

0905517 [2010] RRTA 99 (25 February 2010)

DECISION RECORD

RRT CASE NUMBER: 0905517

DIAC REFERENCE: CLF2009/46827 S07/220

COUNTRY OF REFERENCE: Turkey

TRIBUNAL MEMBER: Ms Philippa McIntosh

DATE: 25 February 2010

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 [in] November 2007 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] April 2009. The delegate decided to refuse to grant the visa [in] June 2009 and notified [the applicant] of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that [the applicant] was not a person to whom Australia had protection obligations under the Refugees Convention
4. [The applicant] applied to the Tribunal [in] July 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that [the applicant] has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

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

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

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

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to [the applicant]. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. [The applicant] appeared before the Tribunal [in] September 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Turkish and English languages.
21. [The applicant] was represented in relation to the review by his registered migration agent, [name deleted: s.431(2)].

Written information provided to the Department (DIAC)

22. [The applicant], who is [in his 20's], arrived in Australia [in] November 2007. He entered the country using his Turkish passport, which contained a subclass 570 student visa valid to [a date in] January 2009. He was issued with two further subclass 570 visas in Australia, the most recent of which ceased [in] April 2009. The protection visa application was lodged [in] April 2009.
23. [The applicant] claimed to be ethnically Kurdish and to be from Igdır in Turkey. He claimed to have been a supporter of two pro-Kurdish political parties in Turkey, being the DTP and HADEP.
24. He claimed that, because of his Kurdish background, he had been subjected to discriminatory treatment by school staff while at high school in Igdır. He claimed that most of the teachers supported the fascist Nationalist Movement Party (MHP). He claimed that in 1999 he had been beaten up by MHP supporters at school, but had been blamed. In his holidays he visited the HADEP office in Igdır and told them what had happened at school. He visited their office a few times, and began reading publications about the Kurds. He was suspended from school for three days in 2000 when he attended Kurdish New Year celebrations. He continued to visit the HADEP office in 2000 and 2001. When the DEHAP office in Igdır was raided in 2001 the police came to his house and questioned him about his activities with HADEP. He told them he went to the office to chat with friends and read newspapers. After that he did not go out often because he was scared. He did the university selection exam in June 2001 but was unsuccessful.
25. In February 2001 [later corrected to February 2002] his uncle's house in Kocaeli [approx. 1,000 km from Igdır] was raided by police and some books confiscated. He had gone to stay with this uncle in December 2001 and was preparing for the university selection exam. His uncle was a supporter of HADEP/DTP and was also studying at university. He and his uncle were assaulted in a police van, and taken home at midnight. [The applicant] soon returned to

Igdir. He stopped attending HADEP meetings at this point, but resumed in 2003. He claimed that his uncle was arrested and beaten on several occasions after he left.

26. In June 2002 he passed the university selection exam and was accepted to study business management at university in September 2002. There was more freedom, and he discussed politics with other Kurdish students. When he had the chance he went to the HADEP office. He also assisted DEHAP during the 3 November 2002 general election. He did not have problems with the authorities in the first year, which he completed in June 2003. In September 2003 he commenced his second year of university study and began going to the HADEP office a few times each month. He also assisted with meeting preparations and participated in discussions. After school he met with other Kurds and left-wingers in a café.
27. He claimed that in February 2004 he was detained when police raided the café. He and three other students were beaten and interrogated, and released the following morning. They later heard that this was to discourage students from participating in upcoming Kurdish New Year (Newroz) celebrations. After this incident he began to receive threats from unknown people. Although he was due to graduate in June 2004 he left school in February 2004 because he was scared.
28. He commenced compulsory military service in March 2004. He had no problems in the first three months of training. He was then sent to Siirt, which had a higher Kurdish population. It was state policy to send Kurds to war zones so they could kill each other. As a Kurd he was under close supervision and was unfairly treated and insulted. He completed his military service in May 2005.
29. He stayed in Igdir for a while but police and MHP supporters resumed swearing at him in public and trying to provoke him. In July 2005 he moved to [Town 1], where he worked in a hotel for five months before returning to Igdir for about seven months. After he was beaten in the street by police in Igdir he returned to [Town 1].
30. Life was peaceful in [Town 1]. He went to the office of the DTP there on his days off, and lived with two other Kurds.
31. He claimed that in September 2006 his home was raided by the police and he was questioned about “suspicious” activities. After this his house was closely watched by the police. On one occasion two people stopped him after work and told him to return to Igdir as they knew he was involved with HADEP/DTP. He changed address in [Town 1] because he was scared. Within a month he saw the same two people in the foyer of the hotel where he was working. In October 2006 he returned to Igdir for two weeks before going to Istanbul in November 2006. He stayed with relatives in Istanbul, and did casual jobs as a waiter. He also sometimes stayed in Ankara with friends. Relatives suggested he could leave Turkey and he began to consider this.
32. He claimed that his father organised for a contact in the police force to issue him with a passport, in return for 5,000 new Turkish lira. He returned to Igdir in late February 2007 to get a passport, and stayed there for a week. The officer told his father he would secure [the applicant]’s safe departure from the airport. His visitor visa application to go to Germany was rejected. He then located an agent in Ankara who organised the Australian student visa. His father borrowed money to pay for the education and related expenses, that money becoming available in June 2007. It was at that time that he approached the agent to start the application process. The application was granted within a few months.

33. He had no English language ability when he arrived in Australia in November 2007. He claimed that about six months after his arrival he met a girl and they fell in love. They decided to marry. He was planning to lodge a spouse visa application but she left him after five months. His school was due to finish in November 2008. He extended his visa for three months but would be unable to remain in Australia after April 2009. He approached a few immigration solicitors for advice about a refugee application but did not have enough money to pay for a solicitor so decided to lodge the application by himself.
34. Since arriving in Australia he had discovered that someone used his name to vote in the local election in Turkey in 2004, at which time he was doing his military service. His parents had received a summons from the court. This was a serious situation for him, as he believed that fascists had set him up.
35. He claimed that he could not return to Turkey because of his political opinion and his ethnicity. He claimed that the Turkish state could not protect him.
36. [The applicant] submitted a letter of support from an NGO, the Australian Kurdish Association ([name, position and date deleted: s.431(2)], in which it was stated that the applicant was a Kurd from Iğdir province who had been a member of the HADEP in 2000 and 2001. The author also stated that [the applicant] was well-known and respected within the Kurdish community. He also repeated the basic claims made by [the applicant] in his statement (“as he stated in his statement”).

Biographical details in the Protection visa application forms

37. [The applicant] claimed that he had been born in the town of [town deleted: s.431(2)] in Iğdir province. He held no citizenship other than that of Turkey. He stated that he was permanently and legally separated. Of his relatives he said that his parents remained in Turkey, as did his brother. He had a sister living in Germany.
38. Of his previous addresses in Turkey, he stated that he had been living from December 2006 to November 2007 at a single address in Istanbul. From June 2006 to October 2006 he had been living at a single address in [Town 1].
39. Of his employment history, he listed a number of jobs working in hotels and restaurants. He stated that from July to November 2005 he had been working in [Town 1], at [employer deleted: s.431(2)] as “security, waiter”. He had worked in the same capacity at the same hotel from June to October 2006. He had then worked as a waiter at a restaurant in Istanbul from November 2006 to November 2007, also working throughout the same period as a waiter in a teahouse. He provided the same information on another part of the application forms, with one exception, which was that after working at [employer deleted: s.431(2)] to October 2006, he had done casual work as a waiter at various restaurants from February to July 2007.
40. Of his education history he said that he had withdrawn from a business management course in Iğdir [in] 2004 (having commenced [in] 2002).
41. He had done his compulsory military service from [dates deleted: s.431(2)], serving as a private at [location deleted: s.431(2)] training base for three months, then for 12 months in Siirt province.
42. He stated that his application for a visitor visa to Germany was refused [in] 2007.

Further information provided during the DIAC interview

43. [The applicant] claimed to have been targeted by the police because of his political profile as a pro-Kurdish demonstrator. He claimed he had been arrested several times and been imprisoned, beaten and tortured. He had been involved with HADEP and the DTP but had not become a member of either party. His support for HADEP manifested by his organising accommodation for Kurdish students and by organising events.
44. He had become involved with HADEP because his uncle was involved with it, because of the way his family had been treated by Turks and the Turkish state and because he was attracted to it.
45. He claimed he had been detained first in February 2002 when he was driven around in a police vehicle with his uncle before being taken home after midnight. The second time was in February 2004 when he was held overnight with three other students. He was mistreated but was not charged on either occasion, and had no criminal record.
46. Immediately after being forced out of school in 2004 he commenced military service.
47. As to his delay in applying for the protection visa after his arrival in Australia, he said that he did not know he was eligible to seek protection.
48. He said he would submit evidence of the summons from the court relating to the bogus voting offence. According to the DIAC decision, that evidence was not submitted.

Information contained in [the applicant]'s student visa application

49. Among the information contained in the student visa application (DIAC file S07/220), granted [in] 2007, was the following:
50. [The applicant] was born in Igdır (Turkish Republic Identity Card). His father's name was [name deleted: s.431(2)]. His father's bank balance had been 51,000 YTL (approximately \$51,000) since January 2007. His father was an officer in [a government department] in Igdır. The college the applicant planned to attend in Australia was to charge him \$8,015 for English classes.
51. He submitted a document issued by the criminal records department of Igdır public prosecutor's office and dated [in] May 2007, confirming that the office had no criminal record relating to him. He also submitted a letter to that office from him requesting this information.

Information provided to this Tribunal

52. [The applicant]'s solicitor, [name deleted: s.431(2)], provided a written submission to the Tribunal dated [in] August 2009 (received [about one week later in] August 2009). This provided recent evidence from various sources about the treatment of Kurds and the DTP and suspected sympathisers of the party in Turkey. Discrimination remained a feature of the social and political landscape in Turkey. That discrimination could escalate into persecutory conduct. [The applicant]'s claims were consistent with the evidence submitted about the treatment of politically active Kurds in Turkey.

53. [In] September 2009 the Tribunal received a statutory declaration made by [the applicant] on that date, in which he addressed some of the delegate's concerns about particular issues. He said that he had approached an agent in Ankara and told him he wanted to study English in Australia. The agent instructed him to get certain documents and he did so. He asked his father for money, after three or four months was issued with his Australian student visa, and enrolled at a college in Sydney to study English for 52 weeks. Before the student visa expired he saw an education agent who enrolled him in a three-month course conducted by a private college in Sydney. He was granted a further student visa until April 2009. He applied for the protection visa [in] April 2009, 17 months after his arrival in Australia.
54. He claimed that in 2008 he had met and formed a relationship with an Australian citizen, [name deleted: s.431(2)]. They were married and lived together for about six months. She was going to sponsor him for a partner visa but they separated in December 2008 so the application was not lodged. It was at this time that he thought about making an application as a refugee because he did not want to return to Turkey. He then approached some immigration solicitors to enquire about this. He wanted to remain in Australia because he feared returning to Turkey, where he would again face the mistreatment that he had previously suffered. He wrote that in hindsight he should have applied for the protection visa earlier. However he was unaware of the implications of applying when he held a student visa. As long as he was lawfully in Australia he did not feel compelled to apply as a refugee.
55. He stated that his parents were still living in Iğdir in eastern Turkey. His father currently worked there as a government employee with the [government department], having done so for four years, before which he had worked for [company deleted: s.431(2)]. He was due to retire soon. [The applicant]'s mother was a housewife. His older sister was living in Germany, and was married to a Turkish Kurd. His brother was living with his parents and attending high school in Iğdir.
56. [The applicant]'s high school education commenced in 1997 in Iğdir. He did not have good memories of his time there because as a Kurd he felt like an outsider and was treated as such by teachers and classmates. He was suspended from school in 1999 and again in 2000. He attributed these suspensions to his Kurdish ethnicity and his political opinion which he was beginning to formulate and express at school, having felt offended by the way others spoke about Kurds. That opinion was not tolerated by non-Kurdish students or teachers. The principal was also antagonistic to him. He referred to another incident when he was singled out at school at the age of 14 or 15 by a teacher who slapped him. His father made a formal complaint to the Department of Education and the teacher was later removed.
57. He said that he had not been a member of any Kurdish party, but had supported HADEP/DTP and been identified as a supporter by Turkish police in three Turkish cities. Although he did not have a significant political profile he had been beaten up, verbally and physically abused, detained and harassed by the police. He said that little people could be persecuted along with those in the public spotlight and the former might be more vulnerable to such treatment.
58. He also claimed that in 2004, while he was doing his military service elsewhere, a summons was issued against him to attend the court in Iğdir. It was sent to his parents' home, and alleged that he had been involved in an election fraud in the local elections in Iğdir in March 2004. It said he had voted twice. He went to court in response to the summons, after completing his military service in May, June or July 2005. He explained that he was innocent as he was not in Iğdir at the time. He was told by the judge to "leave the court". He had no further problems in relation to this matter while in Turkey. However he believed the case was

reopened, because his father told him that in March 2009 the police had questioned him at home about [the applicant]'s whereabouts. They came again in April. His father told the police that [the applicant] was living somewhere in Turkey but he did not know where. His father was told that [the applicant] should contact the police. On the second visit the police spoke to his mother who admitted to them that he was not in Turkey.

59. He claimed that he had obtained a copy of a document issued by the Igdir Criminal Court [in] May 2009 in relation to his hearing [in] May 2009. His father had asked for this document from the court in May 2009.

Oral evidence to the RRT

60. [The applicant] said that his parents, school-age brother and grandmother were all currently living together in Igdir, in the house where he too had resided. He also had a sister in Germany. He had no other siblings. He had tried to go to Germany "but it didn't happen". He had never travelled abroad before his trip to Australia.
61. He confirmed that his father worked in a government department.
62. Of his relatives in Australia, he said that he had none. He said that he had come to Australia on a student visa because it was far from Turkey and respected all cultures and races.
63. He stated that he had married an Australian in July 2008 in Sydney, but was now separated. He had met her in Brisbane during a new year fireworks display. They had remained in constant touch, then had lived together in Sydney. No one had introduced him to her.
64. Of his claim to be a Kurd, he said that both his parents were Kurdish. Asked to name his tribe, he said it was "not Zaza". It was the Brukan tribe or group, which was the major clan in the Igdir area. As to why this clan was not among those on the Tribunal's list of clans in the Igdir area, he said it was a local name used by people there. Asked to name the major clan confederacy in the Igdir area, he reiterated it was Brukan. Told that the Tribunal's information was that it was Haydaran, he said that there were a few, which he named as "Haydaran, Brukan, Kizhan, Geylelu" – these were the biggest living Kurdish clans in Igdir province.
65. Noting that he had written on the protection visa application form that he spoke Kurdish, I asked him to name the dialect. He responded that he did not speak Zaza, but spoke "Igdir Kurdish". It was "just called Kurdish". He then said that his parents did not discuss it with him and that he was "ignorant". His parents only spoke Turkish (not Kurdish) at home because his father was a public servant. Also they had heard of "things that happened to people who spoke Kurdish". He had learned some Kurdish as a child because he had been living in a village until the age of 9, when the family moved to the city, but the language he was most comfortable speaking was Turkish.
66. As to how anyone in Istanbul, for example, might know he was Kurdish, he said that his ID card, which he had given to the DIAC, showed that he was from Igdir. Also his appearance and accent would identify him as a Kurd. I told him that the Tribunal had information that there were people of non-Kurdish background in Igdir (see Tan, A. 2008, "Solution to Kurdish problem (2): Revitalizing peaceful coexistence", Today's Zaman, 23 July) so his ID card would not necessarily indicate that he was a Kurd. He responded "not the card so much, but the way we speak", and "anyway I say I'm Kurdish".

67. Invited to provide details of his claim that his parents had received a summons relating to someone fraudulently using his name to vote in 2004, he said that there were local elections in 2004. Military conscripts did not vote. He said that the parties in power offered no solution to the Kurdish problem so Kurdish parties developed. For many years the Turks had power there, now the Kurds held power. The file was opened in 2004, then all went quiet. He went to court. The DTP won in the 2009 local elections, and the mayor was from the DTP. After the DTP won the local election in Iğdir the problems were renewed. Because this account lacked clarity I asked him what charge he had faced in 2004. He responded that the allegation was that he had voted at more than one polling booth. He said “they thought there was fraud because the DTP did well”. The DTP had progressed in 2004, although in fact the MHP had won in his city. He knew of ten people who faced charges on the same day as himself. Asked if there were, for example, hundreds or thousands of people similarly accused at this time, he indicated that he did not know. As to why the MHP would dispute the outcome of an election in Iğdir if they had won it, he said “they wanted to wear out the Kurds in that region”
68. Noting that in his statutory declaration to the Tribunal he had said that when his case was heard he was told by the judge to leave the court, I told him I inferred from this that the case against him was dismissed. He responded that in 2005 he had told the judge he could not vote at all as he was serving in the military at the time of the alleged incident. He had given the judge a document proving this, and had provided a copy to the Tribunal. As to the outcome of the case, he said that he was not told, and they just told him to “go”. He had had no lawyer. He just understood that they would not close the matter, and assumed they left it open so that if the DTP got further support it would come up again. I asked him if, therefore, he thought this had happened to the other people who were accused of voting twice. He responded that he had heard of one case. This involved a public servant, who was sacked and then disappeared. He said that these people just “want to blacken people’s lives”.
69. In evidence he submitted a copy of a document issued by the Iğdir Criminal Court [in] May 2009 in relation to his hearing [about two weeks later in] May 2009. I asked him what had prompted his father to obtain it. He responded that the police had asked for him twice in 2009 at his home, so his parents were fearful. Therefore his father asked the court why they were asking about [the applicant] and requested documentation about it. As to whether the purpose of obtaining this documentation was to provide it in evidence to the RRT, [the applicant] said that his father’s main reason was to actually find out. Later maybe he heard through people that this matter might cause problems for [the applicant]. Then he sent it to [the applicant] and told him to “give it to Immigration”. He confirmed that the reason the police gave his parents for their visits in 2009 was the voting issue in 2004. As to whether they gave his parents any other reason for their visits, he did not refer to any other reason. He said that his father had told them he was not in Iğdir and had offered to pass a message to [the applicant]. During their first visit the police gave no reason for coming. On the second visit his mother was upset, so they had told her it related to the court case.
70. [The applicant] said that neither he nor his parents had sought legal advice about this matter in Turkey. I suggested to him that it should be easy to prove his innocence, as he was doing his military service at the time of the alleged offence, and asked why no one had sought legal advice in order to help him establish this in court. He responded that there had been no problem between 2005 and 2009 and, as he was in Australia, that he had not considered getting legal advice. I expressed some doubt to him that the claimed renewed official interest in him had arisen in 2009, given his failure to seek legal representation. I also told him of evidence before the Tribunal that it was not difficult to obtain false documentation in Turkey,

putting to him that the document purporting to be issued by a court in 2009 was not even on letterhead. He did not dispute this.

71. I noted that [the applicant] had confirmed on the protection visa application form that he left Turkey legally in November 2007 via Istanbul airport, and that the passport he used, issued [in] March 2007, was in his correct name and date of birth. I advised him that on that basis it appeared that at that time there were no outstanding charges against him and that the police had no interest in arresting him. He responded that after he finished military service life developed very differently for him. His seeking to leave Turkey had nothing to do with the 2004 case. Because of the events he lived through he just wanted to leave. Invited to comment on the Tribunal's understanding that his being granted a passport and leaving the country openly indicated there was no interest in him in 2007, he did not deny this, but said that when he got the passport he was thinking of all the events. He got someone in the passport police to help, and did not go himself to collect the passport.
72. Of his claim on the protection visa form that he had paid a bribe to get the passport, I told him that the Tribunal had evidence of widespread official corruption in Turkey but I was unclear why it had been necessary for him to pay a bribe in 2007. He responded that his father had paid a man who worked in the passport office. He said that when one's citizenship number came up this showed if one was wanted by the police, so he did not want to leave it to chance. Asked to confirm if he meant he did not know at the time if there would be a problem, but did not want to risk it, he said that he went to the police department a few times and knew he had a file there. He was concerned they might realise he was planning to leave Turkey and might try to stop him.
73. As to how he had obtained a document (submitted in support of his Australian student visa application) issued by the criminal records department of Iğdir public prosecutor's office, dated [in] May 2007, confirming that that office had no criminal record relating to him, he said that he had made a written application for it, giving as his reason that he needed it "to look for a job in Turkey". As to why his letter of request, which he had also submitted, did not mention seeking a job in Turkey, he claimed that he had just said it verbally. I suggested to him that the fact that he had not used an intermediary to contact the Iğdir public prosecutor's office could indicate he had no fear that the authorities would be concerned about his travel plans. He confirmed that he had no fear of this, and that he could ask for this document like anyone else. However it might cause problems if he said he needed the document for the purpose of going abroad. I noted that, according to the translation submitted, the public prosecutor's office had addressed its letter to the "Consulate of Australia". He stated this was incorrect, and the interpreter present confirmed that this was not part of the original document in Turkish.
74. I told [the applicant] of evidence that bribery and corruption were widespread in Turkey and that it was easy to get fraudulent documents in return for money, so that the Tribunal must therefore treat the documents he had submitted with caution. He did not dispute this and made no comment.
75. Activities in Australia
76. [The applicant] said that he went to the Australian Kurdish Association, which had confirmed he was a Kurd. As to whether his activities with Kurds in Australia had been social or whether he had also been involved in political activities, he said he had participated in Newruz. He had also participated in the "Zilan commemoration" on 15 August. Asked to

provide details of this, he said that Zilan was the name of a Kurdish folk hero. She was a politician at some time in the last 20 years (he did not know when) but was not an MP. He did not know when she had died, and had known nothing of her while in Turkey. As to whether she was involved with any particular group in Turkey, he said she was in the Kurdish resistance, and was with the PKK in the past, although he himself did not support the PKK. He said he had not done anything else “political” in Australia, because he did not want to. As to why not, he said that in Turkey he “did a bit” but now “don’t want to do anything. I’ve had enough”. As to whether he would feel the same if he returned to Turkey, he said that here he did not think about politics, but in Turkey he would.

77. He told the Tribunal that he was expecting to hear from his father, as [the applicant] had given two letters to the prosecutor’s office. One was about harassment through [the applicant]’s mobile phone, the other was about his being beaten. However his father had been unable to get them from the prosecutor’s office. He told the Tribunal that the family had changed their home telephone number because of harassment. In evidence he submitted two documents from Telecom from 2002, which he indicated showed the number had been changed but did not state why this was necessary
78. As to whether he had had any other news from home since he left that was relevant to his application, [the applicant] said that he had come here but the events he lived through in the past had reflected on his family. By this he meant they looked at his father a bit differently in the community – a few times people had said it was good their traitor son left Turkey. They had said this because he had worked hard for HADEP in the 2002 general election as a university student. He had contributed to the party because he believed the Kurdish problem could be solved, and believed HADEP, as it was then called, would do it.
79. [The applicant] confirmed he had left Turkey [in] 2007 because he was fearful of being seriously harmed. He intended never to return. I asked him for details of his efforts to get advice about remaining in Australia after his arrival. He claimed he was going to apply for asylum but knew no one here, had language problems and had limited money. As to why he had not asked for his wife’s advice or assistance, he said that he wished he had done so, and wished he had had some psychiatric help. Then maybe his marriage would have survived. He said he had “problems in my head”. Asked to explain, he said he had lived through a lot in the past. It had hurt his pride.
80. Invited to state if he was having any difficulties giving oral evidence to the Tribunal because of the problems to which he referred, he said he was not.
81. He said that he had first sought advice in the second month after arriving in Australia. He had approached a consultant in [suburb and person’s name deleted: s.431(2)], in 2008. This person did refugee cases. [The applicant] was going to ask for protection, but thought there would be problems here, like there were in Turkey. He had started going to the Australian Kurdish Association in mid-2008. I told him that he would have had no difficulty getting advice there, and asked him why he had not lodged the Protection visa application until April 2009. He responded that he had got information there but at that time was in a marriage, so thought he could stay here anyway. He was going to apply for a spouse visa but the marriage ended. He said that he had not told his wife about his problems in Turkey, because she might think he was “dangerous”. She might “wonder what kind of person she’d married”.
82. I told him that his delay in lodging the Protection visa application could cast doubt on his claim to fear persecution in Turkey. He made no comment.

83. I discussed with [the applicant] evidence that he had a relative in Australia, suggesting to him that if so she could have made enquiries for him about refugee status even if he did not speak English. He responded that he had stayed with the family of [name deleted: s.431(2)] for the first few months. He was sure he had no relative here, but “maybe when I applied for the visa in Turkey I put such a name as an acquaintance”. Also when he completed the protection visa application he wrote his statement in Turkish and a friend translated it. The friend was “[name] something”. He was now in Turkey. Another friend also helped, a woman who was born in Australia and whose name he could not recall. She was [name deleted: s.431(2)] friend.
84. Political activities in Turkey
85. In response to the Tribunal’s questions, [the applicant] readily and correctly described the DTP’s party emblem on its flag. He also correctly named the leader of the DTP in 2007 as Ahmet Turk and claimed Mr Turk was also currently the leader. There had been a change in leadership at some stage - they alleged his predecessor had not done his military service and took him in, then Ahmet Turk was brought in to the presidency.
86. As to what had happened in 2009 between the DTP and the Turkish government, he said they had met and talked several times about having Kurdish recognised as a language, and also about a Kurdish TV channel.
87. As to HADEP, [the applicant] correctly and readily described its logo, but could not recall the DEHAP symbol.
88. Noting his claim that he had left university in February 2004 despite being due to graduate in June 2004, I asked him if his marks were good enough to graduate. He responded that they were and expressed the intention to submit his academic record.
89. Noting his claim that he was living in Istanbul with relatives from November 2006 to November 2007 when he came to Australia, I asked him if he had been involved in any political activities while there. He responded that he went to a 1 May march, which was Workers Day. He did nothing else. He wanted to hold himself back. There was a protest about the death of Hrant Dink, a journalist. He could not hold back then and had to leave. His actions were enough to make him visible, although he was never involved in fights. However he questioned the injustices of the past. It hurt that 25 million Kurds did not count at all, and that “Turkey was for Turks”.
90. In the above 12 month period he lived at a few addresses, all in Istanbul, and had no problems with the police.
91. Noting that he was working, and according to his account had had no problems with the police for over a year, I asked [the applicant] to explain why he left Turkey. He responded that he was rejected by every government department when applying for jobs, and faced negativity all the time. He was young, and had casual jobs. He wanted a permanent job, but people always did something to harm him. The reason was his activities as a student and things in the past. Asked to state clearly why he, in his opinion, was refused government employment, he said that for example he applied for a job in a bank and did well at the interview, but did not get the job because he was Kurdish. They knew he was Kurdish because they asked for his criminal record and a police clearance. He assumed the clearance

“said something”. He confirmed he was claiming that when he was unsuccessful in getting jobs he assumed it was because of his race, but did not know this.

92. As to why, despite having a job at the time, he had left Turkey in 2007, he said that the events of 2006 made him go to Istanbul. He did not want to live through the same stuff in Istanbul so withdrew himself there. “How much longer could I do that? I can’t change my race. It was affecting my life in a negative way”.
93. Noting that his passport had expired [in] March 2009, I asked him if he had renewed it. He responded that he did not want to be known at the Turkish consulate. As to why not, he said “I just didn’t”.
94. To DIAC he had claimed that it was only in June 2007 that his father was able to get together the money for the applicant to pay for his education and other expenses in Australia, and that around June 2007 [the applicant] started the application process for his Australian visa. He confirmed this, saying that his father had paid for his ticket, and [the applicant] had brought \$8,000 of his father’s money to Australia. I asked him if the only reason for the delay was the fact that his father was trying to get money together. He responded that he had wanted to leave earlier but there was this money problem. He had also applied for a tourist visa for Germany, as that was cheaper.
95. Having heard his oral evidence up to this point, the Tribunal advised him of information that the Tribunal considered might be a part of the reason for affirming the decision under review. The relevance of, and the consequences of relying on, the information were explained. He was invited to comment on or respond to the information orally or in writing after the hearing, and told that the Tribunal would grant him a reasonable period in which to do this if he requested it. The information was that in his student visa application, evidence was provided to the post that his father’s bank balance had contained 51,000 YTL (approximately \$51,000) since January 2007. The Tribunal could infer that [the applicant] could have lodged the student visa application much earlier and, as he did not do so, could infer he was not fearful of harm at that time.
96. He requested and was granted 21 days in which to comment or respond in writing. The hearing was adjourned, [the applicant] having been advised that I may want to take further oral evidence from him.
97. [In] October 2009 and [in] January 2010 further submissions were made. Regarding [the applicant]’s claim to have been unable to depart Turkey until June 2007 due to lack of funds, despite a considerable sum having been in his father’s bank account, it was submitted that he was unaware of his father’s financial position and only knew that his father had helped him fund his departure. [In] September 2009 his father had told him that his uncle in Germany had transferred about \$70,000 into his father’s account for the purpose of investing in property “some years before”. His father had not wanted him to leave Turkey so had not initially made the money available to him.
98. Subsequently an account balance was provided, issued by the Republic of Turkey Reserve Bank in Ankara [in] June 2005 to [name deleted: s.431(2)] in Berlin ([the applicant] claimed this was his uncle). [The applicant] claimed that the funds in it were the source of his father’s funds. The solicitor noted that unfortunately the record of transfer from the uncle’s to the father’s account could not be located.

99. Evidence was also submitted that the Brukan clan existed.
100. Also submitted was a letter from The Student Affairs Department of [university deleted: s.431(2)], dated [in] October 2009. It stated that [the applicant] had enrolled in Business Management of [education provider deleted: s.431(2)] “at our university” [in] September 2002, and was “deregistered on [date] 2004 by decision of Management Committee as per our regulations for not paying education fee (contribution) and renewing his enrolment”. It was issued at [the applicant]’s request. [The applicant]’s letter requesting this information was not submitted.
101. [In] February 2010 a Tribunal officer contacted the adviser and confirmed that I did not now propose to resume the hearing and that [the applicant] was welcome to provide any further information he wished. The adviser expressed no objection to this arrangement and stated that he would be meeting [the applicant] [in] February 2010 and would advise by that date if any further information or documents would be submitted. According to his migration agent [in] February 2010, no further material would be submitted.

Evidence from other sources

102. In a paper, “The Ethnic Identity of the Kurds in Turkey” (u/d), Martin van Bruinessen, an expert on the Kurds, provided the following overview:

Soon after the establishment of the Republic of Turkey, its government embarked upon a radical programme of nation-building. Ethnic diversity was perceived as a danger to the integrity of the state, and the Kurds, as the largest non-Turkish ethnic group, obviously constituted the most serious threat. They were decreed to be Turks, and their language and culture were to be Turkish. All external symbols of their ethnic identity were suppressed. Use of the Kurdish language was forbidden in cities and towns. Turkish teachers were despatched to Kurdish villages with the teaching of Turkish as their chief objective. Distinctive Kurdish dress was forbidden. Personal and family names had to be Turkish; later, village names, too, were Turkicised. The closing down of *medreses* and the ban on the Sufi orders (*tarikats*), though not exclusively directed against the Kurds, were felt as major blows to Kurdish culture, in which these traditional institutions had a prominent place. In the 1930s, after the first Kurdish rebellions, large numbers of Kurds were deported to Turkey's western provinces, while other ethnic groups ... were settled in the Kurdish districts: all attempts to speed up the Turkicisation of the Kurds. These assimilation policies were backed up by a new historical doctrine according to which the Kurds were really Turks originally, but had by historical accident lost their language.

There was no official discrimination against those Kurds who agreed to be assimilated: they could reach the highest positions in the state apparatus. Those who refused, however, often met with severe repression. Publicly proclaiming oneself to be a Kurd has often (though not always) been treated as a major offence, an act of separatism. The assimilation policies were not without effect. Many individuals have for all practical purposes been Turkicised and do not consider themselves as Kurds any more. Most of the Kurds who migrated to the big cities up to the 1960s were rapidly assimilated, and their children do not know Kurdish any more (during the past decades, Kurdish migrants have been too numerous to be assimilated). In several rural areas, too, Turkish has to a considerable extent replaced Kurdish, at least outside the family situation.

In much wider areas, Kurds began calling themselves Turks, and it has long been hard to see how serious they were about it. In the relatively liberal atmosphere of the 1970s, when Kurdish nationalism flourished, it became apparent that this Turkicisation was only skin-deep.

From the late 1960s on, Kurdish nationalism, which in Turkey had until then remained restricted to a limited circle of intellectuals only, suddenly found itself a mass base. The military and political successes of the Iraqi Kurds under Barzani constituted one of the major

influencing factors; large-scale migration to the cities, the increasing number of Kurdish students, and the weakness and division of the central government combined to make the emergence and growth of a nationalist movement possible. This is not the place to discuss the history of that movement; the relevant fact is that it revived or created symbols of Kurdish ethnic identity that affected the way many Kurds saw themselves. Books on Kurdish history were published, and a large number of Kurdish literary, cultural and political magazines appeared. Due to the ban on the Kurdish language, it had long not been able to develop in accordance with the needs of the day. For political discourse, for instance, it was quite inadequate, and most discussions were still held in Turkish. Moreover, the differences between the various dialects were so great that communication was often difficult. Nationalists set out to remedy this situation: there were attempts to create a unified Kurdish (Kurmanji) language, and many neologisms were coined. This modernised Kurdish was disseminated through a variety of journals and many (clandestine) Kurdish literacy courses. A Kurdish national music was re-invented, and became rapidly well-known and popular through the cassette recorder. People started wearing Kurdish clothes again in many cases a fancy dress, based on that worn by the Iraqi Kurds. Kurdish folklore was also re-invented, including the celebration of Newroz, Kurdish New Year, which few remembered as ever having existed in Turkey, but which was the Iraqi Kurds' national holiday. ...

Towards the end of the 1970s, it seemed that this nationalist movement was changing the self-perception of a considerable section of the Kurds. People who had long called themselves Turks started re-defining themselves as Kurds; youngsters in the cities, who knew only Turkish, began to learn Kurdish again.

These developments were cut short by the military take-over of September 1980. The military authorities have taken tough measures against the Kurdish nationalist movement and have reverted to a rigorous policy of forced assimilation. The successes of the Kurdish nationalist movement may well prove to have been ephemeral only. It remains to be seen, however, whether the present government's efforts will be more successful in changing the ethnic map of Eastern Turkey. (Martin van Bruinessen, *Kurdish Ethno-Nationalism Versus Nation-Building States. Collected articles*. Istanbul: ISIS, 2000).

103. Another paper (Helen Chapin Metz, ed. *Turkey: A Country Study*. "Kurds". Washington: GPO for the Library of Congress, 1995) observes that the Kurds are concentrated in eleven provinces of Turkey's southeast, plus isolated Kurdish villages elsewhere. Kurds have been migrating to Istanbul for centuries, and since 1960 have migrated to almost all other urban centres as well. In 1995 estimates of the number of Kurds in Turkey ranged from 6 million to 12 million. Because of the size of the Kurdish population, the Kurds are perceived as the only minority that could pose a threat to Turkish national unity. There has been an active Kurdish separatist movement in southeastern Turkey since 1984. The government's main strategy for assimilating the Kurds has been language suppression yet, despite official attempts over several decades to spread Turkish among them, most Kurds have retained their native language. In Turkey two major Kurdish dialects are spoken: Kermanji, used by the majority of Kurds, and Zaza, spoken mainly in a triangular region in south-eastern Turkey between Diyarbakir, Ezurum and Sivas.
104. This author goes on to observe that class differences divide the Kurds. Wealthy landowners in rural areas and entrepreneurs in urban areas tend to cooperate with the government and espouse assimilation. Many of these Kurds are "bilingual or even speak Turkish more comfortably than Kurdish, which they disparage as the language of the uneducated" The economic changes that began in the 1960s have exacerbated the differences between the minority of assimilated Kurds and the majority who have retained a Kurdish identity. (ibid)
105. Similarly, it has been noted that, post WWII, to the extent that individual Kurds did accept the "new Turkish identity," they enjoyed the full rights of citizenship. In fact many assimilated Kurds rose through political, economic, and even military ranks to occupy

important positions in Turkish society, from president and prime minister to chief of staff of the armed forces. True to the official dogma, they were accepted as bona fide Turks: No one ever questioned their loyalty or Turkishness. (Barkey, H.J. & Fuller, G.E., 1998, Turkey's Kurdish Question, "Origins of the Problem: The Roots of Kurdish Nationalism", Carnegie Commission on Preventing Deadly Conflict, Carnegie Corporation of New York <http://www.wilsoncenter.org/subsites/ccpdc/pubs/kur/chap01.pdf>, accessed 12 February 2010).

106. A 2008 paper observes that about 60 percent of the Kurds living in Turkey resided in western Turkey, in cities including İstanbul, Ankara, Izmir, Adana, Mersin and Bursa. It was estimated that the number of marriages between Turks and Kurds was over 1 million. Economic integration was at an advanced level. Kurds had secured substantial economic resources in almost every part of Turkey and made huge amounts of investments. In economic terms, there were many partnerships between Turks and Kurds. Their interests were interrelated. On the other hand, while there were problems with regard to political and cultural rights, the Kurds had equal status as citizens. In cities like Kars, Iğdır, Erzurum, Sivas, Erzincan, Elazığ, Malatya, Kahramanmaraş, Gaziantep and Adiyaman, Kurds and Turks were intermingled and lived together (Tan 2008).

Human rights situation for Kurds

107. The Turkish State sees three main threats: militant Kurdish nationalism/separatism, militant Marxist-Leninist groups and armed radical Islamic movements (UK Home Office, 2009, Country of Origin Information Report, 20 October, p.197).
108. According to the Kurdish Human Rights Project in a 2009 report, broadly speaking, the human rights situation in the Kurdish region of Turkey remains profoundly troubling. This fact was underlined in the aftermath of the local elections in March 2009, with the detention or investigation of hundreds of pro-Kurdish politicians and activists. It was also borne out by statistics prepared by the Human Rights Association of Turkey which, in the course of 2008 in the province of Siirt alone, recorded 77 reported cases of torture and ill-treatment and more than 380 instances of violations of the right to freedom of expression. In addition to ongoing human rights violations such as these, the Turkish authorities had also continued to fail in their responsibility to effectively address the widespread abuses of the recent past. This issue was again brought to the fore in the first half of 2009 by excavations of wells alleged to contain the remains of some of the many who 'disappeared' at the height of the conflict in the region in the 1990s (Hughes E. and Karakas S., 2009, "Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns, Fact Finding Report", Kurdish Human Rights Project, Bar Human Rights Committee of England and Wales, August).
109. A 2003 Immigration and Refugee Board of Canada report observes that Kurds may be targeted depending on the degree to which they assert their cultural identity:
- Kurds who assert their Kurdish identity can face substantial legal and extra-judicial problems. [This] depends on the degree of their assertion. Speaking publicly in Kurdish is no longer routinely punished, but listening to Kurdish music, reading Kurdish language publications, etc. can draw unwanted attention. There have been recent incidences of films being pulled from festivals because of Kurdish content, as well as musicians being arrested for performing Kurdish songs at weddings, etc.
110. The US Department of State's 2008 *Country Report on Human Rights Practices* for Turkey provides detail on the treatment of Kurds:

In April the government reduced limitations on freedom of expression by amending Article 301 of the penal code to more narrowly define the circumstances under which speech may be criminalised and prosecuted. In June the government amended the law to reduce restrictions on non-Turkish language broadcasts on state-owned television. On December 25, the government expanded Kurdish language broadcasts with the introduction of a pilot, 24-hour state television channel in the Kurdish language.

...During the year police routinely detained demonstrators. Police detained several members of the DTP party on various occasions. Police continued to detain and harass members of human rights organisations, the media, and monitors. Police continued to detain persons on suspicion of “membership in an illegal organisation” and for the distribution of leftist material....

...The law provides a single nationality designation for all citizens and does not recognise ethnic groups as national, racial, or ethnic minorities. Citizens of Kurdish origin constituted a large ethnic and linguistic group. Millions of the country’s citizens identified themselves as Kurds and spoke Kurdish. Kurds who publicly or politically asserted their Kurdish identity or publicly espoused using Kurdish in the public domain risked censure, harassment, or prosecution....

The NGO Minority Rights Group International reported in March that millions who belonged to ethnic, linguistic, and religious minorities faced systematic repression and many remained unrecognised. ... The report stated that these “excluded minorities” [including Kurds] were prohibited from fully exercising their linguistic, religious, and cultural rights and faced intense pressure to assimilate.... (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Turkey*, 25 February).

111. A 2009 report notes “Turkey’s on-going unwillingness to draw the line between militants and sympathisers” when it came to Kurds (Birch, N. 2009, ‘Turkey: Hopes Fading for a Turkish Truce with Militant Kurds’, Eurasianet.org website, 30 April http://www.eurasianet.org/departments/insightb/articles/eav043009d_pr.shtml – accessed 7 September 2009).

112. A 2009 article reports a meeting between Turkey’s prime minister and the DTP leader, Ahmet Turk, as part of a report on government moves toward a “lasting solution” to the “Kurdish problem”:

Successive governments have mumbled about dealing with the Kurdish problem, only to be stopped by Turkey’s hawkish generals. But now a confluence of circumstances is raising hopes of a more lasting solution under the leadership of Turkey’s prime minister, Recep Tayyip Erdogan, who has staked his political future on this issue.

In a ground-breaking speech in parliament earlier this month, Mr Erdogan provoked tears when he spoke of the common pain of Turkish and Kurdish mothers who had lost sons in the conflict. His interior minister, Besir Atalay, has been making the rounds of assorted politicians and civic leaders to build consensus for an as yet unarticulated plan. Mr Erdogan, who has long shunned the largest Kurdish party, the Democratic Society (DTP), for being the PKK’s political front, met its leader, Ahmet Turk, in early August.

The government’s plan is said to include easing remaining bans on Kurdish broadcasting, allowing Turkified villages to regain their Kurdish names, setting up Kurdish language and literature departments in universities and scrapping laws under which thousands of young Kurds are jailed for allegedly acting for the PKK (usually for no more than chanting PKK slogans or throwing stones at police). “This time the government means real business,” concludes Henri Barkey, an American academic who has studied the Kurds.

...The trickiest part of Mr Erdogan’s “Kurdish overture” is how to get the PKK to stop fighting without negotiating with their imprisoned leader, Abdullah Ocalan, who continues to hold sway over both his men and millions of ordinary Kurds. The main opposition parties

have already blasted Mr Erdogan for alleged treason. The obvious way out would be to use the DTP as a proxy, rather as Britain used Sinn Fein to deal with the IRA. ... Although recent opinion polls show 45% of Turks supporting Mr Erdogan's Kurdish overture, a deal that followed overt bargaining with the PKK would be tricky to sell at home.

...More than Mr Erdogan's career is at stake. So is Turkey's future. A new generation of dissatisfied and radical Kurds could easily unleash a cycle of violence that even the PKK might be unable to control. What is most heartening is that the Kurdish initiative is not merely about responding to European Union pressure: it is a home-grown affair. And the onus is as much on the PKK and its allies as on the government to ensure that it succeeds. It will not be easy, but Mr Erdogan seems determined to plough on ('Peace time?' 2009, *The Economist*, 27 August http://www.economist.com/world/europe/displaystory.cfm?story_id=14313719 – accessed 14 September 2009).

113. A later article provides an update on the peace process:

Success will depend on whether Prime Minister Recep Tayyip Erdogan's government can offer a package that the Kurdish guerrillas would find tempting. "The PKK has to have something to show (for laying down its arms)," said Gareth Jenkins, a Turkey analyst based in Istanbul. "It's been fighting for 25 years, and one Kurdish-language TV channel hardly compensates for 40,000 deaths," he said, referring to the Kurdish service that state television inaugurated in January.

Interestingly, it is the Kurdish side that has taken the lead in pushing the peace process forward, suggesting that the PKK wants a solution even more than the government.

The process began with the municipal elections on March 29. Erdogan's Justice and Development Party (AKP) had done well in the Kurdish heartland of south east Turkey in the parliamentary elections of 2007. The Prime Minister hoped to do even better in March so as to be able to argue that it is the AKP, not DTP, which represents the Kurds. He failed. The Kurdish-majority provinces voted heavily for the DTP, particularly in the key cities of Diyarbakir and Tunceli. Like it or not, the DTP is the Kurds' party.

Two weeks later the PKK declared a six week ceasefire. Then in May the PKK leader, Murat Karayilan, invited a mainstream newspaper, *Milliyet*, to his camp in north Iraq for a rare interview. More explicitly than ever before, Karayilan said the PKK no longer wanted an independent Kurdish state, the secession that is Turkey's nightmare, but rather autonomy for the Kurdish provinces in a fully democratic Turkey. ...

Western diplomats and thinking Turks had long urged Erdogan to hold talks with the DTP leader, Ahmet Turk. But Erdogan had refused to do so until Turk declared the PKK to be a terrorist group. Turk would condemn PKK attacks, but he could not denounce the group as a whole. Too many DTP members and voters had brothers, sisters and spouses in the PKK ranks.

However, Ocalan's boldness changed things. On Aug 5, watched by scores of journalists, Ahmet Turk walked down a long corridor in parliament and entered Erdogan's office. ... For the first time since the early 1990s, the prime minister had met the leader of the Kurdish nationalist party.

Erdogan's move provoked a storm. The two biggest opposition parties, the Republican People's Party (CHP) and the National Movement Party (MHP) accused the prime minister of betraying the country. The MHP even spoke of "treason." But the Turkish military endorsed the initiative and said Interior Minister Beshir Atalay should continue sounding out parties and interest groups on the contents of the peace package. (The CHP and MHP refused to meet Atalay.)

Support also came from some surprising quarters, showing the extent of weariness with the insurgency. A former leader of the *Ulku Ocaklari* (Hearth of the Idealists), the once-militant

group known as the Grey Wolves which was behind much of the violence of the 1970s, applauded the initiative and criticized the MHP, the Grey Wolves' party, for opposing it.

...There is general consensus among Turks that they need to overhaul the constitution written under military rule in 1982. The government has tried to start the process at least twice, and then quietly shelved it. ...

The second DTP demand – devolution of power – is at the heart of Karayilan's call for autonomy of the Kurdish provinces. The analyst Jenkins told The Media Line that the government probably wouldn't mind transferring its "administrative burden" to the local authorities, but it would not devolve real power, such as giving the Diyarbakir authority the right to set up Kurdish language schools in the province.

The third DTP demand – Kurdish language rights – poses an even bigger problem. It is the one that shows just how wide the gulf is between Turk and Kurd. The constitution says "the language of Turkey is Turkish," and successive governments have seen this as conferring the right to suppress other languages spoken in Anatolia – Kurdish, Laz and Arabic. It was only in 1991 that the law was changed to permit the speaking of Kurdish in private.

...If it fails, the insurgency will resume. There will be more gun battles in the south east, explosions in shopping malls in Ankara and Istanbul, and Turkish airstrikes in north Iraq.

However, there would be a silver lining. Soner Tufan, the director of a Turkish Christian radio station, Radio Shema, said the Erdogan government has come closer to bridging the gap with the Kurds than any of its predecessors. And Turks have been hearing statements on the Kurdish issue that they haven't heard before. "Even if the peace initiative fails, we will have gained a lot," Tufan said (Mortimer, J. 2009, 'Turkey's olive branch begins to grow', *The Media Line*, 3 September).

114. Despite some encouraging signs, the KHRP (2009, p.17) recently observed that members of the pro-Kurdish DTP in particular had been targeted with arbitrary arrest and detention after local elections on 29 March 2009. Police operations started against DTP members in 13 provinces on 14 April 2009. By August more than 500 DTP members - including vice presidents, board members, former mayors and active members of the party's women council and youth council - had been taken into police custody. According to what had been reported to KHRP, they were not told of what they were being accused. A total of 267 of them were formally detained on the order of a judge. Representatives of the DTP with whom the mission met expressed their grave concern about the mass arrests of members of the party. They also noted that they believed the operations would destroy hopes for finding a democratic and peaceful solution to the Kurdish question. The moves against DTP members were perceived as part of a revenge operation on behalf of the AKP government following the success of the party in local elections in Turkey in late March 2009, in which it almost doubled its number of municipalities.
115. There is no guarantee that a rapprochement between the PKK and the government will significantly improve the human rights situation for Kurds however. More recently Turkey's military has described the detention of scores of retired officers over an alleged plot to topple the government as a "serious situation". The arrests were the latest escalation of tensions between Prime Minister, Erdogan and the military. Mr Erdogan has taken measures to curtail the military's role in politics as Turkey chases European Union membership. The secular military has toppled four governments since 1960, including a predecessor of Mr Erdogan's Justice and Development Party, which it suspects of introducing Islam into politics (2010, Bently M. & Bryant S. "Tensions rise as Turkish military chiefs meet over 'coup plot' arrests", Sydney Morning Herald, 10 February, <http://www.smh.com.au/world/tensions-rise->

[as-turkish-military-chiefs-meet-over-coup-plot-arrests-20100224-p3mu.html](http://www.absoluteastronomy.com/topics/Turkish_Kurdistan), accessed 25 February 2010).

Names of Kurdish tribes and Kurdish languages primarily spoken in Iğdir

116. Turkish Kurdistan or Northern Kurdistan is an unofficial name for the south-eastern part of Turkey, which is inhabited predominantly by ethnic Kurds. The area covers nearly a third of Turkey. The Encyclopaedia of Islam describes Turkish Kurdistan as covering at least 17 provinces, stressing at the same time that "the imprecise limits of the frontiers of Kurdistan hardly allow an exact appreciation of the area." In Turkey, different provinces of Kurdistan cover around 190,000 km. Since 1987 four new provinces including Iğdir have been created inside the Turkish administrative system out of the territory of some of these provinces. The region has no unified administrative identity and the Turkish state rejects the use of the term "Kurdistan" to describe it (Absolute Astronomy website, "Turkish Kurdistan", "Geography and Economy", http://www.absoluteastronomy.com/topics/Turkish_Kurdistan, accessed 19 February 2010).
117. Iğdir Province is on the eastern border adjacent to Armenia, Iran and Azerbaijan ('Turkey Administrative Divisions' 2006, University of Texas Library website http://www.lib.utexas.edu/maps/middle_east_and_asia/turkey_admin_2006.jpg – accessed 15 September 2009). A map from the Kurdish Academy of Language website indicates that the Haydaran is the "Major clan confederacy" in the Province of Iğdir and its surrounds, also naming the Shadlu, Galtri, Kardaki, Asini and Mamakan as "major clans" (Izady, M. 1998, 'Map 31: Great family clans and confederacies in Kurdistan', Kurdish Academy of Language website http://www.kurdishacademy.org/sites/default/files/images/tribes_and_clans_2006.jpg – accessed 15 September 2009).
118. Another map indicates that "North Kurmanji" is the Kurdish dialect primarily spoken in Iğdir Province (Izady, M. 1995, 'Linguistic composition of Kurdistan', Kurdish Academy of Language website <http://www.kurdishacademy.org/?q=node/154> – accessed 15 September 2009). The Ethnologue website states that "Boti (Botani), Marashi, Ashiti, Bayezidi, Hekari, [and] Shemdinani" are dialects of "Northern Kurdish" (also Kermancî, Kirmancî, Kurdi, Kurdî, Kurmancî, Kurmanji), and that there are "[d]ifferences among dialects, but all use the same written form". This source does not specify which dialects are spoken in which regions ('Kurdish, Northern' 2009, Ethnologue website http://www.ethnologue.com/show_language.asp?code=kmr – accessed 15 September 2009).

Leading figures in the DTP nationally in 2007

119. According to the Turkish media, Ahmet Turk was the leader of the DTP for most of 2007, but was replaced in November 2007 by Nurettin Demirtas, who in turn was forced to resign the next month after being arrested for allegedly illegally avoiding military service. Other leading figures in this period were Aysel Tuğluk, who was Deputy Chairwoman under Turk, and Emine Ayna, Deputy Chair under Demirtas, and leader after his resignation. In July 2007 *Today's Zaman* named Ahmet Türk as "the DTP leader" ('DTP deputies complete MP registration' 2007, *Today's Zaman*, 30 July <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=117937&bolum=103> – accessed 7 September 2009). A 2007 report notes that Nurettin Demirtas had been arrested "over charges that a fake health report enabled him to avoid military service", and also that the DTP "is facing the prospect of being closed down in a separate court case after prosecutors charged it with ties to the Turkey's outlawed Kurdish PKK guerrillas" ('Turkey arrests pro-Kurdish DTP party leader

Nurettin Demirtas' 2007, Kurd Net website, (source: *Reuters*), 18 December, <http://www.ekurd.net/mismas/articles/misc2007/12/turkeykurdistan1588.htm> – accessed 7 September 2009).

DTP supporters

120. Of the situation in 2006 the U.S. Department of State (2007, Bureau of Democracy, Human Rights, and Labor 2006, 6 March) observed that DEHAP reconstituted itself as the DTP early in 2006 but the Constitutional Court deliberations in the legal case seeking DEHAP's closure on charges of separatism were ongoing at year's end.
121. During 2006 police raided dozens of DTP offices, particularly in the southeast, and detained hundreds of DTP officials and 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 the DTP. Although security forces released most detainees within a short period, many faced trials, usually for supporting an illegal organization or inciting separatism.
122. The report also noted that members of the security forces occasionally tortured, beat and otherwise abused people Police who engaged in these practices often did so outside police detention centres to avoid detection. Observers believed that security officials usually tortured political detainees to intimidate them and send a warning to others with similar political views. Individuals could not criticize the state or government publicly without fear of reprisal, and the government continued to restrict expression by individuals sympathetic to some political and Kurdish nationalist or cultural viewpoints. Authorities occasionally censored media with pro-Kurdish or leftist content. In May security forces arrested three Kurdish activists as they prepared to peacefully protest recent killings of civilians by security forces in the southeast. They were charged under the Anti-terror Law for "making propaganda for the PKK." Unlike the previous year, police did not interfere in Nevruz celebrations. There was no information regarding police detention of DEHAP officials and students in connection with 2005 Nevruz celebrations.
123. The UK Home Office March 2009 Country of Origin Information Report – Turkey states that:
 - 19.30 The same HRW 2007 report also noted that: "During the past year, in the buildup to the general election, DTP officials in cities throughout Turkey, but especially in the southeast, have been repeatedly prosecuted for speech-related crimes such as 'making propaganda for an illegal organisation' (article 7/1 of the Law to Fight Terrorism and article 220/8 of the Turkish Penal Code) or 'publicly praising a crime or criminal' (article 215 of the TPC). Such prosecutions were typically brought for public statements that mentioned the PKK and referred to its imprisoned leader Abdullah Öcalan with the formal and respectful title of 'Mr' (sayın)." ...
 - 19.32 The HRW 2007 added that "From late February to early March 2007 several DTP premises in a number of provinces were raided by the security forces Documents and computers were seized, party members and executives were arbitrarily detained, and some were later charged with speech- and language-related offenses such as those mentioned above." ...
 - 19.33 Finally the HRW 2007 report noted that: "Kurdish political activists charged with speech-related offenses have sometimes been detained pending trial. ...
 - 19.34 The Minority Rights Group International (MRG) report 'A Quest for Equality: Minorities in Turkey', published 10 December 2007, stated that: ...

19.35 ... “On 19 March 2006, the Ardahan penal court ordered the confiscation of a regional newspaper when it published an ad by the DTP titled ‘Invitation to the Newroz Celebration’. According to the court, the use of the word ‘Newroz’ (rather than Nevruz, its Turkish spelling) was contrary to Article 81(c).” ...

19.36 The MRG 2007 report also noted that: “Kurdish politicians face continuing prosecutions for their activities. In February and March 2007, a series of arrests, searches, seizures and prosecutions have been launched against leaders of the DTP, the latest of successive pro-Kurdish political parties. ...

...19.43 The US State Department (USSD) 2007 report on Human Right Practices, published 11 March 2008, noted that: ... During the year police raided dozens of DTP offices, particularly in the southeast, and detained hundreds of DTP officials and members. During the year prosecutors opened scores of investigations and trials against DTP members. Police raids on DTP offices in Van and Siirt Provinces resulted in the detention of approximately 50 DTP members during the year.

“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 organisation or inciting separatism.” ... (UK Home Office 2009, *Country of Origin Information Report – Turkey*, 13 March).

124. The US Department of State’s 2008 *Country Report on Human Rights Practices* for Turkey observed that throughout 2008 law enforcement and the judiciary increased pressure on members of the DTP. The most common tactic used was investigation and prosecution of DTP leaders for speaking in the Kurdish language or for making statements critical of the government (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Turkey*, 25 February).

Military service

125. The UK Home office observes that:

8.35 The War Resisters International 2005 document stated that “There have been regular reports of Kurdish conscripts in particular being subjected to discriminatory treatment, especially when they are suspected of having separatist sympathies. Different sources make different assessments of the extent to which Kurdish conscripts face discriminatory treatment within the armed forces” ... (UK Home Office 2007 ‘Country of Origin Information report: Turkey’, 12 March).

126. Conscripts are liable to serve anywhere in the country, with many Kurds avoiding the draft to avoid having to serve in the South East:

9.18 The War Resisters International report noted that: “For years, the Turkish armed forces have been involved in heavy fighting with the PKK in South Eastern Turkey. In 1999 a ceasefire was agreed between the Turkish government and the PKK, but the situation has remained tense ever since. All conscripts may be sent to serve in South Eastern Turkey as postings of conscripts are usually decided at random by computer. There is a sizeable group of conscripts of Kurdish origin who refuse to perform military service because they do not want to fight against their own people. Many Kurdish draft evaders have, in fact, left Turkey and applied for asylum abroad.” ... (UK Home Office 2007).

127. Returning asylum seekers

128. In its most recent report on Turkey, the UK Home Office (2009, paras. 31.12-13) observes that the criminal records of Kurdish asylum seekers who are returned to Turkey are checked

on entry just like those of other Turkish nationals. The records may concern criminal convictions by a Turkish court, but can also be related to official judicial preliminary inquiries or “investigations by the police or jandarma”. Under some circumstances the Turkish border authorities interrogate the person concerned. Questioning is often intended to establish or check personal particulars, reasons for and time of departure from Turkey, grounds for seeking asylum, reasons why the application was rejected, any criminal records at home and abroad and possible contacts with “illegal organisations” abroad. If, however, there is no “definite suspicion”, as a rule the person is released after an average six to nine hours' detention. Anyone suspected of having committed criminal offences is transferred to the relevant investigative authority. In Istanbul this is mostly the Police Headquarters, which is located near the airport. Persons “suspected” of membership of (among others) the PKK left-wing radical organisations or “anyone suspected of giving support or shelter to one of those organisations” is handed over to the Anti-Terror Branch, which is housed in the Police HQ mentioned above. Torture or ill-treatment of suspects at the Police Anti-Terror Branch cannot be ruled out. From time to time, asylum seekers rejected from western Europe claim to have been maltreated or tortured after their arrival in Turkey.

FINDINGS AND REASONS

129. On the basis of his Turkish passport, I am satisfied, and find, that [the applicant] is a national of Turkey.
130. As to whether [the applicant] is ethnically Kurdish, I note that he was able to name an existing Kurdish clan, the Brukan, as his own, and I accept that the Australian Kurdish Association regards him as a Kurd [The applicant] named the largest tribe in Iğdir as the Brukan which, according to the Tribunal's information, is a non-confederated Kurdish tribe based north east of Van (Izady, M.R., 1992, “The Kurds: A Concise Handbook”, Taylor & Francis, Washington D.C., http://books.google.com/books?id=I9mr6OgLjBoC&pg=PA83&lpg=PA83&dq=kurdish+tribe+brukan&source=bl&ots=0qKDbvgtMr&sig=psbRPRax1CFkL1QBZViKdL4RV-Y&hl=en&ei=ZZpwS5TCHs2HkQWT3OTUBw&sa=X&oi=book_result&ct=result&resnum=5&ved=0CBAQ6AEwBA#v=onepage&q=kurdish%20tribe%20brukan&f=false, accessed 9 February 2010). The evidence [the applicant] submitted after the hearing similarly does not refer to this tribe existing in Iğdir province. However, given the Australian Kurdish Association's view that he is a Kurd, and that the tribe he identified is in the area (Van province is about [distance] south of his birthplace ([location deleted: s.431(2)] village in Iğdir province), I accept that [the applicant]'s ancestry is Kurdish.
131. He gave evidence, which I accept, that his father has been a government employee for several years and before that was employed by [company deleted: s.431(2)]. He also gave evidence that his parents did not speak “Kurdish” in the family home. Apart from an uncle living in Kocaeli, he did not claim that anyone in his immediate or extended family had been subjected to any discrimination or harm because of their race or political opinion, or that they had any particular “pro-Kurdish” political views. I infer from this and his father's employment background that the immediate family is one of those that, while having Kurdish ancestry, has become absorbed to an extent into the predominant Turkish culture.
132. There was some evidence before the DIAC that a third party in Australia arranged his marriage to an Australian, this being the marriage that broke down subsequently. I have considered that evidence. I am unable to question the source of the information or the alleged third party. However, even if the marriage was arranged by a third party, this shows no more

than that [the applicant] wanted to remain permanently in Australia, and I am not prepared to infer from that that his claims with regard to having had problems in Turkey because of his race or political opinion are untrue.

133. As to [the applicant]'s claims to have been involved in pro-Kurdish political activities since his schooldays, I am satisfied that merely being a Kurd is not sufficient to give rise to a well-founded fear of being persecuted in Turkey. However he essentially claims that he falls into the category of Kurds who face harm because of their political opinion or a political opinion imputed to them. I consider reliable the evidence from the U.S. State Department (2008) that Kurds who publicly or politically assert their Kurdish identity or publicly espouse using Kurdish in the public domain risk censure, harassment or prosecution.
134. As to whether his claim is plausible that he was involved in pro-Kurdish political activities in Turkey, or that he was targeted by security forces or non-state agents because he was a Kurd, I have considered the following:
135. Firstly, [the applicant]'s inability to name the Kurdish dialect he claims to have learned as a child reflects a lack of interest in Kurdish culture inconsistent with his claim to have been motivated for many years to participate in pro-Kurdish activities, and to have been mixing as an adult with people who self-identified as Kurds and who were, in some cases, involved in campaigning for the rights of Kurds. It seems surprising, given the significance of the language issue to Kurds (van Bruinessen 2000; Metz 1995; U.S. Mortimer 2009) that he would be unaware of the name of his dialect, other than to say it was "not Zaza". This casts some doubt on his claim to have been mixing with people who self-identified as Kurds.
136. Secondly, he claims to have left university shortly before graduating because he was scared of being harmed by police or nationalist Turks. I accept that he did leave his course some months' prematurely. He asks the Tribunal to accept that he left out of a fear of harm, but has submitted no evidence beyond his own assertions that he faced any harassment or harm while at university because of perceptions about his race or political opinion. The letter from his university indicates that he left because he did not pay the relevant fees and, although undertaking to submit it, he has not submitted an academic record that would indicate that he left for some reason other than, for example, poor academic progress. However his claim to have feared harm by Turkish nationalists in Iğdir is consistent to some extent with evidence ('Three arrested over plans to assassinate Kurds' 2009, Today's Zaman, 10 September) that Turkish nationalists are active in Iğdir.
137. Thirdly, he claims to have faced some discrimination while doing his military service. That claim is consistent with the evidence from the UK Home Office 2007 that Kurdish conscripts face discrimination, and possibly more serious harm, in the army.
138. Fourthly, in oral evidence to the Tribunal [the applicant] showed a reasonable level of familiarity with pro-Kurdish political parties in Turkey. This is consistent with his claim that he was a supporter of HADEP, DEHAP and the DTP.
139. Fifthly, the Tribunal has evidence that his father had had the equivalent of approximately \$51,000 in his bank account since at least January 2007, and has considered why, if [the applicant] feared serious harm in Turkey, he did not lodge the Australian student visa application until late May 2007. This is an important question in the light of his claim that only months before, in September 2006, his [Town 1] home had been raided by police, he had been questioned by them about his political activities and he was subsequently watched

at his workplace by them. This would be an extremely intimidating environment. His claim that he then moved to Istanbul, some 500 km away, is consistent with that claim. However there he waited until his visa application to go to Germany was refused in April 2007 before applying for the Australian visa. He has given an explanation to the Tribunal as to why he was unaware that his father had access to sufficient money for him to depart Turkey for Australia earlier, that being that his father was reluctant for him to leave so did not tell him. That is not consistent with his claim to the Department in writing that his father organised his passport through a contact in the police force at some time before February 2007, from which it is apparent that his father was willing to help him leave some months before [the applicant] applied for the Australian visa. I am not satisfied that the reason for the delay in applying for that visa was a lack of financial resources. I infer from the delay that [the applicant] did not consider himself to be at risk of any imminent serious harm in Istanbul during 2007.

140. However it is consistent with the country information, and I consider plausible, that in late 2006 his home in [Town 1] had been raided by police, that he was questioned by them about his political activities and that he subsequently felt he was being watched by them.
141. Fifthly, seventeen months elapsed between his arrival in Australia and the lodgement of the protection visa application. That delay casts doubt on his claim to have feared some serious harm in Turkey by the time of his arrival in Australia. He claims that he made enquiries about seeking asylum in Australia shortly after his arrival, although he has submitted no evidence that he did so. He had an opportunity to get advice and assistance through his wife, an Australian citizen, and through the Australian Kurdish Association, with each of which he was in touch for almost a year before the protection visa application was lodged. The delay in lodging the application is not generally consistent with his claim to fear persecution in Turkey. However he had a valid visa that was valid until [a date in] January 2009 and, as he claimed, was under the impression that he may be able to gain sponsorship via his wife.
142. Sixthly, it is the case that his lack of political activity in Australia is not generally consistent with his claim to have been a committed Kurdish activist in Turkey. Asked to describe the extent of his activities in Australia relating to the Kurdish cause, he indicated that he had not wanted to do anything of a “political” nature here. On the other hand his oral evidence indicated that he has kept abreast of political developments for the DTP in Turkey, and I do not propose to infer from his limited activism here, where opportunities for such activism is inevitably limited, that he was not a supporter of pro-Kurdish political groups while in Turkey.
143. I have considered how much weight can reasonably be given to the letter from the Australian Kurdish Association ([in] May 2009) to the Department, whose author stated that [the applicant]’s “ethnic background is Kurdish and also his application for refugee status is genuine” and that he is “well known and respected within the Kurdish community for his involvement in activities organized by the Australian Kurdish Association”. These activities were unspecified. I have accepted that the author regarded [the applicant] as a Kurd. The letter confirms to the Tribunal no more than that [the applicant] had had some contact with the Australian Kurdish Association by May 2009 and that he was regarded by its management committee members as a Kurd, both of which the Tribunal accepts.
144. I have formed the impression from his evidence, taken as a whole, that [the applicant] has Kurdish ancestry, but that his parents took steps to protect him from the discrimination that faced “unassimilated” Kurds by bringing him up in a non-Kurdish-speaking environment. As is noted by van Bruinessen above, many individuals have for all practical purposes been

“Turkicised” and do not consider themselves as Kurds any more. Although [the applicant]’s evidence indicates that he may have lost some knowledge of his culture, I accept that many young Kurds have come to resist the push towards assimilation, and am of the view that he is among them.

145. Although I have some doubts about the plausibility of his claims to have been harassed to the extent he claims, I am satisfied that [the applicant] was involved in pro-Kurdish political activities in Turkey, and was harassed by security forces and nationalist Turks at various times because he was a Kurd. He was one of those Kurds, described by the U.S. Department of State, who publicly or politically asserted their Kurdish identity and who thus risked harassment
146. I am satisfied that a returning failed asylum seeker such as [the applicant] would likely be questioned and his background checked by police, with the possibility of some serious ill-treatment at this point because of his past political activities. His treatment is unpredictable because the authorities continue to show an unwillingness to “draw the line between militants and sympathisers” when it comes to Kurds (Birch, N. 2009). Although he was able to avoid harm while in Istanbul, I am also satisfied that police do random checks of citizens in the city (‘Turkey says wanted radical leftist behind deadly Istanbul blast’ 2004, *Agence France Presse*, 25 June; ‘U.S. military bans soldiers from shops near southern Turkish base following bomb discovery’ 2005, *Associated Press Newswires*, 3 February; UK Home Office 2005, *Turkey Country Report*, April, para. 6.162). Therefore the chance is not remote that [the applicant] may be subjected to some police attention and subsequent harm because a random check of his record by police there may reveal where his political sympathies lie. I am satisfied that repeated instances of low level harassment, motivated by a perception of [the applicant] as a supporter of the pro-Kurdish political parties in their various incarnations over the years, amounts to persecution. I am satisfied that his fear of being persecuted for the Convention reason of political opinion is well-founded.
147. I have therefore not considered further his claim to have been investigated in 2004/2005 on the basis of an allegation that he had voted at two polling stations during a local election in 2004, and that the authorities re-opened their enquiries in 2009.
148. [The applicant] has a well-founded fear of Convention-related persecution in Turkey.

CONCLUSIONS

149. 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

150. 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.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer: PRMHSE