

071631221 [2007] RRTA 315 (8 November 2007)

DECISION RECORD

RRT CASE NUMBER: 071631221

COUNTRY OF REFERENCE: Turkey

TRIBUNAL MEMBER: Peter Katsambanis

DATE DECISION SIGNED: 8 November 2007

PLACE OF DECISION: Melbourne

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

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).

The applicant, who claims to be a citizen of Turkey, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision.

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

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.

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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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.

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.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

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.

Application for Protection

The applicant is a male who was born in Town A, Turkey. In his application for protection he claims to be of Kurdish ethnicity and Muslim Alevi religion. He was married a few years ago and has a child. His wife and child are living in Turkey. He claims to have lived in the same property in City G, Turkey from the late 1990s until he departed Turkey. He is educated and has worked variously in construction and in hospitality in Turkey. He completed military service and claims to have been unemployed in recent years.

In a statement accompanying his application for protection, the applicant claimed that he feared persecution in Turkey because he was Kurdish and Alevi and because he had left wing political views. He claimed that he had been arrested and persecuted in Turkey in the past and if he returned to Turkey he would be persecuted again for the same reasons. He stated that he had been arrested and beaten on several occasions. The applicant claimed that his family had been forced to close down the family business because they were Alevi and Kurdish, and because of the applicant's left wing political activity. He stated that as a result he had been unemployed for a few years. The applicant claimed that the authorities could not protect him because it was the Turkish authorities that were persecuting him.

The applicant further stated that in the early 2000s the authorities mass murdered many people in Town D and one of the people killed was known to the applicant. After this person was killed the applicant knew that he had to get out of Turkey and could not continue to live there. He stated that he would prepare a longer statement with the help of his representative and send it to the Department as soon as he could do so.

The applicant's representative provided the Department with a statutory declaration made by the applicant with an article written by Martin van Bruinessen titled "Kurds, Turks and the Alevi revival in Turkey".

In his statutory declaration the applicant stated that after the military took over in 1980 everyone in his village had problems and even though he was young, he had problems too. He completed primary school and then went to a school in Town B where he first experienced the persecution which he would suffer for years to come. He was made to pray three times a day and to attend mosque on Fridays as well as fasting on Ramaddan, even though he was an Alevi and did not want to pray with Sunnis. He claimed that as life got hard for his family they decided to move to City G where he commenced working.

The applicant claimed that for a few years he worked as a labourer with his sibling and his father, and this was where he started to form left wing political views. He claimed that he worked for Person X and this person's sibling, Person Y, was politically active and had spent some time in prison for political reasons. The applicant stated that he would meet this person at a location and they would talk about social and political issues. He stated that Person X and Ys family was related to his wife's own family. At work sites and other locations he became friendly with people of similar political views and he spent a lot of time at cultural centres and other places discussing politics.

The applicant claimed that the day after the massacre at Town E where many people were killed, around 10,000 people met at Town F. The authorities surrounded this meeting and arrested hundreds of people including the applicant and they were taken into custody. He claimed that he was interrogated and was beaten when he was first arrested. The authorities would take several people into a room and ask them questions, constantly insulting and hitting them. A short time later he was released but was not given any food or drink during his detention. The applicant claimed that as a result of the detention he could not work for many days.

The applicant claimed that soon after his family bought a business in the area of City G where they lived and which was attended by Kurdish and Alevi people. The business was going well but then his friends with leftist political views started frequenting the shop and things started to change. [Information deleted: s.431]. He claimed that around the mid 1990s the authorities forced the family to close the family business for some time and claimed they did not have a business licence to operate the family business. They also stated that they had leftist political publications.

The applicant claimed that in the mid 1990s a coffee shop in Town H was attacked by right wing extremists and claimed that there were similar attacks across City G so on that day he went to Town H with other people. They managed to get inside an area that had been cordoned off by the authorities and gathered around a Cem house (Alevi praying house). The applicant claimed that many people were killed by the authorities and he witnessed these events happen. Later in the evening he was arrested and taken into custody where he was hit, tortured, insulted and denied toilet breaks as well as food and drink. He was then released.

The applicant claimed that he was conscripted for military service a few months later and after basic training he was sent to Town C, where his problems started. He claimed that the Kurds and Alevis were always pushed the hardest and mistreated in the military, being given the most difficult tasks. He endured this for over a year and then had some psychological difficulties after his was released from military service. After some time he went back to work at the family business and his old friends started to come back to the family business. He claimed that the pressure on people like him from the authorities was constant and some people ended up in prison or went overseas.

The applicant claimed that during this period, including the time he was in the army, he started to go out with a girl who later became his wife. Her family were opposed to the relationship because of his political involvement and his friends, but they married despite family opposition. Around the same time there was a demonstration in City G against the conditions in Turkish prisons and in support of the treatment of political prisoners who were staging hunger strikes. His friend, Person Y, was one of the prisoners at the time. The applicant claimed that at this demonstration he was detained again and spent a few days in hell. He claimed that he did not want to talk about this experience as everyone who went

through it, including his family and his wife, had been affected by what happened to him. He claimed that he had to tell the authorities where he lived and he became a target for the authorities who kept him and his house under surveillance. The authorities knew who had visited him so his friends and family would no longer visit, which made him isolated. He and his wife had a child but they were worried about the future of their child.

The applicant claimed that his child was born in the early 2000s but then he began to have more serious financial problems because the income from the family business was not enough for the whole family. He and his wife decided to stay out of politics for a while. Then in the mid 2000s the authorities killed many people in Town D, including his friend. The funerals for his friend and others were held in City G that month and the applicant decided to attend. He also attended a protest in the same month along with many other people. He was arrested and taken into custody where the authorities kept political activists that they called "terrorists". He claimed that his interrogation was even more heavy handed with more beatings than his previous arrests, partly because the deceased was a friend. He was held for a few days before he was released.

The applicant stated that after his release the authorities were following him so he could not go home straight away because he did not want the authorities near his family or the family business. He did not want to get the family involved with the authorities because he thought it was his problem rather than theirs. He claimed that he moved between his own house and other places of friends and relatives to keep pressure off his family and he did less work at the business, meaning that his father had to work harder. His father could not cope because the business was not doing that well and with constant visits from the authorities it was not a nice place for customers. His father was also getting old so he sold the business to a relative.

The applicant stated that he extended his passport in the mid 2000s because he wanted to leave Turkey. His sibling organised his departure from Turkey and his visa to Australia and did not tell the applicant how he had done so. The applicant stated that he did not know how his passport had been renewed or why he was allowed to leave the country. He claimed that things needed to settle down before he left Turkey and stated that if he had tried to leave a few months earlier he was pretty sure he would not be allowed to leave.

The applicant claimed that he lodged another visa application around the same time but did not know any details as he had never been interviewed and did not know why it was refused. He claimed his sibling had tried to organise this visa soon after his passport had been renewed. He claimed that now he was in Australia he was worried about his family in Turkey.

The applicant claimed that if he went back to Turkey the government would not leave him alone and he could not suppress his political views forever. He claimed that he had tried not to get into trouble after his child was born but he could not hide his views all the time and was arrested again. He stated that if he returned to Turkey he would not give up his political views and sooner or later he would be arrested and persecuted again.

The applicant claimed that he had several siblings and except for his youngest sibling they had all been arrested in the past for political reasons. He claimed that also had to sell the family business. He claimed that he had to look after his family but he could not do so in Turkey as he could not get employment as prospective employers knew about his political background. He claimed he had spoken to his wife since he came to Australia and she told him that the authorities had come to the family business, as they often did, to check

everyone's identity and had asked where the applicant was. He stated that the authorities still remembered him even though he had rarely been to the family business since it was sold and claimed that the authorities would keep asking for him.

The applicant stated that no matter what the Turkish government said that things were better, the situation for Kurds and Alevis would not improve and claimed that in his own area of City G they referred to Cem houses as cultural centres. He claimed that Kurds were not able to learn their language properly as the education system was very nationalistic and claimed that things might improve in 30 or 40 years. He stated that leftist activists continued to be imprisoned and live under the harshest conditions, and stated that leftist journalists were being murdered. He referred to a Nobel Prize winner from Turkey who had to go and live in America because he criticised the Turkish government and a Turkish-Armenian person who was killed in January 2007 for things he had written in a newspaper because there was no freedom of thought in Turkey.

The applicant stated that he wanted to live like a human being and to have protection, and that he did not come to Australia for economic reasons.

An undated statement from a medical practice claimed that the applicant was examined by staff from this organisation and it was found that the applicant was not fit for work at the current time.

In a statutory declaration, the applicant stated that he came to Australia on another type of visa that his sibling had organised. He claimed that he brought US\$2000 with him from Turkey, which he had saved from work in construction and in the family business, but had spent that money on rent and living expenses. He claimed that he had no assets and had no bank accounts either in Australia or overseas.

In a submission the applicant's representative provided country information and arguments in support of the applicant's claims for protection.

Application for Protection

The applicant was represented in relation to the review.

The applicant did not make any new claims or lodge any new submissions during the review process, prior to the date of the Tribunal hearing.

Tribunal Hearing

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Turkish and English languages. The applicant's representative was in attendance at all times during the hearing.

At the hearing the applicant confirmed his personal details and stated that he was born in Turkey but was of Kurdish ethnicity and Alevi religion. He stated that he could speak both Turkish and Kurdish and had worked at the family business before coming to Australia. His father had owned his own business for many years, but the applicant had not worked there continuously as he had also done his military service during this time and had occasionally worked as a labourer both before and after his military service. He claimed he had mainly worked in the family business after he finished his military service. He stated that the family

business was in a suburb inside the city of City G and he lived in the same suburb. The family home was nearby to the family business.

The applicant stated that he was married with one child. After his marriage he had continued to live with his family for some months and had then rented a house nearby, not far from the family business. The applicant stated that he had used the one address on his application form, the address of the family business, because he had used this address as his official address for receiving formal documents and as he had only moved nearby, he had never seen the need to change it.

The applicant was asked to outline in his own words what problems he had experienced in Turkey before he came to Australia. He stated that since he moved to City G his problems had continued for more than a decade. He claimed that he always had problems because of politics and because of the pressure on ethnic groups. He claimed that the important factor in his problems was the fact that he was a Kurd and Alevi.

The applicant was asked to outline his political opinion. He stated that he had a socialist opinion and when asked to explain that opinion, he claimed that it was an opinion held by certain groups in Turkey. He claimed that he had an opinion that was aligned to a Turkish Communist Party and stated that he was a sympathiser with this party because he liked their opinion. He stated that he had never joined any political party but that a few people with the same political opinion had been arrested in his village and that is how his own political views were formed.

The applicant stated that whenever political events were held he would go along and he stated these events would be things like the 1st of May or women's day or the Nevroz festival. He explained that Nevroz was held in spring and that the Turkish government was opposed to the celebration of this day because it was a sign of Kurdish rebellion against the Turkish government. Although it was a festival celebrating the start of spring, he stated that it was clearly seen as a Kurdish festival.

The applicant was asked why his political opinion would cause him problems in Turkey if he was not a member of any political party and not overly active in political matters. He stated that it was enough to support these groups or to support their opinions for the government to be against you so you did not need to actually join the groups to have problems with the government.

The applicant was asked what problems he had experienced with the government. He claimed he had been arrested and detained after a political rally and that he had been tortured. When asked to explain how he had been tortured, the applicant stated that he had been detained by the authorities and had been tortured by the insulting, rough and abusive mannerisms the authorities had used towards him that made him feel humiliated. He stated that when you are detained you have nothing to defend yourself and this was the first step for the authorities to torture and interrogate you.

The applicant confirmed his previous claims that he had been arrested in Turkey on several occasions. He stated that on each occasion he had been arrested and detained at rallies or political gatherings that he was attending. He confirmed that he was arrested directly at these rallies and that the authorities had not sought him at his home or at his place of work on these occasions. He stated that on each occasion he had been detained for a few days and then released but had never been charged with any offence as a result of these incidents. He stated

that the authorities could not find any evidence against him to charge him with anything. He stated that he had never been before a court in Turkey and had never been convicted of any offence in Turkey. He stated that on each of these occasions he had been questioned and then released, and claimed that in those situations the authorities detained many people at the rallies and after working out which people were heavily involved the authorities would focus their interrogations on those people and release the rest. He confirmed that they would keep and charge some people but had never charged him with any offence.

The applicant was told by the Tribunal that this pattern of arrest at rallies and release after a short period of detention may indicate that the authorities in Turkey did not have any ongoing interest in him. He responded that it was nothing like that and he was not important to them but Turkey had a history of internal war when democracy descends into chaos. He claimed that as democracy grew, the authorities tried to squeeze the country and put pressure on people.

The applicant was asked to discuss what happened after his most recent arrest. He responded that his concerns increased after this arrest and his family were concerned about him. He claimed that a person who was killed in the same year was known to him and when the authorities conducted an investigation into this man they found out about his history. The applicant stated that he went to the funeral of this man and helped the family of the dead man with burial arrangements.

The applicant was asked if he had worked in the family business after his release from detention. He stated that he had not worked there much but would sometimes go to help his father in the business because his father was sick so he needed the applicant's help. He indicated that the authorities did not arrest him again.

The applicant was asked why the authorities had not gone to arrest him if they had any ongoing interest in him. He stated that they had gone to the family business to ask for him. He claimed that the Turkish authorities would conduct monthly identity checks and in City G they knew where everyone lived because they had all of that information. The applicant was told that if the authorities wanted him, this would mean that they knew exactly where they could go to find him. He responded that they did know where he was but maybe they wanted things to cool down first because they had just killed several guerrillas. He confirmed that he was not a guerrilla but stated that the authorities knew who supported them. When asked if he supported the guerrillas, the applicant stated that he did not do so because he was against war but people were dragged into these things.

The applicant stated that he left Turkey some time ago and claimed that he had never left the country at any stage before this time. The applicant was told that it appeared from his evidence that he had remained in Turkey for a few years since the last time he had come to the attention of the authorities, and if they had any ongoing interest in him, the authorities would have been able to arrest and detain him at any stage during that time. The applicant responded that he tried to be careful and wound down his activities because he had a family but his fears had increased and he could not beat those fears so he always thought about leaving Turkey. He claimed that if he had stayed there he would have been arrested and detained. He stated that a person has a right to live safely and he was concerned for his safety.

The applicant claimed that he left from City G and travelled through various countries on his way to Australia. He stated that he did so legally on his own passport but stated that his family paid bribes to obtain his passport and his visa.

The applicant was asked if he had suffered any other problems in Turkey apart from the incidents of detention he had discussed with the Tribunal. He responded that he always had problems because Turkey claimed to have a democracy but there was always pressure on Kurds and Alevis. He stated that last year three people had disappeared in three separate provinces and they were Kurds and Alevis. He claimed that nobody knew what happened to them but the authorities were responsible for their disappearance. He stated that in the history of Turkey there had been 60 Kurdish journalists who had been killed by the authorities.

The applicant was told by the Tribunal that based on available country information, the Tribunal accepted that the Kurdish people had suffered and continued to suffer some level of discrimination in Turkey, but the Tribunal wanted to know what actual problems the applicant himself had suffered so that it could be determined whether it amounted to Convention related persecution. The applicant responded that he had been persecuted and because of his religion and language he had been exposed to many things. He stated that people continued to die or disappear and it could have been him or a family member that suffered this fate. He claimed that he could never be silent about the pressure the authorities put on his people. He claimed that in the month of Ramadan, the Kurdish businesses in his area were always open but when Turkish people saw them they would look at them in horror. He stated that these people did not like the Kurds because they kept their businesses open during Ramadan but confirmed that the businesses were able to stay open during this time.

The applicant was told that he had made two conflicting statements over time about the reasons why his family were no longer operating their family business. In his statement accompanying his application for a protection visa he had stated that his family had been forced to close down the family business because they were Alevi and Kurdish, and because of the applicant's left wing political activity. However, in his statutory declaration he had stated that his father could not cope because the business was not doing that well and with constant visits from the authorities. He also stated that his father was getting old so he sold the business to a relative. The applicant was asked to clarify these apparent contradictions. In response, he stated that in the end the family sold the business. He claimed that the family business had been closed several times whilst they were operating it but in the end they could not put up with the pressure so they closed it. When asked to clarify whether the business had been sold or closed, the applicant stated that they gave it to someone else.

The applicant was asked to clarify what pressure was placed on the family business by the authorities. He stated that the customers were Kurds and Alevis, and the authorities would regularly come there to check identity cards. They would take away some of the customers who they thought were suspicious. The applicant indicated that there were many Kurdish businesses in his area and stated that they all suffered similar problems. He confirmed this was a general problem suffered by all the local Kurdish businesses but stated that they continued to operate because people need a place to go.

The applicant confirmed that Turkish law required all Turkish citizens to carry an identity card with them at all times but he stated that sometimes people simply forgot to carry it with them. He stated that the authorities used this law unfairly against Kurdish people because they were simply looking for reason to harass them. He stated that there had always been enormous pressure on Kurdish people throughout the history of Turkey.

The applicant was asked what he feared might happen to him if he returned to Turkey now or in the reasonably foreseeable future. He stated that his right to live and his concerns about it would continue. He stated that he did not believe the authorities would leave him alone if he

returned and claimed that his family might not even find out that he had returned if he was sent back there. He stated that he would be harmed by Turkish authorities because he was a Kurd and an Alevi and he had a political opinion which gave the authorities some background and history on him. He claimed that he had been through difficulties in the past and if he went back he would live through them again. He stated that he would not change his ideas and that because of him and his ideas his wife and child had not have a comfortable life. He claimed that if he was happy where he was he would not have left his family to come to Australia. The applicant stated that the Kurds were humans too and asked why they don't have a right to live freely in Turkey He stated that things happen to Kurds in Turkey all the time but they were simply not reported to the outside world.

The applicant's representative requested time to provide a submission to the Tribunal by the end of the week following the Tribunal hearing and made specific reference to a report from the European Union in 2006 which allegedly criticised Turkey and its progress in dealing with human rights issues and in dealing with general corruption in the country. The Tribunal agreed to the representative's request for additional time to provide a submission but expressed some concern that the representative appeared to have made no attempt to provide any submission whatsoever to the Tribunal prior to the hearing.

Post Hearing Submission

In a submission the applicant's representative made reference to a report from the Commission of European Communities titled "Commission Staff Working Document: Turkey 2006 Progress Report" in support of her contention that the applicant's claims of feared persecution upon return to Turkey were not far fetched, remote or insubstantial. The representative enclosed a copy of this report and also enclosed a copy of the submission previously provided to the Department. The Tribunal has read and considered these documents prior to making its decision on this matter.

FINDINGS AND REASONS

There is no issue as to identity. The applicant arrived in Australia on a valid Turkish passport bearing his name and photograph and bearing a valid Australian visa. The Tribunal accepts that the applicant is a Turkish national and for the purposes of the Convention it has assessed the applicant's claims against Turkey as his country of nationality.

The applicant has claimed that he is of Kurdish ethnicity and Alevi religion. Since his arrival in Australia he has described in some detail how he was born in a village area of Turkey that was populated mainly by Kurds and how his family were forced to move from that area to City G when the applicant was still a child He has also described his life in City G living in an area populated by Kurds and attending various Kurdish festivals including the annual Nevroz festival. Accordingly, the Tribunal accepts that the applicant is of Kurdish ethnicity and Alevi religion as claimed.

The applicant has claimed that whilst he was living in Turkey he had some minor involvement in leftist political causes and had developed a profile with the Turkish authorities as a sympathizer with such leftist political causes. The applicant has also claimed that he had participated in a number of political rallies and activities whilst in Turkey and had been arrested on several occasions for participation in such rallies. He claimed that he was detained on each of these occasions for a day or two by the authorities and then released on each occasion without charge. He has also claimed that his family operated a family business

in City G that was visited almost exclusively by Kurdish people, including some who had a profile as sympathizers, supporters or participants in leftist political activities or as sympathizers, supporters or participants in Kurdish political causes, including the cause of Kurdish separatism. The applicant has claimed that as a result of such people frequenting the business, he and his family were imputed with a political opinion by the local authorities as sympathizers of such leftist and/or Kurdish separatist causes and were subject to some questioning by the authorities for their association with such people.

The Tribunal accepts on the basis of the applicant's consistent claims since his arrival in Australia that the applicant's family operated a business in City G frequented almost exclusively by people of Kurdish ethnicity. The Tribunal also accepts that some of these people may have been involved in either leftist causes or causes associated with asserting the Kurdish identity, demanding rights for Kurds in Turkey or supporting the establishment of a separate Kurdish state. The Tribunal also accepts claims made by the applicant that the local authorities would spend some considerable time monitoring the activities of Kurds who patronized such businesses and would conduct regular identity card checks on these people. The Tribunal therefore accepts as entirely possible that the operators of such a Kurdish business like the one run by the applicant and his family would be imputed with some political opinion in support of leftist causes and Kurdish nationalist causes as a result of them providing a meeting place for people who held those beliefs and who had some participation in such political activities.

The Tribunal has considered the applicant's claims that he had some participation in leftist political causes, including the Turkish Communist Party and similar leftist groups. However, the applicant indicated at the hearing that he had never joined this party or any other political party and did not provide any detailed evidence whatsoever in relation to his alleged political activities. The Tribunal also does not accept that the applicant participated in leftist political rallies because in his evidence at the hearing about the type of events, gatherings and rallies he had attended – and subsequently allegedly been arrested at – the applicant appeared to focus his evidence on pro-Kurdish gatherings, including Nevroz celebrations, rather than any leftist causes or events. Accordingly, on the evidence before it, the Tribunal is not satisfied that the applicant was ever involved in any leftist political causes as claimed and is not satisfied that he attended, or was subsequently arrested at, any leftist political gatherings or rallies as claimed. Accordingly, the Tribunal finds that the applicant did not at any stage develop a direct profile as a leftist sympathizer or supporter in his own right, other than the imputed political opinion he may have had ascribed to him because of his family's operation of the business, as discussed above.

The Tribunal has therefore considered the applicant's claims of arrest on several occasions as having occurred in connection with rallies, gatherings and activities in connection with the promotion and espousal of Kurdish identity and Kurdish nationality, including Nevroz celebrations.

In March 2007, the United States Department of State reported as follows about the treatment of Kurds and other minorities in Turkey generally and of the restrictions placed by authorities on the promotion of Kurdish language and Kurdish identity:

The law provides a single nationality designation for all citizens and does not recognize ethnic groups as national, racial, or ethnic minorities. Citizens of Kurdish origin constituted a large ethnic and linguistic group. Millions of the country's citizens identified themselves as Kurds and spoke Kurdish. Kurds who publicly or politically asserted their Kurdish identity or publicly espoused using Kurdish in the public domain risked censure, harassment, or prosecution (see sections 2.a. and 2.b.).

The government maintained significant restrictions on the use of Kurdish and other ethnic minority languages in radio and television broadcasts and in publications (see section 2.a.).

The Ministry of Education did not respond to the HRA's 2005 letter requesting that it remove the book *On This Path* from of its reading curriculum list. The HRA protested that the book had racist statements about Armenians, including, "Are you human, you Armenian?" At year's end the HRA was not able to confirm whether the ministry removed the book.

A number of private Kurdish language courses closed during the year, citing a lack of students. Kurdish rights advocates said many Kurds could not afford to enroll in private classes. They also maintained that many potential applicants were intimidated because authorities required those enrolling in the courses to provide extensive documents, including police records that were not required for other courses. They maintained that the requirements intimidated prospective applicants, who feared police were keeping records on students taking the courses.

...

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 religious, political, and Kurdish nationalist or cultural viewpoints. Active debates on human rights and government policies continued, particularly on issues relating to the country's EU membership process, the role of the military, Islam, political Islam, the question of Turks of Kurdish origin as "minorities", and the history of the Turkish-Armenian conflict after World War I; however, persons who wrote or spoke out on such topics, particularly the Armenian issue, risked prosecution. The Turkish Publishers Association (TPA) reported that serious restrictions on freedom of expression continued despite legal reforms related to the country's EU candidacy.

...

In December 2005 an Ankara court began the trial of 12 officials of the pro-Kurdish party Hak-Par for speaking Kurdish at a party convention and distributing Kurdish-language invitations to the convention. During the trial the prosecutor asked the judge to assist in opening a case to close down Hak-Par. The judge did not rule on that request by year's end.

...

The government maintained significant restrictions on the use of Kurdish and other minority languages in radio and television broadcasts. RTUK regulations limited minority-language news broadcasts to 45 minutes per day; however, RTUK ended time restrictions for minority-language cultural shows or films. Previously such broadcasting was limited to 45 minutes per day and four hours per week for television broadcasting, and 60 minutes per day and five hours per week for radio. RTUK maintained that its regulations require non Turkish radio programs be followed by the same program in Turkish and that non-Turkish television programs have Turkish subtitles. Start-up Kurdish broadcasters reported that these were onerous financial obligations that prevented their entry into the market. The state-owned TRT broadcasting company provided limited national programming in Kurdish and three other minority languages.

...

Authorities occasionally censored media with pro-Kurdish or leftist content, particularly in the southeast, by confiscating materials or temporarily closing down the media source at issue. The TPA reported that the most serious problem during the year was a large increase in complaints filed by ideologically motivated attorneys, and then accepted by the courts, on grounds such as insulting Turkishness or the memory of Ataturk. During the year prosecutors initiated court proceeding against 77 journalists, 22 publishing houses, 41 writers, five translators, and 43 books. Twelve of these cases ended in acquittals, nine in convictions, four in "nonsuit," and 18 were pending at year's end. Prosecutors charged 65 persons during the year under Penal Code Article 301, which criminalizes insulting "Turkishness." (United States Department of State, *Country Reports on Human Rights Practices – Turkey, 2006*, 6 March 2007)

In the same report, the United States Department of State commented on the treatment of demonstrators by authorities in Turkey generally, including Kurdish demonstrators who participated in various demonstrations, including Nevroz celebrations. The report also made some comments in relation to the historical treatment of Nevroz celebrations by Turkish authorities. The comments are as follows:

The law provides for freedom of assembly; however, the government restricted this right in practice. Significant prior notification to authorities is required for a gathering, and authorities may restrict meetings to designated sites.

Police killed demonstrators during the year. For example, government security forces killed a number of persons during violent riots in the southeastern city of Diyarbakir, which emanated from large public funeral processions held for dead PKK members. The HRF reported that in late March and early April, during rioting, the police and military killed 14 persons, including five children.

The trial of nine DEHAP officials for being members of an illegal organization continued at year's end. The nine officials were charged after they alleged that police shot and killed Umit Gonultas during a protest in support of Abdullah Ocalan, imprisoned leader of the PKK. According to the HRA, there was no evidence that demonstrators used weapons during the altercation. No one has been prosecuted for the death of Gonultas.

No investigation was initiated by law enforcement into the 2005 death of Hasan Is, whose relatives and other witnesses claimed was shot and killed by police during an altercation at a funeral ceremony for PKK militants in Batman Province.

No further information was available regarding allegations that in October 2005 Istanbul police shot and killed Atilla Gecmis during demonstrations in support of Abdullah Ocalan.

Police beat, abused, detained, or harassed some demonstrators.

On March 14, a local prosecutor opened a case against 54 police officers alleged to have used excessive force during a March 2005 International Women's Day demonstration in Istanbul. The case was ongoing at year's end.

On May 2 security forces arrested three Kurdish activists--Ibrahim Guclu, Zeynel Abidin Ozalp, and Ahmet Sedat Ogur--as they prepared to peacefully protest the recent killings of civilians by security forces in the southeast. The men were charged under the Antiterror Law for "making propaganda for the PKK." Their trial continued at year's end.

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.

The six juveniles charged for allegedly burning the Turkish flag during Nevruz celebrations in Mersin in 2005 remained free while their trial continued at year's end.

During a September 2005 rally in support of PKK leader Abdullah Ocalan in Siirt province police detained 39 demonstrators; one of the demonstrators died. The public prosecutor dismissed the demonstrators' complaint that alleged the police beat and harassed them. Prosecutors later charged the demonstrators for chanting illegal slogans and performing an illegal march. The trial continued at year's end. Prosecutors charged Police Sergeant G.Y. in connection with the death of 35 year-old-demonstrator Abdullah Aydan. The court acquitted the sergeant in July.

The October 2005 ruling that ordered 20 defendants to pay fines of \$74 (100 lira) each for hanging placards with the letters found in Kurdish but not Turkish was under appeal at year's end.

Proceedings continued at year's end in the appeal of the 2004 conviction of HRF psychiatrist Alp Ayan and codefendants for holding an unauthorized demonstration. (United States Department of State, *Country Reports on Human Rights Practices – Turkey, 2006*, 6 March 2007)

It appears from the country information referred to above that the Turkish authorities have in the past interfered with Nevroz celebrations and have arrested and detained participants at these celebrations, including people who participated in such celebrations in various cities. Based on this information, the Tribunal accepts that the applicant was arrested and detained on several occasions as claimed, as part of Nevroz and other Kurdish cultural celebrations. As discussed with the applicant at the hearing, he was released without charge on each occasion after one or two days of detention, which the Tribunal finds is evidence that the authorities had no ongoing interest in the applicant because of his involvement in such events. The Tribunal has also dismissed the applicant's claims that he was tortured whilst in detention because when given the opportunity at the hearing to state exactly how he was tortured whilst in detention, the applicant stated that he was insulted and subjected to rough and abusive mannerisms by the authorities which made him feel humiliated. The Tribunal finds that the treatment the applicant has described as having suffered at the hands of the authorities during detention does not constitute torture in any way.

However, based on the Tribunal's finding that the applicant was arrested and detained on several occasions in Turkey because of his participation in various Kurdish activities, the Tribunal accepts that the applicant would be ascribed by authorities with a political profile as an active supporter of the Kurdish identity and Kurdish nationalist causes.

The applicant has claimed that he would be targeted for harm by the authorities in Turkey if he returned to Turkey now or in the reasonably foreseeable future because of his political profile and because he is a known supporter of leftist causes and Kurdish nationalist causes. As discussed with the applicant at the hearing, the Tribunal is mindful that in the time he remained in Turkey after his last arrest and release the applicant was subjected to no particular harm or reprisal, other than his own subjective fear of harm, by the Turkish authorities despite him going about his life in essentially the same manner as he had previously done and despite the authorities knowing exactly where he lived and worked which would give them every opportunity to find him if they had any interest whatsoever in him. This would strongly point to the fact that the authorities in Turkey would have no ongoing interest in the applicant because of his political activities in the past in Turkey.

However, since the Tribunal hearing, the situation appears to have changed significantly in Turkey with the Turkish government having become engaged in a new battle with the outlawed separatist Kurdish group known as the Kurdistan Workers' Party (PKK). Although it appears that this battle is currently being fought on the border regions between south-east Turkey and the semi-autonomous Kurdish region in the north of Iraq, this report from The Economist highlights the complexity this dispute creates for the millions of Kurds who live in Turkey, with a significant rise in Turkish nationalism and attacks on Kurdish owned stores and offices in various parts of Turkey:

The effects of northern Iraq on Turkey's Kurds are more complex than they seem.

STANDING by the stream that separates the hamlet of Ovakoy from northern Iraq, Hisyar Ozalp, a young Kurdish lawyer, gestures towards a cluster of pink houses on the opposite bank. "That is Kurdistan," he says. "And so is this." Any conversation in Ovakoy shows why Turkey is so nervous about the effect of the Iraqi Kurds' semi-independent statelet. "I don't like Turkish, it's no good," declares Fatma, a five-year-old, using the commonest Kurdish dialect. A gaggle of Turkish conscripts stares in mute incomprehension.

In the province of Hakkari, members of a group inspired by the Kurdistan Democratic Party (KDP) of Masoud Barzani, president of Iraq's Kurdish region, whisper of a new plan to unite the Kurds of

Turkey, Syria, Iran and Iraq. Until recently, their KDP-Bakur disavowed the Kurdistan Workers' Party (PKK), which has escalated its long war against the Turkish army, killing 48 soldiers in October alone. Today it says armed struggle may be "the only way." The Iraqi Kurds' march to independence since the 1991 Gulf war has stirred excitement among Turkey's 14m Kurds (roughly half of all Kurds). Mr Barzani's autobiography is being snapped up everywhere. "Iraqi Kurdistan is like a beacon," says Ibrahim Guclu, a Kurdish politician.

Like many Kurds, he believes that Turkey's threat to clobber the PKK in northern Iraq is a cover for a full-scale invasion aimed at Iraq's Kurds. Warmongers in the Turkish media are howling for retribution against Mr Barzani for providing a haven for the PKK. Mr Barzani, who lost 200 of his own fighters helping the Turkish army against the PKK in the 1990s, says he would be happy to mediate but insists that the Turks should first recognise him as the Kurds' legitimate representative. Nothing doing, says Turkey, which this week announced new sanctions against those who support the PKK.

Despite Mr Barzani's popularity, the Turks can take heart from the millions of Kurds who have no desire to break away. That was the message of the July 22nd election, says Sehmus Akbas, a Kurdish businessman in Diyarbakir. He is thinking of the big gains made by the Justice and Development (AK) party in Kurdish areas, at the expense of the pro-Kurdish Democratic People's Party (DTP). Such is the appeal of AK's mix of liberalism and Islamic piety that it might even wrest Diyarbakir, the Kurds' unofficial capital, from the DTP in local elections next March.

Relations between Turks and Kurds are as intimate as they are fraught and complex. "We are like flesh and fingernail, inseparable," says Mr Akbas. Many Kurds cling to sentimental notions of an independent state. But the reality after centuries of cohabitation, intermarriage and economic integration is that "drawing boundaries has become impossible", as Hasim Hasimi, a Kurdish politician, puts it.

Take Istanbul; home to some 2m Kurds, and easily the world's biggest Kurdish city. Many Kurds are poor and unemployed, often victims of the army's scorched-earth campaign against the PKK in the 1990s. Not surprisingly, they tend to support the rebels. Yet thousands of middle-class Kurds with summer homes on the Aegean coast, who want their children to learn English not Kurdish, have little interest in politics. There are few signs that northern Iraq is luring Turkey's Kurds. More ethnic Turks than Turkish Kurds do business there.

The frenzy of nationalism that has gripped Turkey since the PKK killed 12 Turkish soldiers and kidnapped another eight on October 21st is threatening to upset the fragile balance at home. In the western city of Bursa, ultra-nationalist vigilantes recently vandalised a chain of stores owned by a Kurdish family, after rumours spread that it was helping the rebels. DTP offices throughout Turkey have been pelted with rocks and, in one place, set on fire.

"Is Turkey going towards partition?" asks Sezgin Tanrikulu, a human-rights lawyer in Diyarbakir. Very probably not. But with every funeral of a Turkish soldier, calls for revenge are growing. Ordinary Kurds risk being caught in the crossfire. (The Economist, *Dreams and Reality*, 1 November 2007, http://www.economist.com/world/europe/displaystory.cfm?story_id=10064699)

The BBC has also recently reported on the rise of Turkish nationalism over the past month as the brazen attacks by the PKK on Turkish soldiers have resulted in a series of deaths:

The coffin of a Turkish soldier - draped in the red and white national flag - was loaded onto my plane back from the Iraq border region to Istanbul this week.

Soldiers stood and saluted as the flight took off, carrying the latest casualty in weeks of intensified clashes with the Kurdish separatist Kurdistan Workers Party (PKK).

Almost every day now the newspapers here are full of the soldiers' life stories and pictures of their funerals. Many of those dying are young conscripts.

These casualties - and the deaths of 12 soldiers and capture of eight more in one PKK ambush in particular - are fuelling anger and frustration in Turkey.

There is a sense that Turkey is battling alone against the PKK - a group that the US and EU both label as "terrorist".

Ankara argues that the mountains of northern Iraq have become the PKK's safe haven and command centre.

"Something has to be done!" has become almost a catchphrase here now, from sober commentators to furious protesters on the streets.

Government under scrutiny

"The public's patience is really running out," says Radikal newspaper columnist Haluk Sahin. He describes himself as pessimistic about what comes next.

Last month, the Turkish parliament authorised the government to order cross-border military operations, if required.

"The Turkish government is clearly reluctant to use force in northern Iraq, but it's under tremendous pressure to come up with something. We have seen empty promises for such a long time," he says.

Turkey has complained for months about PKK bases inside northern Iraq and what it sees as a US and Iraqi failure to act against them.

With tension now so high, all attention is focused on Friday's visit by US Secretary of State Condoleezza Rice to Ankara and the meeting between Prime Minister Recep Tayyip Erdogan and President George Bush in Washington that follows on Monday.

"I will tell him (Bush) that we expect immediate concrete steps against the terrorists," Mr Erdogan said this week. "The problem of the PKK is a sincerity test for everyone. It is important to determine the fate of our future relations."

On Wednesday, a Pentagon spokesman said the US was now giving Turkey more intelligence on PKK positions inside Iraq. But commentators here feel Prime Minister Erdogan will have to emerge from his talks with President Bush with more than that - and most are sceptical.

"If the US does not provide an acceptable solution to this crisis, then the Turkish government cannot afford to stand still," says columnist Mehmet Ali Kislali.

"The Turkish population expects the government to teach the PKK a lesson. Everyone knows the PKK will not be wiped out with military action. But the overriding feeling is that something has to be done to prove that Turkey will not hesitate in such a situation," explains Mr Kislali.

Targeted strikes

Turkey has been massing troops on the Iraqi border since Spring. Some reports suggest up to 100,000 soldiers are now in the region. But the consensus remains that Turkey would prefer to avoid a major ground offensive.

"Creating a buffer zone across the border would need a large number of soldiers. Targeted operations can be repeated many times and need much less - say, 50 special forces soldiers, two planes, two attack helicopters," says retired Maj-Gen Armagan Kuloglu.

"It is impossible to stop the PKK this way - the target is to reduce their activities. If our aircraft bomb according to intelligence they can destroy some logistics bases and provide a morale boost to Turkish public opinion. That will also put pressure on the PKK, the Iraqi Kurds and even the US," he explains.

The onset of winter would make any ground incursion more difficult; more doveish Turks hope it will also subdue PKK attacks, thereby easing pressure on the government.

But it appears preparations for possible large-scale operations are under way.

Shortly after parliament voted to authorise possible military action, the health ministry distributed a circular to state medical facilities warning them to prepare to send doctors to southeastern Turkey or northern Iraq if required.

There have been 24 cross-border operations into Iraq before. The head of the Ankara Doctors' Union describes such a circular as "unusual".

Belligerent mood

Ahead of the Erdogan-Bush meeting Turkey does appear to be holding fire, both on major military action and fully-fledged economic sanctions.

But Ankara has been talking tough for so long, many here feel it is time for action.

Nationalist feeling is running at fever pitch. Turkish flags - already prominent - now adorn most buildings, many cars and businesses.

This weekend left-wing trade unionists and rights groups will demonstrate in Ankara against military action.

"I think the US will find a way to calm the public here, to convince the government that America will act to help us," one man who will travel from Istanbul for the protest told the BBC.

But the demonstration he is heading for is likely to be small.

Any military action in northern Iraq would inevitably mean more Turkish soldiers die, not fewer. That fact seems no deterrent though.

"As the losses here increase, so does the demand for counter-action - for a strong response," explains Mehmet Ali Kislali.

At the mass funeral of one soldier this week his widow told her two young sons not to cry - and to hold their Turkish flags up higher. (BBC News, *Turkish anti-PKK anger mounts*, 2 November 2007, <http://news.bbc.co.uk/2/hi/europe/7073718.stm>)

The BBC has also reported on the "coded" support shown for the PKK by some of the millions of Kurds who live within Turkey and who may not necessarily support the PKK or its actions but continue to espouse the cause of Kurdish identity and the cause of a Kurdish homeland:

Amine Yigit is in her late 60s and sat in front of me surrounded by some of her extended family spanning four generations.

She boasts three sons, four daughters and as many as 15 grandchildren (she does not know the exact number).

But as we sat drinking tea on a baking hot afternoon in her home in south-eastern Turkey, she was not thinking about the family members surrounding her, but about a son she last saw 15 years ago.

On the little wooden table in front of us was a photograph of Sincan Yigit.

He was wearing makeshift army fatigues with a rifle slung across his back.

He was smiling, he looked happy.

The photo was taken shortly after Sincan left his village, family and old life behind, to start a new life as a guerrilla fighting for the Kurdistan Workers Party or PKK.

"I didn't cry," she told me "when I heard he'd been killed in fighting with Turkish troops. I'm proud of him, he is a martyr."

"He died honourably. He was fighting for Kurdish freedom, for Kurdish rights."

Widespread support

In this part of Turkey Amine Yigit is not alone in losing a loved one to the PKK.

The south-eastern flank of the country is a Kurdish heartland where most of the nation's 20 million Kurds live.

Kurdish political leaders will tell you (in private) that at least 80% of their people support the rebels and are proud if a family member is "living in the mountains."

But for Turkey and much of the rest of the world, the PKK are terrorists pure and simple.

A ragtag bag of killers who use violence to serve their political ends.

Such thoughts are never in the minds of most Kurds living in Turkey.

I spoke with Metin Bayik in a remote location high in the foothills of the Judi Mountains which form part of the border with northern Iraq.

"The Turkish Army is watching everyone," he told me, "we can't talk out in the open, it's too dangerous."

He spoke about his brother Abdullah who joined the PKK in March 1984 and - as far as he is aware - is still alive and fighting the Turks.

He is now well into his 50s. I asked Metin if he condoned the tactics of the PKK in using violence.

"I condemn the violence of all sides in this struggle," he told me diplomatically.

"I'm neither proud, nor ashamed of my brother. We Kurds are an oppressed people and while I might not wholeheartedly agree with their methods, the PKK is fighting for us and that IS something to be proud of.

'Oppressed minority'

The PKK is fighting for a separate homeland in south-eastern Turkey for the Kurds.

Living under the Turkish flag they say means living like second class citizens.

And this is not a new phenomenon. They will tell you they have been an oppressed minority for centuries going way back to the rule of the Ottoman Turks.

Nowadays, the Kurdish language is not allowed to be taught in schools.

Kurdish children must learn only Turkish while Kurdish programming on TV is restricted to one hour a week.

It is these kinds of assaults they say on Kurdish culture and heritage that the PKK despises - an attempt, the guerrillas and their supporters believe, to deny who they are.

To make everyone who lives within Turkey's borders, Turkish.

The government in Ankara is now contemplating a full ground offensive into northern Iraq to flush out the PKK.

The Kurds I spoke to say they do not want a war, that enough blood has been spilled, what they want are their rights as Kurds.

It is very unlikely Turkey will any time soon agree to their demands, so it seems more mothers like Amine Yigit are destined to lose their sons to the mountains. (BBC News, *Kurds show coded support for PKK*, 26 October 2007, http://news.bbc.co.uk/2/hi/middle_east/7062971.stm)

Another article from the BBC in early October 2007, whilst focusing primarily on the prosecution of people promoting the Armenian cause in Turkey rather than the Kurdish cause, highlights that the Turkish state continues to aggressively pursue those who it considers are attacking the cause of "Turkishness" and promoting separatist or minority causes. The report also discusses the continuing legal prosecution of journalists who write about the killings of Kurds or Armenians. It states as follows:

The son of murdered Turkish-Armenian writer Hrant Dink has been found guilty of insulting "Turkishness", along with another newspaper editor.

Arat Dink and Serkis Seropyan were convicted after printing Dink's claims that the killing of Armenians by Ottoman Turks from 1915 was genocide.

The verdict came a day after a US congressional committee backed a bill labelling the killings as genocide.

Turkish leaders reacted angrily, but the decision was welcomed by Armenians.

The non-binding US vote, passed by 27 to 21 votes by members of the congressional House Foreign Affairs Committee, is the first step towards holding a vote in the House of Representatives.

Outspoken

Arat Dink and Mr Seropyan, who both work as editors at Agos, a leading bilingual Turkish and Armenian weekly newspaper, were given one-year suspended sentences for printing comments made by Hrant Dink during an interview.

Dink, the editor-in-chief of the newspaper, was one of Turkey's most prominent Armenian voices.

He was shot dead outside his Istanbul office in January 2007.

At the time he was appealing against a prior conviction for the same offence - insulting the Turkish identity under Article 301 of the country's penal code.

Turkey faces ongoing international pressure to scrap the offence, under which dozens of writers who have been charged, often for articles dealing with killings of Kurds or Ottoman Armenians.

Hundreds of thousands of Armenians died in 1915 and the following years at the hands of Ottoman Turks.

Armenians have campaigned for the killings to be described internationally as genocide. More than a dozen countries, various international bodies and many Western historians have done so.

Turkey admits that many Armenians were killed but it denies any genocide, saying the deaths were a part of World War I.

Turkey and neighbouring Armenia still have no official relations. (BBC News, Pair guilty of 'insulting Turkey', 11 October 2007, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/7040171.stm>)

These reports from the BBC and from The Economist, that discuss events that have occurred since the date of the Tribunal hearing, appear to indicate a more hard-line approach from Turkish authorities to those who espouse causes associated with Kurdish identity and Kurdish nationalism. The current continuing animosity has heightened tensions in the region as a direct result of attacks by the PKK killing Turkish soldiers and counter-attacks by the Turkish armed forces on PKK positions on either side of the border between Turkey and Iraq. There is also the strong possibility that this current conflict may be escalated with further attacks and even the possibility of all-out warfare. The Tribunal has already found that the applicant has been imputed with a political opinion in Turkey in the past as a sympathizer with leftist and Kurdish causes through his family's ownership of the business and has an actual and imputed political opinion as a supporter of Kurdish nationalist causes through his participation in various Kurdish celebrations and rallies in the past and his arrest on several separate occasions at these events. In the context of recent events in Turkey that have occurred largely since the Tribunal hearing was held and given the heightened tensions these events have caused within Turkey, the Tribunal is unable to completely dismiss the possibility that the applicant may be of some interest to the Turkish authorities in the reasonably foreseeable future if he returned to Turkey, particularly given the applicant's strong assertions at the hearing that he did not want to suppress his ideology and his belief in the causes he espoused.

In determining if the applicant's fears are well founded the Tribunal must assess whether there is a real chance of persecution. 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 percent. Based on all of the above, the Tribunal is unable to conclude that the possibility that the applicant would be harmed by Turkish authorities is one that is remote, insubstantial or far-fetched. Although the likelihood of such harm may be unlikely or even less than a 50% probability, the Tribunal is satisfied, based on all available evidence, that if the applicant was to return to Turkey now or in the reasonably foreseeable future there is a real chance that he would face persecution for his actual and imputed political opinion as a supporter of Kurdish causes, Kurdish identity and Kurdish nationalism.

The harm the applicant fears upon return to Turkey includes arrest, detention and possible prosecution. Although any such prosecution would be based on articles of the Turkish penal code, the Tribunal accepts that the applicant would be so charged because of his political opinion and his expression of Kurdish identity. Therefore such articles of the Turkish Penal Code are not the type of laws that are appropriate and adapted to achieving some legitimate object of the country concerned (as per *Applicant A & Anor v MIEA & Anor* (1997) 190 CLR 225 and *Chen Shi Hai v MIMA* (2000) 201 CLR 293) but are instead laws that deliberately

suppress the ability of minorities like the Kurds to freely express their political opinion and therefore give rise to convention related persecution.

As the applicant fears harm directly from the Turkish state, there is no issue in relation to effective state protection. Relocation within Turkey is not an option reasonably available to the applicant as the fear of persecution would apply equally across the whole country.

On the basis of all of the above, the Tribunal is satisfied that the applicant has a well-founded fear of persecution in Turkey because of his actual and imputed political opinion as a supporter of Kurdish causes, Kurdish identity and Kurdish nationalism.

There is no evidence before the Tribunal to indicate that the applicant has a legally enforceable right to enter and reside in any third country for the purposes of section 36(3) of the Act.

CONCLUSIONS

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

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.

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

Sealing Officer's I.D: ntrev