



OPERATIONAL GUIDANCE NOTE

TURKEY

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Turkey and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with any COI Service Turkey Country of Origin Information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2** This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.
- 1.4** Asylum and human rights claims must be considered on their individual merits. However, if following consideration, the claim is refused, caseworkers should consider whether the claim can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality, Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out

below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether certain types of claim are likely to be clearly unfounded.

Source documents

1.5 A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1 The law provides citizens with the right to change their government peacefully, and citizens generally exercised this right in practice through periodic free and fair elections held on the basis of universal suffrage. However, the government restricted the activities of some political parties and leaders.¹ Legislative authority is vested in the Turkish Grand National Assembly (TGNA). The TGNA is composed of 550 deputies. Parliamentary elections are held every five years.² In November 2002 the Justice and Development Party (AKP) won the election and secured a majority in the National Assembly.³ The Prime Minister is Recep Tayyip Erdogan and the President is Ahmet Necdet Sezer.⁴
- 2.2 Since 1984 the Turkish authorities have been engaged in a violent conflict against the Kurdistan Workers Party (PKK).⁵ The PKK is primarily a separatist movement that has sought an independent Kurdish state in southeast Turkey. (The PKK is a proscribed terrorist organisation in the UK).⁶ According to the government, 34 civilians, 100 members of the security forces, and 160 terrorists were killed in armed clashes between the PKK and the security forces between January and November 2005. Most of the clashes occurred in the southeast.⁷ In addition there are also a number of left wing and Islamic terrorist organisations operating in Turkey that have been responsible for violent attacks against the state.⁸
- 2.3 The law provides for an independent judiciary; however, the judiciary was sometimes subject to outside influence. There were allegations of judicial corruption. The law prohibits the government from issuing orders or recommendations concerning the exercise of judicial power; however, the government and the National Security Council (NSC), an advisory body to the government composed of civilian government leaders and senior military officers, periodically issued announcements or directives about threats to the government, which could be interpreted as general directions to the judiciary.⁹
- 2.4 The government generally respected the human rights of its citizens during 2005 and there were improvements in a number of areas, however, serious problems remained including some restrictions on political activity; unlawful killings; torture, beatings, and other abuses of persons by security forces; arbitrary detention; impunity and corruption; lengthy pre-trial detention; excessively long trials; restrictions on freedoms of speech, press, assembly, and association; restrictions on religious freedom.¹⁰
- 2.5 Overall human rights developments in Turkey were mixed during 2005. The government showed some commitment to reform, but it was clearly inhibited by anti-reform elements within the judiciary, police, and army. The main achievement in 2005 was sustained progress in combating torture, with the number of reports of ill-treatment in police stations continuing to fall. Little progress was made, however, toward guaranteeing language freedoms and freedom of expression. In an alarming development, there were episodes of

¹ COIS Turkey Country Report April 2006 para 5.14

² COIS Turkey Country Report April 2006 para 5.10

³ COIS Turkey Country Report April 2006 para 5.17

⁴ COIS Turkey Country Report April 2006 para 5.13

⁵ COIS Turkey Country Report April 2006 para 4.03

⁶ Terrorism Act 2000

⁷ COIS Turkey Country Report April 2006 para 6.303

⁸ COIS Turkey Country Report April 2006 Annex C

⁹ COIS Turkey Country Report April 2006 para 5.40

¹⁰ COIS Turkey Country Report April 2006 para 6.01

police using unwarranted lethal violence during street disturbances. Political violence by the Kurdish Workers' Party (PKK) flared during 2005, increasing tension and provoking heavy-handed responses, including human rights violations, by state forces.¹¹

- 2.6** Concerning the protection of human rights and minorities, despite some progress, the picture remains mixed in 2005. As regards the fight against torture and ill-treatment further provisions have entered into force, adding to the comprehensive legislative framework already in place, and the incidences of torture and ill-treatment have diminished. Nevertheless, reports of torture and ill-treatment remain frequent and those perpetrating such crimes still often enjoy impunity.¹²

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Turkey. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

- 3.5** All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 Involvement with Kurdish, left wing or Islamic terrorist groups or political parties.

- 3.6.1** Most claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their involvement at either a high or low level with illegal Kurdish, left wing or Islamic terrorist groups or Kurdish, left wing or Islamic political parties.

- 3.6.2 *Treatment*** Since 1984 the Turkish authorities have been engaged in a violent conflict against the Kurdistan Workers Party (PKK).¹³ The PKK is primarily a separatist movement

¹¹ COIS Turkey Country Report April 2006 para 6.02

¹² COIS Turkey Country Report April 2006 para 6.04

¹³ COIS Turkey Country Report April 2006 para 4.03

that has sought an independent Kurdish state in southeast Turkey. (The PKK is a proscribed terrorist organisation in the UK).¹⁴ According to the government, 34 civilians, 100 members of the security forces, and 160 terrorists were killed in armed clashes between the PKK and the security forces between January and November 2005. Most of the clashes occurred in Kurdish southeast.¹⁵ In addition there are also a number of left wing and Islamic terrorist organisations operating in Turkey that have been responsible for violent attacks against the state.¹⁶

- 3.6.3** The Human Rights Association (HRA) estimated that there were several thousand political prisoners, including leftists, rightists, and Islamists. Of these, approximately 1,500 were alleged members of Hizballah or other radical Islamist political organisations. The government claimed that alleged political prisoners were in fact charged with being members of, or assisting, terrorist organisations. According to the government, police detained 3,449 suspects on terrorism charges during 2005. International humanitarian organizations were allowed access to 'political' prisoners, provided they could obtain permission from the Ministry of Justice. With the exception of the CPT, which generally had good access, such organisations were rarely granted such permission.¹⁷
- 3.6.4** During 2005 there has been a sustained progress in combating torture, with the number of reports of ill-treatment in police stations continuing to fall.¹⁸ Police compliance with laws and regulations was generally good, even in remoter areas of the southeast. In some provinces, delegations from local human rights boards, including bar association and medical chamber representatives, made unannounced monitoring visits to police stations and gendarmeries.¹⁹ The European Commission reported that as further legal provisions on torture and ill-treatment entered into force in 2005, adding to the comprehensive legislative framework already in place, the incidences of torture and ill-treatment have begun to diminish.²⁰
- 3.6.5** Nevertheless, reports of torture and ill-treatment remain frequent and those perpetrating such crimes still often enjoy impunity.²¹ Human rights activists, attorneys, and physicians who treated victims in 2005 said that the police who abused prisoners often did so outside of police detention centres to avoid detection. Human rights activists maintained that those arrested for ordinary crimes were as likely to suffer torture and ill treatment in detention as those arrested for political offences, although they were less likely to report abuse. Observers said security officials sometimes tortured political detainees to intimidate them and send a warning to others with similar political views and allegedly tortured ordinary suspects to obtain a confession.²²
- 3.6.6** However, the security forces' actions against those suspected of taking part in marginal activities for illegal organisations was often quite unpredictable. Handing out of leaflets could trigger detention, ill-treatment and criminal persecution one day, and go without any sanctions the next day. Although regional differences seem to play a role, it is difficult to see a pattern as to how security-forces would sanction a certain behaviour in a certain city or area. Professor Şeref Ünal, former state secretary at the Ministry of Justice stated that case law in cases of marginal activities (handing-out of leaflets, spreading of propaganda and so forth) varied extremely. A person being found in possession of PKK pamphlets might be acquitted by one court while another court could sentence him to two or three years in prison.²³

¹⁴ Terrorism Act 2000

¹⁵ COIS Turkey Country Report April 2006 para 6.303

¹⁶ COIS Turkey Country Report April 2006 Annex C

¹⁷ COIS Turkey Country Report April 2006 para 6.410

¹⁸ COIS Turkey Country Report April 2006 para 6.02

¹⁹ COIS Turkey Country Report April 2006 para 6.21

²⁰ COIS Turkey Country Report April 2006 para 6.04

²¹ COIS Turkey Country Report April 2006 para 6.04

²² COIS Turkey Country Report April 2006 para 6.20

²³ COIS Turkey Country Report April 2006 para 6.412

- 3.6.7** 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 or supported violence. However, the Turkish authorities regarded HADEP as the PKK's political wing.²⁴ In March 2003 HADEP was banned by the Constitutional Court. In response its successor the Democratic People Party (DEHAP) was formed.²⁵ However, legal proceedings against DEHAP on charges of separatism were instigated by the Constitutional Court.²⁶ On 17 August 2005, DEHAP, joined the Democratic Society Movement, or DTH (now known as the Democratic Society Party (DTP)).²⁷
- 3.6.8** During the 2005 police raided dozens of DEHAP/DTH offices, particularly in the southeast, and detained hundreds of DEHAP/DTH officials and members. Jandarma and police regularly harassed DEHAP/DTH members through verbal threats, arbitrary detentions at rallies, and detention at checkpoints. Security forces also regularly harassed villagers they believed were sympathetic to DEHAP/DTH. Although security forces released most detainees within a short period, many faced trials, usually for supporting an illegal organisation or inciting separatism.²⁸
- 3.6.9** **Sufficiency of protection** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.6.10** **Internal relocation** Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. The differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.
- 3.6.11** In the case of claimants who claim to be low-level sympathisers or suspected activists of one of these separatist/terrorist groups there are certain categories for whom internal relocation would be a viable option. For example, even if the claimant claims to have experienced arrests, questionings and possibly ill-treatment by the authorities in his own locality, because of his suspected separatist/terrorist activities, if he has never been prosecuted by the authorities internal relocation may still be a viable alternative in accordance with **IK**. It is unlikely that there would be any real risk that such a claimant would attract adverse attention from the authorities resulting in persecution within the meaning of the 1951 Convention or under the ECHR, even if he registered with the Mukhtar in the new location.
- 3.6.12** However, if the claimant is a higher-profile activist, or suspected activist of one of these separatist/terrorist groups and for example has or is being prosecuted for separatist/terrorist activities, or has an outstanding arrest warrant then internal relocation may not be feasible since the need to register with the Mukhtar in the new location would inevitably give rise to further adverse attention from the authorities in the new location

²⁴ COIS Turkey Country Report April 2006 para 6.256

²⁵ COIS Turkey Country Report April 2006 para 6.261

²⁶ COIS Turkey Country Report April 2006 para 6.264

²⁷ COIS Turkey Country Report April 2006 para 6.271

²⁸ COIS Turkey Country Report April 2006 para 6.271

3.6.13 Caselaw

IK (Returnees- Records- IFA) Turkey CG [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004. The IAT concluded that many of the individual risk factors described in **A (Turkey)** [below] comprise in themselves a broad spectrum of variable potential risk that requires careful evaluation on the specific facts of each appeal as a whole. The factors described in A (Turkey) were not intended as a simplistic checklist and should not be used as such. The proper course in assessing the risk for a returnee is normally to decide first whether he has a well founded fear of persecution in his home area based upon a case sensitive assessment of the facts in the context of an analysis of the risk factors described in A (Turkey). If he does not then he is unlikely to be at any real risk anywhere in Turkey.

A (Turkey) [2003] UKIAT 00034 Heard 12 May 2003, notified 28 July 2003

The IAT considered several appeals concerning risk on return for Kurds involved with or suspected of involvement with separatists and concluded that:

- Torture continues to be endemic.
- The outlawing of HADEP on the basis it was closely linked to Kurdish rebels may arguably increase the risk of HADEP members and supporters being associated with the PKK. Ill treatment of non-prominent members of HADEP/DEHAP is not precluded by the evidence.
- The Turkish Governments attitudes towards the PKK has not changed since it renounced violence, altered its objectives and regrouped as KADEK. Anyone suspected of giving support/membership/shelter to the PKK, left wing radical organisations or militant Islamic groups are handed over to the Anti-Terror Branch and would face a real risk of persecution or breach of human rights.
- That the Tribunal in **Hayser** were correct in finding that there are no minimum number of factors which have to be satisfied before an individual comes under suspicion and none of these factors are necessarily of greater or less weight than any of the others, the assessment of risk should be a cumulative one but not all factors will be of equal significance. The factors referred to in **Hayser** were:

- 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 Sepef this alone is not a basis for a refugee or human rights claim.

- The IAT emphasise the importance of avoiding treating this as a checklist. The claim must be assessed in the round as a consequence of careful scrutiny and assessment of the evidence, the existing political and human rights context overall also being of significance (as the same circumstances may not prevail in 6 months).

3.6.14 Conclusion The Immigration Appeal Tribunal in **A (Turkey) (2003)** and **IK (Turkey) (2004)** concluded that persons suspected by the authorities of membership of, or giving support or shelter to, illegal organisations may be at risk of persecution if returned to Turkey. However, in light of the significant reduction in reports of torture and the wide-ranging legislative changes to improve human rights that have taken place in the last few years, the findings on torture and the criteria for assessing state mistreatment as set out in these cases are not automatically applicable to the situation for those affiliated to Kurdish, left wing, or Islamic terrorist group or political parties. Those simply presenting themselves as affiliates of one of these groups having never previously come to the adverse attention of the authorities or who are otherwise low-profile supporters are likely to be liable for questioning and/or routine prosecution but not persecution or treatment in breach of Article 3. The grant of asylum or Humanitarian Protection in such cases is therefore unlikely to be appropriate.

3.6.15 The Turkish government has made significant legislative changes to improve the human rights situation in recent years and is committed to a policy of zero tolerance of torture. Nevertheless, although there have been significant improvements in the human rights situation, abuses and mistreatment still occur. Those who are accepted as being in leading roles or otherwise significantly involved with Kurdish, left wing or Islamic terrorist groups or political parties are likely to face prosecution for activities against the state and may also experience mistreatment by the security forces amounting to persecution or a breach of Article 3 of the ECHR. If it is accepted that the claimant is, or is suspected of being a high profile member/activist of a separatist group and has or is being prosecuted by the authorities for separatist activity then there may be a real risk of persecution or ill-treatment contrary to Article 3 and a grant of asylum or Humanitarian Protection in such cases may be appropriate.

3.6.16 Caseworkers should note that members of these terrorist groups have been responsible for numerous serious human rights abuses. If it is accepted that a claimant was an active operational member or combatant for any Kurdish, Left-wing or Islamic terrorist organisation and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.7 Family connections with Kurdish, left wing or Islamic terrorist groups or political parties.

3.7.1 Many claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to a relatives involvement at either at a high or low level with Kurdish, left wing or Islamic terrorist groups or political parties.

3.7.2 Treatment It is likely that relatives of suspected PKK members are kept under observation by the authorities or questioned and interrogated for instance about the whereabouts of their fugitive relatives, and 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.²⁹

3.7.3 The head of DEHAP in Diyarbakır stated that relatives of members of illegal organisations sometimes faced harassment, such as repeated questioning by the police, intimidation, verbal assaults, beating, detention and arrest. The level of harassment would often depend on the degree of kinship and on the rank of the respective relative in the PKK. However, it is difficult to detect a pattern on how relatives of PKK militants are dealt with as it depends on

²⁹ COIS Turkey Country Report April 2006 para 6.415

the circumstances and on the law-enforcement officials in charge. Any person having a relative within the PKK should expect some attention from the authorities without becoming automatically subject to harassment or persecution.³⁰

- 3.7.4** Countless people in Turkey have one or more relatives in the PKK, left wing or Islamic terrorist groups without having any significant problems with the authorities as a result.³¹ If the authorities are convinced that relatives of suspected PKK members do not have any links to the PKK they are not persecuted.³²
- 3.7.5** Relatives of members of Kurdish political parties need not fear persecution by the Turkish authorities solely because one or more of their relatives is a member of any party. However, in certain cases, relatives of HADEP/DEHAP/DTH members who are active at local level are closely watched by the State because of their relatives' activities.³³
- 3.7.6** **Sufficiency of protection** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.7.7** **Internal relocation** Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. The differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.
- 3.7.8** Where claimants cite family members who are known to be active or suspected of supporting a separatist/terrorist group, the harassment experienced may be directly connected to the fact that the claimant lives in an area where PKK or other separatist/terrorist groups are known to be active and where members of the claimant's family are known to the authorities as supporters or sympathisers. Simply sharing the same surname as a relation who is a known or suspected member of a separatist group may give rise to adverse interest from the authorities in a localised nature where the claimant and family may be seen as troublemakers. However in such circumstances, provided the claimant has no outstanding arrest warrants and has not personally been prosecuted for an offence, internal relocation to another area would be a viable alternative in accordance with **IK**. It is unlikely that there would be any real risk that such a claimant would attract adverse attention from the authorities resulting in persecution within the meaning of the 1951 Convention or under the ECHR, regardless of his identity or family background, even if he registered with the Mukhtar in the new location.

3.7.9 Caselaw

See para 3.6.13 above for caselaw details

- 3.7.10 Conclusion** Although relatives of members or supporters of Kurdish, left wing or Islamic terrorist groups or political parties may face some police harassment or discrimination this does not generally reach the level of persecution. Therefore applicants who apply only on

³⁰ COIS Turkey Country Report April 2006 para 6.414

³¹ COIS Turkey Country Report April 2006 para 6.416 & 6.417

³² COIS Turkey Country Report April 2006 para 6.416

³³ COIS Turkey Country Report April 2006 para 6.260

the basis of a relative's involvement in an illegal organisation are unlikely to qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

3.8 Kurdish ethnicity

- 3.8.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their Kurdish ethnicity.
- 3.8.2** *Treatment* According to estimates, there are between twelve and fifteen million Kurds living in Turkey. However, there are no official statistics as national censuses do not take account of people's ethnic origins. The Kurds live mainly in the South-East, although many of them have left the region as part of the drift to the towns and also because of the armed conflict between the authorities and the PKK.³⁴
- 3.8.3** The Turkish government does not persecute Kurds solely because they are Kurds. All Turkish citizens (including the Kurds) have equal access to public institutions such as health care and authorities responsible for issuing official documents.³⁵ Millions of the country's citizens identified themselves as Kurds and spoke Kurdish and many members of parliament and senior government officials were Kurds.³⁶ However, Kurds who publicly or politically asserted their Kurdish identity or publicly espoused using Kurdish in the public domain risked censure, harassment, or prosecution.³⁷
- 3.8.4** The constitutional and legislative changes made in recent years in the field of human rights and fundamental freedoms have helped to give the Kurds greater freedom of expression, freedom of assembly and freedom of association. However, in practice, such freedoms are still severely curtailed. Kurdish students have been arrested and/or expelled from university for having signed petitions or demonstrated in support of the teaching of Kurdish in universities. However, in some cases, those who have expressed their Kurdish identity by peaceful means have been acquitted. Parents are now permitted by law to give their children Kurdish first names, even though a circular prohibits them from choosing names incorporating the letters Q, W or X, which exist in the Kurdish language but not in the Turkish alphabet.³⁸
- 3.8.6** Broadcasting on both radio and TV in non-Turkish languages, including Kurdish dialects, began on 7 June 2004 on the state-owned national broadcaster TRT. Private language courses in Kurdish also opened across Turkey in 2004, including in Van, Batman and Sanliurfa.³⁹ However, the government maintained significant restrictions on the use of Kurdish and other ethnic minority languages in radio and television broadcasts and in publications.⁴⁰ Harassment of Kurdish groups and political parties is still common among the general population and it remains illegal to carry out political campaigning in any language other than Turkish.⁴¹
- 3.8.7** A regulation that allowed (for the first time) private courses in Kurdish entered into force in December 2003. Six private schools started teaching Kurdish in Van, Batman and Şanlıurfa in April 2004, in Diyarbakir and Adana in August 2004 and in Istanbul in October 2004. These schools did not receive financial support from the state and there were restrictions concerning, in particular, the curriculum, the appointment of teachers, the timetable and the attendees. Notably, students must have completed their basic education and therefore will be older than 15.⁴²

³⁴ COIS Turkey Country Report April 2006 para 6.234

³⁵ COIS Turkey Country Report April 2006 para 6.237

³⁶ COIS Turkey Country Report April 2006 para 6.233

³⁷ COIS Turkey Country Report April 2006 para 6.232

³⁸ COIS Turkey Country Report April 2006 para 6.235

³⁹ COIS Turkey Country Report April 2006 para 6.241

⁴⁰ COIS Turkey Country Report April 2006 para 6.240

⁴¹ COIS Turkey Country Report April 2006 para 6.241

⁴² COIS Turkey Country Report April 2006 para 6.246

3.8.8 However, in 2005 a number of these private Kurdish language courses closed down, citing a lack of students. Kurdish rights advocates said many Kurds could not afford to enrol in private classes. They also maintained that many potential applicants were intimidated because authorities required those enrolling in the courses to provide extensive documents, including police records that were not required for other courses. They maintained that the requirements intimidated prospective applicants, who feared police were keeping records on students taking the courses.⁴³

3.8.7 Sufficiency of protection As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.8.9 Internal relocation Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. The differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.

3.8.10 A claimant of Kurdish ethnicity is unlikely to encounter ill-treatment by the authorities amounting to persecution solely on the grounds of their ethnicity. In cases where Kurdish ethnicity is cited as the sole basis of claim, internal relocation to another area to escape this threat is viable. It is unlikely that there would be any real risk that such a claimant would attract adverse attention from the authorities resulting in persecution within the meaning of the 1951 Convention or under the ECHR, even if he registered with the Mukhtar in the new location. Where Kurdish ethnicity is cited in conjunction with other aggravating factors, such as draft evasion or separatist/terrorist activity then caseworkers should consider the viability of internal relocation in line with the guidance provided in the appropriate sections of this OGN.

3.8.11 Caselaw

IK (Returnees- Records- IFA) Turkey CG [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004 As regards expert witness reports on Kurdish issues the IAT found that the expert witness Mr. McDowell cannot be considered as an independent expert but rather has his own strong personal views, and acts in effect as an informed advocate.

[2002] UKIAT 06624 IAT decision notified 19 February 2003 The appellant stated that he had suffered persecution and harassment since his school days because of his Kurdish ethnicity and his Alevi religious faith. The IAT concluded that although the situation for Alevi Kurds in Turkey is not altogether pleasant, there was no reason why this appellant should be regarded by the authorities on return as anything more than the usual failed asylum seeker, that is to say someone who has left Turkey to seek economic betterment and who has claimed asylum to try to achieve that objective.

3.8.12 Conclusion Although Turkish citizens of Kurdish ethnic origin may face some unequal treatment or discrimination both from the authorities and the general population this does not generally reach the level of persecution or breach article 3 of the ECHR. Therefore it is unlikely that applicants in this category whose claims are based solely on persecution due

⁴³ COIS Turkey Country Report April 2006 para 6.249

to their Kurdish ethnicity would qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

3.9 Alevi religious faith

- 3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their Alevi religious faith.
- 3.9.2 *Treatment*** In addition to the country's Sunni Muslim majority, there are an estimated 7-20 million Alevis⁴⁴ who are followers of a belief system that incorporates aspects of both Shi'a and Sunni Islam and draws on the traditions of other religions found in Anatolia as well. Some Alevis practice rituals that include men and women worshipping together through oratory, poetry, and dance. The Government considers Alevism a heterodox Muslim sect; however, some Alevis and radical Sunnis maintain Alevis are not Muslims.⁴⁵
- 3.9.3** Alevis are able to freely practice their beliefs and build 'Cem houses' (places of gathering).⁴⁶ However, Alevis are not officially recognised as a religious community and they are not officially represented in the Diyanet (the directorate for religious affairs). Alevi's still sometimes experience difficulties in opening places of worship as 'Cem' houses, have no legal status and receive no funding from the authorities.⁴⁷ Many Alevis allege discrimination in the Government's failure to include any of their doctrines or beliefs in religious instruction classes in public schools.⁴⁸
- 3.9.4 *Sufficiency of protection*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.9.5 *Internal relocation*** Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.
- 3.9.6** A claimant of the Alevi faith is unlikely to encounter ill-treatment by the authorities amounting to persecution solely on the grounds of their religious beliefs. In cases where membership of the Alevi faith is cited as the sole basis of claim, internal relocation to another area to escape this threat is viable. It is unlikely that there would be any real risk that such a claimant would attract adverse attention from the authorities resulting in persecution within the meaning of the 1951 Convention or under the ECHR, even if he registered with the Mukhtar in the new location. Where Alevi beliefs are cited in conjunction with other aggravating factors, such as draft evasion or separatist/terrorist activity then caseworkers should consider the viability of internal relocation using the guidance provided in the appropriate sections of this OGN.

⁴⁴ COIS Turkey Country Report April 2006 para 6.150

⁴⁵ COIS Turkey Country Report April 2006 para 6.148

⁴⁶ COIS Turkey Country Report April 2006 para 6.149

⁴⁷ COIS Turkey Country Report April 2006 para 6.154

⁴⁸ COIS Turkey Country Report April 2006 para 6.149

3.9.7 *Caselaw*

[2002] UKIAT 06624 IAT decision notified 19/02/2003 The appellant stated that he had suffered persecution and harassment since his school days because of his Kurdish ethnicity and his Alevi religious faith. The IAT concluded that although the situation for Alevi Kurds in Turkey is not altogether pleasant, there was no reason why the individual appellant would be regarded by the authorities on return as anything more than the usual failed asylum seeker, that is to say someone who has left Turkey to seek economic betterment and who has claimed asylum to try to achieve that objective.

3.9.8 *Conclusion* Although Turkish citizens belonging to the Alevi religious faith may face some unequal treatment or discrimination within Turkey this does not generally reach the level of persecution. Therefore it is unlikely that applicants in this category whose claims are based solely on persecution due to their Kurdish ethnicity would qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

3.10 *Military service*

3.10.1 Some claimants may apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their evasion of military service.

3.10.2 Claimants will usually claim that they cannot perform military service for one or more of the following reasons:

(i) Due to their political opinions, Kurdish ethnicity, or Alevi faith they will face persecution within the armed forces from other soldiers or officers.

(ii) They are conscientious objectors (either for political, religious, or moral grounds) and that their refusal to perform military service will lead to persecution from the state.

(iii) In addition some claimants will claim that they cannot return to Turkey as the very fact they have evaded military service will lead to ill treatment at the hands of the Turkish authorities and that the punishment suffered by draft evaders would breach Article 3 of the ECHR.

3.10.3 *Treatment* According to Article 1 of the Military Act No.1111 (1927) every male Turkish citizen is obliged to carry out military service.⁴⁹ The standard length of military service is 15 months although some conscripts may serve less.⁵⁰ According to Article 35 of the Military Act No.1111 (1927) a number of provisions allow people liable to military service to defer their service, principally for educational reasons⁵¹

3.10.4 Draft evasion and desertion in Turkey are widespread. The exact number of draft evaders is not known, but the number is estimated to be approximately 350,000. Draft evasion and desertion are punishable under the Law on Military Service and the Turkish Military Penal Code.⁵²

3.10.5 Punishments in cases relating to evasion of military service (including desertion) take place in military prisons if the sentence is six months or less and in normal prisons if the sentence is more than six months. As a rule, the sentence is first enforced and then the conscript completes the remainder of his military service. In the case of desertion enforcement of the judgement may be deferred at the suggestion of the officers of the relevant military division until after military service has been completed.⁵³

3.10.6 The Turkish armed forces operate a harsh regime. Non-commissioned officers and lieutenants in particular occasionally beat conscripts as a means of disciplining them. The use of insults – again by NCOs and lieutenants – to conscripts is a fairly regular occurrence

⁴⁹ COIS Turkey Country Report April 2006 para 5.136

⁵⁰ COIS Turkey Country Report April 2006 para 5.137

⁵¹ COIS Turkey Country Report April 2006 para 5.139

⁵² COIS Turkey Country Report April 2006 para 5.143

⁵³ COIS Turkey Country Report April 2006 para 5.145

and harassment and discrimination by fellow soldiers or non-commissioned officers does occur against individual conscripts.⁵⁴

- 3.10.7** However, it is not possible to say that any single group suffers systematic discrimination within the Turkish armed forces. According to Turkish human rights organisations and former soldiers, in many cases the problems stem from conflicts between conscripts themselves.⁵⁵ There is no systematic discrimination against Kurdish or left wing conscripts. At the level of the unit in which conscripts serve, the situation is very often dependent on the individual commander.⁵⁶
- 3.10.8** The right to conscientious objection is not legally recognized in Turkey.⁵⁷ Therefore any conscientious objector refusing military service is viewed by military criminal law as a straight forward case of draft evasion. The person concerned is accordingly sentenced as described above, in precisely the same way as all other draft evaders, under article 63 of the Military Criminal Code. The individual conscripts' motives for non-compliance with the military service obligation are not taken into consideration in sentencing, so that refusal for reasons of principle attracts neither a heavier nor a lighter sentence.⁵⁸
- 3.10.9** In January 2006 the European Court of Human Rights ruled that Turkey had violated the rights of a Turkish citizen who was the first conscientious objector in the country to openly declare his refusal to perform compulsory military service for reasons of conscience. In the matter of the complaint filed by Osman Murat Ülke, the European court decided that Turkey's response to the individuals continued refusal to perform military service had violated Article 3 of the European Convention on Human Rights concerning the prohibition of inhumane or degrading treatment and ruled that Turkey pay 11,000 euros in financial compensation to the complainant.⁵⁹
- 3.10.10 Sufficiency of protection** There is no systematic state discrimination of any group within the military and the situation is dependent on the individual commander and unit in which conscripts serve. Sufficiency of protection will be available to applicants whose claims are based on discrimination and abuse suffered within a particular unit.
- 3.10.11 Internal relocation** If the claimant has an outstanding arrest warrant or has been prosecuted for draft evasion, then internal relocation followed by registry with a new Mukhtar would continue to bring the claimant to the adverse attention of the authorities. Therefore, relocation to a different area of the country to escape this threat is not reasonable.

3.10.12 Caselaw

Ulke v Turkey European Court of Human Rights Chamber Judgement (24 January 2005) The appellant refused to do his military service on the ground of conscientious objection. After being sentenced to 6 months imprisonment and a fine for desertion, he was ordered to enlist for military service. Between March 1997 and November 1998, he was convicted on 8 occasions of 'persistent disobedience' on account of his refusal to wear a military uniform and was also convicted on 2 occasions of desertion because he failed to rejoin his regiment. In total he served 701 days imprisonment because of these convictions. The European Court, in a Chamber Judgement held unanimously that there had been a violation of Article 3 (prohibition of inhuman degrading treatment because the treatment under consideration caused Mr Ulke severe pain and suffering which went beyond the normal element of humiliation inherent in any criminal sentence or detention.

In reaching this decision the court noted the lack of an effective legal framework in Turkey for dealing with conscientious objectors which meant that such individuals ran the risk of

⁵⁴ COIS Turkey Country Report April 2006 para 5.162

⁵⁵ COIS Turkey Country Report April 2006 para 5.162

⁵⁶ COIS Turkey Country Report April 2006 para 5.163

⁵⁷ COIS Turkey Country Report April 2006 para 5.146

⁵⁸ COIS Turkey Country Report April 2005 para 5.150

⁵⁹ COIS Turkey Country Report April 2005 para 5.154

being subjected to an interminable series of prosecutions and criminal convictions for life. It found that this punishment was disproportionate to the aim of ensuring that military service was performed and appeared more calculated to repressing the individuals intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will.. The court took into account the cumulative effects of the criminal convictions, the constant alteration between prosecution and imprisonment and the gravity and repetitive nature of the treatment inflicted

Sepet (FC) & Another (FC) [2003] UKHL 15 – The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgment dismissed the appellants' appeals. The House of Lords also asserted that in deciding whether an applicant would be persecuted for a convention reason it is necessary for the person considering the claim for asylum to assess carefully the real reason for the persecution which is an objective judgment of the reason that operates in the mind of the persecutor.

IK (Returnees- Records- IFA) Turkey CG [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004. If a returnee is a draft evader he will be stopped at the immigration booth when the GBTS reveals this information, He will be transferred to the airport police station and the military will be informed so that he can be collected by them. It is again well-established jurisprudence that draft evaders as such will not qualify for international protection as a consequence of their treatment on and after return.

Faith Akan [2002] UKIAT 01111 – The appellant claimed that he did not want to undergo military service because he had a conscientious objection to serving as a result of his Kurdish ethnic origin and his political beliefs. The claim was largely based upon the conditions he would suffer as a draft evader if he were sentenced to serve a sentence at a house of correction. The IAT found "...we are prepared to believe that they may be more rigorous than those which may be applicable in a prison, but it is a far step from that to say that there is a real risk that such incarceration would breach Article 3. The IAT continued "...it is quite impossible for us to assume that the conditions would be such as would be breach Article 3."

3.10.13 Conclusion

3.10.14 Those who fear mistreatment due to their political opinions, Kurdish ethnicity, or Alevi faith

Although some Turkish citizens may on an individual level face some unequal treatment or discrimination within the military from other soldiers because of their political opinions, Kurdish ethnicity, or Alevi faith, this discrimination is not systematic or sanctioned by the state and does not generally reach the level of persecution under the 1951 Refugee Convention or breach article 3 of the ECHR. Therefore it is unlikely that applicants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded. **However, caseworkers should be aware that those who refuse to perform military service for the above reasons will be treated in the same way as those who refuse to perform military service due to conscientious objection. (See section below)**

3.10.15 Conscientious objectors

The House of Lords found in **Sepet (FC) & Another (FC) [2003] UKHL 15** (see above) that there is no internationally recognised right to object to military service on grounds of conscience. As with the two claimants in the Sepet and Bulbul case, it is unlikely that Turkish claimants, who claim to be in fear of punishment for evading military service would qualify for asylum since they would not be able to demonstrate that the punishment for draft evasion would amount to persecution under one or more of the three criteria identified by Lord Bingham and because it is unlikely that they will be able to show that any punishment, were it to be persecutory, would be carried out by the Turkish state for a convention reason (i.e. that the decision by the state to inflict such a persecutory punishment was for political, religious or other convention ground reasons).

3.10.16 The case of **Ulke v Turkey (ECtHR)** was an **extreme** example of draft evasion. The ECtHR held that it was the cumulative factors, (specified below), that were found to have caused the claimant severe pain and suffering which went beyond the normal element of

humiliation inherent in any criminal sentence or detention amounting to degrading treatment within the meaning of Article 3 ECHR. Forcing him to live a clandestine life amounting to a 'civil death' was held to be incompatible with the punishment regime of a democratic society.

3.10.17 The cumulative factors were:

- Ulke was a conscientious objector who had a history of conscientious objection. Since 1993, (2 years before he was called up for service), he became an active member of the Association of Opponents of War (SKD) and later from 1994 to 1998 was Chairman of Izmir Association of Opponents of War, (ISKD).
- He was first called up for military service in August 1995, but refused to perform military service on grounds that he had firm pacifist convictions and he burned his call up papers in public at a press conference.
- The numerous criminal prosecutions: (Namely: 8 separate prosecutions and convictions for 'persistent disobedience' for refusing to wear a uniform and two prosecutions and convictions for desertion).
- The cumulative effects of the criminal convictions, namely 701 days of imprisonment, and the constant alterations between prosecutions and terms of imprisonment.
- The repetitive nature of the punishment. (Namely, on each occasion, on release from prison, being escorted back to the regiment, whereupon refusal to perform military service, or to wear a uniform lead to another conviction and transfer to prison.)
- The lack of an effective legal framework for dealing conscientious objectors and the possibility of a risk of being subjected to an interminable series of prosecutions and convictions for life for refusing to perform compulsory military service, leading to a 'civil death'.

3.10.18 Despite the ECtHR judgment in the case of **Ulke**, this does not impact on the House of Lords judgment in **Sepet and Bulbul**, which confirmed that punishment for refusing to perform military service will not of itself give rise to a well founded fear of persecution within the meaning of the 1951 Convention.

3.10.19 However, exceptional cases which are on a par with the facts of the Ulke case may need to be treated differently, however this will only be the case where the individual concerned is able to demonstrate that they have such strong views that they would continue to refuse to perform military service at all costs and as a result suffer treatment as described in the Ulke case which would amount to a breach of article 3. In such exceptional cases a grant of Humanitarian Protection may be appropriate. In addition, in cases where these exceptional circumstances are reached caseworkers should also consider as appropriate whether anything in an individual case indicates that the treatment is made worse for a convention reason and if this is the case then a grant of asylum may be appropriate. Any cases that reach this exceptional level should be referred to a Senior Caseworker.

3.10.20 However, in the majority of cases, the consequences of a claimants general 'unwillingness to serve' in the armed forces or objection to enter a 'combat zone' will not usually reach the level of severity as experienced in Ulke and the majority of claimants will not qualify for a grant of Humanitarian Protection. For further guidance on conscientious objection please refer to the API 'Military Service and Conscientious Objection'.

3.10.21 Punishment suffered by draft evaders

Prison conditions in Turkey, though poor have not been found to breach Article 3 of the ECHR and generally speaking the punishment for draft evasion or desertion is not considered so disproportionate as to amount to a real risk of a breach of Article 3 ECHR. Therefore it is unlikely that claimants who are draft evaders would generally qualify for asylum or Humanitarian Protection under Article 3 ECHR and such claims are likely to be clearly unfounded. **Fatih Akcan [2002]** (see above).

3.11 Individuals whose details appear on the Turkish authorities records systems.

3.11.1 Most claimants will claim that the likelihood of facing ill-treatment at the hands of the Turkish authorities for one or more of the reasons mentioned above in sections 3.6-3.10 will

be increased due to their details being registered on the one of the Turkish government's computerised record systems.

- 3.11.2 Treatment** There are a number of different information systems in Turkey. The central information system is known as the GBTS (Genel Bilgi Toplama Sistemi – General Information Gathering System). This system lists extensive personal data such as information on arrest warrants, previous arrests, foreign travel restrictions, avoidance of military service, desertion, refusal to pay military tax and delays paying tax.⁶⁰ In **IK** (para 133) the IAT with reference to a letter dated September 2003 from Omer Aydin (A Senior Officer in Turkey, in the Department of Anti-Smuggling and Organised Crime, which runs the GBT system) confirmed that the Turkish Authorities make distinctions between what constitutes an arrest and a detention. “Arrests” require some court intervention or decision as opposed to “detentions” which are carried out by the security forces followed by release without charge; it is only “arrests” that would be recorded on the GBT system. This letter also states that GBT records of people who are acquitted or whose cases are being abated as a result of decisions made not to prosecute due to time limitations (under the statute of limitations) are erased as soon as the decision reaches the security forces.
- 3.11.3** In addition to the GBTS central information system, the various security forces each have their own information systems. They include the registers of the police, the anti-terrorist department, the gendarmerie and the military secret service etc.⁶¹
- 3.11.4** The GBTS is governed by the Trafficking Intelligence and Information Gathering Directorate attached to the Ministry of Internal Affairs. While the customs officers stationed at international ports and borders cannot use the GBTS system, law enforcement units such as the police and the gendarmes can use the GBTS and police units stationed at all land, air and sea borders are able to use the system. Foreign establishments cannot use this system in any way whatsoever.⁶²
- 3.11.5** According to the Ministry of Internal Affairs the offence of leaving the country through illegal means can only be detected when the offenders are captured abroad. It is impossible to know who left the country through illegal means in Turkey and therefore no records are kept in relation to such matters. Records relating to individuals who are being prosecuted or are subject to investigation are kept in the GBT system however, records relating to individuals who are been taken into custody and subsequently released without charge are not registered on the GBTS. The details of draft evaders are also registered in the GBTS.⁶³
- 3.11.6** Information about convicted persons and served sentences are stored at the Judicial Registry Office (Adli Sicil Mudurlukleri), rather than on the GBTS.⁶⁴
- 3.11.7** In September 2005 officials from the British Embassy visited two Mukhtars' offices in north eastern Turkey and found that both offices were very basically equipped and there was no evidence of any kind of computer equipment. In one village, local people reported that they had been without electricity for a year.⁶⁵ The Istanbul Security Directorate is currently running a Mukhtar computer project which aims to eventually administer the work of all Mukhtars from one centre. The project began in early 2005 and should be completed by early 2007. One hundred of the 956 Mukhtars in Istanbul are currently using the system.⁶⁶
- 3.11.8 Sufficiency of protection** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.11.9 Internal relocation** Though claimants would not ordinarily be able to relocate to a different area of Turkey to escape the threat of persecution where the alleged source of that

⁶⁰ COIS Turkey Country Report April 2006 para 5.77

⁶¹ COIS Turkey Country Report April 2006 para 5.85

⁶² COIS Turkey Country Report April 2006 para 5.87

⁶³ COIS Turkey Country Report April 2006 para 5.87

⁶⁴ COIS Turkey Country Report April 2006 para 5.77

⁶⁵ COIS Turkey Country Report April 2006 para 5.27

⁶⁶ COIS Turkey Country Report April 2006 para 5.30

persecution is state-sponsored, the IAT found in **IK [2004] UKIAT 00312** that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. The differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. In **IK** the IAT also found that 'it is implausible in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his [own] prosecution for a criminal offence [of torture]' (para 117). Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.

3.11.10 If there are serious reasons for believing that GBT records are being maintained about a claimant, then internal relocation within Turkey would not be a feasible option as registering with a Mukhtar in a new location could give rise to further adverse attention from the authorities. Moreover such claimants would be apprehended at the port of entry into Turkey as soon as their GBT records become known.

3.11.11 Caselaw

IK (Returnees- Records- IFA) Turkey CG [2004] UKIAT 00312 Heard 19 October 2004, notified 02 December 2004 The IAT found that the computerised GBT system comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. "Arrests" as comprised in the GBTS require some court intervention, and must be distinguished from "detentions" by the security forces followed by release without charge. The GBTS is fairly widely accessible and is in particular available to the border police at booths in Istanbul airport, and elsewhere in Turkey to the security forces.

If a returnee is a draft evader he will be stopped at the immigration booth when the GBTS reveals this information, He will be transferred to the airport police station and the military will be informed so that he can be collected by them. It is again well-established jurisprudence that draft evaders as such will not qualify for international protection as a consequence of their treatment on and after return.

The Judicial Record Directorate keeps judicial records on sentences served by convicted persons, separate from GBTS. The system is known as "Adli Sicil." It is unlikely that this system would be directly accessible at border control in addition to the information in the GBTS.

3.11.12 Conclusion The GBTS records information on outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. However, it does not contain records of those who have been simply detained by the police and released without being formally arrested or charged. The Adli Sicil systems keeps a record of past sentences served. The GBTS is available to the police at all sea and airports while the Adli Sicil system is not. Those who appear on the GBTS computer system are likely to come to the attention of the authorities. However, the majority of those on the system are wanted for criminal acts and there is no evidence to suggest that simply appearing on the system means that a claimant will face ill-treatment or persecution. Caseworkers should refer to the relevant sections in this OGN (sections 3.6-3.10) to ascertain whether claimants will be at risk if they do come to the attention of the Turkish authorities.

3.12 Prison conditions

3.12.1 Claimants may claim that they cannot return to Turkey due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Turkey are so poor as to amount to torture or inhuman treatment or punishment.

- 3.12.2 Treatment** According to official sources, in May 2005 there were 58,670 persons in prisons and detention houses. Of these, 31,812 were convicted prisoners and 26,858 were prisoners detained on remand. By May 2005, 14,431 prisoners had been released as a result of changes to the law brought about by the adoption of the new Penal Code.⁶⁷ The European Commission reported that there has been significant progress in prison conditions in recent years however some prisons remain overcrowded and under-resourced⁶⁸ and isolation of some inmates in high security prisons remained a serious problem.⁶⁹
- 3.12.3** The USSD 2005 reported that conditions in many prisons remained poor in 2005 with under-funding, overcrowding, and insufficient staff training being problems. Some inmates convicted for non-violent, speech related offences were held in high-security prisons. However, the government made significant improvements in the food provided in the prisons, although there was a lack of potable water in some facilities. According to the medical association, there were insufficient doctors, and psychologists were available only at some of the largest prisons. Some inmates claimed they were denied appropriate medical treatment for serious illness. Despite the existence of separate juvenile facilities, at times juveniles and adults were held in adjacent wards with mutual access. Some observers reported that detainees and convicts were sometimes held together.⁷⁰
- 3.12.4** Human rights organisations protested against the conditions imposed in prisons, mainly maximum-security facilities such as E-Type and F-Type prisons (mainly housing those tried or convicted at former State Security Courts). The Human Rights Association of Turkey HRA reported that eleven inmates committed suicide in prisons, and six persons killed themselves by setting fire to themselves, a common form of protest. Another person died due to the so-called 'death fast', another form of protest by political prisoners. Nine prisoners died reportedly due to the prevention or neglect of medical treatment, and five others were killed by other inmates. The prevention of the treatment of prisoners with fatal or serious medical conditions was a common problem.⁷¹
- 3.12.5** The government permitted prison visits by representatives of some international organisations, such as the European Committee for the Prevention of Torture (CPT); however, domestic non-governmental organisations (NGOs) did not have access to prisons. The CPT visited in March 2004 and conducted ongoing consultations with the government. Requests by the CPT to visit prisons were routinely granted.⁷²
- 3.12.6** There are 131 Monitoring Boards, whose work focuses on living conditions, health, food, education and the rehabilitation of prisoners. By June 2005, these boards had made 1,247 recommendations, of which 532 had been acted upon. The Boards paid visits to 419 prisons between October 2004 and May 2005. Their composition still does not include a significant representation from civil society and their reports remain confidential. In the last quarter of 2004, the 141 Enforcement Judges received 830 complaints on actions involving prisoners and detainees. Of these applications, 83 have been accepted and acted upon, 4 have been partially accepted and acted upon, 679 have been rejected and 64 have resulted in other decisions, such as non-jurisdiction of the Enforcement Judges.⁷³
- 3.12.7 Conclusion** Whilst prison conditions in Turkey are poor with overcrowding in ordinary prisons and the isolation of inmates in high security F-type prisons being particular problems conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Turkey a grant of Humanitarian Protection will not generally be appropriate. Similarly where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will not be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular

⁶⁷ COIS Turkey Country Report April 2006 para 5.113

⁶⁸ COIS Turkey Country Report April 2006 para 5.113

⁶⁹ COIS Turkey Country Report April 2006 para 5.114

⁷⁰ COIS Turkey Country Report April 2006 para 5.118

⁷¹ COIS Turkey Country Report April 2006 para 5.124

⁷² COIS Turkey Country Report April 2006 para 5.132

⁷³ COIS Turkey Country Report April 2006 para 5.129

circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate.

4.1 Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

4.2 With particular reference to Turkey the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave

4.3 Minors claiming in their own right

4.3.1 Minors who have not been granted asylum or Humanitarian Protection can only be returned where they have family to return to or there are adequate reception, care or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care or support arrangements in place.

4.3.2 Minors without a family to return to, or where there are no adequate reception, care or support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to Turkey due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 According to the Turkish Health Ministry, in 2003 there were 1,130 hospitals with a bed capacity of 164,897. The total number of physicians was 93,200 with 748 people per physician.⁷⁴ In addition mental health treatment is part of the primary health care system.⁷⁵ According to the WHO in 2005 there were 1.3 psychiatric beds per 10,000 population, and 1 neurosurgeon, 1 neurologist, 1 psychologist and 1 social worker per 100,000 population.⁷⁶ Anti-psychotic and anti-depressant medication is also widely available in Turkey.⁷⁷

HIV/AIDS

4.4.3 The number of HIV patients registered in Turkey in the past 20 years is less than 2,000, but the true figure of those infected is estimated to be at least five times higher.⁷⁸ To ensure blood safety, commercial blood donation has been fully abolished. The government ensures that all HIV infected patients receive antiretroviral treatment.⁷⁹

4.4.4 Caselaw.

⁷⁴ COIS Turkey Country Report April 2006 para 5.172

⁷⁵ COIS Turkey Country Report April 2006 para 5.176

⁷⁶ COIS Turkey Country Report April 2006 para 5.177

⁷⁷ COIS Turkey Country Report April 2006 para 5.178

⁷⁸ COIS Turkey Country Report April 2006 para 5.181

⁷⁹ COIS Turkey Country Report April 2006 para 5.182

DE (Turkey) [2005] UKAIT 00148 promulgated 21 October 2005. This case dealt with the risk on return of suicide and the availability of psychiatric treatment in Turkey. The IAT found that adequate mental health facilities and treatment are available in Turkey.

4.4.5 The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.

5.2 Turkish nationals may return voluntarily to any region of Turkey at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Turkey. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Turkish nationals wishing to avail themselves of this opportunity for assisted return to Turkey should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

- Home Office Country of Origin Information Service (COIS) Turkey Country of Origin Information Report published April 2006 at:
http://www.homeoffice.gov.uk/rds/country_reports.html
- Terrorism Act 2000 (accessed on Home Office website) 11 May 2006
<http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/proscribed-groups?version=1>

**Asylum and Appeals Policy Directorate
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