

# IN THE IMMIGRATION APPEAL TRIBUNAL

**KK (GBTS – other information systems – McDowall) Turkey CG [2004] UKIAT 00177**

Heard at: Field House Decision number:  
Heard on: 14th June 2004 Appeal number:  
Date typed: 17th June 2004  
Date promulgated: 29<sup>th</sup> June 2004

Before:

MS D K GILL (VICE PRESIDENT)  
MR. C. J. HODGKINSON  
MRS. L. R. SCHMITT

Between:

Appellant

And

The Secretary of State for the Home Department

Respondent

## **DETERMINATION AND REASONS**

### **Representation:**

For the Appellant: Miss M. Thirumaney, of Counsel, instructed by Trott & Gentry Solicitors.

For the Respondent: Ms. K. Evans, Senior Home Office Presenting Officer.

- 1.1 The Appellant (a national of Turkey, who claimed asylum in the United Kingdom on 13th November 2001) has appealed, with permission, against the determination of Mr. N. J. Blandy, an Adjudicator, who (following a hearing on 19th August 2003 at Hatton Cross) dismissed his appeal on asylum and human rights grounds against the Respondent's decision of 27th May 2003 to refuse leave to enter the United Kingdom. The Appellant's appeal to the Adjudicator was brought under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
- 1.2 **This Determination is reported because we consider new evidence relating to information systems/registers in Turkey and the report of Mr. David McDowall of 19<sup>th</sup> March 2004 in which he comments on the Tribunal's Determination in [2004] UKIAT 00038 O (Turkey). Our consideration of these documents is set out at paragraph 23, sub-paragraphs (a) to (k) below.**
- 2.1 **The issue:** Given the terms of the grant of permission to appeal and the grounds of application dated 13th September 2003, the issue before us is whether, if removed to Turkey, the Appellant would be at real risk of persecution or treatment in breach of Article 3.
- 2.2 In the grounds of application and the decision granting leave, reference is made to the Tribunal's Determination [2003] UKIAT 00034 ACDOG. It is also asserted that the Adjudicator had failed to take into account the heightened risk to the Appellant due to the fact that the HADEP organisation, which the Appellant supported, was banned in March 2003 (i.e. following the Appellant's arrival in the United Kingdom). In [2003] UKIAT 00034 ACDOG, the Tribunal set out guidelines for assessing

whether individuals would be reasonably likely to be subjected to persecution or treatment in breach of Article 3 in Turkey. Since the grant of permission to appeal, the Tribunal's Determination in [2004] UKIAT 00038 O (Turkey) has been promulgated.

- 4.1 **Basis of claim:** The Appellant is an Alevi Kurd. He has performed his military service. He supported HADEP (Halkin Demokrasi Partisi) from early 1999 in Umraniye. He never officially joined HADEP (paragraph 3.10 of the Determination). He was detained on a total of four occasions as follows:
- (a) On 21st May 1999, during a raid on a HADEP building in Umraniye. He was held for one day. Whilst being questioned, he was hit with a sandbag. He was released without charge but with a warning not to attend the HADEP building. He nevertheless continued his activities.
  - (b) In August 1999, during a raid on a HADEP building in Umraniye. He was questioned and repeatedly punched. He was released without charge the following day, and told that the police would not just warn him the next time. He decided not to go to HADEP any longer (last sentence of paragraph 3.4 of the Determination).
  - (c) On 21st December 2000 during a raid on a HADEP building in Sarigazi. He was taken with 15 or 16 people. He was held for two days, denied food and water, interrogated and beaten with truncheons on his knees and back. He was released without charge. He resolved not to attend any more HADEP meetings. He said he had had enough of it (paragraph 3.6 of the Determination).
  - (d) On 21st March 2001 from a Newroz celebration. About 200 / 250 people were arrested. He was released the same day. He did not mention any ill-treatment on this occasion.
- 4.2 The Appellant also says that, in the latter part of 2001, he experienced problems from Sunni extremists / Hezbollah. This happened after he had questioned an Imam's preaching at the Central Mosque about Muslim support for Bin Laden's organisation, giving his (the Appellant's) opinion that innocents had been killed in America on 11th September 2001 and that the preaching was wrong. He said that the police also went looking for him. He thought that this was connected with the "Hezbollah incident" (paragraph 3.9 of the Determination).
- 4.3 His parents and two younger siblings live in Istanbul. However, the Appellant was born in Karakuyu in the Sivas province. When he last spoke to his parents, they told him that the police have raided their house and that there is a warrant for his arrest.
- 4.4 Page F1 of the statutory appeal bundle shows that the Appellant has with him in the United Kingdom a Turkish driving licence. He left Turkey on 30th October 2001 (page A1 of the statutory appeal bundle). According to page A2 of the statutory appeal bundle, he used a forged passport to travel to the United Kingdom. He destroyed the passport before arriving in the United Kingdom. On 13th November 2001, he entered the United Kingdom by train from France.
- 4.5 Since his arrival in the United Kingdom, the Appellant has married a naturalised British Citizen who is of Turkish origin. The marriage took place on 12th August 2002. His wife had a baby about 3 weeks before the hearing before the Adjudicator took place.

- 5.1 **The Adjudicator's Determination:** The Adjudicator stated that he was able to accept the core of the Appellant's accounts, with some reservations. He made the following findings:
- (a) (paragraph 6.2) He accepted that the Appellant was detained on 3 occasions from various HADEP buildings. His detentions were brief and he was released on each occasion without charge. The Adjudicator noted that the Appellant complained of a degree of ill-treatment during his detentions which the Adjudicator stated did not seem to him (the Adjudicator) to be very severe when compared to some of the objective evidence. The Adjudicator stated that the Appellant was detained on each occasion for "a very short time and that, on looking at the facts of these episodes", it was clear that the Appellant was not thought to be a separatist but that he was merely regarded as a low-level HADEP sympathiser. The Adjudicator considered that the detentions had the desired effect, in that, the Appellant did decide to stop his political activities. It was apparent that the authorities took no further interest in him. The Adjudicator found that it was not reasonably likely that the authorities actually kept a record of the Appellant's detentions at all and that it was considerably more likely that the Appellant's treatment was simply informal bullying.
  - (b) (paragraph 6.6) The Adjudicator noted the Appellant's detention following the Newroz celebration, that many people were taken with the Appellant and that the Appellant was released after a few hours. The Adjudicator noted that the Appellant was not ill-treated and had not mentioned whether his name was taken.
  - (c) (paragraph 6.3) The Adjudicator rejected the Appellant's claims concerning the speech he said he had given at the Central Mosque and the alleged subsequent problems from the Hezbollah / Sunni extremists and the police.
  - (d) (paragraph 6.4) The Adjudicator rejected the Appellant's claim that an arrest warrant had been issued against him.
  - (e) (paragraph 6.5) The Adjudicator noted that the Appellant had not suggested having had any difficulties during his youth or during his military service as a result of his Kurdish ethnicity or his Alevi faith, that he speaks Turkish and that his family lives in Istanbul. He found that the Appellant is clearly a Kurd who has been successfully assimilated into the Turkish community. The Appellant has not suggested that his family have in any way been involved in separatist activities or that they have suffered any degree of persecution for any reason.
- 5.2 The Adjudicator found that the Appellant's removal would not be in breach Article 8. This has not been challenged.
- 6.1 At the commencement of the hearing, we asked the parties to address us on whether the Appellant would have a viable internal flight option, in case this becomes relevant. At paragraphs 67 and 69 of the No. 38 O case, the Tribunal suggested that the internal relocation was likely to assume importance in cases involving Turkish citizens.
- 6.2 It was accepted and agreed between the parties that the Appellant's first and second detentions took place in Umraniye and his third in Sarigazi. It was also accepted and

agreed that (as the Appellant had said in his statement) Umraniye is in Istanbul and that Sarigazi is one hour's drive away from Istanbul.

- 6.3 Miss Thirumaney contended that the Adjudicator's finding that the Appellant was not thought by the Turkish authorities to be a separatist was challenged in the grounds of application. In support of this, she relied on the following extract of paragraph 6 of the grounds of application:

The Adjudicator considers that the Appellant is not at risk because "it is clear that the Appellant was not thought to be a separatist but he was merely regarded as a low-level HADEP sympathiser" (para 6.2).

However, this paragraph goes on to state:

Yet, the Tribunal in [ ACDOG ] has found that a returnee will face a real risk on return if he is suspected [sic] being a supporter of HADEP. In concluding that only those thought to be actual separatists are at risk, the Adjudicator has applied the Polat standard to the assessment of the risk on return, a standard rejected by both the Tribunal and Court of Appeal. For the foregoing reasons it is submitted that the Adjudicator's approach to the assessment of the risk to the Appellant if returned to Turkey is inconsistent with that dictated by the Tribunal in [ ACDOG ].

- 6.4 We considered that it was clear, from the remainder of paragraph 6 of the grounds of application, that the assertion in paragraph 6 of the grounds of application is that the Adjudicator erred in considering that only separatists are at risk; there was no challenge to the Adjudicator's finding that the Appellant was not thought to be a separatist. This is further supported by the heading of Ground 1, which refers to "the Adjudicator's assessment of the risk to the Appellant on return in the light of the facts as found" (our emphasis). We therefore ruled that it was not open to Miss Thirumaney to challenge the Adjudicator's finding that the Appellant was not thought to be a separatist.
- 6.5 With regard to the Adjudicator's finding that the degree of ill-treatment the Appellant had experienced in detention was "not very severe when compared with some of the objective evidence", Miss Thirumaney agreed that the Adjudicator had not rejected the Appellant's claims as to the way in which he had been ill-treated. However, it is asserted in the grounds of application that such ill-treatment should be regarded as "severe" and that the Adjudicator erred in opining that it was "not very severe".
- 6.6 We then proceeded to hear submissions.

### **Oral submissions**

- 7.1 Miss Thirumaney referred us to:
- (a) paragraph 5.56 and 5.57 of the CIPU report dated April 2004. She was not able to give us any information about the Swiss Organisation for Refugees (SWOR) but submitted that, by virtue of the fact that this information is contained in the CIPU Report, we should place reliance on it, notwithstanding paragraph 1.2 of the CIPU report. In her submission, the CIPU Report has consistently been relied upon before the Tribunal as reliable evidence. In Miss Thirumaney's submission, the last two sentences of paragraph 5.57 leads to the inference that the other information systems would be available at Istanbul airport and would be linked to the GBTS system.

- (b) paragraphs 6.241 and 6.242 of the CIPU Report, which deal with the treatment of failed asylum seekers. There is a list of factors at paragraph 6.242.
- (c) the “Zaman On-Line” article at page 245 of the Appellant's Bundle B and the final page of the same bundle. Although the former refers to criminal records, the latter states that the Police Computer Network and Information System is in service through all city centres and border gates of Turkey - airports, harbours and land borders.
- (d) paragraphs 6.162 and 6.165 of the CIPU Report, which states that, in April 2002, a former HADEP leader was sentenced to 10 month's imprisonment for “challenging Turkey's unitary structure” during speeches at a 2000 HADEP convention. A lawsuit has been filed to close down DEHAP (Democratic People's Party), the successor of HADEP.
- (e) paragraph 4 of Mr. David McDowall's report of October 2002 (page 44 of the Appellant's bundle B) which states that, although HADEP was a legal party at that time, those belonging to it or supporting it are considered separatists by the security forces and treated accordingly.

7.2 Accordingly, bearing in mind paragraph 6.242 of the CIPU Report and the fact that checks will be made of the local gendarmerie station, the Appellant's 4 detentions would emerge, as would the fact that he was a HADEP supporter. There would then be a real risk that he would be subjected to persecution or Article 3 ill-treatment.

7.3 In Miss Thirumaney's submission, the Adjudicator had failed to give any consideration at all to the heightened risk on account of the banning of HADEP on 31st March 2003, after the Appellant's departure from Turkey. In ACDOG, the Tribunal stated that HADEP was banned because of its connections with the PKK (Kurdistan Workers Party).

7.4 In Miss Thirumaney's submission, we should apply the guidance of the Tribunal in ACDOG in order to determine whether the Appellant would be at risk at Istanbul airport. This is because ACDOG was a country guidance case, whereas No. 38 O case is not. Furthermore, the No. 38 O case only deals with the GBTS system. She relied on the response of Mr. McDowall dated 19th March 2004 to the No. 38 O case at pages 232 to 244 of the Appellant's bundle B. Although his comments on the third page of his report (page 234 of the Appellant's bundle B) were not sourced, Miss Thirumaney submitted that we ought to rely on whatever he says because he is an expert and has been acknowledged to be so. Our attention was also drawn to the first sentence on page 8 of the report (page 240 of bundle B) and the first sentence of the full paragraph on page 9 of the report. Furthermore, the instant appeal could be distinguished from the No. 38 O case in that the Adjudicator in the instant appeal had accepted that the Appellant was detained on 4 occasions.

7.5 At paragraph 6.7 of the Determination, the Adjudicator had indicated that he had considered the guidance in ACDOG. However, he had not indicated what factors he had considered. In Miss Thirumaney's submission, the Appellant satisfied the following factors listed at paragraph 46 of the Determination in ACDOG – (a), (b), (e), (g), (h), (i), (j) and (k). She accepted that he did not satisfy the remaining factors. As the Tribunal stated in ACDOG, there is no minimum number of factors which had to be satisfied for there to be a real risk of persecution or Article 3 ill-treatment.

- 7.6 Accordingly, Miss Thirumaney asked us to allow the appeal. If we were not with her this, she asked us to remit the appeal to an Adjudicator so that the risk on return could be assessed. We could not see any basis for the request to remit the appeal, since it was tantamount to saying that, if the Appellant lost his case before the Tribunal on the issue of the risk on return, then he ought to be given a chance before an Adjudicator on the same issue.
- 8.1 Ms. Evans informed us that she would not object to the Tribunal commencing the assessment of the risk on return on the basis of the guidance in ACDOG, although she asked us to bear in mind the conclusion of the Tribunal in No. 38 O case as to what amounts to an arrest and what is a detention in assessing some of the criteria set out in ACDOG. In Ms. Evans' submission, since the Appellant did have a passport which he gave to his agent, there would be no problem obtaining a replacement passport from the Turkish Embassy.
- 8.2 The only information about SWOR is that it is a non-governmental organisation (NGO). Ms. Evans relied on paragraph 1.2 of the CIPU report, which makes clear that the CPU report does not represent Home Office policy or opinion. With regard to the "treatment of failed asylum seekers" section from paragraph 6.240 onwards, Ms. Evans questioned how the Turkish authorities would know that the Appellant is a failed asylum seeker, unless he chooses to tell them. He has a wife in the United Kingdom. There was no reason for the Turkish authorities to be told that he is a failed asylum seeker. The Zaman-On-line article refers to criminal records, whereas the Appellant does not have any criminal records. The report states that the reason for the new online system is to bring standards up to EU standards. Paragraph 4 of Mr. McDowall's report of October 2002 (page 44 of the Appellant's bundle B) is irrelevant because the Adjudicator had found that the Appellant was not thought to be a separatist. That finding had not been challenged. Page 3 of Mr. McDowall's report of 19th March 2004 (on page 235 of the Appellant's bundle B) states that "the result is that we are all guessing". With regard to page 8 of the report, the source for the text to footnote 13 is an ex-para legal with Baker & Co. There is nothing to indicate what makes this individual a person with sufficient expertise to comment on the GBTS system or Mr. McDowall to rely on his "expertise". In Ms. Evans' submission, this was not a report the Tribunal could rely on. The document on the final page of bundle B refers to a project for the future. The system is not operational. There is no information about who would be listed on this system. There is no reason to suppose that the Appellant would be on any such system.
- 8.3 In Ms. Evans' submission, the internal flight option was not relevant in this case. Ms. Evans asked us to dismiss the appeal. There was no need for the appeal to be remitted.
9. In response Miss Thirumaney submitted that the final page of Bundle B indicates that the computer system is in service at all border gates. This corresponds with paragraph 5.56 and 5.57 of the CIPU report, which states that records of all detentions are kept. Even if we did not take into account the report of Mr. McDowall dated 19th March 2004, she urged us to rely on paragraph 5.56 and 5.57 of the CIPU report. The internal flight option would not be available to the Appellant, because, at page 70 of the Appellant's bundle B, Mr. McDowall states that the requirement of registration with "mukhtars" would give rise to problems. Furthermore, if the Appellant fears the state authorities in his home area, he would not be able to avoid state-persecution by internally relocating.
10. We asked Miss Thirumaney whether she could help us understand why, if Mr. McDowall is the expert he is being, or has been, portrayed to be, he had no

knowledge of the information contained on the GBTS until that evidence was adduced to the Tribunal in No. 38 O case. Miss Thirumaney submitted that it was only after the evidence about the GBTS was adduced to the Tribunal that the evidence became known.

11. We reserved our Determination.

### **Determination and reasons**

12. We have decided to dismiss this appeal. We now give our reasons for doing so.
13. We have already given our reasons in paragraph 6.4 above for concluding that there was no challenge in the grounds of application to the Adjudicator's finding that the Appellant was not thought to be a separatist by the Turkish authorities but that he was merely regarded as a low-level sympathiser.
14. With regard to the Adjudicator's opinion that the ill-treatment the Appellant described he experienced in detention was "not very severe", we have stated in paragraph 6.5 above that Miss Thirumaney agreed that the Adjudicator had not rejected the Appellant's claims as to the way in which he was ill-treated in detention. The grounds of application assert that the Appellant's ill-treatment was such that the Adjudicator erred in opining that it was "no very severe". In other words, the challenge is not to the Adjudicator's assessment of credibility but to the description of the ill-treatment as being "not very severe". The Adjudicator said that the ill-treatment was "not very severe when compared with the some of the objective evidence". That is the context in which his opinion should be considered. Paragraph 6.1 of the CIPU report dated April 204 states that they have been numerous reports by human rights organisations of systematic use of torture by security forces, deaths in police custody, disappearances and extrajudicial executions. It states that details of commonly reported types of torture can be found in the US State Department Reports. The Appellant's Bundle B contains the US State Department Report for Turkey dated 31st March 2004. The fifth paragraph of Section 1.c (page 5 of the report) states:

Human rights observers and medical experts said that security officials often used methods that did not leave physical traces, such as beating detainees with weighted bags instead of clubs or fists, or applying electric shocks to a metal chair where the detainee sits, rather than directly on the body. Commonly employed methods of torture reported by AI and the HRF's treatment centers included: repeated beatings; stripping and blindfolding; exposure to extreme cold or high-pressure cold water hoses; electric shocks; beatings on the soles of the feet (falaka) and genitalia; hanging by the arms; food and sleep deprivation; heavy weights hung on the body; water dripped onto the head; burns; hanging sandbags on the neck; near-suffocation by placing bags over the head; vaginal and anal rape with truncheons and, in some instances, gun barrels; squeezing and twisting of testicles; and other forms of sexual abuse. In some cases, multiple torture methods (e.g. hanging and electric shocks) were employed at the same time. Other methods used were forced prolonged standing, isolation, loud music, witnessing or hearing incidents of torture, being driven to the countryside for a mock execution, and threats to detainees or their family members.

15. The Appellant has described the following ill-treatment during his detention:
- (a) During his first detention, he was hit with a sandbag for 10 to 15 minutes. He was interrogated. He describes the officers being aggressive. He was told that “they” would “fix” him with a crime (paragraph 7 of his statement at page 61 of Bundle A).
  - (b) During his second detention, his face was punched, whilst he was questioned (paragraph 9 of the statement, pages 63 and 64 of Bundle A). He was again told that he would be fixed with a crime.
  - (c) During his third detention, he was handcuffed and told that “orders had been received from above” - as a form of psychological pressure. He was deprived of food and drink and had to sleep on the floor. On the second day of his detention, he was beaten with truncheons, including on his knees and back (paragraphs 12 and 13 on pages 65 and 66 of Bundle A).
  - (d) He has not mentioned any physical ill-treatment during his fourth detention (paragraph 11 on pages 64 and 65 of Bundle A).
16. Whilst we fully appreciate that the ill-treatment he received must have been frightening for him and whilst we stress that we do not in any way condone the ill-treatment, we agree with the Adjudicator that, when seen in the context of the objective evidence as to the ill-treatment of detainees in Turkey, the ill-treatment the Appellant suffered “was not very severe”.
17. The thrust of Miss Thirumaney’s submissions is that, if we were to apply the guidance in ACDOG, the Appellant would be at real risk of persecution or Article 3 ill-treatment on arrival at Istanbul airport. We do not agree. Miss Thirumaney accepted that the factors mentioned at paragraph 46 c), d), f) l), m), n) and o) of the ACDOG Determination were not satisfied. We do not agree with her that the Appellant satisfies all of the remaining factors. We observe on the factors in paragraph 46 as follows:
- a) the Adjudicator found that the Appellant was not thought to be a separatist but was merely regarded by the Turkish authorities as a low-level HADEP sympathiser.
  - b) The Appellant was detained on 4 occasions. Three of those detentions took place as a result of raids on HADEP buildings. All of these detentions were short. With regard to his fourth detention, he was taken from a Newroz celebration; 200 or 250 people were detained at the same time. He was released on the same day.
  - e) The ill-treatment during his first 3 detentions was “not very severe”. He did not mention any physical ill-treatment during his final detention.
  - f) He has not suggested that his family have in any way been involved in separatist activities or that they have suffered any degree of persecution for any reason.
  - g) Seven months elapsed between the fourth detention and the Appellant's departure. However, that detention related to the Appellant’s attendance at a Newroz celebration. The last detention which was in connection with his presence in a HADEP building was in December 2000 – which was about 10

months before his departure from Turkey. According to paragraph 16 of the Appellant's statement (page 67 of Bundle A), the Appellant continued to work after his fourth and final detention. The Adjudicator rejected his claims about the problems he experienced following his fourth detention. It follows that he was able to work without any problems from anyone.

- h) There is no credible evidence of the Appellant being under any surveillance or that he was monitored. As we have said above, the Adjudicator rejected his claims as to events following his fourth and last detention.
- i) He is a Kurd by ethnic origin. However, it is also relevant to take into account the fact that he speaks Turkish and the Adjudicator's finding that he is a Kurd who has successfully assimilated into the Turkish community.
- k) We do not agree with Ms. Evans' submission on paragraph k) because the Appellant's account is that he used a forged passport to travel to the United Kingdom. However, he has a Turkish driving licence, which will assist him in the way of evidence of identity. In any event, he would be returned with a Turkish emergency travel document.

(The remaining factors do not apply).

18. We are of course mindful that there is no minimum number of factors which must be satisfied before there would be a real risk of persecution or Article 3. In addition to our observations above, we note that he was never arrested from home. Between his first detention and second detention, there was a period of 4 months during which time he experienced no problems. Between his second detention and third detention, there was a period of 1 year 4 months, during which time he experienced no problems. These were the HADEP-related detentions. The lack of any problems during these periods does not support the contention that he was of adverse interest to the Turkish authorities. We agree with the Adjudicator's finding that the Appellant's detentions were no more than a form of informal bullying. Considering all of the circumstances as a whole and bearing in mind the low standard of proof, we are satisfied that, even if we were to determine the risk on return by applying the guidance in ACDOG, it is not reasonably likely that there would be any record of the Appellant's detentions either on the GBTS or any other information systems (even assuming that such other info systems are available at Istanbul and are linked in some way to the GBTS system).
19. As paragraph 6.242 of the CIPU report states, persons who arrive in Turkey on an emergency travel document would be questioned. There is no need for the Appellant to inform the Turkish authorities that he had claimed asylum in the United Kingdom. He has a wife and child in the United Kingdom. He has a Turkish driving licence which would assist him in establishing his identity. Having regard to all of the circumstances of this case, we are satisfied that it is not reasonably likely that any suspicions would be raised about the Appellant on arrival at Istanbul airport. We are satisfied that he would be allowed to leave the airport after routine questioning and identity checks have been carried out. On average, this takes between 6 hours and 9 hours.
20. After leaving the airport, it is not reasonably likely that the Appellant would experience any problems at the hands of the Turkish authorities if he were to return to live in Istanbul or in his home province of Sivas. Accordingly, the internal flight option is therefore not relevant. Accordingly, we agree with the Adjudicator's finding the Appellant's removal would not be in breach of the United Kingdom's obligations

under the Refugee Convention or the Appellant's rights under Article 3. We can see no good reason to remit this appeal. The assertion that we should remit the appeal for the risk on return to be assessed if we were to decide that the Appellant is not at risk amounts to no more than saying that, if the Appellant fails before us, he ought to be allowed to try his luck before another Adjudicator.

21. We acknowledge that, since the Appellant's departure from Turkey, HADEP has been banned. With regard to Miss Thirumaney's submission that this means that there is a heightened risk for the Appellant, we are satisfied that there would only be a heightened risk if there is a record of his detentions in the first place. Since it is not reasonably likely that there would be any record of his detentions, the banning of HADEP since his departure from Turkey does not add to the risk in his particular case.
22. Accordingly, the Appellant's asylum and Article 3 claims fail.
23. Strictly speaking therefore, it is not necessary for us to deal with Miss Thirumaney's submissions as to the reasons why the No. 38 O case should not be followed, nor is it necessary for us to deal with the documents referred to at paragraphs 7.1 or Mr. McDowall's report of 19<sup>th</sup> March 2004. However, we take the opportunity to make the following observations:
  - (a) The fact that paragraphs 5.48 to 5.57 of the CIPU report sets out extracts of a report from SWOR (Swiss Organisation for Refugees) does not mean that this information is reliable. Paragraph 1.2 of the CPU Report makes it clear that the CIPU report is a collation of extracts of reports. We do not have any information about SWOR other than that it is an NGO. We do not know what methodology SWOR has used to gather its information, or the reliability of the sources of its information.
  - (b) Whilst it may well be that various bodies (the police, the gendarmerie, the army, etc.) within the Turkish government have their own information systems or registers and it may even be that such information systems/registers may contain information about persons who have been detained but not formally arrested, we are of the view that the last two sentences of paragraph 5.57 of the CIPU Report dated April 2004 should be treated with great caution. If taken literally, these two sentences would mean that *every single individual* who has ever been detained in the past (for however short a period of time and for whatever reason) would be listed on an information system. Information systems which include all such persons would be rendered of little use, given (from what we know about Turkey) that the numbers of such individuals would be very large indeed – unless, of course, the body which operates the information system/register makes entries of an adverse nature against the names of those individuals who are of continuing adverse interest to distinguish them from the generality. Accordingly, even if other information systems / registers exist, the guidance set out in the ACDOG case would have to be used in order to determine whether it would be reasonably likely that an individual would be subjected to treatment amounting to persecution or in breach of Article 3 on account of any information about the individual on any such systems or registers if the individual were to come into contact with the body which operates the systems or register. In other words, the ACDOG guidance would determine whether an individual is at real risk of such ill-treatment in his home area or the area where his detentions took place.

- (c) Even if (applying the guidance in ACDOG) it would be reasonably likely that an individual would be at real risk of persecution or treatment in breach of Article 3 in his home area or the area in which his detentions took place, he would only be at real risk of such treatment on arrival at Istanbul airport if it is shown:
- (i) that the other information system/register on which the individual is adversely recorded is available to the immigration or security officials at Istanbul airport; and
  - (ii) that there is some way of linking the other information system/register with the GBTS.
- (d) SWOR does not say that other information systems/registers are available to the security officials at Istanbul airport. It suggests the existence of multiple information systems/registers in Turkey but makes no mention of any initiative by the Turkish authorities to put in place a single computer system to replace records held by police departments in Turkey (see (e), (f) and (g) below).
- (e) The Zaman On-Line article dated 1st February 2004 (page 245 of the Appellant's Bundle B) refers to a single computer system which will replace all records kept by the police and gendarmerie. This article gives the name of the system as "Information Collection System". This article states that, under the single on-line system, all records of police and gendarmerie in the provinces will be abolished and the new on-line system will be used. The document entitled "Project for Police Information Systems" dated April 2002 on the final page of the Appellant's Bundle B also makes reference to a police computer network but it gives a different name – the name given in this article is "Police Computer Network and Information System". Both documents must be referring to one and the same computer system – since both articles refer to one system to cover the police departments. If this is the case, then the Zaman On-Line article makes it clear that only criminal records would be collected into the single system. The inference therefore is that mere detentions would not be collected into the single on-line system.
- (f) It is also clear from the Zaman On-Line article that not all police departments are already covered by the single on-line computer system. This article specifically refers to the Ankara Police Department having already destroyed all of its records. Accordingly, anyone who was previously detained by the Ankara police and who did not have any criminal record will not be named on the single on-line system, even if that system is available to security officials at Istanbul airport. The fact that records of the Ankara Police Department have been destroyed means that anyone with a history of detentions in Ankara would not now experience problems in Ankara, unless they can show that the individual officers would remember him and would continue to have an adverse interest in him.
- (g) Furthermore, the Zaman On-line article states that the previous record keeping system sometimes led to violations in human rights and freedoms. Bearing this in mind, we regard the initiative to eventually abolish all records held by the police and gendarmerie and to collate criminal records into one on-line system as a positive development. Furthermore, if only those with criminal records will be named on the single system (as this Zaman On-line article states) and records in local police stations will be or have been

destroyed, then the inference from this article is that fewer people will their human rights abused even in their former home areas.

- (h) Mr. McDowall (at page 3 of his report of March 2004, page 235 of the Appellant's bundle B) specifically states that “we are all guessing”. Accordingly, he is speculating in commenting on the evidence placed before the Tribunal in the No. 38 O case. On the same page, he states that “the central question here is whether the filter as applied by the GBTS as described [in his report] is in itself sufficient to serve Turkey's security needs”. He opines that it is not. He proceeds to move from this opinion to the assumption that the Turkish authorities must therefore be using a better system which does serve its security needs. There is no basis for that assumption, which is based on speculation. The evidence we have is that, whether adequate or not, it is the GBTS which is used at Istanbul airport.
- (i) At page 8 of his report (page 240 of the Appellant's Bundle B), Mr. McDowall states that “Where the person detained is alleged to have been politically active or is otherwise perceived as an opponent of the State, it is practice for their detentions to be recorded on the GBT. The records can be accessed by the police”. Footnote 13 indicates that the source for this is Hayri Zafer Korkmaz, who is described as an ex-para legal of Baker & Co. Who is Mr. Korkmaz? What expertise does he have in this area? What does he base his information on? How reliable is his information? These questions are not dealt with in Mr. McDowall's report. Furthermore, the contention that it is the practice for detentions to be recorded contradicts Mr. McDowall's previous report of November 2002 (see paragraph 5.42 of the CIPU Report) in which he stated that a large proportion of detentions at police stations appear to go unrecorded in a formal sense.
- (j) We do not accept that Mr. McDowall's report of 19<sup>th</sup> March 2004 should be accepted by the Tribunal, even though his opinions are based, in part, on speculation and, in part, on information from parties about whom we are given very little information. It may be that the Tribunal has, to date, given too much credence to Mr. McDowall's opinions. If he is the expert he is professed to be, then serious questions are raised as to why, as an expert, he had no prior knowledge of the information about the GBTS which was placed before the Tribunal in the No. 38 O case. The suggestion that it was only at that time that the evidence about the GBTS came forth does not address the issue we are raising here. Mr. McDowall has, for some time now, produced reports opining that the Turkish authorities hold records of detentions which would be available to the security officers at Istanbul airport because they would be on the GBTS. The argument he advances in the report of 19<sup>th</sup> March 2004 (that the practical application of the GBTS goes beyond official rules covering it) is not one which he has previously advanced – which is very surprising, if he is an “expert” and given the length of time this particular debate has been going on for. We infer, from Mr. McDowall's failure to mention previously such a distinction, that he was, quite simply, unaware of any such distinction until the No. 38 O case. It is also interesting to note that the information contained in the “Project for Police Information Systems” document dated April 2002 and the information contained in the Zaman On-Line article dated 1st February 2004 (both of which pre-date the report of Mr. McDowall dated 19th March 2004) is not mentioned in his report. The time may now have come when the Tribunal may wish to reconsider what credence should be given to Mr. McDowall's opinions.

- (k) We do not agree that the No. 38 O case is not a country guidance case. It was clearly meant to provide guidance on the new evidence adduced to the Tribunal in that case about the GBTS system.

**Decision**

**The appeal is DISMISSED.**

Ms. D. K. GILL  
VICE PRESIDENT

Date: 24<sup>th</sup> June 2004

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