

0808664 [2009] RRTA 184 (16 March 2009)

DECISION RECORD

RRT CASE NUMBER: 0808664

COUNTRY OF REFERENCE: Turkey

TRIBUNAL MEMBER: Wendy Boddison

DATE: 16 March 2009

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

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

RELEVANT LAW

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

Definition of 'refugee'

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

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

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

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal 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 is an adult and was born in City A, Turkey. He stated he belonged to the Kurdish ethnic group and his religion was Muslim and Alevi. He completed some years of schooling in Istanbul and then worked in the textile industry.
22. The applicant claimed that he left Turkey because he was seen to be a potential suspect by the Turkish authorities because of his Kurdish identity. He was always being followed by the an organisation about once every few months they would arrest, interrogate and torture him. This usually occurred when there was a bomb attack made by Organisation L or other terrorist organisation. This foul treatment stopped the applicant from enjoying his life because he was always under constant pressure and threat.
23. The main reason why the authorities followed, arrested and tortured him was because his ex-wife was said to have connections with the PKK. They arrested the applicant to find out where she was and to use him to identify people. They asked him for the names of people who had connections with the PKK. The second reason why they would arrest him was due to his involvement with the Democratic Society Party (DTP). They wanted him to become an informer for them, which the applicant refused because it was against his beliefs.
24. The applicant believed that if he returned to Turkey his life would be under constant attack and surveillance. He would continue to be threatened, arrested and tortured as they had done before. The applicant feared that they would try to blame him for a crime that he had not committed in order to jail him.
25. He was fearful that if he was put into jail they would persecute him or, worse, they would arrest him and kill him whilst they were interrogating and torturing him. In the past they had killed people and then claimed that they had committed suicide and the applicant feared that this would happen to him.
26. If the applicant returned to Turkey he feared that the anti-terror organisation would harm and mistreat him. He had been ill-treated previously and feared that this would

continue so long as he lived in Turkey. The reason why he would be interrogated by the anti-terror organisation was because they wanted to find out about the involvement of his ex-wife in the PKK.

27. The applicant was first arrested when a Kurdish leader, Person 1 was arrested. In response there were bomb attacks in cities of Turkey in protest against the arrest of the Kurdish leader. A bomb attack occurred in Suburb B in Istanbul and the applicant was arrested, interrogated and tortured by the police. He was asked whether he was a PKK member or whether he was involved in the Suburb B bombing or if he was upset because a Kurdish leader was arrested.
28. Since the early 2000s the anti-terror organisation had questioned the applicant about the whereabouts of his ex-wife and her involvement with the PKK. They had tried to make him an informant of the DTP and they constantly wanted information about the DTP and its involvement with the PKK. They also wanted the applicant to locate and identify any Organisation L members (who the applicant considered to be a terrorist organisation and who he was not a supporter of). The authorities in Turkey could not protect the applicant because they were the ones who were mistreating him.
29. In the early 2000s the Tribunal received a letter from the Association O which stated that since the applicant had arrived in Australia he had been actively participating in the association's activities. He had developed close relationships with the Kurdish community in City C and he was assisting to organise the Kurdish celebrations. The Tribunal also received a letter from the applicant's employer.

Evidence to the Tribunal:

30. The applicant moved from City A to Istanbul with his parents when he was a child. He completed some years of school in Istanbul and worked in the textile industry. This work was seasonal and he worked for some months in preparation for one season and then did not work for a period. He would then work for a further few months in preparation for another season. The applicant's father worked in the food industry. In 1980s his father was arrested and the family did not see him for many days. The applicant did not know the full details because he was a child. The suburb in which they lived in was predominantly Kurdish Alevi and most of the neighbours were taken at this time as well. As far as the applicant was aware, his father had no further problems with the authorities after the arrest in 1980s. The applicant's siblings also only attended school. He was asked why he and his siblings did not attend further study and he said it was during the 1980s when the Junta government was in power and there was a civil war. The right and the left were fighting one another and there were dead bodies in the streets. There were terrible problems at that time.
31. The applicant spoke very little Kurdish, but his parents could speak Kurdish. He became involved in the DTP from 1990s. It was previously called HADEP. He was never a member of either the DTP or HADEP, but he would go to their meetings and join in their protests. They were advocating freedom for the Kurds and he would attend their May Day celebrations and their Nevroz celebrations. The government shut down HADEP several years ago. The party was also known by another name. The applicant was involved in the branch that was situated in Street D. There was a building which they would meet in front of, and from there they would go and protest. He took part in protests about many things, including compulsory religious education in school and the

fact that 40 per cent of the Turkish budget went to the organisation that trained the Imams, whereas the Alevi Cem houses never had any recognition. The applicant did not attend any political meetings; he just participated in their protests. He knew when these protests were to occur because they would place posters and placards around the streets.

32. In early 2000s the applicant celebrated Nevroz at Suburb E. There were approximately a few hundred thousand people who participated although a further few hundred came in by bus and the police would not let them participate and they were arrested. A senior officer of the DTP, Person 2, gave a speech and so did the president of various Kurdish and Alevi associations. Person 2 said in his speech that they said "no to war". They sang songs, there was a fire lit and famous singers attended. The applicant did not know why the police did not allow the people who came by bus to attend.
33. In May Day in early 2000s they gathered at Place F for their celebration. Usually they would hold their celebration at Place G; however, at the last May Day there were many police at Place G who would not allow them to celebrate so they met in Place F instead. The police tried to break up the celebration and they attempted to stop it using force. The applicant was asked what happened to him and he said that he was affected. He said that they had permission to hold this celebration. It was a legal gathering and it had been undertaken every year in Square G. He did not know why they would not let them celebrate in Place G in early 2000s. There was another May Day celebration in Place H where many problems occurred. The applicant went there after he left Place F. At Place H they insisted that they be allowed to walk through the street, but the police would not let them and began to beat them. They picked up stones and threw them at the police and things escalated from there.
34. The applicant was not a member of any Kurdish or Alevi association. However, he was involved in the Association Q and he attended a service regularly. He never had any problems with the police attending the Association Q, but he did have problems with radical religious people. He referred to the incident where Alevis were burnt in Sivas. The Alevi beliefs were not acceptable to these religious people even though the Alevis were respectful to the mosques. They made insulting comments about Alevis' sexual practises and accused them of incest. The applicant was asked whether, apart from being assaulted, anything else was done to him. He said he used to be treated very badly at his workplaces as most religious people would put pressure on him and would look down on him because he was Alevi. This particularly occurred during Ramadan because he did not fast and he would be told to leave the place of employment. He only had a few years of social security benefit and no insurance. His employers would not pay his insurance, and they would treat him like a second class citizen - like he didn't exist.
35. During the election campaign in 2000s the applicant campaigned for Person 3 who was the candidate for a division in Istanbul. He/she was in jail during the campaign. He described how he handed out pamphlets and promoted him/ her in the Istanbul area. He/ she was elected and became a MP and was released from prison. There were many DTP candidates who were elected during that election. The applicant never had any problems with the authorities whilst he was campaigning for him/her but he had difficulties with another PKK member who would provoke fights. He then clarified that Person 3 was actually elected as an independent, but then he/she came under the DTP banner once he/she was in parliament.

36. The applicant was divorced many years ago. He had a child who was currently not living with him. After the applicant came to Australia his child contacted him and said that he/she wished to move because he/she was sick of the attention he/she was getting from the authorities because of his/her mother's activities. His child needed his/her father's permission in order to obtain a passport to travel outside of Turkey and the applicant went to the Turkish Consulate in City C and provided his permission. Before that, his child had been living with a relative.
37. His ex-wife was living in Turkey. The police had told him that she had joined the PKK, but he did not know what she was doing. When they were first married she was a normal housewife and they had no problems. He went to do his military service when he and when he came back everything had changed. She suddenly had a lot of male friends who she went out to meetings with and sometimes she would not come home at night time. He used to question her a lot about what she was doing as he was very jealous and he did not want her going to these meetings. She said that they were just friends and at that stage he suggested they get divorced, but she said no and they reconciled and had a child. She then started meeting people again who he didn't know and spending time away from the house. Later on, friends told him that it was the PKK that she had become involved in. He had already told her that he couldn't stand this and he got a divorce and his wife obtained custody of their child. When their child was young, his wife left the child with her relative and went to the east. After that she came back to Istanbul and took the child for several years to another part of Turkey. They were then often coming backwards and forwards. When the child was in Istanbul, his/her relative would telephone the applicant and tell him so that he could visit him/her. He/she went to primary school in Place F and he had some secondary school and then came back to Istanbul.
38. After he was divorced from his wife, he mostly had phone contact with her and sometimes when she was at her relative's place he would see her. He had a good relationship with her family.
39. The Tribunal asked the applicant what his wife was doing after they divorced. He responded that when Person 1 was apprehended, the police arrested him and questioned him about his wife's activities and he said he didn't know what she was doing. The police told him that she was involved in the PKK and asked him if he knew about her activities.
40. The applicant explained that some days after Person 1 was arrested, which he thought was in 1990s, a place in Istanbul, Suburb B, was bombed and he was apprehended. It was the anti-terror squad that arrested him whilst he was sitting in a shop. He was taken to a suburb. This is not the headquarters of the anti-terror police, but is where a police station is located. He was interrogated about his wife's activities and about his own connection to the PKK. He was tortured and he had been hurt, which he has since had fixed, and he had a scar when he was pushed. They accused him of being involved in the bombing and they also said that he was upset because Person 1 had been arrested. They asked questions about where he obtained weapons; where weapons were kept; and he was asked about other activities. He was told that if he confessed to them, they would help him get a lenient sentence. He was released after some days because, in Turkey, a person can only be held for three days and after that they have to have a confession or they have to charge the person. He refused to sign any confession so he was released after some days.

41. About a few months later he was apprehended again, around the time there were many car bombings in Istanbul. As well as questioning him about the car bombings, they asked him questions about his wife's involvement with the PKK. They seemed to infer that although they were divorced they were not really separated, and that they were in contact and he was somehow working with her in Istanbul while she was in the east of Turkey.
42. The applicant did not know whether the authorities ever arrested his ex-wife. They did not tell him and he did not know. They seem to take him in for questioning every time something occurred or he was involved in something such as protest meetings. When he was taken in for questioning he would be blindfolded. He would spend a couple of hours in that room and then they would put him in another room with some other people that had one-way glass. They would put witnesses on the other side that would point out the applicant and say that he had done certain things. He would be hit so he rarely had any injuries. He also had other methods used on him. After awhile this made his head feel swollen. He was asked whether he ever saw a doctor whilst he was in custody and he said he would sometimes talk to the doctor before he was questioned. The doctor would examine him and say he looked healthy and he would tell the doctor he should be examining him after he had been questioned.
43. Over the past several years the applicant believed he had been taken in for questioning on average several times a year. The police usually came and got him from a shop or from his home. They did not come and get him from work as he worked in all different places. The applicant lived with his parent. They never questioned his parent because he/she was elderly. The applicant was never arrested during Nevroz, but he was when he was taking part in political activities. In 1990s there was the time when many Alevis were killed in a district of Istanbul. The police put up barricades and nobody was allowed in and out. A lot of Alevis went there to see what had happened and later on they bought food to give to the people who were unable to get out. When they were doing this they breached the barricade and the applicant was arrested.
44. The applicant was asked whether he told anyone that he had been threatened by the police. He said he couldn't because they threatened to kill him if he said anything to anyone. He referred to the "deep government" and he commented that 18,500 went missing and nobody knew where they were. He referred to the current Ergenekon Investigation.
45. He did not tell anyone at the DTP what was happening to him because they were in the same situation. They were accused of having connections to the PKK and were being interrogated. He did not go to any human rights groups because he was unable to afford to engage a lawyer. For those sorts of things you needed money and he had never had a good job. It was put to him he did not need a lawyer to go to the Human Rights Association or to the Human Rights Boards. He said the police were just trying to blame him and he was sure that if he complained against them then they would find some excuse to charge him or to kill him.
46. It was put to him, this treatment had gone on a very long time why were the police so persistent and why was he targeted. He said he did not know – maybe it was his destiny. He then said it was because he was a Kurdish and Alevi and it was put to him that there were many millions of Kurdish and Alevi people who were not treated in this way. Why was he, and he said all the problems started with his wife. They believed

that she was a member of the PKK and they did not really believe that he was separated from her. When he was still with his wife there were occasions when his wife didn't come home and he assumed that she had been arrested and held at the police station. He had lived a life with so much harassment and he feared the police and the authorities in Turkey. He was under pressure and he was in ill health.

47. He had no problems getting a passport because he had no convictions on his record. The longest he was ever detained was a few days and the shortest period was several hours. He borrowed money from his sibling in Turkey for the airfare to come to Australia. His elder sibling in Australia helped him to come to Australia. He/she had been in Australia for many years – his/her spouse came here as an asylum seeker. He/she had come to Turkey some time ago and had seen the situation that he was in and helped him to get out. He/she had not done anything earlier because it had been a long time since he/she had visited Turkey. He did not leave earlier because it was only that time that his sibling showed him a way that he could get out. Apart from his injuries, he had no other injuries as a result of the treatment he received in Turkey.
48. As a Kurdish Alevi person, he wanted to live comfortably with a sense of security. He was being put under pressure to inform on the DTP and he did not want to do this, and he was afraid that if he kept not complying with what the police wanted well then they would kill him.
49. He was asked what changed that caused the police to take a greater interest in him, after he divorced his wife rather than before when he was still with her, when she was active with the PKK at that time. He said when he was married, all he did was work and come home. After he was divorced his lifestyle changed and he started going to political meetings, May Day demonstrations and going to shops with friends where they talked about things. He became more active and this was when they started taking an interest in him.
50. In relation to the country information that seemed indicate that people were not targeted merely because they were Kurdish Alevi, he indicated that there are a lot of things that happen in Turkey that don't see the light of day. He referred again to the Ergenekon Investigation and he referred to a number of other incidents that the outside world had not heard about. [Information about the applicant's ex-wife deleted in accordance with s.431 as it may identify the applicant].
51. The Tribunal asked the applicant about the persistence of the police in targeting him, when many years he had given them no information and not helped them. He said he had had this discussion with the occasional policeman who was a good policeman. They indicated that they kept arresting him because they had to appear to be busy and to be conducting investigation to look good before the public. When he asked them why him, they said they didn't know – maybe he was a marked man; maybe he was someone they had an interest in. After the treatment that he received from the police he should have had medical assistance, but he was too scared to get any. He had terrible pain; and he just felt under pressure. He wanted the remainder of his life to be peaceful.

FINDINGS AND REASONS

52. The applicant arrived in Australia on a validity issued Turkish passport and the Tribunal accepts that he is a national of Turkey. The applicant has been attending Association O and the Tribunal accepts that he is Kurdish.
53. The applicant claims that he has been regularly detained by the Turkish security forces for up to three days because of:
 - His wife's involvement in the PKK;
 - His involvement in the DTP; and
 - because he is Kurdish.

He fears that this treatment would continue if he was to return to Turkey. The applicant also claimed that he suffered discrimination and insults because he was Alevi.

54. The applicant is someone of limited education who gave evidence in a direct manner and was able to provide details when asked by the Tribunal. He appeared to generally not embellish his claims. For example when describing a demonstration he attended on May Day which became violent and asked what occurred to him, the only detriment he mentioned was the fact he was affected by the methods used. He did not indicate he was beaten or detained although the country information indicates that many people were detained at this demonstration. However the Tribunal has some doubts as to the frequency he claimed that he was detained. Further he claimed he was first detained after Person 1 was arrested in 1990s. Yet later he claimed that he was arrested in the aftermath of another incident in 1990s. The country information indicated that this occurred in a different year. Although the Tribunal accepts that he may have got the date wrong it is still sometime before he claimed he was first arrested.
55. The applicant described fairly frequent short term arrest and detention by the security forces in Turkey. These experiences particularly the frequency seemed to conflict with the country information available to the Tribunal regarding the treatment of persons with the applicant's profile in Turkey.
56. The applicant claimed that he was a supporter of the DTP. The applicant did not claim that he was a member rather that he supported their protests and demonstration and campaigned for them during the elections. The applicant's knowledge of the DTP and the election campaign accorded with his claimed level of involvement and the Tribunal accepts that he was a supporter of the DTP and campaigned for them and took part in their demonstrations.
57. The pro-Kurdish People's Democracy Party (HADEP), was established in 1994 as a successor to the successively banned HEP, DEP and ÖZDEP. HADEP campaigned for greater cultural rights for Kurds and a peaceful solution to the Kurdish issue. It never resorted to nor supported violence. However, the Turkish authorities regarded HADEP as the PKK's political wing. In March 2003 HADEP was banned. In response its successor the Democratic People Party (DEHAP) was formed. However, legal proceedings against DEHAP on charges of separatism were instigated and remained ongoing at the end of 2006. On 17 August 2, DEHAP joined the Democratic Society

Movement, or DTH (now known as the Democratic Society Party (DTP) (see The UK Home Office Turkey Operational Guidance Note October 2008).

58. The country information indicates that the leaders, officials and high profile members of the DTP suffer harassment in Turkey. The US Department of State 2009, *Country Reports on Human Rights Practices for 2008-Turkey*, details a number incidents involving leaders and officials of the DTP being charged with offences and often these offences are connected with speaking Kurdish. The applicant does not have the profile of an official or leader. However the same report does indicate that security forces regularly harassed villagers they believed were sympathetic to DTP. Most were released within a short period but many faced trials for supporting an illegal organisation or inciting separatism.
59. The applicant claimed that the authorities wanted him to be an informer in the DTP given that he was not a member and did not attend meetings, it would be unlikely that he would be able to provide the type information they would have sought.
60. The applicant claimed that his wife was involved in the PKK He said that this involvement commenced when he was away doing his military service. It was her involvement in the PKK that led to their divorce.
61. The applicant claimed that his difficulties with the authorities increased after he divorced his wife and coincided with the increase of PKK attacks following the arrest of Person 1 It was put to the applicant that as the main reason he was having difficulties appeared to be because of her PKK involvement it did not make sense that his difficulties increased after they divorced. In answer he explained that the authorities did not really believe that he and his wife were separated they thought that he was working in the west of Turkey to assist what she as doing in the east of Turkey. Secondly it was not until he was divorced that he became involved in the PKK and other protest activities. The applicant still regularly visited his wife's family after they were divorced and this may have led the authorities to believe that he was still maintaining contact with his wife. The Tribunal accepts that there would have been increased action against those that were suspected of supporting the PKK after the arrest of Person 1 The Tribunal found the applicant generally credible regarding the activities of his wife and accepts that the authorities suspected her of involvement in the PKK.
62. Council of the European Union, Brussels, Official General Report on Turkey States:

3.4.5 Relatives of members of the PKK or of left-wing or Islamist militant groups

Those known to have or suspected of having one or more family members in the PKK can expect some attention from the authorities. Depending, among other things, on the degree of kinship and the (suspected) position of their relative(s) within the PKK, family members may be subjected to varying degrees of intimidation, harassment, official obstruction, questioning and similar problems. It is perfectly conceivable, even probable in many cases, for the families of (suspected) PKK members to be kept under observation by the authorities or questioned and interrogated, for instance about the whereabouts of their fugitive relatives, but also because they could as often as not be potential suspects themselves. In many cases the Turkish authorities assume that some relatives of PKK supporters harbour sympathies for the party. However, if the authorities are convinced that relatives of (suspected) PKK members do not have any links to the PKK they are not persecuted.

Countless people in Turkey have one or more relatives in the PKK without having any significant problems with the authorities as a result. The families of prominent PKK supporters such as Abdullah Öcalan and Şemdin Sakık were probably always under intensive surveillance by the authorities and lived under a certain degree of pressure, but they were not actually persecuted for their relationship with the PKK leaders. Öcalan's family attended his trial. One of Sakık's brothers is openly politically active.

63. The Tribunal notes that this information carries the rider that, if the authorities are convinced that relatives of (suspected) PKK members do not have any links to the PKK they are not persecuted. The applicant is claiming that the authorities were not convinced that he did not have links to the PKK and further his own involvement in the activities of the DTP which the authorities believe promotes separatism and supports the PKK would have made the authorities more suspicious of him. In addition Research Directorate, Immigration and Refugee Board of Canada, Ottawa, Turkey: Status of the Kurdistan Workers' Party and Turkish Hezbollah; situation and treatment of members, supporters and sympathizers of these parties (2006 - 2007) states:

In 28 April 2006 correspondence sent to the Research Directorate, an assistant professor of political science at Loyola University in Chicago who specializes in Islamic politics in Turkey stated that "[b]oth the PKK and the Hezbollah of Turkey are considered terrorist organizations by the Turkish state". Media reports also state that the PKK is "considered a terrorist organization by Turkey, the US and the European Union". Criminal charges involving terrorism have been brought against members of both the PKK and Turkish Hezbollah: for instance, out of the 512 inmates of a prison in the city of Diyarbakir, 258 allegedly belong to Turkish Hezbollah and 224 are thought to belong to the PKK (UN 16 Nov. 2006).

According to the Assistant Professor,

[i]t is illegal to be members, supporters, and sympathizers of both organizations in Turkey. Citizens suspected to have any kinds of ties to these organizations are harassed by security forces and violations of their human rights have been common. While the European Union-demanded reforms have liberalized Turkish legal systems, the progress in application has been much limited. Additionally, tensions between ethnic Kurds and Turks in mixed cities have increased in recent years. There have been several attempted lynchings of Kurdish activists in various Anatolian [Middle Eastern Turkish] cities. Turkish public opinion has very strong negative views of both the PKK and the Hezbollah. These organizations are perceived to be exclusively responsible for the deaths of thousands of people.

The Tribunal accepts that a combination of the applicant's low level involvement in the DTP and his wife's involvement in the PKK means that his account of being detained by the authorities in Turkey and questioned about his activities and his wife's activities is consistent with country information. Further it is not a remote or far-fetched possibility that this treatment would continue if he returned to Turkey.

64. The US Department of State, *Country Report* indicates that members of the security forces continue to torture beat and abuse persons. 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 organizations, the media, and monitors. Police continued to detain persons on suspicion of "membership in an illegal organization" and for the distribution of leftist material.

65. The UK Home Office Turkey Country Assessment, Country Information and Policy unit August 2008:

The US State Department Report (USSD) 2007, published on 11 March 2008, noted that “The constitution and law prohibit such practices; however, members of the security forces continued to torture, beat, and otherwise abuse persons. Human rights organizations reported a rise in cases of torture and abuse during the year. In a July 5 report, Amnesty International (AI) noted that a ‘culture of impunity’ allowed police and Jandarma to escape accountability for torture and enabled courts to disregard medical evidence of torture and accept as evidence statements allegedly extracted under torture.”

The IHF Human Rights 2007 report further noted that “The implementation of legislation aimed at preventing torture remained ineffective and, as observed by the UN Special Rapporteur on Torture, safeguards against torture – such as access to a lawyer and qualified forensic doctors – were not adequately enforced. An amendment to the Law on the Prosecution of Public Servants re-introduced privileges preventing prosecution of officials accused of torture and ill-treatment. Officials found guilty of torture and ill-treatment were rarely suspended.”

The Human Rights Watch (HRW) World Report 2008, published on 31 January 2008 stated:

“Ill-treatment appeared to be on the rise in 2007 and was regularly reported as occurring during arrest, outside places of official detention, and in the context of demonstrations, as well as in detention centres. This trend was further exacerbated by the passing in June of a new police law granting wide-ranging powers of stop and search. After the new law came into force, cases of police brutality were also reported in the context of the routine identity checks permitted in the new law... Fatal shootings of civilians by members of the security forces remain a serious concern. Although police typically state that the killing occurred because the individual has failed to obey a warning to stop, in some cases these may amount to extrajudicial executions.

66. The Tribunal accepts that when the applicant was detained by the security forces in Turkey that he was be ill-treated and that this ill-treatment amounted to serious harm. The Tribunal finds that the applicant has been persecuted in the past and there is a real chance that the applicant would be persecuted in the reasonably foreseeable future if he returned to Turkey and that his fear of persecution is well-founded.
67. The reason why the applicant would be detained and questioned was due to the cumulative effect of his Kurdish ethnicity, his political opinions namely his participation in DTP activities and membership of a particular social group of persons whose family members are connected to the PKK. The meaning of the expression ‘for reasons of ... membership of a particular social group’ was considered by the High Court in *Applicant A’s* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the

first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

68. Whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group. Based on the country information that makes reference to persons who are family members of the PKK the Tribunal accepts that this is a particular social group in Turkish society.
69. The Tribunal accepts that the applicant fears persecution for reasons of the combination of three Convention grounds. The Tribunal has considered whether it would be possible for the applicant to relocate to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. However as the applicant fears the Turkish authorities, and the country information indicates that the risks are higher in other parts of Turkey such as the East, the Tribunal finds that it would not be reasonable for him to relocate to avoid the risk of persecution. The applicant fear of persecution is well-founded and for a Convention reason therefore he is a refugee within the meaning of the Convention.

CONCLUSIONS

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

DECISION

71. 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's I.D. lward