously responded. The emergence of Al Qaeda pre-dated **A (Turkey)**. There is no real evidence beyond speculation that the bomb attacks of November 2003 have added significantly the to the priority given by the Turkish government to combating terrorism within Turkey, which has been a feature of that country's politics over many years.

Ending of PKK Ceasefire

90. The second matter, also raised by Mr Grieves, is the ending of the PKK's unilateral ceasefire in the summer of 2004 with a consequent increase in violence and deaths in parts of southeast Turkey. We accept the evidence, to which we were referred by Mr Grieves, that the violence has escalated, though it is not anywhere near the levels seen at the peak of the conflict. Indeed, the PKK ceasefire was always unilateral, and the Turkish authorities continued operations against the PKK during it. In general terms however, the escalation of the violence reinforces our view, to which we shall return when considering internal relocation, that the risk to a Kurdish returnee of ill treatment by the authorities will be greater if his home area is in an area of conflict in Turkey than it would be elsewhere. We have already described how the record keeping about an individual would be at its greatest in his home area. Additional factors increasing risk in a home area within the areas of conflict include for example, the evidence that some of the ill-

treatment carried out by the security forces there was designed to intimidate local Kurdish populations from giving assistance to PKK fighters, and in some areas to depopulate villages altogether to deny the PKK the opportunity for support from local communities. Also a risk of ill-treatment arises from people who are perceived as "ne'er-do-wells" being questioned about local terrorist attacks. The same considerations would not apply in areas where the PKK is not active and the risk of ill-treatment would be correspondingly reduced. Thus the escalation of violence is a factor in assessing risk in the areas where violence occurs.

EU Reports for 2004

91. The third development to which we were referred is the publication on the first day of the hearing of this appeal, on 6th October 2004, of the EC Recommendation on Turkey's accession to the EU and its 2004 Regular Report. **A (Turkey)** dealt only with the 2003 Report. These documents are of material relevance, and in some respects reveal information, which is not dealt with in the April 2004 CIPU - for example the CPT report in March 2004 and the Fact Finding Mission in September 2004. The regular and detailed assessments by the EU about candidate states for membership, including an analysis of the progress made in removing obstacles to membership, have been very helpful to the Tribunal in its jurisprudence on other candidate countries. They will, we expect, be so increasingly in respect of Turkey, where its traditionally poor record on human rights is a major obstacle to membership, which the Turkish Government recognises and appears committed to addressing. We do not accept Mr Grieves submission that the present assessment is to some extent skewed by a "carrot and stick" approach by the EU to Turkey. The report appears to us to be firmly based in fact. Indeed the credibility of the Commission would be undermined were it not so.

92. The EU documents taken as a whole show that considerable progress has been made in addressing human rights issues in Turkey since the new government took power in 2002 and lifted the state of emergency, but there is still further need for improvement.

93. Page 2 of the Report refers to the "substantial legislative and institutional convergence in Turkey towards European standards in particular after the 2002 elections". The report refers in the same paragraph to changes to the judicial system and the abolition of the State Security Courts. Turkey recognises the primacy of international and European law. The death penalty has been abolished. Those sentenced for expressing non-violent opinion have been released. Fundamental freedoms of expression and assembly have been extended. Cultural rights for the Kurds have started to be recognised. The state of emergency has been lifted everywhere. The process of normalisation has begun in the South East.

94. On page 6 of the report, under the heading Reinforcing and Supporting the Reform Process with Turkey, a number of important points are made, which can be used in the future to measure the progress made towards meeting human rights targets.

> "… the policy of zero tolerance towards torture should be implemented through determined efforts on all levels of the Turkish state to eradicate

remaining instances of torture. … the need to consolidate and broaden political reform also applies to the normalisation and development of the situation in the South East including … initiatives to facilitate the return of displaced people and to allow for full enjoyment of rights and freedoms by the Kurds".

95. The Conclusions of the Report are set out at page 7. Sub paragraph 2 refers to the strong efforts undertaken by Turkey to ensure proper implementation of the reforms.

96. In Part 2 of the Introduction at page 8 reference is made to the 2004 Programme for Turkey. The programme focuses on the various priorities, which include Justice and Home Affairs under which moves will be made towards a judicial system under which convictions are secured on evidence rather than on the extraction of confessions.

97. The Report describes the developments since the Helsinki conference in December 1999. At page 17 it is said that "… considerable efforts have been made to strengthen the fight against torture and ill treatment, in particular through abolishing incommunicado detention and improving the rules for pre trial detention, access to a lawyer and medical examinations. – The authorities have adopted a zero tolerance policy towards torture. – Although torture is no longer systematic, numerous cases of ill treatment including torture still continue to occur and further efforts will be required to eradicate such practice".

98. In September 2004 a new Penal Code was adopted. The Code introduces modern European standards (page 24). At page 29 it is said that the new Penal Code will have positive effects on a number of areas related to human rights particularly women's rights, discrimination and torture.

99. At pages 33 and 34 a series of measures are described which have improved civil and political rights.
    a. since May 2004 the death penalty has been abolished
    b. most of the legislative and administrative framework required to combat torture and ill treatment has been in place since 2002 when the government announced a zero tolerance policy against torture
    c. pre trial detention procedures have been brought into line with European standards
    d. the rights of detainees have been strengthened
    e. the new Penal Code increases the sentences for perpetrators of torture
    f. in April 04 a circular was issued for law enforcement officials to avoid methods that may engender allegations of ill treatment of detainees
    g. in October 03 a circular was issued instructing public prosecutors to investigate personally allegations of torture and ill treatment.

100. The report states, at page 34, that "The Government's policy of zero tolerance and its serious efforts to implement the legislative reforms have led to a decline in instances of torture. In the first six months of 2004 the Turkish Human Rights

Association received 692 complaints related to torture, a 29% decrease on the first six months of 2003. Of the total human rights violations claims received by the Human Rights Presidency between January and June 2004, a significant proportion related to "torture and ill treatment" indicating that such practice remains a problem.

101. In March 2004 a report was published by the European Committee for the Prevention of Torture and Ill Treatment following field visits to the South and South East of Turkey. The report notes "a considerable improvement in detention facilities and in the treatment of people in custody. The use of torture methods such as suspension by the arms and electric shocks is now very rare, although in some police headquarters such methods were reported. Less detectable methods of torture and ill treatment still occur". (first paragraph page 35).

102. A project is currently underway to train 2500 doctors who work in the western part of Turkey. The training programme is in accordance with the Forensic Medicine Institution's "Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment". (page 35 paragraph 3)

103. The fifth paragraph on the same page refers to there still being reports of arbitrary detentions, disappearances, abductions and at least one alleged extra judicial killing. The final paragraph on page 35 states that the Commission undertook a fact finding mission in September 2004 to carry out a further check on the situation vis a vis torture and ill treatment in Turkey. "The mission enabled the Commission to confirm that the Government is seriously pursuing its policy of zero tolerance in the fight against torture; however numerous cases of ill treatment including torture still continue to occur and further efforts will be required to eradicate such practices".

104. Reference is made at page 49 paragraph 6 to a greater tolerance towards the Kurdish language and the expression of Kurdish culture in its different forms. The Newroz celebrations were authorised and only minor incidents were reported.

105. At page 50, second paragraph, it is said that the situation in the south and south east of the country has continued to improve gradually since 1999 both in terms of security and the enjoyment of fundamental freedoms. Reference is made in the fourth paragraph to the security threat increasing since the Kongra Gel announced the end of the ceasefire in June 2004.

106. We have considered this new evidence as a whole in the context of the submissions by both Mr Grieves and Ms Giovannetti, and the evidence generally. We conclude that the Turkish Government has made since 1999 and particularly since 2002, and is continuing to make year on year, serious, sustained and determined efforts to address its traditionally poor human rights record in support of its determination to become a member of the European

Union. Of particular significance is the government's adoption of a zero tolerance policy towards torture and the structural and legislative initiatives undertaken to carry this into effect. Of importance to Kurds in particular is the acceptance of non-violent expressions of their culture and language and the authorisation of Newroz celebrations. Where Kurdish individuals have in the past experienced difficulties for involvement in such activities, they would now be less likely to attract the same level of risk in relation to their past record or future activities.

107. However the key issue is the extent to which torture is still used by the security forces, notwithstanding the Government's policy of zero tolerance. In essence the risk of torture is what creates the need in appropriate Turkish cases for international protection. We invited specific submissions from the representatives on two aspects of the report.

108. The first was what we should understand by the conclusion in the EU documents that torture "is no longer systematic". On this point there was agreement between Mr Grieves and Ms Giovannetti that this meant that torture was not now approved of and tolerated at the highest political level. With this we agree.

109. The second aspect on which we invited further submissions was in relation to the observations in the EU documents about the level of incidence of torture on the ground, and whether the reference to torture outside detention centres reflected an increase in torture with a shift of practice, or whether there was now a greater willingness by victims to report torture. Mr Grieves has argued that the evidence as a whole shows that torture is still used on the ground as a pervasive technique in investigations, securing confessions, and in order to intimidate. Ms Giovannetti argued that overall reports of torture have declined by 29% in the last year and that this was significant. Moreover there was some evidence to show that the risk of torture was uneven across the country, with the implementation of Government policy being more effective in areas outside the south east, and less so in the south east.

110. Looking at the evidence as a whole in the light of the submissions made, we accept that the statistics demonstrate some significant reduction in reported incidents as the Government's policies begin to bite. There is also some suggestion that the use of torture may have shifted to other less formally recorded places and is less detectable by physical manifestations, though this practice has often in the past been a feature of cases coming to us. There is also the likelihood that examples of torture are in this new and more open climate of debate about human rights in Turkey, as described by Mr Kanat, more likely to result in complaints now than in the past. Our assessment is that the Turkish Government is taking the necessary action in legislative and structural terms to address the problem and has made its zero tolerance policy towards torture clear. However the use of torture is long and deep-seated in the security forces and it will take time, and continued and determined, effort to bring it under control in practice. It will require the strong and public demonstration of the

punishment of abusive officials, to bring and end to the climate of impunity for torturers. It is in our view therefore premature on the evidence before us to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention, as described in **A (Turkey)** has yet been overtaken by material changes in the behaviour of the security forces on the ground. The present evidence does not in our view establish either that there is no longer any real risk of torture in detention at all, or that there are now "torture free" areas in Turkey. However there are strong pressures for change emanating from the Turkish Government and its actions, and these questions will require review as further evidence becomes available. For the time being as in the past, the risk in each case must be assessed on its own merits from the individual's own history and the relevant risk factors as described in paragraphs 46 and 47 of **A (Turkey).**

111. In saying this, we emphasise that many of the individual risk factors described in **A (Turkey)** comprise in themselves a broad spectrum of variable potential risk that requires careful evaluation on the specific facts of each appeal as a whole. The factors described in **A (Turkey)** were not intended as a simplistic checklist and should not be used as such. Thus, not all "detentions" will be of comparable significance in assessing risk. For example, in the light of the positive developments in Turkey in recent years, described above, there could be a considerable difference between the potential significance when evaluating present risk to a person who say was rounded up with many others in the course of Kurdish Nevroz celebrations and held overnight before being released without charge, and a person who was ill-treated along with others in his village in implementation of the clearance programme in the Southeast on the one hand, and a person who was specifically and individually targeted and detained for reasons inherent in his personal history and seriously ill treated over a more protracted period on the other hand. This comparison illustrates why we caution against a too simplistic approach to "headline" factors.

Should an individual (and his family) be expected to live without registration with the local Mukhtar in order to avoid persecution?

112. The factual evidence before the Tribunal from Mr Kanat about the practicalities of a person failing to register with the local Mukhtar when moving to a new area has not been disputed by Ms Giovannetti. Such registration is in legal terms compulsory and on registration a person will receive a certificate of residence. This certificate will have to be produced by that individual whenever he seeks to do a wide range of things in Turkey that engage the state and in some respects the private sector. Thus he will need a certificate of residence in order to vote, get married, register the birth of a child, send children to school, obtain or renew a passport, access private or public education, obtain a driving licence, renew an ID card (which must be done at least every ten years), access public health care, access Social Security assistance, become a member of a political party, obtain a government job and in some cases private employment, and obtain a cheque-book or secure credit or loans.

113. Some objective evidence, and indeed our own experience in many of the cases that come before us, suggests that a large number of people in Turkey do not in fact register with their local Mukhtar, at least for a time. No doubt, if such an individual were caught the authorities would undertake a security check on him. Mr Grieves argued that the viability of internal relocation should not depend upon a person having to live without appropriate registration in the new area and that such a requirement would constitute undue harshness, given the wide range of important matters from which a person would be excluded if he could not produce a certificate of residence.

114. Ms Giovannetti stated the Appellant's position on this subject as follows.

> "The Secretary of State does not suggest that, as in general proposition, individuals should be expected to relocate to a different area and simply fail to register with the local Mukhtar. They may be cases where an Adjudicator is entitled to find that there is no reasonable likelihood of an individual needing to register in the foreseeable future. However in the vast majority of cases the issue will be whether such registration would be reasonably likely to lead to persecution."

115. We can see that a young, fit, unmarried person, seeking unofficial employment in a big city, may not feel the need to register with his local Mukhtar, at least at the outset. Nevertheless, given the range of basic activities for which a certificate of residence is needed, we conclude that it would in most normal circumstances be unduly harsh to expect a person to live without appropriate registration for any material time as a requirement for avoiding persecution. We stress however that this finding does not necessarily preclude the viability of internal relocation, for the reasons described below.

Is there an internal relocation option for a person who is at real risk of persecution by the authorities in his or her home area?

116. We have already touched upon this issue in some of our previous observations. We have indicated that the proper course in assessing risk on return is normally to decide first whether an individual 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)**. It is however implicit in our conclusions so far that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there.

117. Some information about an individual is not reasonably likely to be apparent to anyone other than a few individuals in his home area. For example, a specific

gendarme might have it in for an individual whom he considers to be a local "ne'er-do-well" but against whom there is no specific information. Also it is implausible, in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his prosecution for a criminal offence.

118. In general terms however we consider that one should proceed, when assessing the viability of internal relocation, on the basis that an individual's material history will in broad terms become known to the authorities at the airport and in his new area when he settles, either through registration with the local Mukhtar or if he comes to the attention for any reason of the police there. The issue is whether that record would be reasonably likely to lead to persecution outside his home area.

119. We have already identified some examples of the circumstances in which a person may have experienced serious ill-treatment in the past in areas of Turkey where the PKK was or now is active, but would not necessarily be at similar risk of such treatment elsewhere in Turkey where it is not, and where a different view of his history could be taken. They include examples of general intimidation by the authorities of the Kurdish population to discourage support for the PKK, or to clear whole villages. The evidence is that anything between some hundreds of thousands to some millions (depending on whose figures one uses) may have been displaced within Turkey as a consequence of this. However outside the areas of PKK activity there will not be the same perceived need to undertake such intimidation or clearances and the authorities within the receiving areas will be aware of the tactics that led to this mass migration, and will be able to assess an individual's record in the light of it. Similarly, a person who was included on Mr Dil's list of local "ne'er-do-wells", against whom there was no evidence of PKK involvement, but who ran the risk of being detained for questioning whenever an PKK incident occurred in his vicinity, would not be at a similar risk in another area where the PKK was not active and where such incidents were much less likely to occur. These are just some examples of why differential risk can arise in different areas of Turkey.

120. In saying this, we have full regard, as invited by Mr Grieves, to the current guidance of UNHCR, which, so far as we have been informed, does not appear to have changed since the publication of its last official general report in May 2001. Nothing we have said is in our view in any material contradiction to this guidance. It states

> "Kurds and members of Christian minorities from the southeast Turkey do have an internal flight alternative outside the region……. unless the case in question is of a prominent nature or is perceived by the authorities to have real or alleged linked with the PKK or other main Kurdish parties. UNHCR considers that the group most likely to be exposed to harassment/prosecution/persecution are Kurds suspected of being connected with or sympathisers of the PKK….
>
> In the context of internal flight "it is essential to find out if Turkish asylum seekers if returned would be suspected of connection to or

> sympathy with the PKK. In this case they should not be considered as having been able to avail themselves of an internal flight alternative"… in the UNHCR's perspective, if persecution emanates from state authorities then there is no internal flight alternative or relocation. The situation may look different with regard to village guards or people persecuted by non-state agents."

Assessment of the specific appeal

121. These are our general conclusions on the generic issues raised before us. As indicated earlier we have not referred specifically to every submission made during the four day hearing, or every one of the many hundreds of pages of documentary evidence. We have however taken it all into account in our assessment.

122. In applying our general assessment to the Adjudicator's determination in this specific appeal, we have followed the guidance of the Court of Appeal in **Subesh & Others [2004] EWCA Civ 56** concerning the proper approach to be taken by the Tribunal to challenges against an Adjudicator's findings in appeals arising under our old jurisdiction, which was not limited to errors of law. In paragraph 43, Laws LJ stated it as follows.

> "In every case the Appellant assumes the burden of showing that the judgment appealed from is wrong. The burden so assumed is not the burden of proof normally carried by a claimant in first instance proceedings where there are factual disputes. An Appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one. The divide between these positions is not caught by the supposed difference between a perceived error and a disagreement. In either case the appeal court disagrees with the court below, and indeed may express itself in such terms. The true distinction is between the case where the court of appeal might prefer different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning and the application of the relevant law, require it to adopt a different view. The burden which an Appellant assumes is to show that the case falls within this latter category."

123. There are two specific challenges by the Appellant in the amended grounds of appeal to the determination as we have described earlier.

124. The first is that the Adjudicator identified no material capable of supporting the conclusion that brief detentions of the sort described by the Respondent would be recorded on computerised records and revealed by checks at the airport.

125. As we have indicated in our generic conclusions, detentions by the security forces, followed by release without charge or other court intervention will not be recorded on the GBTS, though the Respondent's status as a draft evader will

be so recorded. He will therefore be detained on arrival as a draft evader and transferred to the airport police station. Additionally, it will be apparent from his emergency travel documents and from the fact he left Turkey illegally, that he is likely to be a failed asylum seeker. There is therefore likely to be some further questioning about his history. The issues arising are what will emerge from this and what risk will attach to him as a consequence. In this context, the second ground of appeal is that the Adjudicator failed to give adequate consideration to the issue of risk, even if checks at the airport showed that the Respondent had been detained twice 5 years earlier in the circumstances described.

126. In this appeal, there is a four year gap so far as the authorities are concerned in the Respondent's history, which they would logically seek to fill. He will be able to establish that he came to the UK in 2001 but the last official record of his residence will be in his village in Karamanmaris in 1997. We do not know how the military became aware of his presence in Istanbul but they knew his name when they came for him. By then he had been a draft evader for several years and one may reasonably presume that the military came for him approximately when they had knowledge of where he was. An obvious concern, when a young man disappears from a village in Karamanmaris in 1997, without trace and for some years, is whether he had joined the PKK in that period. The airport police in 2004 would in our view ask questions of the Respondent to fill the time gap in his record following his leaving his village. In so doing we think it likely that they would make enquiries of the authorities in the last area where he was registered. At that point his recorded history there would be revealed. It is likely that this would include at least the October 1997 detention at the police station, some information about his family in the village, which would embrace the 2 cousins convicted with life sentences for their activities in the PKK, and the "problems" caused by the family's resistance to the order to evacuate the village, including his uncle's experiences. We doubt that the unofficial, intimidatory and plainly illegal detention in the mountains by the military of the young males of the village in December 1997 would have been recorded, though we cannot say that the Adjudicator was necessarily in error in concluding that it would.

127. Therefore with regard to the first ground of appeal, we hold that the Adjudicator was entitled to proceed on the basis that the Respondent's material history would become known to the authorities at the airport in the course of their enquiries. We turn then to the Adjudicator's assessment of risk and the second ground of appeal.

128. We would first observe that ground 2 does not do full justice to the Adjudicator's findings of fact. It is true that paragraph 19 of the determination is not as detailed as might be desirable, particularly in relation to the Adjudicator's conclusion that "I am satisfied that [the Respondent] has been detained and questioned on suspicion of assisting the PKK." However it must be read in the context of the determination as a whole and the full findings of fact. This included the facts that numerous members of the Respondent's family lived in a

small village, two of whom had received life sentences for activities for the PKK. Moreover, the Respondent had in fact on his own evidence provided at least low level help to the PKK. Can the Adjudicator therefore be said in the light of the guidance of **A (Turkey)** and the terms of Subesh be said to have erred in her risk assessment to the point that we are "required to adopt a different view?"

129. We consider this to be a marginal case and it may be that we would have adopted a different conclusion ourselves. We however accept that the Adjudicator did, in the course of her determination, reach findings of fact that reveal a number of potential risk factors, and she reached her overall conclusion to allow the appeal in the context of those findings. She was assisted in her conclusions by hearing oral evidence both from the Respondent and from one of his relatives, which we have not. The relevant risk factors supporting the Adjudicator's conclusion in favour of the Respondent can be summarised as:
    1. He is an Alevi Kurd from Karamanmaris, within the area of conflict.
    2. He and his immediate family did provide food for the PKK.
    3. He experienced a detention, with others, in 1997, during which in a police station he suffered serious torture over several days and was questioned about involvement with the PKK.
    4. He was again detained, with others, in December 1997 and questioned about his uncle and was told to give information about his whereabouts.
    5. Two cousins from his village had received life sentences in 1995 as PKK fighters, which may have focused the authorities' adverse attention on the Respondent's family and village.
    6. Other family members in the village also experienced difficulties with the authorities. The village was subject to an order to evacuate which some villagers, including a number of members of the Respondent's family, resisted.
    7. His disappearance from the village without trace would raise questions about what he did thereafter, especially in the period between December 1997 and his coming to the UK in 2001, and enhance suspicions of a PKK connection.
    8. He is a draft evader.

130. Having said that, we also note that the Respondent's only two detentions occurred within the ambit of a clearance decision in respect of his village. He was not personally specifically targeted for questioning but was taken along with all the males/young men in the village. The first detention was in a police station and he and the others were all questioned about PKK involvement and denied it. The second "detention" was unofficial in that it did not occur within a police station but in the mountains and was brief. It was intimidatory, especially within the context of the curfew being imposed on the village, as revealed by the press reports at the time. The Respondent was questioned about the whereabouts of his uncle. There is no evidence that the authorities had any specific information linking the Respondent personally to the PKK as a

consequence of his own actions. There was no indication prior to the events of late 1997 that he personally suffered any material difficulties as a consequence of the arrest and conviction of his two cousins. The Respondent was then able, after leaving the village, to live in Istanbul for four years without difficulties albeit under a false name. No doubt some inquiries were made about him in his village when he first left, as they would have been made of any young man who left the village in southeast Turkey without registering elsewhere. However there is no evidence that he was actually sought by the authorities, other than as a draft evader. It was the military, who came for him in Istanbul and for conscription. It was not the police, seeking him for any other purpose, though by this time his identity and whereabouts were known to the authorities. He left Istanbul because he did not wish to be taken for conscription. He has had no political involvement in the UK. Any risk to him would be greater in his home area in Karamanmaris, where he and his family would be seen as troublemakers.

131. This alternative view of the evidence is why we consider this to be a marginal case. However we accept that the Adjudicator was entitled to take the view she did on the evidence and to conclude there would be a real risk on return of material ill-treatment, both in his home area and elsewhere, including the airport on arrival. The possibility that we might have taken a different view does not render her determination unsustainable within the terms of Subesh.

132. Accordingly, we dismiss this appeal.

Summary of Generic Conclusions

133. The following is a summary of our main conclusions in this determination.

1. The evidence of Mr Aydin (paragraph 32) accurately describes the defined and limited ambit of the computerised GBT system. It comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. "Arrests" as comprised in the GBTS require some court intervention, and must be distinguished from "detentions" by the security forces followed by release without charge. The GBTS is fairly widely accessible and is in particular available to the border police at booths in Istanbul airport, and elsewhere in Turkey to the security forces.
2. In addition, there is border control information collated by the national police (Department for Foreigners, Borders and Asylum) recording past legal arrivals and departures of Turkish citizens, and information about people prohibited from entering Turkey as a result of their activities abroad, collated by MIT.
3. The Judicial Record Directorate keeps judicial records on sentences served by convicted persons, separate from GBTS. The system is known as "Adli Sicil." It is unlikely that this system would be directly accessible at border control in addition to the information in the GBTS.
4. The Nufus registration system comprises details of age, residence, marriage, death, parents' and children's details, and religious status.

It may also include arrest warrants and if any of the people listed have been stripped of nationality. There is no evidence that it is directly available at border control.

5. If a person is held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.
6. If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation.
7. It will be for an Adjudicator in each case to assess what questions are likely to be asked during such investigation and how a returnee would respond without being required to lie. The ambit of the likely questioning depends upon the circumstances of each case.
8. The escalation of the violence following the ending of the PKK ceasefire reinforces our view that the risk to a Kurdish returnee of ill treatment by the authorities may be greater if his home area is in an area of conflict in Turkey than it would be elsewhere, for the reasons described in paragraphs 90 and 116.
9. The Turkish Government is taking action in legislative and structural terms to address the human rights problems that present a serious obstacle to its membership of the EU. It has made its zero tolerance policy towards torture clear. However the use of torture is long and deep-seated in the security forces and it will take time and continued and determined effort to bring it under control in practice. It is premature to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention as per **A (Turkey)** requires material revision on the present evidence. However the situation will require review as further evidence becomes available. For the time being as in the past, each case must be assessed on its own merits from the individual's own history and the relevant risk factors as described in paragraph 46 of **A (Turkey).**
10. Many of the individual risk factors described in **A (Turkey)** comprise in themselves a broad spectrum of variable potential risk that requires careful evaluation on the specific facts of each appeal as a whole. The factors described in **A (Turkey)** were not intended as a simplistic checklist and should not be used as such.
11. A young, fit, unmarried person, leaving his home area and seeking unofficial employment in a big city, may not feel the need to register with the local Mukhtar, at least at the outset. Many do not. However, given the range of basic activities for which a certificate of residence is needed, and which depend upon such registration,

we conclude that it would in most normal circumstances be unduly harsh to expect a person to live without appropriate registration for any material time, as a requirement for avoiding persecution. This does not necessarily preclude the viability of internal relocation for the reasons described in paragraph 133.13 below.

12. The proper course in assessing the risk for a returnee is normally to decide first whether he has a well founded fear of persecution in his home area based upon a case sensitive assessment of the facts in the context of an analysis of the risk factors described in **A (Turkey)**. If he does not then he is unlikely to be at any real risk anywhere in Turkey.
13. The risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.
14. This determination updates and replaces the 7 decisions listed below, in the light of further evidence and argument, and now comprises the Tribunal's current country guidance on the issues described.
    1. HO (National Records) Turkey CG [2004] UKIAT 00038.
    2. SA (GBTS records) Turkey CG [2004] UKIAT 00177.
    3. LT (Internal flight – Registration system) Turkey CG [2004] UKIAT 00175.
    4. AG (GBTS, "tab" and other records) Turkey CG [2004] UKIAT 00168.
    5. KK (GBTS – Other information systems – McDowall) Turkey CG [2004] UKIAT 00177
    6. MS (GBTS information at borders) Turkey [2004] UKIAT 00192.
    7. CE (KK confirmed – McDowall report) Turkey CG UKIAT [2004] 00233.

Spencer Batiste
Vice-President

Approved for electronic transmission