

1010708 [2011] RRTA 282 (15 April 2011)

DECISION RECORD

RRT CASE NUMBER: 1010708

DIAC REFERENCE(S): CLF2010/88404

COUNTRY OF REFERENCE: Turkey

TRIBUNAL MEMBER: Denis O'Brien

DATE: 15 April 2011

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Turkey, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] July 2010. The delegate decided to refuse to grant the visa [in] November 2010 and notified the applicant of the decision and his review rights by letter of the same date.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
4. The applicant applied to the Tribunal [in] November 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Secondly, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, if the hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or unable to be controlled by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution (see *Chan per McHugh J* at 430; *Applicant A per Brennan CJ* at 233, *McHugh J* at 258).
14. Persecution also implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However, the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Thirdly, the persecution which the applicant fears must be for one or more of the reasons specified in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourthly, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if he or she has genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded when there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] April 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Turkish and English languages.
21. The applicant was represented in relation to the review by his registered migration agent.

Protection visa application

22. The applicant is [age deleted]. He was born in the city of Gaziantep in south eastern Turkey. He is married and has a [age deleted] daughter. They are now living in his parents in law's house in Istanbul. The applicant arrived in Australia on a student visa.
23. He worked in Turkey in [vocation deleted] and is the owner of a business called [business deleted].
24. In a statement accompanying his protection visa application he said:
 - He is Kurdish and has been a supporter of Kurdish political parties. In Turkey he experienced torture, harassment and discrimination because of his Kurdish ethnicity. He fears returning to Turkey.
 - His father and relatives have been known political activists for years. His father was involved in left wing Kurdish political groups (Kurtulus) when he was young and had been detained, tortured and on the run for several years in Turkey.
 - His father was released on bail in 1980 and the family had to leave Gaziantep. His father has been an active supporter of various Kurdish political parties which have been banned and reformed under different names over the years. The case against his father was dismissed following an amnesty in 1986 and the family returned to Gaziantep. However, his father could not get work there because of his past and in 1988 the family returned to Istanbul.
 - At school in Istanbul the applicant was harassed because of his accent and ethnicity. The first time he attended Newroz in 1995 with his father, he saw his father's friends being beaten by the police.
 - The applicant attended [school deleted] from [year deleted]. He got heavily involved in politics in those years and was targeted by the school

administration and fascists. When he was in the second year “well-known Gazi incidents” occurred a few weeks before Newroz. Hundreds of people were detained and tortured and, while the official death toll was 17, the actual number of deaths was higher.

- After Newroz celebrations in 1995 he was attacked by a group of fascists while catching a bus and was beaten. He was hospitalised overnight and did not go to school for 10 days.
- In [year deleted] he graduated from high school as [a tradesman]. He worked as an office boy in a private firm and financially contributed to the HADEP. He continued to be harassed by the police during this time.
- At the 1999 Newroz Celebration in [suburb deleted] he and others were detained by police. He was taken to [a] police station where he was interrogated and beaten. He was released the following morning.
- In [date deleted] his mandatory military service began. He underwent heavy training in [city deleted] for a month before being sent to [city deleted] for 17 months. During this time he experienced inhumane treatment because of his Kurdish background. He was given 1 week detention for criticising the unfair attitudes of superiors 3 months before finishing his service.
- In [year deleted] he completed his military service and returned to live with his parents working as a [vocation deleted]. During this time his involvement with the HADEP continued.
- In 2003 he attended Global Action Day in Kadikoy, Istanbul. While leaving the meeting area, HADEP supporters were attacked by the police. The applicant was arrested and kept in custody for 3-4 hours where he was threatened and warned about his involvement with the HADEP.
- In 2003 HADEP was banned by authorities and was succeeded by the DEHAP. The applicant donated financially to the new party and also attended the party office a few times a month. He did not experience any problems with the authorities at this time.
- He married in June 2005. His wife was from [city deleted] and had left wing opinions. She was also a sympathiser of the Kurdish cause. When the DTP was founded, they were both involved in the party. Their daughter was born in [month and year deleted].
- In December 2006 the applicant and a business partner established a successful [business] in [District A].
- His financial assistance to the DTP increased. In 2007 his company supplied [details deleted] to members and volunteers during the election campaign. In July 2007 one of his delivery drivers was detained by the police and the applicant had to attend the police station. He told police he was a sympathiser of DTP and was assisting them with their election campaign. Both he and his delivery driver were released after the interview.

- After this incident security forces targeted him. His firm was subjected to inspection by the health department, tax office and the business registry office. In late 2007 he and his partner agreed that they would no longer assist the DTP because of the possible risks.
- In January 2008 the business expanded and they found new customers in Tekirdag city where they opened another branch of the business.
- In early March 2008 police raided the applicant's home. He was asked to give a statement at the police station. There he was tortured for almost 2 hours. He admitted that he had supplied [items] to the DTP office during the election campaign and had also donated to the party in the past. He was released at 7am the following morning. Upon release he had to sign a statement stating that he had been treated well during his detention.
- He continued to attend DTP meetings at least once a month. In September 2008 he noticed that he was being followed by unknown people.
- In November 2008 he was stopped while leaving his workplace in Tekirdag by men claiming to be police. They ordered him to take them to his office where they searched the premises. They asked him about names of people in the DTP who were connected with the PKK. He said that he had only provided financial assistance to the DTP. He was beaten and passed out. When he woke up the men had left.
- After this incident he received threatening phone calls saying that they would cripple his business. From January 2009 he started to lose customers. His customers had been threatened by police. One customer told him that it had been reported to that customer that money paid to the applicant's business went to the PKK.
- In February/March 2009 the applicant's home was raided by police. He was taken away and driven to the [location deleted] and threatened with death if he did not release names of DTP members who were involved in the KCK. The applicant did not in fact know who the KCK was. He was told that he would be watched for the next 6 months and if he did anything wrong he and his family might disappear.
- The next day he left his wife and daughter at his parent's home in Istanbul and obtained a passport by paying a \$2,500 (US) bribe.
- He left Turkey and went to [Country 1] for one week. During this time his wife advised that she had noticed strangers around the house. He returned to Turkey and took his wife and daughter to his sister's house in [city deleted]. His brother in law suggested that the applicant apply for a student visa to Australia.
- He sold his share of the business to his partner for 40,000 Turkish Lira.
- In June 2009 he was granted an Australian student visa. He left his wife and daughter with his father in law and arrived in Australia [in] July 2009.

- He came to Sydney with the intention to study English and to stay away from Turkey as long as possible until everything was forgotten.
- In April 2010 police interrogated his wife at his father in law's house. His wife told police that she was no longer married.
- In early May 2010 his brother's home was raided by police. His brother told police that he did not know the whereabouts of the applicant.
- The applicant has had disturbed sleep, nightmares and lack of concentration for 2 months.
- He applied for refugee status after talking to a few Kurdish friends.
- He is too scared to go back to Turkey for fear of persecution. His life will be in danger if he returns and his return will constitute a further risk to his wife and daughter.

Interview with delegate

25. In the interview with the delegate the applicant gave further details of the incident in March 2009 when the police called at his house. He said that that the family had just completed dinner when the police knocked at the door and said that they had come see them. This was similar to what happened in 2008. The applicant asked the police why they were conducting an investigation at his house. One of the police officers told him that the police would ask the questions. The police asked the applicant's wife to go into the kitchen. Two police officers without uniform sat with the applicant in his lounge room and asked if he had any firearms in the house. He said that he did not. Police searched the house but found nothing.
26. The applicant told the delegate that, when the police called at his house in 2008 they had found a magazine and a newspaper.
27. The delegate asked the applicant about the incident in late 2008 when the police searched his business. The applicant said that the incident occurred just as he was leaving work and getting into his car. The police came up. They took him back to the office and checked his ledgers, invoices and other business papers. The delegate asked the applicant whether they took anything with them from the office. The applicant replied that he wasn't 100% sure but he thought that they may have noted down the names and telephone numbers of customers of the applicant. The delegate asked whether they found any information about the applicant's involvement with the DTP. The applicant replied that they did not because he didn't keep any records about his involvement with the DTP nor did he keep receipts for donations that he had made to the party.
28. The delegate also asked the applicant about the threatening phone calls he said that he had received. The applicant said that these phone calls started in 2008. The callers made comments like, "aren't you aware of yourself anymore?" and "we are going to finish you, your family and your business." The delegate asked the applicant who he thought had made these calls. The applicant replied that he thought that the calls were probably made by Turkish militants attached to the police.

29. The delegate further asked the applicant whether his wife had been questioned by the police. He replied that that she had been questioned in May 2010. This was some time after the applicant had come to Australia. Police officers went to the applicant's parents in laws' place. The applicant's father in law asked the police why they were visiting his house. He was asked to call the applicant's wife. They looked around her bedroom and found nothing. They asked the applicant's wife whether she was still connected with the applicant. She replied that they were no longer married. They then asked her how it was that she had kept a picture of the applicant on the bedside table. She replied that she did not know. The police told her to let them know if the applicant was in contact with her.

Submission and supporting material provided prior to Tribunal hearing

30. Prior to the Tribunal hearing the applicant's representative made a submission to the Tribunal that the applicant's claims were consistent with country information on Turkey. The submission set out various pieces of country information concerning Turkey.
31. Accompanying the submission was a statutory declaration from the applicant in which he spoke about his [business]. He said:
1. *In November 2006 I began a [business] in the [District A] of Istanbul with a partner and we started trading in January 2007. I met my partner as we had worked in the [deleted] business and met because of our work. The business was called [name]. We bought [goods] and delivered to various businesses.*
 2. *In January 2008 we opened a second branch at Tekirdag city outside of Istanbul in [District B]. The second one was bigger about 700 sqm – the first one in [District A], Istanbul was about 280 sqm. Both premises were rented and had [details deleted]. I spent more time in Tekirdag – it was open 24 hours, 7 days a week. The [shop] at [District A] was open 6 days.*
 3. *We started with 7 employees and we grew to about 47 employees before we reduced.*
 4. *I have found some of the business documentation that I happened to have on a CD with me. Attached are the following documents:*
 - *Trade Registration Certificate that shows my name as part owner of the business (marked A)*
 - *6 photos from a collection of many photos that show the premises at Istanbul (marked B)*
 - *3 salary payrolls: March 2008 for [District B], April 2008 for [District B], May 2008 for Istanbul (marked C)*
 - *4 monthly insurance premium declarations: [date].9.2007 for Istanbul, [date].10.2007 for Istanbul, [date].6.2008 for Istanbul and [date].6.2008 for [District B] (marked D)*
 5. *The business was very successful and grew very quickly. I stopped working in the business in March 2009 and by that stage I was earning about 5,000 TL a month*

(about AUD \$4,600) and this is a very good wage in Turkey. Also in 2008 my father had his second heart attack and heart surgery and my mother was diagnosed with [cancer]. When I departed Turkey in July 2009 I left behind my wife and my [age] daughter. I would not have left Turkey and left behind a very good income and a business that I loved, and my family, unless I had good reason.

6. *The business provided free [goods] to the DTP during the election campaign in July 2007. The [goods were] packaged with the company logo on it. The provision of [goods] came to the attention of the authorities and one of the delivery drivers was detained and questioned and I was called to [District A] police station. I went to the station and I said that I donated the [goods] and that I was a sympathiser/supporter of the DTP. This incident was the beginning of my problems with the authorities. I believe that the authorities saw my financial capacity and support as a threat and see the DTP as the same as the PKK which is incorrect.*

Tribunal hearing

32. At the Tribunal hearing, the Tribunal asked the applicant to tell the Tribunal all that had happened to him in Turkey. The applicant said that he had attended primary school in Gaziantep from [years deleted]. While he was at primary school some of the students teased him because of his Kurdish accent. These insults continued through his junior high school and senior high school years. The family moved to Istanbul in 1988. In 1995 the applicant attended his first Newroz celebrations. He went to the celebrations with his father and some of his father's friends. While there, he witnessed attacks on his father and friends by persons who were opposed to the Kurds. Rocks were thrown and sticks were used. The applicant's father tried to keep him away from the crowd. They eventually came home. After 1995, the applicant continued to attend annual Newroz celebrations and May Day celebrations with his friends.
33. The applicant started going to HADEP. The Tribunal asked him what he meant by this. He said that he would attend meetings at the HADEP premises. These were youth branch meetings. He would usually attend in the evening, normally once a week, and sometimes twice a week.
34. In 1999 the applicant was detained after the Newroz celebrations in [district deleted]. He and others were taken to the [police station] by the police in a police minibus. While they were in the minibus the police beat them. They also beat them when they got to the police station. The beating comprised blows with fists and batons. The applicant and the others were also kicked. The police took identification information from the applicant and others and eventually let them go. A large number of people had been taken to the police station. The police divided the group into smaller groups of 4 to 5 people and kept them in separate rooms. They asked them question such as, "don't you have parents? who sent you here? what are you after?". A lot of insulting words were used.
35. The applicant finished high school in [year deleted] and worked until his compulsory military service began. The first part of his military service he spent in Burdur Province. This involved one month of training. After this month of training he was sent to Kars Province. The applicant was involved in various military training exercises and did such things as go on patrols.

36. The Tribunal referred to what the applicant had said in his written statement about unfair treatment while he was performing military service. The applicant said that, if you are Kurdish, whatever you do, the military are not happy. The applicant stood up to one of his superiors alleging that he was being treated unfairly in relation to the shifts that he was being asked to perform. The superior officer asked the applicant whether he was judging him. The applicant said that he was not; he was only asking whether he could be treated more fairly in the shifts he was required to do. The superior officer beat the applicant, kicking his legs from under him and then slapping him. The applicant was detained for a week. This followed a report that the superior officer wrote saying that the applicant should be jailed for a week. The applicant spent a week in the detention centre. There were others confined there too. The conditions were very bad. Those kept there were not allowed to lift their heads and they had to keep their hands always by their side. If they were told to sit they had to keep sitting until they were told that they could stand.
37. The applicant said that other Kurds performing military service were also treated badly. For example, at the army camps, there was always a tip area which a soldier was assigned to guard to keep dogs and cats away. It was a very smelly and unpleasant job. The soldier who was assigned to this task would always be a Kurd.
38. The applicant completed his 18 months military service. He said that, in more recent times, the period of compulsory military service has been reduced to 15 months.
39. The applicant said that he was again detained in 2003 at the World Peace Day gathering. It was a big gathering with different human rights groups attending. It took place at Kadikoy in Istanbul. After the gathering everyone was heading off in their separate groups. The applicant was with the HADEP group. All of a sudden, the police came up to the HADEP group. They took the applicant and others to [the] police station. There were hundreds detained. Others were taken to Kadikoy police station.
40. The Tribunal asked the applicant whether anyone asked why they were being taken. The applicant said that no one asked.
41. The applicant and those in the minibus with him were beaten. The applicant was kept for 3 or 4 hours in [the] police station and again all his identification details were noted down by the police. He was not questioned. The police simply warned him and the others that they were in trouble and that they would see them again.
42. In 2003 HADEP was closed down by the government. The DTP party came into existence to replace it.
43. At the end of 2006 the applicant had set up the [business] with his business partner. In 2007 general elections took place. The applicant's business commitments were such that he was not able to attend DTP gatherings as frequently. However, he assisted the DTP by sending [items] to the DTP headquarters building which was not that far from the business premises of the applicant and his business partner. The applicant said that there were others like him who were providing support in kind to the DTP. For example, there were some supporters who were providing IT support and there were others who would help the party at polling stations. The applicant provided [goods] to the DTP with the knowledge of his business partner. However, his business partner is not Kurdish.

44. One day during this period in 2007 when the applicant was providing assistance to the DTP, he received a phone call from [District A] police station and the police told him that one of his workers had been taken in the company car to the police station. After the police asked the worker what he was doing, the police called the applicant. When the applicant got to the police station he was questioned by two police who asked who he was and why he was sending [items] to the DTP. The applicant replied that he was a supporter of the DTP and he was providing some voluntary help to the DTP. The police asked whether he invoiced the DTP for what he provided. The applicant said that what he provided was provided on a voluntary basis. The police checked the applicant's ID and noted his birth place. They asked if he was Kurdish. He said that he was. They insulted him but then let him go.
45. A few weeks after this incident, the applicant's business was inspected by various government regulatory agencies in turn, including the tax department, the fire department, the licensing department and the health department. None of the agencies found anything wrong with the business operations.
46. The applicant said that he and his business partner started the business with about seven employees. It then grew to about 13 employees in Istanbul. Then the applicant and his business partner decided to open another branch of the business in [District B], about [distance deleted] from Istanbul, in Tekirdag Province. At its height, the business had about 37 employees in total at the locations in Istanbul and Tekirdag. The applicant was responsible for the Tekirdag branch. He was usually there four days a week. He and his business partner rented some accommodation there and either the applicant or his business partner would stay there from time to time when they were in Tekirdag.
47. At the beginning of March 2008 the applicant's house was raided by the police. Two police in plain clothes came to the house after dinner and said that they wanted to search the house. The applicant asked why and asked whether they had a search warrant. They said that they would give the applicant information afterwards. The applicant could see that they were carrying pistols in holsters. They told the applicant's wife and child to go to the kitchen. They asked the applicant if there were any weapons in the house. He said that there were none. They searched the house. They gathered up a few newspaper publications and magazines and a couple of books, including a book about the left wing revolutionary leader, Deniz Gezmiş. They also took a book about the 12 September 1980 military coup in which thousands were killed in Turkey and was the biggest crisis between the left and right in that country. The police asked the applicant who owned the books and magazines. The applicant said that they were his. The police asked him to go to the [District A] police station with them. There he was interrogated and abused. The police beat him with their fists and slapped him. They also kicked him and stamped on his feet.
48. The Tribunal asked the applicant whether the police said anything to him. He replied that they asked him what contact he had with the DTP, why he helped the DTP and what he knew about the connection between the DTP and the PKK. He told the police that he was just a supporter of the DTP and he had no connection at all with the PKK. The police replied that the DTP and the PKK were all one and the same. The applicant explained to the police that he had done volunteer work for the DTP. This volunteer work extended to making funds available to the DTP to enable the DTP to provide financial assistance to help orphans, the poor and students with their education.
49. The interrogation of the applicant lasted for a couple of hours. The applicant was kept at the police station until the morning. In the morning, another police man came into the room

where the applicant was and asked him to sign a statement saying that he had been treated well during his detention. The applicant was not in a position to argue. He signed the statement so that he could leave. He was not given a copy of the statement. The applicant caught a taxi to his workplace. From there he rang his wife to tell her that he had been taken to the police station and that he had made a statement there and had then gone to his workplace.

50. The applicant said that the next thing that happened was in September 2008 when he realised that he was being followed when he was out driving in his car. At different times he kept noticing different cars in his rear-view mirror. The cars followed him wherever he went. The surveillance was not constant but from time to time the applicant noticed that it was occurring.
51. One evening in November 2008 the applicant left his workplace in Tekirdag. He had just started to move off in his car when a car cut in front of him blocking his way, and men in that car jumped out carrying guns and asked the applicant to get out of his car. The applicant opened the driver-side door. One of the men grabbed him by the arm and pulled him out of the car. The men asked him to take them to his office. The applicant returned to the office and opened it up. The applicant was told to sit in a visitor's chair in his office while one of the policemen sat at the applicant's desk. There were three police in all. They asked the applicant where all the office paperwork was. The applicant pointed to a cupboard against the wall behind him. One of the men then started to go through the files in this cupboard. The applicant was ordered to keep looking at the other policeman who was sitting at the applicant's desk. This policeman asked the applicant what the connection was between the DTP and the PKK and who the persons were who were responsible for this connection. The applicant said that he was not involved with, the PKK. At this, two of the policemen started to beat him. One of them held the applicant's head between his legs while the second man kicked the applicant's legs. The applicant passed out. When he came to, the men had gone. Paperwork, bank statements, invoices and other material lay scattered around the room. However, nothing seemed to be missing. It was about 8 or 9 pm in the evening when the applicant came to. Because of the kicks he had received to his legs, he had difficulty walking. He called his brother in Istanbul to come to Tekirdag to pick him up, with the arrangement being that the two of them would drive back to Istanbul in the applicant's car. The applicant also called his wife and told her that there had been some problems with the business and that he would be home late.
52. When the applicant's brother arrived, the applicant told him what had happened. He drove the applicant to his place in the applicant's car. The applicant stayed there that night and then went home the next morning. His wife asked him what had happened. He said that he had had an accident at work. His wife didn't believe him. He had a lot of swelling and bruises on his legs and pain in his neck and shoulders as a result of his head having been pinned tightly between the legs of one of the police officers while the beating took place.
53. The applicant's business partner did not know about this event.
54. In January 2009 the business started to lose customers in both Istanbul and Tekirdag. The applicant's business partner became concerned about this. The applicant said that he would try to find out what the problem was. He contacted some of the customers who were no longer using the services of the business and asked them why. A few of them said that they didn't want to risk their own business. One of the customers said that they didn't want to work with separatists and that they had heard that the money they had paid to the business

went to the PKK. The applicant was shocked about this. His business partner blamed him because of his involvement with the DTP. The applicant asked his business partner to give him some time to rebuild the customer base. The applicant did find some new customers.

55. In March 2009 police again came to the applicant's house. They were not in uniform. However, the applicant could see that they were carrying guns. There were three of them and they were very aggressive. They searched the house. They then asked the applicant to get into the car with them. He did this. After a while they blindfolded him. The drive lasted 30-40 minutes and then the car stopped. They took the applicant out of the car and pushed him to the ground. It was night time. He heard a gun being cocked behind his head. The applicant asked the men not to hurt him as he had a wife and child. They said to him, "You did not listen to us. Now we will show you." At this, they punched, slapped and kicked him. They said, "We will kill you and throw you into this [details deleted]." When they said this, the applicant realised that the place where they had taken him was near the [location deleted].
56. One of the policemen asked the applicant, "Who in the DTP has the connection with the KCK?" This was the first time the applicant had heard of the KCK. He asked what it was. The police said, "We will bury you and your family in this [details deleted]. No one will know what has happened to you. We will watch you for six months and, if you don't comply, we will kill you."
57. The Tribunal asked the applicant what it was that the police were wanting him to do. The applicant responded that they wanted him to name the people in the DTP who were making connections with the KCK and the PKK.
58. After the police had given the applicant the above warning, they beat him and left him where he was. He walked from the [area] and then caught a taxi home, getting home at about 11pm. He told his wife what had happened. He said to her that their lives were not going to be right anymore and that he needed some time to plan what they should do.
59. The applicant organised a passport for himself through a friend who had a connection with an elderly police officer in the passports office. The applicant paid a bribe of USD2500 and got his passport. He wanted to find out if the passport was suitable to use so made enquiries of a travel agent about the cheapest place he could travel without needing a visa. He found out that he could get to [Country 1] without a visa.
60. There are entries in the applicant's passport showing a trip [in] March 2009. The stamps in the passport are not entirely clear but they may relate to a Turkey – [Country 1] - Turkey trip.
61. On the applicants return, he had discussions with his wife. She was scared. The family decided to go to the applicant's sister's place in [city deleted]. The applicant's sister is married. Her husband shares the same political opinions as the applicant. The applicant told his brother in law everything that had happened to him. His brother in law said that, if the applicant and his family were to live in other peoples' places, they would put the lives of those people at risk also. The applicant's brother in law suggested that the applicant seek to obtain a student visa so that he could stay away from Turkey longer in the hope that the police would forget about him. The applicant decided to adopt this course.
62. He rang his business partner and offered to sell him his share in the business. The business partner agreed to buy the applicant out, offering 40,000 Turkish lira. The applicant was hoping for more than this but, in the end, was prepared to sell for that amount

63. The Tribunal asked the applicant whether, since coming to Australia, he had had any involvement with Kurdish organisations in Australia. He said that he had not. He was intending to attend the most recent Newroz celebrations but was sick on the day. Several of his friends attended.
64. The Tribunal asked the applicant why the authorities in Turkey would continue to have any interest in him, given that that he had now been away for almost 2 years. The applicant said that he feared that the authorities were still interested in him. Ten months after he left Turkey, his wife told him that that the police had searched her parent's place where the applicant's wife and daughter were living. They asked her about the applicant. She said that she was not any longer married to him. They searched her room and saw the applicant's picture on the bedside chest. She explained to the police that she was keeping it for her [age deleted] daughter. The police did not believe this explanation.
65. The applicant's brother's home was also raided by the police about one week after they raided the home of his parents in law.
66. The Tribunal asked the applicant whether he was still in touch with his wife. He said that he was. Contact was mainly over the internet using Skype and MSN.
67. The Tribunal referred to the statements in the applicant's statutory declaration that, when he left Turkey in July 2009, he left behind a good income and a wife and young daughter and that he would not have done that without a good reason. The Tribunal put to him that, if he fled because of persecution, it was difficult to understand why he had not made a protection visa claim until July 2010. The applicant responded that he came to Australia not because he wanted to apply for protection but so that he could have a period out of Turkey which would give the authorities an opportunity to forget about him. However, once the applicant heard that, after 10 months, they went to the homes of his parents in law and his brother, he realised that they had not forgotten about him. The applicant said that friends in Australia told him about the possibility of applying for a protection visa.
68. The Tribunal put to the applicant that the timing of his protection visa claim might suggest that he had manufactured his protection visa claims because he had lodged his application for a protection visa on the day before his student visa was due to expire. The Tribunal put to him that this might suggest that he had simply decided that Australia was a good place to live. The applicant said that he went to a legal service provider at the end of May but it had advised him that it could not help him while he still had a valid student visa.
69. The Tribunal put to the applicant that reports of human rights organisations did not include any reports of discrimination against Kurds while they were engaged in compulsory military service. The applicant responded that the military is a very important part of Turkey and that any criticism of it out would cause trouble for the person voicing criticism. No one in Turkey could say anything bad about the Turkish army.
70. The Tribunal put to the applicant that country of information reports indicated that there are millions of Kurds in Turkey and that Human Rights Watch said in its World Report 2010 that the government's announcement that it was committed to ensuring the human rights of Kurds in Turkey was the most hopeful indication that reform in relation to the Kurds might occur. The applicant responded that tiny improvements had been made in Turkey in relation to the Kurdish issue. For example, there was now a Kurdish TV channel. However these improvements were only on the surface and the government had given no dates by which

fundamental improvements would be made. They were merely political statements. Selahattin Demirtas, the leader of the BDP, which had taken over from the DTP following the banning of that party in December 2009, had criticised the Prime Minister for providing no answer on when the reforms relating to Kurdish people were to be implemented. The applicant said to the Tribunal that history showed that discrimination against Kurds would continue.

71. The Tribunal put to the applicant that the US State Department report of 2010 had reported no incidents of violence during the Newroz celebrations in 2009. The applicant said that the report was ignorant. He said that in the more recent Newroz celebrations people wanting to celebrate were sprayed with water cannon and gas and were detained. He referred to a group in Sırnak being treated in this way as they were heading to a park to celebrate Newroz. He said that hundreds were detained in this incident.

Post-hearing submission

72. After the hearing the Tribunal was provided with a submission on behalf of the applicant which updated certain of the country information discussed with the applicant at the hearing.

Country of origin information

Human rights of Kurds in Turkey

73. Human Rights Watch in its 2010 World Report- Turkey reported that the government's announcement to the Turkish parliament in November 2009 that it was committed to ensuring the human rights of Kurds in Turkey was the most hopeful indication that a long-stalled reform process might be restarted. However, in its World Report 2011, which reports on events in 2010, Human Rights Watch said:

The government made little concrete progress towards realizing its 2009 plan to improve the human rights of Kurds in Turkey. The Constitutional Court in December 2009 closed down the pro-Kurdish Democratic Society Party (DTP) for alleged separatist activities, and hundreds of officials from the DTP and its successor, the Peace and Democracy Party (BDP), faced trial for membership of the Union of Kurdistan Communities, a body connected with the armed Kurdistan Workers' Party (PKK).

There is increasing agreement across the political spectrum on the need for a rights-based and non-military approach to ending the conflict with the PKK. Armed clashes between the Turkish military and the PKK continued. Disagreement erupted over whether the September attack on a minibus in Hakkari province, which killed nine civilians, was staged by the PKK, or by elements of the security forces. The PKK was suspected of the August and September killings of two imams in Hakkari and Sırnak.¹

Newroz celebrations

74. The US State Department Report of 2009, issued in March 2010, reported that Newroz celebrations (in March 2009) were relatively peaceful. However, there is a press report of clashes between demonstrators and police in connection with the 2011 celebrations:

¹ Human Rights Watch 2011, World Report 2011, 24 January www.hrw.org/en/world-report-2011/turkey- Accessed 13 January 2011

Thousands of Kurds rallied in Diyarbakir City, southeastern Anatolia, Turkey, to celebrate Nawroz Anniversary. Demonstrators held green, red and yellow flags and chanted slogans in support of Kurdistan Workers Party (PKK).

Celebrations soon turned into clashes between demonstrators and security forces which used tear gas and water hoses on protesters.

Security forces arrested a number of people while other clashes erupted in southeastern Turkey as well.²

Military service and discrimination against Kurds

75. No reports were found of discrimination against Kurds whilst engaged in compulsory military service in Turkey in recent years. However, reports relating to the period of about 10 years ago when the applicant was doing his military service do refer to harassment and ill-treatment of Kurdish conscripts. For example, an Amnesty International document from 1999 noted reports of “deaths in suspicious circumstances” of Turkish conscripts from the Kurdish southeast, stating:

Reports of persecution and deaths in suspicious circumstances of young men carrying out their military service in the Turkish army are on the increase, Amnesty International said today, giving rise to concern about ill-treatment in the armed forces.

Many of these reports relate to individuals whose families originate from the predominantly Kurdish southeastern provinces of Turkey.³

Democratic Society Party (DTP)

76. The Democratic Society Party (*Demokratik Toplum Partisi* - DTP) is a pro-Kurdish political party. The DTP was banned in December 2009 as a result of a ruling by the Turkish Constitutional Court. The court banned the DTP on the basis of its undertaking activities deemed to be in conflict with the unity of the nation. The court reportedly found the DTP to be linked to the terrorist Kurdistan Workers' Party (PKK);⁴ 37 DTP members were also banned from politics for five years. Following this ban, the DTP regrouped as the Peace and Democracy Party (BDP).⁵ The European Union has expressed regret over the court's decision to ban the DTP and has noted that Turkey's legislation governing the closure of political parties is not compatible with the European Convention on Human Rights.⁶ The DTP is the 10th pro-Kurdish party to be banned in Turkey for collaborating with the PKK.⁷

² <http://asia.world247.net/iraq-news/nawroz-celebrations-turn-into-clashes-in-turkey-2/>, March 21, 2011

³ Amnesty International 1999, 'Evidence of persecution of conscripts on the increase', 27 August <http://web.amnesty.org/library/Index/ENGEUR440551999?open&of=ENG-2EU> – Accessed 18 July 2007.

⁴ The PKK has been branded as a terrorist organisation in Turkey, the European Union (EU), and the United States. The US Department of State has described the PKK as the most prominent among terrorist group in Turkey. ('Constitutional Court Ban of Pro-Kurdish Party Plunges Turkey into Political Turmoil' 2009, HIS Global Insight, 14 December <http://www.ihslobalinsight.com/SDA/SDADetail18006.htm> – Accessed 13 January 2011; US Department of State 2010, *Country Reports on Terrorism 2009*, August).

⁵ Freedom House 2010, *Freedom in the World – Turkey (2010)*, June <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7937> – Accessed 10 September 2010 Human Rights Watch 2010, *World Report 2009 – Turkey*, 20 January; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Turkey*, 11 March, Section 1.d & 2.d.

⁶ European Parliament 2010, *European Parliament resolution on Turkey's progress report 2009*, 2 February <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B7-2010-0068+0+DOC+PDF+V0//EN> - Accessed 13 January 2011; European Union 2010, *Conclusions on Turkey*, 11

Detention and mistreatment of DTP and BDP members by authorities

77. Reports indicate that large numbers of DTP and BDP members have recently been detained. Throughout 2009 and 2010 police have conducted large scale raids against alleged *Koma Civaken Kurdistan* (KCK) sympathisers which have resulted in the mass arrest of BDP members.⁸ DTP and BDP members have been detained on the grounds of support for the PKK and the KCK. In November 2010, the Department of Foreign Affairs and Trade (DFAT) advised that DTP and BDP members have been charged with membership of a terrorist organisation, propaganda of a terrorist organisation, acting as accomplice and breaching the law on meetings and demonstrations.⁹ DTP and BDP officials and high ranking members have been targeted by authorities for arrest and detention. Recent advice, from the US Department of State also states that DTP supporters have been subject to police harassment and arrests.¹⁰ It can be assumed that the majority of targeted DTP/BDP members are of Kurdish ethnicity.
78. The abovementioned DFAT advice states that “some DTP and BDP members have been charged and detained over alleged links with and support to the PKK” DFAT advised that 151 DPT and BDP had been charged with breaching public demonstration and links to terrorism related crimes. 103 of these party members were incarcerated at the time of the advice. DFAT provided the following further information on the continued detention of DTP and BDP members:
- Q5. Country information indicates that regular DTP members were being detained in 2009 and 2010 - is there any more information about the profiles of those being detained, and the circumstances of them being detained?
- ...R5. Party membership is not a reason for being detained in Turkey. Some DTP and BDP members have been charged and detained over alleged links with and support to the PKK terrorist organisation. The legal process continues for 151 people in this context of which 103 are detained. Media reports indicate that the charges against them include, among others, being members of a terrorist organisation, propaganda of a terrorist organisation, acting as accomplice and breaching the law on meetings and demonstrations. We have no further information about the profiles and the circumstances of those being detained.¹¹
79. Human Rights Watch also reported on the above arrest of 151 DTP and BDP party members and activists. According to the report, the party officials were indicted in June 2010 for links with the KCK and PKK. Those arrested included eight current and four former elected mayors of municipalities in the southeast. According to the report, 53 DTP and BDP officials

November http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/conclusions_turkey_en.pdf - Accessed 14 January 2011.

⁷ ‘Constitutional Court Ban of Pro-Kurdish Party Plunges Turkey into Political Turmoil’ 2009, HIS Global Insight, 14 December <http://www.ihsglobalinsight.com/SDA/SDADetail18006.htm> - Accessed 13 January 2011.

⁸ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Turkey*, 11 March, Section 2.a & 3.

⁹ DIAC Country Information Service 2010, *CIS Request No. TUR10840 - Peace and Democracy Party*, (Sourced from DFAT advice of 8 November 2010), 10 November; Human Rights Watch 2010, *Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey*, 1 November, pp. 5 & 13-14 <http://www.hrw.org/en/node/93924/section/3> - Accessed 11 January 2011.

¹⁰ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Turkey*, 11 March, Section 2.a & 3.

¹¹ DIAC Country Information Service 2010, *CIS Request No. TUR10840 - Peace and Democracy Party*, (Sourced from DFAT advice of 8 November 2010), 10 November .

and politically supportive lawyers had been detained for over a year without being formally indicted.¹²

80. On 12 July 2010, DFAT also advised that officials of Kurdish political parties continue to be convicted for involvement in pro-Kurdish political activities. The report states that “1483 Kurdish political party figures, human rights defenders, journalists and NGO representatives have been detained for several months to a year, many without charge.” According to the advice these detained individuals have been charged with “inciting hatred and violence and supporting the PKK terror organisation through their statements.”¹³
81. A February 2010 report published by *Bianet*, a Turkish news agency, similarly states that according to BDP officers Turkish authorities have arrested 1,400 people in operations which are alleged aimed at the KCK activity. Those detained include “party headquarters executives, mayors, heads of provincial councils, and provincial executives among others.”¹⁴
82. The following further reported incidences of arrests, detentions and mistreatment of BDP and DTP members in 2010 have been found:
 - *Firat News Agency*, a pro-Kurdish news agency, reported that on 5 October 2010 Turkish police detained 15 BDP members in house raids, including a Kurdish teenager. The Head of BPD's Istanbul branch, Mustafa Avci, is reported to have stated that “the government is trying to weaken BDP with police operations.”¹⁵
 - On 5 October 2010, *Hurriyet Daily News and Economic Review*, a Turkish news source, reported that 25 BDP members, including one party branch head, had been detained. The BDP members were detained on accusations of throwing Molotov cocktails, encouraging such actions and recruiting personnel for the PKK.¹⁶
 - A report by *Anatolia*, a semi- official Turkish news agency, states that on 28 September 2010 BDP chairman and parliamentarian, Selahattin Demirtas, was sentenced to 10 months in prison for “carrying out propaganda of terrorist organisation PKK.”¹⁷
 - On 26 May 2010, *Bianet*, a Turkish news source, reported that more than 120 people had been detained during police raids intended to target KCK members. Those detained included BDP executives, BDP members and university students. BDP deputy, Özdal Üçer, is noted as criticising the raids and stating that most of the people taken into custody were young people.¹⁸
 - On April 2010, Ahmet Turk, the former chairman of the banned DTP was punched in the face by an assailant as he left a court room in which he releasing a press statement.

¹² Human Rights Watch 2010, *Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey*, 1 November, pp. 5 & 13-14
<http://www.hrw.org/en/node/93924/section/3> - Accessed 11 January 2011.

¹³ DIAC Country Information Service 2010, Human rights in the south-east of Turkey, (Sourced from DFAT advice of 1 July 2010), 12 July.

¹⁴ ‘Dozens of BDP members arrested – again’ 2010, *Bianet*, 15 February.

¹⁵ ‘15 BDP members detained in Istanbul 2010, *Firat News Agency*, 5 October.

¹⁶ ‘25 BDP detained after PKK truce extension’ 2010, *Hurriyet Daily News and Economic Review*, 1 October.

¹⁷ ‘Turkish court sentences BDP leader Demirtas to 10 months in jail’ 2010, *BBC Monitoring European*, source: *Anatolia*, 28 September.

¹⁸ Önderoglu, E. 2010, ‘Kurdish initiative continues: 120 detentions’, *Bianet*, 26 May.

As a result of the attack Türk acquired a broken nose and deep cuts in his forehead. BDP leaders are reported to have stated that the attack was organised with security forces. BDP leader Selahattin Demirtaş is reported to have stated that “It is clear that the assailant pre-arranged the incident by even receiving support from the security forces” The Interior Ministry opened an investigation into the incident and provisionally removed two high-ranking police officers responsible for the security of the court building.¹⁹

- Reports indicate that on 13 February 2010, between 86 and 130 people suspected of links with KCK were arrested in police operations across the country.²⁰ According to a report published by *Bianet* the majority of those arrested were BDP members and local executives. BDP members arrested included party council members, executives from the women and youth council, county commissioners and district executives.²¹

83. The US Department of State report on human rights practices for Turkey for 2009 states that Turkish authorities regularly harassed DTP members and supportive villagers. The report also states that “human rights activists claimed that more than 1,000 cases had been opened against former DTP and BDP members during the year. The following are extracts from the report:

Throughout the year police and the judiciary increased pressure on members of the pro-Kurdish former DTP and BDP.

...Most were investigated and prosecuted for speaking in the Kurdish language or for making statements critical of the government. Many were also arrested for alleged ties with the KCK, the political branch of the terrorist PKK organization, including a group of more than 40 between December 25 and 31 that included elected mayors and BDP officials.

...During the year police raided dozens of DTP offices, particularly in the southeast, and detained hundreds of DTP officials and members. Prosecutors also opened numerous investigations and trials against DTP members.

...Jandarma and police regularly harassed DTP members through verbal threats, arbitrary detentions at rallies, and detention at checkpoints. Security forces also regularly harassed villagers they believed were sympathetic to DTP. Although security forces released most detainees within a short period, many faced trials, usually for supporting an illegal organization or inciting separatism²²

The KCK

84. The *Koma Civaken Kurdistan* is also known as the Kurdistan Communities Union, Association of Communities in Kurdistan, Community of Kurdish Society and the Ruling Committee of Kurdistan Society. The *Koma Civaken Kurdistan* (KCK) is an illegal Kurdish umbrella organisation or alliance which includes various Kurdish terrorist groups such as The Party of Free Life of Iranian Kurdistan (PJAK)²³ and the PKK.²⁴ The KCK was formed by

¹⁹ ‘Kurdish leader attacked in Turkey’ 2010, *The Kurdish Globe*, 17 April; ‘Ahmet Türk, Kurdish intellectuals urge public to remain calm’ 2010, *Plus News Pakistan*, 15 April; ‘BDP demands investigation into attack on Türk in Samsun’ 2010, *Plus News Pakistan*, 14 April.

²⁰ ‘Turkey arrests 86 over links to Kurdish rebels’ 2010, *Agence France Presse*, 13 February; ‘Dozens of BDP members arrested – again’ 2010, *Bianet*, 15 February.

²¹ ‘Dozens of BDP members arrested – again’ 2010, *Bianet*, 15 February.

²² US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Turkey*, 11 March, Section 2.a & 3.

²³ According to a report by the Jamestown Foundation PJAK is “an offshoot of the PKK fighting against Iran.” (The Jamestown Foundation 2008, *Terrorism Focus*, vol.5, issue.10).

the PKK and has been described as the PKK's political and urban branch.²⁵ The KCK is led by an elected Executive Council.²⁶ Although the sources consulted provided limited information on the stated goals of the KCK, as the PKK's political and urban branch, it is likely that the KCK shares the PKK's goal of greater cultural and political rights for Turkey's Kurdish minority."²⁷

85. An October 2010 column published *Sunday's Zaman*, an English language Turkish news agency provides some further general information on the KCK. According to the report, the KCK is a "clandestine organisation" which is closely linked with the PKK and thus "can be seen as an extension of a terrorist organization." The report also states that the KCK provides public services at the local level such as schools and courts. The report states that:

The KCK is an alternative to the state. This applies not only to its Turkey council, but also its councils three other countries. It comprises the PKK. Moreover, it undertakes all the responsibilities of a state proper and exercises the powers of state at the local level. It establishes courts to solve disputes. It provides schooling. It imposes punishments on those who fail to comply with its rules.

The power of such an organization relies on the support of the public. The state of the Turkish republic and the KCK will confront each other in the Southeast. If the public submits to the KCK's authority, then the Kurdish political movement will have made great progress. Today, this is the case in Hakkari. The state's power has been replaced with the KCK's rules in Hakkari. The state's forces just ignore the fact of the KCK's domination lest they increase tension.

... the KCK is effectively bringing the PKK down from the mountains, altering its mode of operating from a military one to a political one. The borders of the state policy built upon

²⁴ International Federation of Human Rights 2009, 'The Human Rights Association (IHD) remains in the firing line', 29 December <http://www.fidh.org/The-Human-Rights-Association-IHD-remains-in-the> - Accessed 17 January 2011; Önderoğlu, E. 2010, 'KCK Declines Responsibility for Bomb Attack - Ceasefire Extended', *Bia News Center*, 2 November <http://bianet.org/english/minorities/125804-kck-declines-responsibility-for-bomb-attack---ceasefire-extended> - Accessed 16 January 2011; 'PKK leader calls on PJAK to declare ceasefire' 2010, Kurd Net website, 9 June <http://www.ekurd.net/mismas/articles/misc2010/6/turkey2695.htm> - Accessed 16 January 2011; Chomani, K. 2009, 'PJAK leader: USA should not undermine Kurds', Kurdish Media website, 8 August <http://www.kurdmedia.com/article.aspx?id=15940> - Accessed 16 January 2011; Türköne, M. 2010, 'What sort of organization is the KCK?', *Sunday's Zaman*, 23 October <http://www.todayszaman.com/columnists-225126-what-sort-of-organization-is-the-kck.html> - Accessed 16 January 2011; The Jamestown Foundation 2010, *Terrorism Monitor*, vol.3, issue.33, 19 August <http://www.unhcr.org/refworld/pdfid/4c6e2a3f2.pdf> - Accessed 16 January 2011; Christie-Miller, A. 2010, 'The PKK and the Closure of Turkey's Kurdish Opening', Middle East Report Online, 4 August <http://www.merip.org/mero/mero080410.html> - Accessed 16 January 2011.

²⁵ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Turkey*, 11 March, Section 1.d & 2.d; Minority Rights Group International 2010, *State of the World's Minorities and Indigenous Peoples 2010: Events of 2009*; Türköne, M. 2010, 'What sort of organization is the KCK?', *Sunday's Zaman*, 23 October <http://www.todayszaman.com/columnists-225126-what-sort-of-organization-is-the-kck.html> - Accessed 16 January 2011; 'Second KCK trial in Adana to start on 22 October' 2010, Kurd Net website, 20 October, source: *Bia Net* <http://www.ekurd.net/mismas/articles/misc2010/10/turkey3005.htm> - Accessed 16 January 2011.

²⁶ 'PKK leader calls on PJAK to declare ceasefire' 2010, Kurd Net website, 9 June <http://www.ekurd.net/mismas/articles/misc2010/6/turkey2695.htm> - Accessed 16 January 2011; 'Cemil Bayik: Political genocide is being imposed on the Kurds' (undated), HPD Online http://www.hezenparastin.com/eng/index.php?option=com_content&view=article&id=496:political-genocide-is-being-imposed-on-the-kurds&catid=36:meru-savunma&Itemid=297 - Accessed 16 January 2011.

²⁷ Önderoğlu, E. 2010, 'KCK Declines Responsibility for Bomb Attack - Ceasefire Extended', *Bia News Center*, 2 November <http://bianet.org/english/minorities/125804-kck-declines-responsibility-for-bomb-attack---ceasefire-extended> - Accessed 16 January 2011; Türköne, M. 2010, 'What sort of organization is the KCK?', *Sunday's Zaman*, 23 October <http://www.todayszaman.com/columnists-225126-what-sort-of-organization-is-the-kck.html> - Accessed 16 January 2011.

counterterrorism end here. How can the state cope with the KCK? No one is ready to answer this question. This is evidenced by the ongoing KCK trial. The state must radically change its perspectives on the Kurdish issue.²⁸

86. As mentioned above, throughout 2009 and 2010, police conducted large scale raids against alleged KCK sympathisers. During 2009 and 2010 approximately 1,500 Kurdish politicians, activists, lawyers and NGO workers were jailed for alleged links with the KCK and PKK.²⁹
87. The DTP/BDP has been linked to the KCK and its founding organisation, the PKK. In December 2009 the Turkish Constitutional Court ruled to ban the DTP due to its alleged links with the PKK.³⁰ Raids against alleged KCK/PKK sympathisers in 2009 and 2010 also resulted in the mass arrest of former DTP and BDP members.³¹ Many arrested DTP members were, however, reported to have been unfairly charged with links to the KCK.³²
88. A 2010 report published by the Middle East Report Online provides further information on the relationship between the banned DTP and the KCK/PKK. According to the report as the DTP/BDP and PKK share the same followers or constituency they are inevitably linked. The report also stated that, as Kurds cannot vote for the PKK/KCK itself, many instead vote for DTP/BDP, which has been perceived to be the PKK's political representative or "legal affiliate" The report describes links between some DTP members and the PKK The report also describes significant pressure placed on neutral DTP politicians by the PKK. Umit Firat, an independent Kurdish activist is reported to have provided the below description of KCK links with the DTP:

Firat described KCK operatives within the DTP as "commissars" guiding and monitoring the activities of elected politicians. "They are never left alone," he said. "They are always under the control of the organization -- that's the totalitarian character of it. ... Therein lies the fundamental problem of trying to uproot the PKK from the "civilian" ground of the Kurdish political scene: The roots are sunk so deep as to be unbreakable.³³

²⁸ Türköne, M. 2010, 'What sort of organization is the KCK?', *Sunday's Zaman*, 23 October <http://www.todayszaman.com/columnists-225126-what-sort-of-organization-is-the-kck.html> - Accessed 16 January 2011.

²⁹ Christie-Miller, A. 2010, 'The PKK and the Closure of Turkey's Kurdish Opening', Middle East Report Online, 4 August <http://www.merip.org/mero/mero080410.html> - Accessed 16 January 2011; '1,483 Pro-Kurdish DTP members detained for 1 year without indictment' 2010, *Bianet*, 14 April; DIAC Country Information Service 2010, Human rights in the south-east of Turkey, (Sourced from DFAT advice of 1 July 2010), 12 July.

³⁰ 'Constitutional Court Ban of Pro-Kurdish Party Plunges Turkey into Political Turmoil' 2009, HIS Global Insight, 14 December <http://www.ihsglobalinsight.com/SDA/SDADetail18006.htm> - Accessed 13 January 2011

³¹ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Turkey*, 11 March, Section 2.a & 3; Christie-Miller, A. 2010, 'The PKK and the Closure of Turkey's Kurdish Opening', Middle East Report Online, 4 August <http://www.merip.org/mero/mero080410.html> - Accessed 16 January 2011 -; '1,483 Pro-Kurdish DTP members detained for 1 year without indictment' 2010, *Bianet*, 14 April; DIAC Country Information Service 2010, *CIS Request No. TUR10840 - Peace and Democracy Party*, (Sourced from DFAT advice of 8 November 2010), 10 November -; Human Rights Watch 2010, *Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey*, 1 November, pp. 5 & 13-14 <http://www.hrw.org/en/node/93924/section/3> - Accessed 11 January 2011.

³² Christie-Miller, A. 2010, 'The PKK and the Closure of Turkey's Kurdish Opening', Middle East Report Online, 4 August <http://www.merip.org/mero/mero080410.html> - Accessed 16 January 2011.

³³ Christie-Miller, A. 2010, 'The PKK and the Closure of Turkey's Kurdish Opening', Middle East Report Online, 4 August <http://www.merip.org/mero/mero080410.html> - Accessed 16 January 2011.

Ability of Turkish nationals to get a passport through payment of bribes

89. No recent information was found in the sources consulted regarding the payment of bribes for passports in Turkey. Reports indicate, however, that corruption is a continuing problem in Turkey.³⁴
90. A recent report by *Freedom House* states that “Turkey struggles with corruption in government and in daily life.” According to the report “Turkey was ranked 61 out of 180 countries surveyed in Transparency International’s 2009 Corruption Perceptions Index.”³⁵
91. The 2010 US Department of State *Country Report on Human Rights Practices* for Turkey provides the following description of official corruption:

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and some officials engaged in corrupt practices with impunity. The World Bank Worldwide Governance Indicators reflected that corruption remained a problem.³⁶
92. In January 2011 police uncovered a smuggling and bribery ring operating in Turkey’s customs organisation. The illegal activity involved the importation of goods. According to a report published by *Hurriyet News*, a Turkish news source, the illegal customs ring “falsified official documents, solicited bribes from smugglers and importers and was involved in bringing large amounts of smuggled cigarettes into the country.” 34 customs officials were arrested as a result of a police investigation.³⁷

FINDINGS AND REASONS

93. The applicant travelled to Australia on a Republic of Turkey passport and claims to be a citizen of Turkey. His passport appears to be valid, despite his claim that he had to bribe an official to obtain it. On the basis of the evidence of his passport and his evidence at the hearing before the Tribunal, the Tribunal finds that he is a citizen of Turkey and has assessed his claims against that country as his country of nationality.
94. The applicant claims that he was persecuted in Turkey because of his Kurdish ethnicity and his political opinion as a supporter of successive pro-Kurdish political parties in Turkey.
95. The Tribunal accepts that the applicant grew up in Gaziantep in the mainly Kurdish south-east of Turkey and is of Kurdish ethnicity as he claims. The Tribunal also accepts that he is committed to Kurdish causes and has participated in Turkey in the Kurdish spring festival of Newroz, in which those taking part frequently clash with the police.

³⁴ Freedom House 2010, *Freedom in the World – Turkey (2010)*, June <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7937> – Accessed 10 September 2010 - Attachment 3; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Turkey*, 11 March, Section 4.

³⁵ Freedom House 2010, *Freedom in the World – Turkey (2010)*, June <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7937> – Accessed 10 September 2010.

³⁶ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Turkey*, 11 March, Section 4.

³⁷ ‘Police report burns Turkey’s customs house chief’ 2011, *Hurriyet Daily News*, 9 January <http://www.hurriyetdailynews.com/n.php?n=the-intelligence-report-burned-the-custom-chief-manager-2011-01-09> - Accessed 17 January 2011; ‘Turkey detains 34 customs officials over bribery probe’ 2011, *World Bulletin*, 9 January http://www.worldbulletin.net/news_detail.php?id=68362 - Accessed 17 January 2011.

96. The evidence the applicant gave before the Tribunal about the various incidents when he was detained by the police, questioned by them or injured by them was consistent with the written claims in his protection visa application and the evidence he gave to the delegate when he was interviewed by her. The applicant was an impressive witness in this regard. He told his story to the Tribunal with little prompting and was able to give clear and convincing answers whenever the Tribunal sought clarification or further detail. The Tribunal finds that he has been interrogated and ill-treated by the police as he claims.
97. On the basis of the applicant's story and the documentary evidence supplied with his statutory declaration, the Tribunal accepts that, from November 2006, he was the joint owner of a [business] in Turkey and that the business was successful, with premises first in Istanbul and later with other premises in Tekirdag. The applicant said that his troubles with the authorities intensified after one of his delivery drivers was taken in by the police during the 2007 election campaign and the police discovered that the applicant was a supporter of the DTP and was volunteering [supplies] to the DTP to support DTP officials and workers during the campaign. It seems highly plausible to the Tribunal that the attention paid by the authorities to the applicant increased after this event. The country of origin information referred to above indicates targeting by the authorities in recent years of persons perceived to be pro-Kurdish activists and it is likely that the applicant came under particular scrutiny because his business and financial position was such that he was able to provide what may have been perceived by the authorities as significant support to the DTP. The line of questioning of the applicant by the police in seeking to discover connections between the DTP and the outlawed PKK and KCK is also consistent with country of origin information about the banning of the DTP in December 2009 because of a court finding about its links to the PKK and about raids against suspected PKK and KCK sympathisers, resulting in arrests of BDP members and executives.
98. The applicant gave evidence in a straightforward and convincing way about the police calling on his wife, searching her home and asking about his picture which she kept in her bedroom. On the basis of that evidence, the Tribunal accepts that the authorities in Turkey have maintained an interest in the applicant since his departure.
99. For the reasons which follow, the Tribunal is satisfied that the applicant has a well-founded fear of persecution for reasons of his ethnicity and political opinion.
100. The incidents of his detention or custody by the police which the applicant describes involved serious harm within the meaning of s.91R(1)(b), in that the harm at least constituted significant physical harassment or significant physical ill-treatment as referred to in s.91R(2)(b) and(c). Those incidents also involved systematic and discriminatory conduct as referred to in s.91R(1)(c). The applicant's ethnicity and political opinion were the essential and significant reasons for the harm suffered by him (s.91R(1)(a)).
101. The question is whether the applicant has a fear of persecution that is well-founded. The Tribunal was concerned that the long delay that occurred before the applicant made his protection visa claim and the fact that the claim was made only the day before his student visa expired might suggest that he did not have a fear of persecution in Turkey, despite his protestation that he would not have left family and a financially secure life behind him unless he had such a fear. However, the Tribunal accepts the explanation the applicant gave about this. He said that he obtained his student visa so that he could have time away from Turkey and allow the heat to move off him and his family. That had not happened: the visits the police had made to his wife and his brother indicated that they remained interested in him. It

was only after these visits occurred and the applicant became aware through friends in Australia of the possibility of applying for a protection visa that he decided to make such an application.

102. The Tribunal put to the applicant that country of origin information suggested a growing degree of accommodation of Kurdish interests and aspirations at the government level in Turkey. This was denied by the applicant who thought that government statements about reform in relation to Kurdish issues were window dressing and that, without firm timing commitments at the government level, no fundamental changes would occur. Certainly, the most recent Human Rights Watch report referred to above reports little progress on improving the human rights of Kurds in Turkey and there is no evidence before the Tribunal to suggest that a solution to the Kurdish issue has been found or to suggest that persons believed to be sympathetic to pro- Kurdish parties in Turkey no longer face arbitrary interrogation and detention. The country of origin information referred to above indicates to the contrary. The Tribunal is also mindful that the applicant has been seen by the authorities as a person whose business and financial stature make him an influential supporter of pro- Kurdish political parties and interests. His perceived stature might expose him to a greater degree of risk of harm from the authorities than would be faced by a politically active Kurd without that perceived stature..
103. Based on all the above, the Tribunal cannot exclude the possibility of the applicant's being seriously harmed by the Turkish authorities as one that is remote, insubstantial or far-fetched if he were to return to Turkey. Accordingly, the Tribunal is satisfied that his fear of persecution is well-founded.

CONCLUSIONS

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

DECISION

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