

Heard at Field House
On 12 May 2003
[2003] UKIAT 00034 ACDOG (Turkey)

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
28.07.03

Before:

Mr D K Allen (Chairman)
Mrs J A J C Gleeson
Mr A R Mackey

DETERMINATION AND REASONS

1. These appeals, which all concern the risk on return to Turkey of Kurds who are or may be suspected separatists, have been listed together in order to enable the Tribunal to provide guidance to Adjudicators on the proper approach to be taken in such cases.
2. It was agreed at the hearing that the names of the claimants would be anonymised, a practice which is now standard for reported IAT decisions. The claimants as we shall refer to them, in D, G and O, were represented by Mr Grieves instructed respectively in those cases by Sheikh & Co, Howe & Co and Trott & Gentry. The claimant in A was represented by Mr Taghavi, instructed by Birnberg Pierce & Partners, and the claimant in C was represented by Mr Huffer, instructed by Dicksons HMB Solicitors. In all cases the Secretary of State was represented by Mr Deller. The Secretary of State appealed in A, C and G and is the respondent in D and O. We have thus avoided the terms "Appellant" and "Respondent" to overcome confusion.
3. We are grateful to Mr Grieves who produced a consolidated general skeleton argument described as a country material summary which was relevant for the three claimants whom he represented. Mr Taghavi and Mr Huffer were happy to adopt the argument and the points set out in that summary, subject to several points made by Mr Taghavi to which we shall refer below. There was a great deal of objective evidence before the Tribunal, and we adopt the helpful suggestion of Mr Taghavi of providing at the end of our determination an index of all the evidence that was before us. As will be seen from our determination we derived particular

help from certain pieces of evidence and to which we have found it appropriate to go into greater detail than with others.

4. The proposed structure of this determination is to provide a general assessment of the objective evidence under various headings, including our suggestions as to appropriate guidelines to be borne in mind by Adjudicators in assessing this type of case. Thereafter we shall apply our analysis to the facts of the particular cases before us. In this regard we heard first of all very full submissions from Mr Grieves picking up points from his skeleton argument. We then received submissions from Mr Deller who sought only to rely on the April 2003 CIPU report. Mr Deller very helpfully indicated those matters upon which there was common ground between him and the claimants' representatives, and as will be seen there was a good deal of ground common to them all. Subsequently we heard submissions from Mr Taghavi based essentially but not exclusively on his skeleton argument, and we also then heard submissions from Mr Huffer.

Overview of Current Situation

5. We begin our determination with a brief comment on the current situation in Turkey at the date of the Tribunal hearing on 12 May 2003. It is clear to us that the current situation in Turkey is volatile. The war in Iraq has raised concerns in Turkey that moves for separatism may be exacerbated by the downfall of the Ba'ath regime in Iraq. It is relevant to note, as is pointed out at page 125 of the Netherlands Delegation Report to CIREA, (NDR) entitled "Official General Report on Turkey (January 2002), that a determining factor in the position of Kurds in Turkey is the government's concept of state and society. The point is made also in that report that the Turkish government views Kurdish nationalist aspirations as a threat to the indivisibility of the unified state and as causing a rift between Turkish citizens on grounds of ethnicity. Kurdish origin, as a basis for recognition as a separate ethnic group, is considered incompatible with the basic concept of the Turkish state. Support for the Kurdish cause is a criminal offence under Articles 124, 168, 169 and 312 of the Criminal Code or Articles 6, 7 and 8 of the Anti-Terror Law, depending upon the type of support.
6. The NDR is a report upon which a good deal of reliance is placed on the relevant sections of the April 2003 CIPU report. It is clearly a report which deserves attention. The point is made at page 5 of that report, which is to be found in the bundle in G, that the NDR report has made use of a wide variety of sources including on the spot conversations and findings and reports obtained from the Netherlands Embassy in Ankara and the Netherlands Consulate General in Istanbul which consulted a network of contacts for this purpose, and also a variety of international sources including the UNHCR, the European Commission and the Council of Europe and

also NGOs such as Amnesty International, Human Rights Watch and also the Turkish human rights organisations IHTHV and Mazlum-Der. It is we think common ground between the representatives that being of Kurdish ethnicity in and of itself does not lead to a risk of persecution but that it may well be a factor depending upon other factors also which may give rise to persecution. We shall return to this factor subsequently. For now we consider that it is worth making the point that we are determining these appeals in this somewhat volatile context, and the particularly significant aspect of this which again we shall deal with in more detail subsequently is the recent outlawing of HADEP by the Constitutional Court. This was done on the basis that it was closely linked to Kurdish rebels and therefore, as we shall describe subsequently, may arguably increase the risk of HADEP members or supporters being associated with the PKK. This is clearly a relevant factor in assessing risk on return. HADEP's successor is DEHAP, which is currently a legal organisation. However, the EU has expressed concern about the banning of HADEP and the not unlinked application by the Turkish Senior Prosecutor to close DEHAP also. This has clear relevance to the climate on return and therefore must be borne in mind as an aspect of the evidence concerning whether or not a person has shown a well-founded fear of persecution or real risk of their human rights being breached on return to Turkey. Whether or not this heightened state of risk will continue is certainly not a matter which we can predict and indeed do not have to since we are concerned with the situation as at the date of the Tribunal hearing.

Torture in Turkey

7. The background evidence is that torture continues to be endemic in Turkey. Thus we find the following in the US State Department report for 2003 at pages 1-2:

"Security forces continued to commit unlawful killings, including deaths due to excessive use of force and torture. Torture, beatings and other abuses by security forces remained widespread, although the number of reported cases declined. There were reports that police and Jandarma often employed torture and abused detainees during incommunicado detention and interrogation. The lack of universal and immediate access to an attorney, long detention periods for those held for political crimes, and a culture of impunity were major factors in the commission of torture by police and security forces. The rarity of convictions and the light sentences imposed on police and other security officials for killings and torture continued to foster a climate of impunity. Prison conditions remained poor, despite some improvements."

8. Again, at paragraph 6.1 of the April 2003 CIPU report (this is the current report and the one to which we shall refer) the following is stated:

“There have been numerous reports by human rights organisations of systematic use of torture by security forces, deaths in police custody, disappearances and extra-judicial executions.”

At paragraph 6.2 is recorded the view of the UN’s Special Rapporteur following a visit to Turkey in 1998 that the practice of torture in numerous places around the country might well deserve the categorisation of systematic in the sense of being a pervasive technique of law enforcement agencies for the purpose of investigation, securing confessions and intimidation. The comment was made at paragraph 56 of the determination of the Tribunal in Hayser [2002] UKIAT 07083 that the only improvement is some indications in some cases that the authorities are using methods of torture which are less likely to leave visible marks, and we rather agree with Mr Taghavi that it is difficult to see this as an improvement and in some respects it might indeed be regarded as a deterioration given the apparent awareness on the part of the authorities in concealing the marks of torture as a desirable development.

Recent Human Rights Developments in Turkey

9. In April 1987 Turkey made formal application to become a full member of the European Community. In December 1999 Turkey was given official status as a candidate for European Union membership. As regards the political and economic programme which Turkey would have to adopt as an EU candidate, the EU leaders made specific mention of the need for Turkey to improve its record on human rights. This point is noted at paragraph 4.37 of the CIPU report.
10. On 3 October 2001 Turkey completed a significant legislative overhaul when the Parliament approved a package of 34 amendments to the Constitution designed to pave the way for EU membership. These amendments, which ranged from easing restrictions on using the Kurdish language, reducing maximum detention periods for suspects before they are charged and making it harder to ban political parties, represented the most significant amendment to Turkey’s Constitution since it was drafted after the 1980 military coup. On 3 August 2002 the Parliament formally approved a package of key democratic reforms designed to improve Turkey’s chances of EU membership. This included such matters as an end to the death penalty in peace time, and TV and radio broadcasts being allowed in languages other than Turkish, but

not in contravention of principles of national security laid out in the Constitution. This change allowed for broadcasts in Kurdish. Kurdish dialects are to be taught in special courses at private schools under the regulation of the Ministry of Education, and there is an easing of restrictions on public demonstrations and association, allowing 48-hour notification to the authorities and an end to penalties for written, vocal or pictorial criticism of state institutions including the armed forces. This package was welcomed by the European Commission as an important sign of the determination of the majority of Turkey's political leaders to align Turkey further with the values and standards of the European Union.

11. In its October 2002 report "Regular Report on Turkey's Progress Towards Accession", the European Commission in welcoming the reforms, nevertheless concluded that Turkey does not fully meet the political criteria for EU membership for reasons including a number of important issues arising under the political criteria which were yet to be adequately addressed, these including the fight against torture and ill treatment, the situation of persons in prison for expressing non-violent opinions and compliance with the decisions of the European Court of Human Rights. It is the case that the state of emergency as it existed in various provinces of Turkey for some time has now been lifted.
12. In this regard we return to the concerns expressed by the EU Presidency concerning the closure of HADEP and the apparent intention to secure the closure of DEHAP. The EU stated that it would examine both developments in depth and reiterated the fundamental importance it attached to democratic pluralism and to the freedom of expression and political opinion. Mr Grieves cited a Reuters report suggesting that the proposed ban, together with other matters such as the collapse of the UN brokered Cyprus talks which led to a severe warning issued to Turkey by the EU Commission that it could be called an "occupier" in Cyprus which is due to be an EU territory soon, and also the conclusion of the European Court of Human Rights that Abdullah Ocalan, the leader of the PKK had not been given a fair trial, together seriously hampered prospects of Turkey becoming an EU member in the future. We note that a Human Rights Watch Report mentioned at paragraph 4.45 of the CIPU report states that although there had been more substantial human rights improvements than in any years since the 1990 coup, there were two areas in particular where Turkey still had to act in order to demonstrate that it had broken with its history of human rights abuses, torture and freedom of expression.
13. From this we conclude that there have been some steps in the right direction in improving human rights in Turkey, though we consider there is some force in the point made by Mr Grieves before us and in

his skeleton argument at paragraph 105 that there have been no significant signs of implementation of the reforms which have led to a benefit to individuals potentially at risk.

14. A further point made by Mr Grieves in this regard is the extent to which the proposals on minority language rights signal some improvement in the situation for Kurds. Until 1991 the use of Kurdish was totally prohibited, and thereafter, though it was no longer prohibited, Turkish was to be the only official language. The point is made by Mr Grieves that though the reform package has opened up the possibility of teaching the Kurdish language at private institutions it does not ensure that Kurdish becomes part of any national curriculum or an optional subject at state schools or that subjects can be taught through Kurdish. We note from page 31 of the State Department report that by the end of the year there were in fact no such private courses teaching Kurdish and other non-Turkish languages in fact operating. It is said that demand for private Kurdish courses was limited, and Kurdish rights advocates argued that the regulations placed prohibitive costs by requiring that Kurdish courses be established in separate institutions rather than added to existing language schools. The point is made that in November the government adopted regulations designed to allow under tight restrictions broadcasts in Kurdish and other non-Turkish languages but that no Kurdish language television broadcasts, radio programmes or courses were in place at year's end. The point is also made that the Ministry of Education tightly controls the curriculum in schools. In his submissions Mr Deller very fairly accepted that the assertions that were made about progress and recognition of the right to use the Kurdish language had to be treated with caution. We think that this is an accurate summary of the situation. It can at least be noted that a start has been made, but progress is indeed slow.

PKK/KADEK

15. PKK (Kurdistan Workers Party) was founded in November 1978. We take our description of it from the helpful summary contained in an appendix to the CIPU report. PKK advocates armed struggle both at home and abroad in order to achieve an independent Kurdish state. Its armed operations in south eastern Turkey, which commenced in 1984 and peaked in the years 1990 to 1994, involved attacks on civilians including in many cases Kurds, and military targets and caused a large number of deaths. PKK was guilty of human rights violations including murders especially in rural parts of the south east but also in other areas. From the outset the Turkish army took tough action against the PKK. In February 1999 Abdullah Ocalan, the leader of the PKK, was captured by the Turkish authorities, tried and convicted of treason and sentenced to death. In July 1999 the PKK declared a universal ceasefire, and in August

1999 Mr Ocalan made a statement calling on the PKK to end the armed struggle and withdraw its forces outside the borders for the sake of peace. It seems from figures provided by the Turkish Army High Command in May 2000 that only five hundred out of five thousand five hundred PKK fighters remained at that time in Turkey. The number of armed clashes diminished significantly in the early part of 2000, and there were few armed clashes in 2001 and an absence of PKK violence in 2002.

16. In April 2002 the PKK announced that it had ceased activities and had regrouped as KADEK, the Kurdistan Freedom and Democracy Congress. The Deputy Prime Minister stated that if former PKK members who were involved in unlawful activities in the past continued to be active within the same organisation, all the restrictive decisions and measures that had applied to the PKK must also apply to the new organisation. He stated that those who had been involved in terrorism in the past should definitely be brought to justice.
17. Clearly there is a potential relevance in the decision by the PKK to renounce violence and work towards a peaceful solution to the question of Kurdish rights. However it is stated at 6.184 of the CIPU report that there has been no change in the Turkish authorities' attitude towards the PKK since it withdrew its fighters outside Turkey's borders, altered its objectives and renounced violence. It is said that, like members of militant left wing or Islamist organisations, PKK members still face criminal prosecution by the authorities. The point is also made at paragraph 6.188 that people known to have or suspected of having one or more family members in the PKK can expect some attention from the authorities. This will depend upon a number of factors including the degree of kinship and suspected position of their relative within the PKK and varying degrees of intimidation and harassment and other similar problems can be anticipated. That having been said, the point is also made that countless people in Turkey who have one or more relatives in the PKK will not experience significant problems with the authorities as a result. It would seem from this, and we did not understand that Mr Deller disagreed, that there has been no practical change in the attitudes of the Turkish authorities to KADEK from their attitude to the PKK.

HADEP/DEHAP

18. HADEP (The Peoples' Democracy Party) was founded in 1994. It was a successor to the successively banned AGP, DEP and OZDEP. It is described in the Dutch report, to which we have referred above, as having around 60,000 members and as drawing support mainly from among Kurds. HADEP campaigns for greater cultural rights for Kurds and a peaceful solution to the Kurdish issue and is described as

having kept to that position by never resorting to violence. It is said to be viewed by the Turkish authorities as the PKK's political wing and as a consequence they view it with suspicion. It is said that HADEP has no direct ties with the PKK but relies largely on the same supporters.

19. As we have noted above, HADEP was banned by the Constitutional Court in March 2003 on the grounds that it aided and abetted the PKK. DEHAP (The Democratic Peoples' Party) which was founded in 1997 claims not to be solely a Kurdish party but to be a party of Turkey. It is said in Annex B to the CIPU report that in early September 2002 HADEP, DEP and SDP (Socialist Democracy Party) decided to unite under the roof of DEHAP at the general election in November 2002. DEHAP has not been banned, but, as is noted above, the Public Prosecutor has filed a case to close DEHAP also, accusing it of becoming a faction contravening the principles of equality and an illegal state within the Democratic Republic. We note that in the November 2002 general election DEHAP claimed 6.2% of the vote but failed to win a seat in the Grand National Assembly of Turkey.

20. On page 25 of the US State Department report 2003 we find the following:

"HADEP/DEHAP leaders said state harassment of the party has continued to decline gradually through the past few years, following a steep reduction in PKK related conflict. They said the party was able to operate more freely in the November Parliamentary elections than in the previous election in 1999. However, throughout the year, police raided dozens of HADEP offices, particularly in the south east, and had detained hundreds of HADEP officials and members. DEHAP and HADEP members were regularly harassed by Jandarma and security officials, including verbal threats, arbitrary arrests at rallies and detention at checkpoints. The security forces also readily harassed villages they believed were sympathetic to HADEP/DEHAP. Most detainees were released within a short period, many faced trials, usually for "supporting an illegal organisation", "inciting separatism", or for violations of the law on meetings and demonstrations."

21. In G's bundle at page 706 and thereafter there is a report of the Turkish Human Rights Association of March 2003. The major activities of the Human Rights Association are described at paragraph 6.208 of the CIPU report. These are to collect and verify information on human rights violations and it publishes monthly reports and press releases on arrests, torture, disappearances in custody, violation of the right to freedom of expression. It has financial support from EU

member states in organising courses for teachers and lawyers which also cover local procedures for the right of individual petition. There is a strong Kurdish current within the HRA. It is regularly harassed and obstructed by the authorities, and in recent years some of its regional offices have temporarily been shut down and criminal proceedings brought against various HRA workers for separatist propaganda or support for illegal organisations.

Risk on Return

22. Mr Grieves took us to various examples set out in the report covering the months January to March 2003. This lists a number of instances of arrests of DEHAP members and imprisonment including young members, detention of the DEHAP secretary and DEHAP executive members including arrests on the basis of attending unauthorised Newroz celebrations and attending DEHAP district party buildings. There is a report of Mr Yoruk, a doctoral student at the University of Essex who has worked as a reporter for the Turkish Daily News in Istanbul between 1995 and 1997. He cites examples of detention and ill treatment of HADEP and DEHAP members and supporters in the first three months of 2003. It is not clear what the sources of this information are, given that it does not appear from his report that he has been in Turkey since 1997, but what he states appears to be broadly consistent with what is to be found in the Human Rights Association documentation.

23. With these background matters in mind we move on to consider the specific situation of risk on return to Turkey. Mr Grieves argued that this was the essential point at which if problems were going to occur they would occur. He based this upon the existence of the central information system usually abbreviated as GBTS which is available to the Turkish state. This is described at paragraph 5.62 of the CIPU report. It is said that the system stores various personal data, including information on outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion or refusal to perform military service and tax arrears. Sentences which have been served are in principle removed from the system and entered into the national accessible Judicial Records. In the light of this we move on to consider further points contained in CIPU report concerning treatment of returned asylum seekers. Paragraph 6.91 of the report states as follows:

“6.91. The criminal records of Turkish-Kurdish asylum seekers who are returned to Turkey are checked on entry just like those of other Turkish nationals. The records may concern criminal convictions by a Turkish court, but can also be related to official judicial preliminary enquiries or investigations by the police or Jandarma. Draft evaders and deserters are also on record at the border posts.

6.92. If a person is found to have a criminal record or incorrect border-crossing documents, to have left Turkey illegally in the past or been expelled from another country, the Turkish border authorities often interrogate the person concerned. Questioning is often intended to establish or check personal particulars, reasons for and time of departure from Turkey, grounds for seeking asylum, reasons why the application was rejected, any criminal records at home and abroad, including (drug related) offences and possible contacts with illegal organisations abroad. If, however, there is no definite suspicion, as a rule the person is released after an average 6 to 9 hours detention.

6.93. Anyone suspected of having committed criminal offences is transferred to the relevant investigative authority. In Istanbul this is generally the police headquarters which is located in Bakirkoy, not far from the airport. Persons suspected of membership of the PKK, left wing radical organisations such as the DHKP/C or TKP/ML, militant Islamic groups or anyone suspected of giving support or shelter to one of those organisations is handed over the Anti-Terror Branch, which is housed at the police headquarters mentioned above. Torture or ill treatment of suspects at the police Anti-Terror Branch cannot be ruled out."

These paragraphs are essentially borrowed from the Dutch report which we have quoted above in other contexts. They are clearly of significance to the assessment of risk on return. Of further relevance are two other paragraphs in this section of the report:

"6.99. Turkey does not at present accept the removal to Turkey of Turks using EU letters (which are standard format travel identity documents adopted by the General Secretary from the Council of the EU in its recommendation of 13 November 1994), and Turks who are without passports are therefore returned on one-way emergency travel documents which are issued by the Turkish Consul General in London.

6.100. A returnee without a valid Turkish travel document is likely to be given an in-depth questioning by the Turkish border police, and this is to be distinguished from the routine identity check on arrival. The German authorities stated in July 1999 that, as a rule, the questioning refers to personal data, date of and reasons for departing Turkey, possible criminal record in Germany and contacts with illegal Turkish organisations. In some cases further enquiries will be made via other offices (e.g. Prosecutor's office, Registrar's office at the last Turkish

residence of the returnee) in order to find out if the returnee is liable to prosecution for a criminal offence. These enquiries can take from several hours to several days, during which time the returnee will be kept in custody. The German authorities advised that available information as of July 1999 indicated that undocumented returnees were generally not being maltreated while being kept in custody. However ill treatment could not be ruled out in cases where returnees are suspected separatists. UNHCR's view is that any political profile and not simply PKK creates risk. The Swiss authorities took the view in June 1999 that nothing can be completely excluded or assumed from the start; it depends on the individual case."

Elsewhere the point is emphasised that everything depends on the individual and his activities in Turkey and abroad, and being of Kurdish origin does not in itself constitute a higher risk of inhuman treatment.

24. It should also be borne in mind that there is no organisation that specifically monitors returnees. There is some evidence, of somewhat anecdotal nature on this, and we shall subsequently refer to extracts of a report from Proasyl put in by Mr Grieves.
25. In the light of this evidence, Mr Deller very helpfully made it clear that he accepted that the computer system exists as recorded and that interrogations at the border take place. He also accepted that if there was reason for a person to get into the hands of the Anti-Terror Branch then there was a risk of torture. Of particular relevance in this regard therefore as concerns risk on return is paragraph 6.93 of the CIPU report, which we have set out above.
26. A point that was rightly emphasised before us is the significance of suspicion of involvement with a separatist organisation. Suspicion may arise not purely on the basis of membership or of prominence in a separatist or other disapproved organisation, but may extend to risk on account of suspicion. In this context it is of some interest to note the Proasyl report to which we have referred above. It seems that from early 1998 the Refugees Council of Lower Saxony and Proasyl have begun to collect circulating reports on arrests and abuses affecting refugees expelled or deported from Germany. Most of these cases were researched in close cooperation with the Turkish Human Rights Group IHD and with pro bono lawyers. It is said that in many cases it has been possible to establish contact with the affected person and where the matters came to court to obtain access to the court files. A few examples of this are documented in the bundle. The problem that we have with these is that there is no indication as to the history of the particular people in Turkey prior to

their going to Germany and subsequently being returned to Turkey. For example the first case is a case of Kemal O who was deported with his family in February 1998. Following 8 hours of checks at the airport he was initially set free and after his release opened a tea shop and appears to have experienced no problems beyond harassment of the customers and searching. Because of these matters, however, the customers ceased to come to the shop and the shop had to be closed in early 2000 and he then returned to his village. After some two weeks he was arrested in the fields and interrogated and tortured and accused firstly of having joined the guerrillas and secondly of having worked for the PKK in Germany. He is therefore somebody who did not experience a problem on immediate return but subsequently. We do not know what his history was, but it appears that he was not persecuted or treated in breach of his Article 3 rights on immediate return to Turkey.

27. The same cannot be said of the next case, that of Hakkant who on return to Turkey was accused of having been sentenced in Germany for acting for the PKK which it seems on the limited information may have been the case, and who was subsequently taken to the Anti-Terror Department where he was interrogated and tortured. The next three cases all involve people who in two cases after two days of questioning at the airport and in the other after three days, were released and experienced problems subsequently. Again it does not appear that they were persecuted or suffered ill treatment in breach of their human rights while at the airport and experienced problems subsequently. Again the problem is that we do not know what their history in Turkey was. These examples also sit somewhat inconveniently with the arguments generally accepted before us that in light of the extensive and effective computer system operating in Turkey that a person's history would be obtained either from the central computer or by information being obtained from their own local area, to enable the authorities to come to a view concerning them. In at least some of these cases returnees were initially able to get through the airport and only experienced problems subsequently. The main difficulties with these examples is that in the absence of clear information and evidence about their background in Turkey it is difficult to see what assistance we can derive from these examples in providing guidelines on the assessment of risk on return in the cases before us.
28. The representatives before us urged on us a unitary approach to the kind of guidelines that might be thought to be appropriate. Mr Deller cautioned us against providing anything that might be interpreted as being a list, in that on the one hand it was at risk of being treated as a checklist by Adjudicators rather than as a series of factors to be considered in the round, and that on the other hand

it risked tempting claimants to tailor their stories to factors which were regarded as being relevant. We bear in mind these cautions.

Polat & Hayser

29. In this regard it is worthwhile our reviewing some of the matters raised in two particular determinations of the Tribunal which in some respects led to these five cases being listed for consideration by a legal panel of the Tribunal. The first of these is Polat [2002] UKIAT 04332.
30. There the Tribunal bore in mind the UNHCR letter of March 1999 which appears to represent the UNHCR view today, that those most likely to be exposed to harassment/ prosecution/ persecution are Kurds suspected of being connected to or being sympathisers of the PKK, and it is essential to find out if Turkish asylum seekers if returned would be at risk of being suspected of connections to or sympathy with the PKK or otherwise have a political profile.
31. Various factors were thought to indicate that mistreatment at the point of return is a limited phenomenon. The first of these is the comment reported by a senior official at the Department of the Ministry of Foreign Affairs who said in March 2001 that the Turkish government now recognise the overwhelming number of Turkish nationals who had applied for asylum overseas had done so for purely economic reasons and were not of any interest to the Turkish government and would not be imprisoned on return.
32. We find ourselves in agreement with the view expressed to us in submissions that one would hardly expect the Turkish government's representative to admit to ill treatment of its nationals on return. Thus in our view limited weight only can be afforded to this.
33. The next point made by the Tribunal in Polat was that such statistics as there are do not indicate that mistreatment of returnees is a serious problem in quantitative terms. In this regard we find ourselves in agreement with the comment of Mr Grieves that it is important to bear in mind that if the state determining status outside Turkey has done its job properly, then the person being returned should not face a real risk of persecution or breach of their human rights. As a consequence one would not expect there to be many cases of ill treatment assuming that the process of determining their applications and appeals in the countries to which they had fled had been done properly.
34. The third point made by the Tribunal in Polat in this context can be encapsulated in the view that the authorities are less concerned about prospective separatists now in the light of the PKK's decision to cease the armed struggle in 1999. We have set out above our

comments on that and indeed consider that there is little if any difference in the attitude of the authorities to the PKK (now KADEP) subsequent to the ending of the use of violence proclaimed on the part of the PKK. In this regard we also note the point made by Mr Grieves concerning the declaration in February 2003 of the PKK to undertake a defensive war, as it describes it, against Turkey on the basis of the failure to push forward the reform process to enhance fundamental human rights of Kurds and the enforced isolation of Ocalan. We agree with Mr Grieves' conclusion that the Turkish authorities are likely to see this as an enhanced threat.

35. The next point made in Polat is that the evidence of actions taken against those involved in separatist organisations such as the PKK and HADEP increasingly indicates that the principal risk of persecution is to those who are prominent members. It goes on to state that the main focus of police raids and detentions and prosecutions has been against prominent PKK and HADEP officials or supporters. While that point appears to be right, we do not consider that it can properly be said to preclude the evidence which we have considered above concerning ill treatment of members of HADEP who do not have a level of prominence. Much depends on the circumstances, but it is not in our view right to say that the risk is only to prominent members of those organisations.
36. The final point considered as relevant in showing mistreatment at the point of return is a limited phenomenon is the evidence from UNHCR, based on its own dealings with returnees from Iraq, that as a category they are not subjected to persecution upon return to Turkey. Though we consider that that must also be a factor placed into the balance, we do not consider that it has much weight based as it is upon a very limited category of returnees.
37. The Tribunal in Polat went on to conclude that there remained a real risk that persons considered to be "suspected separatists" will continue to face ill treatment at the point of return. It went on however to conclude that it was not reasonably likely that the authorities would include in that category all persons who have a record of involvement in separatist organisations irrespective of the degree and nature of that involvement.
38. Various "guidelines" were set out in Polat as factors which were relevant to consideration in determining the question whether or not the authorities would ill treat a returnee with some record of involvement in a separatist organisation. Having set these factors out the Tribunal concluded that it was satisfied that a Turkish appellant of Kurdish origin could not succeed unless he could show, by reference to factors of this kind, something more than that the

authorities would have a record of his involvement in or sympathy for a separatist organisation.

39. The Tribunal in Hayser, to which we have referred above, drew certain general conclusions from the objective evidence which led it to propose a modified series of "guidelines" to those set out in Polat.

General Conclusions on Factors Relevant to Risk

40. We consider that it may be helpful if we set out our own general conclusions before moving on to suggest ourselves the kind of factors that can properly and relevantly be taken into account by an Adjudicator or other Tribunal assessing risk in this kind of case. Before doing so however we make some general observations which are to a large extent based upon points made to us by Mr Deller in his helpful submissions. They are of general application to the determination of appeals in this jurisdiction, but are of particular relevance to the issues with which we are faced in these appeals, given their complexity. The factors to be taken into account in assessing risk on return have to be taken together with the question of whether or not there is a well-founded fear of persecution. It cannot be over-emphasised that the appeal is based upon whether a person who is a refugee will in fact be refouled. It is of paramount importance to the fact finder to look at the facts as put forward and determine whether they are true and whether they are relevant in coming to a decision. That is, as in all assessments, the fundamental issue is: objectively, and as relevant only subjectively, on the facts as found, does the Appellant have a well-founded fear of persecution (or real risk of a breach of an ECHR right) on return. Then, of course, the Refugee Convention nexus, if any, must be assessed.
41. In the Turkish situation this will begin with the usual assessment of the truthfulness, or otherwise, of the Appellant's story and then it will be necessary to make an assessment of what matters would be recorded on the computer to which the authorities would have access and whether such matters could arouse suspicions that the person was political, and that even if they got through the airport would this happen to them again. The fact finder will have to decide what is likely to be on record and consider the story very carefully and assess such matters as whether there were detentions, if so what circumstances led to them, what the circumstances were during them and in what circumstances did they end and what happened subsequent to the detentions. Such other matters as the manner of the arrest and anything said by the authorities during detention may also be of relevance. Again if such issues as a claimed fear on account of being related to a separatist or separatists are part of the claim then it will be necessary to

determine how it was that the authorities knew about this, if they did indeed know about it, and whether they would have any interest subsequently in this. All the circumstances of consequence are to be taken into consideration. Overall there is the need to decide which parts of a story are material and what is the core of the story. A particular factor drawn to our attention by Mr Deller was the question of failure to claim asylum en route and its implications for credibility which, he accepted, in the light of Adimi has largely fallen into disrepute. He made however the very proper point that a careful assessment of the facts and the claim may indicate an inconsistency between the claim that the person in question was ill-informed and nervous on the one hand and on the other had a sophisticated knowledge of which countries do and which do not take asylum seekers from outside Europe. Given that the heart of the question in cases such as this is whether the Turkish authorities suspect the claimant of separatist tendencies, it is important to determine such matters as how it is that they suspect that person and how it is that they suspect them of being a separatist as relevant issues. It will be necessary to consider to what degree of certainty a suspicion of separatist tendencies has to be held and recorded. The fact that something is plausible or possible does not mean that it is true. We have borne in mind ourselves these general cautions as well as urging them upon fact finders in future appeals.

42. It will be clear from our assessment of the general issues above that we agree that there is a real risk that any history a person has of previous arrests, outstanding arrest warrants, criminal records or judicial preliminary enquiries or investigations by the police or Jandarma will be contained on the GBTS computer system. The typical returned Turkish asylum seeker will be travelling either on no documents or one-way emergency travel documents which we accept may place the authorities on notice that they return as someone who has sought asylum and has been unsuccessful. If however the claimant holds a current valid Turkish passport it is significantly less likely that this perception will arise.
43. Assuming possession of only a temporary travel document, it is likely that the returnee will be detained for interrogation at the point of entry while enquiries are carried out by them because they are identified as being a failed asylum seeker who may therefore have a history, or if the GBTS computer records reveal information regarded as relevant.
44. The evidence from paragraph 6.92 of the CIPU report, based on the Dutch report, is that the kind of questioning carried out at this stage would often be intended to establish or check personal particulars and matters such as reasons for and time of departure from Turkey, grounds for seeking asylum and reasons why the application was

rejected and any criminal record and possible contacts with illegal organisations abroad. It is said that if there is no definite suspicion then as a rule the person is released after an average of 6 to 9 hours detention. Given the ways of the Turkish authorities, ill treatment at this stage cannot be ruled out. We do not consider however that the evidence shows that such ill treatment would be such as to be likely to be persecutory or to give rise to maltreatment in breach of the person's human rights. We disagree with the submission of Mr Taghavi in this regard. Such reports as the Proasyl reports to which we have referred above where persons were held for a few hours and released without any indication of ill treatment, particularly nothing giving rise to Article 3 ill treatment, are of relevance. We bear in mind the point made by Mr Taghavi concerning the difference between the kind of treatment involved in persecution and Article 3, but even if that is right, we do not consider that the evidence bears out the contention that detention during this period of interrogation would be such as to give rise to breach of a person's human rights.

45. More serious issues arise in the case of persons who, as is recorded in paragraph 6.93 of the CIPU report, are suspected of membership of the PKK, left wing radical organisations such as the DHKP/CRTKP/ML, militant Islamic groups, or anyone suspected of giving support or shelter to one of those organisations. Such persons are handed over to the Anti-Terror Branch, and it was common ground before us that in those circumstances they would face a real risk of persecution or breach of their human rights.
46. This leaves unclear the basis upon which a person would be suspected of such membership or such support or shelter. It is essential therefore to identify the kind of criteria which on a proper view of the objective evidence and on a commonsense view are likely to be regarded as of relevance in determining the degree of risk in any particular case. It should be borne in mind that none of the factors which we set out below can be said to be necessarily of greater or less weight than of any of the others. We agree with the Tribunal in Hayser that there is no minimum number of factors which has to be satisfied before an individual comes under suspicion. The assessment is a cumulative one but not all factors will be of equal significance. It may be that in a particular case one factor alone is sufficiently weighty for it to be properly concluded that the individual concerned is at risk on return. We remind fact finders of the points that we have set out above concerning the importance of careful and thorough scrutiny of the evidence and for a clear statement in the determination of the facts that are found, those that are not, and then the kind of issues and factors that must be properly assessed. In this regard it is important to bear in mind the problems faced by Adjudicators hearing asylum appeals when they

do not have the benefit of assistance by a representative acting on behalf of the Secretary of State. In what is essentially an accusatorial system, the Adjudicator is all too frequently placed in a near impossible situation on the one hand in avoiding descending into the arena and on the other hand wishing to have the evidence properly tested in order for proper findings of fact to be made. We urge on the Secretary of State the importance of ensuring that as far as possible he is represented at all appeals before Adjudicators in order that a proper assessment of the evidence can be made and proper findings of fact made.

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

- a) The level if any of the appellant's known or suspected involvement with a separatist organisation. Together with this must be assessed the basis upon which it is contended that the authorities knew of or might suspect such involvement.
- b) Whether the appellant has ever been arrested or detained and if so in what circumstances. In this context it may be relevant to note how long ago such arrests or detentions took place, if it is the case that there appears to be no causal connection between them and the claimant's departure from Turkey, but otherwise it may be a factor of no particular significance.
- c) Whether the circumstances of the appellant's past arrest(s) and detention(s) (if any) indicate that the authorities did in fact view him or her as a suspected separatist.
- d) Whether the appellant was charged or placed on reporting conditions or now faces charges.
- e) The degree of ill treatment to which the appellant was subjected in the past.
- f) Whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP.
- g) How long a period elapsed between the appellant's last arrest and detention and his or her departure from Turkey. In this regard it may of course be relevant to consider the evidence if any concerning what the appellant was in fact doing between the time of the last arrest and detention and departure from Turkey. It is a factor that is only likely to be of any particular relevance if there is a reasonably lengthy

period between the two events without any ongoing problems being experienced on the part of the appellant from the authorities.

- h) Whether in the period after the appellant's last arrest there is any evidence that he or she was kept under surveillance or monitored by the authorities.
 - i) Kurdish ethnicity.
 - j) Alevi faith.
 - k) Lack of a current up-to-date Turkish passport.
 - l) Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the appellant since he or she left Turkey.
 - m) Whether the appellant became an informer or was asked to become one.
 - n) Actual perceived political activities abroad in connection with a separatist organisation.
 - o) If the returnee is a military draft evader there will be some logical impact on his profile to those assessing him on his immediate return. Following Sepet of course this alone is not a basis for a refugee or human rights claim.
47. We cannot emphasise too strongly the importance of avoiding treating these factors as some kind of checklist. Assessment of the claim must be in the round bearing in mind the matters set out above as a consequence of a careful scrutiny and assessment of the evidence. The central issue as always is the question of the real risk on return of ill treatment amounting to persecution or breach of a person's Article 3 rights. The existing political and human rights context overall is also a matter of significance as will be seen from our assessment of the particular appeals in our determinations of those below. The particular circumstances that prevail today may not be in existence in 6 months time for all we know. In this regard we note that there still appears to be no procedure in this country to consider cessation of refugee status, as is provided for in Article 1C of the 1951 Convention. The "immigration" decision to grant indefinite leave to remain that is adopted appears in virtually all cases where refugee status is determined, appears to pre-empt such an approach. We note this point, if only to stress that the concept of surrogate protection under the Refugee Convention is envisaged as a temporary protection (safe haven) during a time of risk, not necessarily a permanent immigration status. This is of course

a matter for the Secretary of State and not for us, but we consider that it is a point well worth bearing in mind given the particular factors that have developed in Turkey in the last three months or so which may give rise to particular risk in particular circumstances which might not have existed before that time.

Assessment of the Individual Cases

48. We now turn to the assessment of the factual situation of each individual claimant set against our above findings and the specific submissions made by their representatives and Mr Deller to us at the hearing.

Claimant 'A'

49. This was a Secretary of State appeal where the grounds were that the Adjudicator had failed to show how the claimant fell within the ambit of Polat and that the Adjudicator also had failed to take into account the authority of Sepet and Bulbul. In the determination of the Adjudicator promulgated 6 December 2002 it was noted that 'A' was an Alevi Kurd from the district of 'E' in South East Turkey. He had three brothers, one of whom has indefinite leave to remain in the United Kingdom as a refugee and the other two remain in Turkey. (One of them is in hiding with the PKK). The parents also remain in Turkey. He arrived in the United Kingdom in late 2001. His claim was that his family were perceived as being involved with the PKK and the claimant himself was a well known HADEP supporter. The Adjudicator found his story was consistent with the background evidence, plausible and credible as to its core elements. He noted that two of the claimant's cousins had been killed at the hands of the Turkish authorities on 30 July 2001 and that their deaths had been published in a newspaper. He also noted the refugee status grant to a brother 'T'.
50. The Adjudicator, after referring to the Polat determination and the report of Mr McDowell, dated 1 October 1999, summarised the facts (at paragraph 24) finding that the claimant had a history of harassment and discrimination at the hands of the Turkish authorities. He had not left Turkey soon after his six day detention in March 1999 when he was tortured, or indeed after the violent attack on him by youths from the MHP in June 2000. He noted that matters only came to a head in summer 2001 with his imminent requirement to report for military service, the release of his brother 'B' from custody, and the discovery that not only was the claimant selling Kurdish tapes but also had been reading a banned book. In this situation the Adjudicator considered that the claimant would be returning as an identified failed asylum seeker and, leaving aside the issue of draft evasion, the other matters would place him seriously at risk of ill treatment. He therefore allowed the appeal on both asylum and human rights grounds.

51. Mr Deller submitted to us, after our full consideration of the objective evidence detailed above, that this appeared to be a case where the Tribunal should reach its determination based on the totality of the evidence that had been presented and then noting this individual claimant's circumstances set against that objective evidence. On the face of it he conceded that there did not appear to be a sustainable challenge to the Adjudicator's determination.
52. Mr Grieves submitted that the appeal could not succeed from the analysis of the applicant's personal situation and the acceptance of his credibility.

Decision on Claimant 'A'

53. We have concluded, after taking into account the accepted credible evidence relating to this applicant and the objective analysis set out above, that the appeal of the Secretary of State must be dismissed. The determination of the Adjudicator is sustainable and is indeed confirmed by the analysis of his personal situation set against the objective evidence analysed in this determination. The appeal is therefore dismissed and the determination of the Adjudicator upheld.

Claimant 'C' (HX/32172/2002)

54. This also was an appeal by the Secretary of State. It was submitted that the Adjudicator had again not correctly followed the determination in Polat and that the conclusions of the Adjudicator that the claimant would be viewed as a "suspected separatist" was unlikely as he had only been approached on one occasion by people claiming to be plain clothes policemen.
55. The Adjudicator, in a determination promulgated 27 September 2002, found that the claimant was largely credible apart from some exaggerations in the basis of his claim. He accepted that the claimant had been a member of HADEP and that he had been sympathetic towards the PKK and sought to assist them in the ways he described. In this situation he had come to the attention of the authorities who kept a watch on him, arresting him in 1989 and again in November 1993. He also accepted that during detention the claimant had been ill treated and therefore had moved to 'A'. While in 'A' the authorities had also watched him and knew that he was an active member of HADEP. Also they were aware that he was a friend of 'VD' who was the secretary of HADEP for the province. The Adjudicator accepted the evidence that a plain clothes police officer mistreated him in 1999 and asked him to become an informer. It was this incident that was the catalyst to the claimant leaving Turkey. The Adjudicator then assessed the

appellant's evidence against the objective evidence before him and concluded, given the totality of the claimant's profile, that he could be a person of interest to the authorities, particularly given his significant personal connection with 'VD'. The appeal was therefore allowed on both asylum and human rights grounds.

56. In this case, Mr Deller conceded to us that the grounds did not appear to have substance to them following the detailed examination of the objective information carried out in these cases.

The Issue

57. We found the only issue before us was whether the determination of the Adjudicator was a sustainable one in the light of the submissions put to us and the objective information now before us.

Decision on Claimant 'C'

58. We are satisfied that the appeal of the Secretary of State must be dismissed. The grounds do not disclose any substantive error in the determination. We also satisfied on the totality of the objective evidence and the validity of the claimant's story as accepted by the Adjudicator, that he is a refugee within the meaning of Article 1A(2) of the Refugee Convention and that there would be a real risk of a breach of Article 3 of the ECHR should he be returned to Turkey at this time. This appeal is thus dismissed.

Claimant 'D' (HX/58799/2002)

59. This is an appeal made by the claimant against the decision of an Adjudicator promulgated 8 January 2003 wherein he dismissed an appeal against the decision of the Secretary of State who had refused leave to enter and asylum and human rights claims. The Adjudicator accepted that the claimant had given a credible account of his ill treatment during three detentions suffered in Turkey in 1997, July 2000 and March 2002. The claimant had stated that his fear of persecution was based on his Kurdish ethnic origin, his Alevi religion and his support and sympathies for HADEP. The Adjudicator however found that the arrests on each occasion had been as a result of the claimant taking part in demonstrations and that he was a very low level supporter of HADEP and not a prominent member or supporter, thus he was not in a category where there was any real risk to him of ill treatment on return. He considered that the last arrest in March 2002 did not put him in a specific category of risk as there was nothing to indicate that he was in fact viewed as a suspected separatist. He was never charged or placed on any reporting conditions and there was nothing, in the view of the Adjudicator, to indicate any family connections with prominent members of the PKK or HADEP, nor that he was kept under surveillance or monitored after his last release. In

this situation he considered the claimant would not be targeted at this time.

60. Consideration was also given to the claimant's medical condition under an Article 3 assessment and the Adjudicator considered there were ample psychiatric and medical facilities available in Turkey. The appeal was therefore dismissed on both asylum and human rights grounds.
61. Mr Grieves submitted to us, in a skeleton argument, that the Adjudicator had found the claimant credible in all respects bar one. Accordingly there was credible evidence that the claimant and his family had sympathised with HADEP and participated in numerous demonstrations and meetings, and had attended the HADEP building. The claimant had been detained in May 1997 while marching under a HADEP banner. During four days detention he had been punched, kicked, subjected to falaka and food deprivation. He had also been accused of being a separatist and linked to the PKK. In July 2000 he was detained when at a demonstration in remembrance of a massacre of Alevi Kurds he had been punched, kicked and beaten, including scars from metal and wooden sticks. At this time he was interrogated about PKK and those who organised the meeting. In March 2003 at Newroz he was again taken to the Anti-Terrorist Branch for three days and threatened, kicked and beaten. He was questioned about his brother in the DHKPC then, after further beatings, agreed to become an informer. He then went into hiding.
61. The adverse credibility finding he submitted, should be rejected, primarily on the basis that at the time when he completed his SEF in June and was interviewed in July 2002, he could not have known about the authorities' attempts to find him. The Tribunal was thus invited to reverse the adverse credibility finding.
62. The risks on return were of course covered at length in the submissions set out above.
63. Mr Grieves also submitted that the length of time and the activities of the claimant while in the United Kingdom in support of HADEP should also be seen as part of the total profile of this claimant and be included in the risk assessment.
64. Mr Deller, in his submissions, agreed that the correct method of assessment was to look at the total profile of a claimant. Potentially in this case the actions taken in the United Kingdom may be relevant if they came to the attention of the Turkish authorities. He agreed that the submissions made in respect of the credibility assessment of the Adjudicator did appear to have some merit.

The Issue

65. We found again the only issue before us to be whether, on the totality of the evidence accepted by the Adjudicator and the submissions made in relation to credibility when set against the objective evidence, the determination of the Adjudicator should be seen as a safe and sustainable one.

Decision on Claimant "D"

66. We are satisfied in this case that the negative credibility assessment of the Adjudicator on the aspect of the case relating to later interest in the applicant did appear to be unsustainable. Two of the three reasons for the assessment appear to have been made erroneously given that the claimant had not ever claimed he was aware of the continuing interest in him by the authorities until after the date of the SEF and his interview.

67. Thus we find the claimant's story a credible one. When assessed against the totality of the evidence, in the round, we are satisfied that the determination of the Adjudicator is an unsafe one. We consider that the claimant would be at a real risk of detention and persecution on return to the airport in Turkey. He is thus a refugee within the meaning of Article 1A(2) of the Refugee Convention and we consider there are substantive grounds for considering there is a real risk of a breach of Article 3 of the ECHR should he be returned to Turkey. Accordingly the appeal made by claimant 'D' is allowed.

Claimant 'O' (HX/36244/2002)

68. This was an appeal by the claimant 'O' against the determination of an Adjudicator, Mr P S Aujla, promulgated 5 November 2002 wherein he dismissed an appeal against the decision of the Secretary of State who had refused leave to enter and asylum and human rights claims.

The Adjudicator's Determination

69. The submission made by Mr Grieves in this case was that the determination of the Adjudicator was flawed to the extent that it needed to be remitted for hearing afresh before another Adjudicator. Mr Deller agreed that this appeared to be the appropriate action.

Decision on Claimant "O"

70. After consideration of the findings of the Adjudicator set out between paragraphs 24 and 39 of his determination, we agree that the wholly adverse credibility finding appears to be unsustainable. The Adjudicator, at paragraph 32, found that because the authorities *could* have asked him to work for them in his home town then they would not have taken him to the station to do so. This was

submitted to reflect an unawareness of the intimidatory effect of detention in Turkey, or the methods of operation of the Turkish authorities. We agree with this submission.

71. It was also submitted that the finding that “it is even more unbelievable that the security forces would waste their time thinking that the appellant, a 16-year old shepherd, would have a credible knowledge of PKK hideouts” was also unsustainable. We agree that a shepherd, like this claimant, with a family history of PKK support, would be one of the best people to know the whereabouts of the PKK or their places of shelter. Also the treatment of the documentation presented by the claimant does not appear to have been assessed following the guidelines of the Tribunal in Tanveer Ahmed (“starred”) [2002] UKIAT 0439.
72. In this situation we find ourselves in agreement with the submissions put forward by Mr Grieves and acceded to by Mr Deller. We do not have sufficient clarity of findings before us to reach our own determination. The most expedient and pragmatic manner of proceeding therefore is for this appeal to be allowed to the extent that it is to be remitted for hearing afresh before another Adjudicator apart from Mr P S Aujla.

Claimant ‘G’ (HX/35873/2002)

73. This was an appeal by the Secretary of State against the determination of an Adjudicator, Mrs C M A Jones, promulgated 11 October 2002, wherein she allowed the appeal, both on asylum and human rights grounds, against the decision of the Secretary of State who had refused leave to enter and asylum and human rights claims.

The Adjudicator’s Determination

74. The Adjudicator found the claimant, a female Kurdish citizen from the district of ‘G’ in Southern Central Turkey, to be wholly credible. The Adjudicator noted that the claimant struck her as a person with a committed pro-Kurdish viewpoint who, if returned to Turkey, would continue her active support of HADEP. She found that the claimant had been previously tortured. This was supported by a medical report from Dr Steadman. The Adjudicator had found that the claimant came from a family of Kurdish rights activists. Her father had been involved with HADEP from 1994 on. He had been arrested and maltreated on several occasions, as had the claimant’s brothers. In 2001 the claimant herself became involved with HADEP and attended youth activities, and was involved in soliciting support for HADEP. In January 2002 she had been involved in a protest relating to education in the Kurdish language and presented a petition to the local mayor. This petition was refused and some 15 other demonstrators sat in the street in protest. They were arrested.

She was blindfolded and beaten and hosed with pressurised water. She was accused of being a PKK supporter. She was released after one day. In May of 2002 she participated in a demonstration, also in support of Kurdish rights and was again arrested along with 30 HADEP supporters. She was taken to the 'G' Anti-Terrorist headquarters where she was asked to admit to her terrorist activities. She refused. The police ran a check on her and found that she had been arrested previously in January 2002. It was then said that she had not listened before and that she was going to be killed. She was subjected to falaka, blindfolded and beaten over a period of some six days while in detention. She was made to strip naked and hosed with pressurised cold water. Six days later she was released without charge. It was accepted that she suffered psychological problems as a result of the torture she sustained. In June 2002 she was able to flee Turkey with the assistance of an agent. She stated that she had left Turkey on her own passport. After assessment of the claimant's account and acceptance of her credibility, the Adjudicator took note of the objective country information that was before her and noted that as it appeared the claimant would return to Turkey undocumented, save a one-way travel pass, it was reasonably likely that her computer records would be accessed and these would show that she had been detained twice in the past on suspicion of involvement with PKK. The appeal was therefore allowed.

75. Mr Deller said that he noted the positive credibility findings and admitted that this appeal should now be determined by the Tribunal on the basis of the claimant's story set against the totality of the objective evidence reviewed by us in this hearing.
76. Mr Grieves presented a skeleton argument of which we have taken note. In particular, on the passport issue, he asked us to note that while the Adjudicator may not have referred to the claimant leaving Turkey on her own passport and the airport official retaining the passport for two or three minutes before returning it to her, this, he submitted, was irrelevant given the finding by the Adjudicator that the claimant would be at risk on return to Turkey. He submitted that the Tribunal should be cautious to infer that just because a claimant had been able to pass through an airport when leaving the country, this did not negate the risk when forcibly returned. He referred us to the determination in Jin Liao He v Secretary of State for the Home Department [2002] EWCA Civ. 1150 at paragraph 32 which stated:

"Another pillar [of the IAT's reasoning] seems to be that he left on his own passport. That at best goes to show that he is not wanted for any outstanding offences. Given that it is to be assumed that the passport was obtained by bribery, it does not even go that far. In any event, it tells us nothing of the

likelihood of persecution on return. History contains examples of regimes which persecute a minority in their home country but are content for them to leave their home country. Their attitude is: we just do not want them here."

77. Mr Grieves submitted that the claimant was obviously under the guidance of an agent. She did not even handle her own passport and bribery was a strong possibility. It was unlikely that she would be on a list of persons to be prevented from leaving because she was not someone who had committed a crime or evaded tax.

The Issue

78. We found the sole issue before us to be whether the determination of the Adjudicator was a sustainable one in the light of the evidence now before us and the submissions made by both parties.

Decision on Claimant "G"

79. We are satisfied that the determination of the Adjudicator is a correct and sustainable one. The submissions of Mr Grieves are, taken with the totality of the evidence, seen as valid ones. Accordingly the decision of the Adjudicator is upheld. The Secretary of State's appeal is dismissed.

D K Allen
Vice President

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