

DECISION RECORD

RRT CASE NUMBER: 071645328

DIAC REFERENCE(S): CLF2007/114637 CLF2007/65712

COUNTRY OF REFERENCE: Turkey

TRIBUNAL MEMBER: Peter Katsambanis

DATE DECISION SIGNED: 24 January 2008

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second and third named applicants satisfy s.36(2)(b)(i) of the Migration Act, being the spouse and dependant respectively of the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants, who claim to be citizens of Turkey, arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.

The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.

The applicants applied to the Tribunal for review of the delegate's decisions.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

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

Definition of 'refugee'

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

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

outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Application for Protection

The applicants are a family. The first named applicant is a male in his thirties who was born in Town A, Turkey and is a Turkish citizen. The second named applicant is also in her thirties and is the wife of the first named applicant. The wife was born in Turkey and is a Turkish citizen. The third named applicant is a child. The child is a Turkish citizen.

Only the first named applicant has made any Convention related claims, the other applicants relying only on their membership of his family. Therefore, for convenience, the Tribunal will refer to the first named applicant as "the applicant" where appropriate.

In his application for protection the applicant stated that he was of Kurdish/Arab Alevi ethnicity and of Alevi religion. He had married in village B, Turkey and had a child. He stated that he had lived in several separate addresses in northern Cyprus from the 1990s onwards. He had completed several years of schooling in Turkey. He stated that from the late 1990s to the mid 2000s he had worked at a number of venues in northern Cyprus.

In his application form the applicant stated that he fled Turkey and northern Cyprus because he feared for his life and would provide a full statement shortly. He claimed that if he returned he feared that he would be severely mistreated, imprisoned without trial and could be murdered. He feared harm from the authorities of both northern Cyprus and Turkey, and claimed that his fears arose because of previous treatment, political belief, ethnicity and social group. He claimed that the authorities could not protect him because they were the ones who were primarily responsible for the prosecution. He indicated that he had left Turkey to come to Australia from City C.

The applicants provided copies of the passports to the Department. The passport of the first named applicant indicated that he entered and departed Turkey and northern Cyprus on multiple occasions over many years. The first named applicant also provided copies of a military service leave form (not translated) and his Turkish identity card.

In a statutory declaration the first named applicant outlined his life history in Turkey and Northern Cyprus. He stated that he was claiming asylum in Australia because he fled persecution in Turkey and northern Cyprus and was unable to return as the authorities could not protect him and he feared that threats to harm him would be acted upon on his return.

The applicant stated that his parents were of Kurdish and Arab Alevi background and that his religion was Alevi. He claimed that his parents lived in Turkey and had suffered persecution over a number of years because of their background. Through their experiences, the applicant had formed the views he held and had been persecuted for his beliefs. He feared return to Turkey and northern Cyprus on the basis of his political opinion, his ethnicity, including religious association and his family background.

The applicant claimed he believed in freedom and individual rights and as a member of two ethnic groups that had been persecuted in Turkey for generations he believed he had to stand up for these beliefs. He claimed that relative 1 was an educator with strong leftist views who had supported greater freedoms for the Kurdish and Arab populations. He claimed that relative 1's sibling was harmed in Village D in the mid 1990s. He claimed that his relative 2's family were originally from village E, which was in Syria but had become part of Turkey in the late 1930s at a time of significant forced movement of various populations. He claimed that his relative 2's parent was forced to move from village E to village F in the late 1940s and claimed that this was an internal exile. The Arab population in the area had its property appropriated by Turkish authorities and minority groups were subject to strict rules about displaying their cultural heritage.

The applicant claimed that he returned to village E with relative 2 to visit family and he was the repression of the Arab population there, with no right to speak or to express their religion. He claimed that during this visit he met person 3, who obtained protection in Australia, and it was through an invitation from this man's wife that he was able to come to Australia. He claimed he became more and more concerned at the suffering of his people and in the late 1980s he met with friends to investigate setting up an association of people from Kurdish and Alevi backgrounds with a view to informing others about the repression they were suffering. He claimed that the association did not go ahead because the authorities found out and arrested a number of people, including the applicant. He stated that he was held by the authorities for several days.

The applicant claimed that in the late 1980s he and person 3 decided to go to a celebration in village E however on arrival the applicant was arrested and held in custody for several days. He claimed that in the early 1990s he was told by Turkish authorities that he had to leave village B as he was a trouble maker and was told he had to go to Northern Cyprus where the authorities could keep a close eye on him. He was told that he would be permitted to return to Turkey on occasions and was required to report to authorities on a weekly basis. He stated that on arrival in Cyprus he was again detained, harmed, threatened and warned to be careful with what he did and who he met with. He stated that he was again detained in the early 1990s because of his background and beliefs and again in the early 1990s he was informed he had to do his compulsory military service. [Some details of issues regarding military service deleted in accordance with s. 431 as it may identify the applicant] he believed it was wrong to use force to suppress ethnic groups in Turkey but because of his beliefs he was put into military prison where he was tortured and [details of issues regarding military service deleted in accordance with s. 431].

The applicant stated that in the mid 1990s he agreed to attend an important Alevi religious celebration at town G. He left Cyprus and went to village B but on the day that he and his friends were about to go to town G they found out there had been some trouble between Islamic extremists and Alevis in town G and after Friday prayers a building was damaged in town G and many people were killed. The applicant was upset by these reports and returned to Cyprus.

The applicant returned to Cyprus to do military service and spent several months in the army where he claims he was treated very badly. He finished his military service in the early 1990s. He claimed that he became a member of a political party, which tried to protect the rights of individuals who believed that Turkish authorities were taking away political rights. He claimed people in the political party were of Kurdish and Alevi background and although the party itself was not illegal, it was suppressed by authorities. He claimed that he did not have a large role in the party as he was concerned for his safety but believed strongly in the party. He claimed that this party was aligned to a newspaper but the editor of the newspaper was killed by authorities in city C after they arrested him. The applicant claimed that he left the party in the late 1990s because he felt at great risk and did not want to be harmed for his beliefs. He had met his wife, who he married in the 1990s, and wanted a normal life with her.

The applicant claimed he had been detained on a number of occasions in Turkey and had been forced to leave his own town to go to Cyprus to make a new life. He also claimed that at times in his life he had to attend to the authorities on a weekly basis where he would have to sign in, face a number of questions and then be allowed to go. He claimed he was first detained in the late 1990s in village B when he was in his teens. He was detained for several days and the authorities hit and threatened him before they released him. He was again detained during the celebrations in village E that year, along with his friend person 3, and was harmed by the authorities and questioned because of his beliefs. He was held for several days but eventually released after being warned to watch out as bad things could happen to him, which he took to be a threat on his life. He claimed that he was made to report to the authorities fortnightly and was being watched by plain clothed officials, which scared him and made him fear for his life because they could take him away and nobody would see him again.

The applicant claimed that he was detained again in early 1990s and was pressured to leave Turkey by the authorities and the military as he was a bad influence in his area. He relocated to northern Cyprus, fearing what the authorities might do to him. At the border in northern Cyprus he was stopped by border authorities and taken to the police station where he was questioned and told that the authorities had his file and knew he was a person who caused trouble. He claimed one of the authorities hit him and slapped him, and kept saying it would be easy for him to disappear.

The applicant claimed that in the early 1990s some friends from village E came to visit him and they went to have a few drinks. The authorities came to question the group and then detained them. The applicant claimed he was accused of being the trigger for all this and was told that it was “people like us who were segregating the country”. He was punched hard two or three times and was detained for about a day.

The applicant claimed that in the early 1990s when [details of issues regarding military service deleted in accordance with s. 431] he continued to refuse to serve he was imprisoned for 3 months and made to do dirty jobs. During this period he was taken to a place in northern Cyprus where he was held for some time and was tortured and physically abused. He was forced to sign a letter withdrawing his allegations against the Turkish authorities and [details of issues regarding military service deleted in accordance with s. 431]. He was told that if he did not sign he would be detained for 3 years so he signed and did his military service.

After completing his service he was forced to return to northern Cyprus where he kept a low profile but the authorities continued to watch him, occasionally detaining him for short periods of time to ask him questions.

The applicant married his wife in the 1990s and stated that his wife was person 3's wife's relative. They married in northern Cyprus and on the night of the reception the authorities arrived asking if he had a permit to get married. They took a bribe to allow him to continue with the reception.

The applicant claimed that in the early 2000s he went back to village B to stay with his family but the authorities came and took him to the police station where he was held for a day. He was slapped and told he could be harmed any day. He was very worried by this experience and returned to northern Cyprus with his wife.

The applicant claimed that he was again arrested during celebrations in the 2000s when he was playing a musical instrument at a function held by an Alevi organisation in town H. He was arrested and held along with a few other people for several hours. The authorities accused him of being the instigator of these celebrations.

The applicant claimed that he was also detained in the mid 2000s when he was working at a social establishment and another person of Kurdish ethnicity used money there that was found to be the proceeds of a theft. The applicant claims he was accused of being involved in the robbery with the other person because they were both of Kurdish ethnicity. He was taken to the police station where he was held for several hours, questioned and physically abused. Then in the mid 2000s when he was travelling between the northern part of Cyprus and Turkey on a boat, there was a disturbance between border guards and another passenger. When the applicant intervened, the guards started to push him around and then detained him and took him to town I police station where he was told that he had quite a history and was a problematic person. He was held for several hours and physically abused before being released.

The applicant claimed that this last episode confirmed his fears that he could not escape his history or the continued authorities' presence in his life. He lived in fear of his life and in fear that he may be detained at any time so he made preparations to leave.

The applicant claimed that his relative 2 is an Alevi Arab and his relative 1 is Kurdish. He claimed that these groups have been persecuted in Turkey for a long time and due to entrenched attitudes, the recent attempts by Kurdish authorities to be more relaxed on Kurdish culture had made little difference in his region. Alevis had also been persecuted in Turkey for a long time and because this minority congregates together they were easily identifiable. He claimed that the Turkish authorities had taken steps to discredit people like himself of Kurdish and Arab Alevi background and many had been forced to relocate to the northern part of Cyprus where the local authorities could keep any eye on them. He claimed that they could not live a normal life in the northern part of Cyprus as they were continually monitored by the authorities.

The applicant claimed that he had a valid Turkish passport for a long time because he had been required to leave Turkey. He could live and work in the northern part of Cyprus but periodically had to leave and return to Turkey in order to be allowed to stay. He claimed that his passport would be extended every year for one year. He claimed that his friends, person 3 and person 4, had been through similar experiences and had both fled Turkey and come to Australia where they had been granted protection. He had worked with person 3 in the northern part of Cyprus and this man had been with him on many occasions when he had been harassed and persecuted by authorities. He feared for his life and did not want his child to grow up in fear. He was invited to come to Australia by person 3's wife and so he obtained

a visa to come here. He was frightened the authorities would stop him from leaving so he paid a bribe to a man in Turkey who would help him leave easily, which enabled him to leave without incident.

The applicant claimed that he feared that if he returned to Turkey or to the northern part of Cyprus he would disappear. He wanted his child and wife to be safe. He claimed that he had been told so many times by the authorities that he would be harmed and he believed that it would happen. He feared that he would be detained upon return due to his political opinion, his ethnicity and his religion and would be subject to persecution. He had tried to relocate to the northern part of Cyprus but he had not escaped his feared harm there. That is why he sought protection in Australia.

The applicant was interviewed in relation to his claims by an officer from the Department. At this interview the applicant expanded and clarified the claims made in his previous statements. He claimed that he had struggled to obtain any documents evidencing his alleged detention in the past in Turkey for refusing to do military service. He also claimed that a certificate from the Police Headquarters in the northern part of Cyprus stating that he had no criminal convictions recorded against him, that he had presented to the Australian authorities in Turkey in order to obtain his visa, had been obtained by bribing a person in Cyprus on the recommendation of his friend, person 3.

The applicant claimed at interview that he could hold a job at an establishment in Cyprus, despite being a person who was considered to be a dissident by the authorities, because the establishment was privately run and his employers would deal with any issues with the authorities. The applicant also confirmed at interview that he owned his own property in village B, Turkey and that his parents and sibling were currently living in that property. He confirmed that he had made many trips between Turkey and Cyprus over many years but stated that on each occasion he had obtained permission for these trips.

In response to country information presented to the applicant at the interview that Kurds and Alevis appeared to live in safety in Cyprus, the applicant responded that this not true because the Cypriot authorities worked hand-in-hand with the Turkish government.

The applicant stated that he was not an active religious practitioner but believed in freedom of religion and had participated in some activities held in Cem houses as part of his Alevi religion. He described his practice of his religion as being undertaken "every now and then if allowed".

During the application process the applicant provided the Department with a statement purporting to evidence that he was detained for several months as a result of his refusal to undertake military service. [Details of issues regarding military service deleted in accordance with s. 431]. He also provided the Department with a statement indicating that after the completion of his military service he was granted leave allowing him to live with his family in Turkey. This document stated that it could not be used to return to Cyprus.

Application for Review

The applicants were represented in relation to the review.

The Tribunal was provided with a copy of the document referred to above. After the Tribunal hearing a translation of this document was provided which confirmed the details noted in

English on the version of the document on the Department file and also indicated that this document was from “The Republic of Turkey, Army, The Turkish Peace Forces Command in Cyprus”.

A report from a community organisation stated that the applicant’s symptoms appear to be as result of long-term exposure to abuse and threat and were exacerbated by the ongoing uncertainty of his future as well as his genuine belief that a return would lead to further harassment, abuse and threat.

Tribunal Hearing

The first named applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from person 3, who is the applicants’ friend. The Tribunal hearing was conducted with the assistance of an interpreter in the Turkish and English languages. The applicants’ representative attended the Tribunal hearing.

At the hearing the applicant confirmed his personal details and stated that he was born in town A, Turkey and grew up in that area. He and his family moved to village B where other members of his family were still living. He lived in village B until the 1990s when he claimed that he was forced to move to the northern part of Cyprus. He stated that he had siblings. One sibling lived in the northern part of Cyprus while the others lived in village B, where his parents also lived. He confirmed that his wife and child, the second and third named applicants, were with him in Australia but were not present at the Tribunal hearing.

The applicant claimed that relative 2 was of Arab Alevi ethnicity and that relative 1 was of Kurdish ethnicity. He claimed that he saw himself as a human being but that in Turkey he was viewed as being of mixed Arab and Kurdish ethnicity. He claimed he was of Alevi religion. He did not go to any mosque but as part of his religion he would attend Cem houses if permitted to do so.

The applicant was asked if he had attended Cem houses whilst living in the northern part of Cyprus. He responded that they used to get together initially and tried to open a Cem house but that building was never completed.

The applicant stated that he finished his education in village B and did not go to university. He stated that he had before worked in Turkey before he left there in the early 1990s, because he left straight after he finished his education. When asked why he had gone to the northern part of Cyprus, the applicant responded that he had defied the persecution that had been done to him so the military and the authorities forced him to go. When asked how they did this, he stated that his relative 2 was in village E at the time and he was distributing some documents to inform people about discrimination. He claimed that they had gone to give support to the people of village E at a celebration. He stated that they were sending those people away to stop them creating problems. The applicant was again asked to outline how the Turkish authorities had forced him to leave the country and go to the northern part of Cyprus. He stated that he had been detained twice before and had been harmed before he left. He claimed that it was sort of like what happened to exiled people because people went to the northern part of Cyprus as exiles. When asked if he was taken there or if he went on his own, the applicant responded that he had been sent there by police escort. He then stated that he had been sent to a port [name deleted in accordance with s. 431] When asked if he was forced to get onto the boat, the applicant stated that he was put onto the boat and claimed that no matter how separate the northern part of Cyprus may look, it was connected to Turkey. He

confirmed that he had gone to the northern part of Cyprus and stated that he could not go to the other side of Cyprus.

The applicant was asked if any military or police officers had accompanied him on the boat. He responded that they waited until the ship left and when he arrived in the northern part of Cyprus he was detained because they had informed the authorities about him. He claimed he was held at customs for around several hours. He stated that he had been sent there and the local authorities were told to watch his activities there. He claimed they warned him not to get into any trouble.

When asked if he had lived in the northern part of Cyprus from the 1990s onwards, the applicant stated that he had to do so. When asked if he had been allowed to return to Turkey, the applicant stated that he was hoping to return one day and had bought a house with the help of his family but he had not been permitted to go back. He claimed that he had bought a house in village B in 2000. When asked why he would be allowed to buy a house in Turkey but could not live there, the applicant stated that he just purchased the house hoping he would be allowed to go back but was never given the chance.

The applicant confirmed that that he had travelled very frequently between Turkey and the northern part of Cyprus over many years. He claimed he was given permission from these trips but had to notify the authorities at the exits on every trip. He claimed that he would tell them he wanted to go and then they would ask him why. When told that as a Turkish citizen he had a right to go to Turkey whenever he wanted to, the applicant stated that he had problems because every time he went back he would be looked at differently. When told that from his passport and his admission of many frequent trips it appeared that he had no problems travelling between the two places over a long period of time, the applicant responded that he had to go back for marriages, to see his parents and for other visits.

The applicant was asked what work he did when he was in the northern part of Cyprus. He stated that at first he worked in part time jobs and was detained from time to time by authorities. He claimed that in early 1990 he had been detained at [location deleted: s. 431] with his friends. At this point in the hearing the applicant was told to answer the direct questions asked of him rather than to make statements about other, totally unrelated matters. He then stated that he did part time work in the northern part of Cyprus as well as some seasonal work prior to his military service. When he returned from military service he started working as an administrator at an establishment and worked there until he came to Australia. He agreed that this was a senior and responsible position that he held at the establishment.

The applicant was asked why someone with a negative police history would be allowed to hold such a position in an establishment. He responded that the establishment was not run by the government [information deleted: s. 431]. He claimed the mafia ran the establishment there and that he did his job well. He had told his bosses about his police problems and they had told him they did not care about that.

The applicant was told that from his evidence it appeared that he had gone to Cyprus as soon as he finished his education, had worked there, had managed to buy a house in Turkey with the proceeds of his earnings and had married a Turkish girl in Turkey. On this basis, he was asked if he had gone to Cyprus for purely economic reasons rather than because he was forced to do so by the authorities in Turkey. He responded by claiming that his family did not have economic problems and that he did not go to Cyprus for work.

The applicant stated that he was called up for military service in the early 1990s and he [details of issues regarding military service deleted in accordance with s. 431] refused to go because he was a conscientious objector. He claimed that he was put into a military court and was charged with defying a military order. He claimed he was imprisoned for several months and was persecuted whilst in prison but he was told that if he accepted to go to military service then he would be released, otherwise he would be held in prison for several years and even then he would still need to do military service upon release. He stated that under this pressure, he accepted and went to do his military service.

When asked if he had any documents in relation to the military court proceedings, the applicant stated that he did not have any documents about the court hearing but he had a document proving that he was imprisoned. He then presented the untranslated document, which is referred to above.

The applicant was told that in his application form which he filled out when applying for a visa to come to Australia, he had stated clearly that he had never been convicted of any crime. He was asked, given this previous claim, why the Tribunal should now accept his claims that he had been previously convicted and detained in Turkey. He responded that he had not been convicted of a crime against humanity and did not harm people or traffic drugs. When told he was now claiming that he had been convicted of an offence in Turkey and had been detained for that offence, the applicant stated that this was not a crime against humanity but it was a situation where he had not been allowed his opinion, which was not a real crime. The applicant was told that he either lied on his application form or he was lying about his claims in relation to being detained because of a conscientious objection to military service. He again responded that it was not a crime against humanity. When told that he was now claiming that he was convicted and detained in Turkey, which therefore meant he had been convicted of a crime, the applicant responded that it was just an objection to the military and that he was only guilty under Turkish laws.

The applicant was asked about his claimed arrest at Newroz celebrations in the early 2000s. He stated that this happened in town H. When asked why he had been detained, the applicant claimed that he was with friends with common ideas and was celebrating Newroz. He was playing a musical instrument when the authorities came to the restaurant and claimed that it was an illegal demonstration and detained the participants. He stated that he was detained for several hours but confirmed that he had been released after this time and had never been charged with any offence in relation to this matter.

The applicant confirmed his claim that in the mid 2000s he had been detained at the establishment where he worked and had been detained for a day or so in relation to an investigation into a robbery. The applicant was asked if he was ever charged with any offence in relation to this matter. He responded that he had been blamed for aiding and abetting the thieves but when again asked if he had been ever been charged with any offence he responded that he had not been charged and confirmed that he had been released after the matter had been investigated and he had been eliminated as a suspect. He stated that he had been treated badly during his detention.

The applicant was asked why he had been arrested during Newroz celebrations in the early 2000s given that available country information indicated that there appeared to be no problems for people of Kurdish background in the northern part of Cyprus and that they were able to live their lives without any problems in this area. The applicant responded that the northern part of Cyprus was a pirate country and that a specific terrorist group [name deleted

in accordance with s. 431] had a presence in the Republic of Cyprus but he claimed that it was hard to get information about the northern part of Cyprus because it was managed by Turkish security forces. He stated that Kurds were oppressed there and had problems. When told that all available international reports seemed to suggest that Kurds did not have any particular problems in the northern part of Cyprus, the applicant responded that this is how Turkey shows itself to the world and they claim that but in actual fact they had invaded the northern part of Cyprus. Although Turkey makes the reports look good, the applicant stated that he had experienced these things that he was talking about. When told that the reports the Tribunal was referring to were from the United States and from the United Kingdom rather than from Turkey, the applicant stated that no matter how much they do there are always secret parts of real life that they do not experience. He claimed that he had suffered and experienced these things.

The applicant was asked where he had completed his military service. He stated that he did several months in Turkey and was then stationed in the northern part of Cyprus. When asked if he had travelled freely between Turkey and the northern part of Cyprus from the early 1990s until he came to Australia, the applicant stated that this was how it looked and there were no documents attached to his passport but he had to notify his exits and entries to the authorities. The applicant was told that even in the early 1990s, based on the statements in his statutory declaration, he had returned to Turkey freely with the intention of attending a religious festival in town G and did not appear too concerned about any repercussions if he attended such a festival. He responded that he had stopped along the way and had stayed with his family otherwise he may have died at town G as others had at the time. When told that nobody stopped him from going, but it appeared he had changed his mind and decided not to go, the applicant responded that he did not tell anyone he was going and claimed that once you decide to do something you overcome your fears.

The applicant was asked what he feared would happen to him if he returned to Turkey now or in the reasonably foreseeable future. He stated that because of his history and his military offence they would be waiting for him, plus he would have to face the things that he had lived through and he would never be able to live peacefully because he had gone against the system and would not live within that system.

The applicant was told that based on his evidence over time it appeared that since the completion of his military service he had been able to travel freely between Turkey and the northern part of Cyprus, he had worked and he had managed to buy a house. On this basis, he was told that it appeared to the Tribunal that his life was not overly restricted. He claimed that it was nothing to do with that but when you deal with government departments it is different. He stated that his child may never be able to work in a government department because there was a law in Turkey that if relatives have political crimes or defy the military then their children cannot take military or police positions.

The applicant was asked if he had any specific concerns because of recent developments in Turkey since his arrival in Australia. He stated that he had concerns because for 43 years Turkey had been trying to join the European Union and they tried to assimilate their minorities. He claimed that every time there was a specific terrorist group incident they would blame all Kurds for it so there was never any peace or democracy. He stated that it was wrong for Turkey to enter into the northern parts of country J. When asked how the current situation would impact on him, the applicant stated that he would oppose it because of his Kurdish and Arab background and claimed that they would always see him as a criminal because he would oppose their laws and their government.

The witness, person 3, stated that he had known the applicant in Turkey and in the northern part of Cyprus. He confirmed that he had been granted refugee status in Australia after arriving here and stated that his wife was related to the wife of the applicant but they had known each other well before they had become related by marriage. The witness stated that the applicant had lived through many incidents and he could understand how he felt. The witness claimed that he still suffered because of the problems he went through in Turkey and he carried those physical and emotional scars with him.

The witness stated that he met the applicant in Turkey and confirmed that he had gone to the northern part of Cyprus in the early 1990s, before the applicant went there. He claimed that he did not want to go but had to go because he was the leader of people in village E and his thoughts were considered dangerous. He claimed that he was sent to the northern part of Cyprus by the military and kept under surveillance because of incidents that he had been involved in when he was in village E. He claimed he was kept [location deleted in accordance with s. 431] and had to notify authorities every time he entered or left Cyprus.

The witness was asked if every Turkish citizen who entered and exited the northern part of Cyprus had to provide some notification to authorities at entry and exit points. He responded that it depended on the type of notification. He stated that normally people just use their passport but people labelled and known to authorities are different.

The witness was asked if he had been involved in any incidents in either Turkey or the northern part of Cyprus in which the applicant had also been involved. He responded that yes he had been but when asked when these incidents occurred he indicated that he could not recall the dates. When asked if he could recall the nature of these incidents, the witness stated that he needed to force his memory. He then stated that they were working together at an establishment in the late 1990s. When asked if any specific incident had happened in the late 1990s, the witness stated that he could not remember. At this point of the hearing, the applicant started whispering to the witness and was asked to desist from doing so.

The witness was asked if he knew anything about the applicant's military service in Turkey. He responded [details of issues regarding military service deleted in accordance with s. 431] they had been in touch with each other through the internet after 2000 when the witness came to Australia. The witness was asked when he first found out about the applicant's military service problems. He responded that he knew about them when he was there and when he came to Australia. When asked to articulate the applicant's military service problems, the witness stated that he did not want to do military service but later on he did it. He stated that the applicant had gone to court and had been sentenced to custody but when asked how long his sentence was, the witness stated that he did not remember. The witness was asked whether he knew of these problems because he had been told by the applicant or because he was there when they happened, or through some other way. He responded that the applicant told him when they were in the northern part of Cyprus.

The applicant's representative stated that all matters had been well covered at the hearing and that he had nothing else to add. He did not have any further submissions to make and would be relying on the submissions previously made to the Department.

FINDINGS AND REASONS

There is no issue as to identity. The applicants arrived in Australia on valid Turkish passports in their own name bearing their photographs and bearing valid Australian visas. The Tribunal

accepts that the applicants are Turkish nationals and for the purposes of the Convention it has assessed the applicants' claims against Turkey as their country of nationality.

As only the first named applicant has made Convention related claims, with the other applicants relying only on their membership of his family, the Tribunal will continue to refer to the first named applicant as "the applicant" where appropriate.

The applicant is in his mid 30s. The second named applicant is his wife and the third named applicant is their child. They are all Turkish nationals. The Tribunal accepts the applicant's claims that he is of Alevi religion and that he is of mixed Kurdish and Alevi ethnicity as his relative 1 was of Kurdish ethnicity and his relative 2 was of Arab ethnicity.

The applicant has claimed that as a result of various activities and actions over the years he has been imputed with a political profile in Turkey as being supportive of various Kurdish nationalist causes through his active participation in Kurdish events over many years as well as his previous conscientious objection to military service in Turkey when first called up to do his compulsory military service.

There are a number of claims of the applicant where the Tribunal has considerable credibility concerns about the claims that the applicant has made and the consistency of these claims. However, given that the Tribunal is prepared to accept some of the applicants claims and given that these claims lead the Tribunal to make the findings that the applicant would face a real chance of Convention related harm if he returned to Turkey now or in the reasonably foreseeable future, the Tribunal has not examined the other claims, which lack credibility, in any great detail.

The Tribunal also has concerns about the witness evidence provided by person 3 at the Tribunal hearing. Person 3's evidence at this hearing was vague, evasive and sometimes contradictory to the extent that the Tribunal finds this evidence lacks credibility and accordingly has placed no weight on the evidence of person 3 at the hearing. However, these findings of the Tribunal do not in any way impact upon previous findings made in relation to person 3's own claims. The Tribunal accepts that the person 3 has previously been found to be a person to whom Australia owes protection obligations.

The Tribunal accepts the applicant's basic claims that as a young man of Kurdish and Alevi background he became actively interested in Kurdish causes in Turkey in the 1980s when he was still a student. Given the long history of direct oppression of Kurdish causes by the authorities in Turkey, the Tribunal accepts as plausible the applicant's claims that he participated in various events in Turkey in the 1980s and as a result of his participation in these events, the Tribunal accepts that he was arrested and detained after a march in the 1980s. The Tribunal also accepts the applicant's claims that he was arrested and detained by Turkish authorities in the same year because of his involvement in an attempt to set up a Kurdish organisation, which was thwarted by the intervention of the authorities.

The Tribunal is also prepared to accept that after these two incidents of arrest and detention in the 1980s, the applicant was closely monitored by authorities in Turkey. On the basis of these findings the Tribunal is prepared to accept that the applicant was imputed with a profile by Turkish authorities as a supporter of Kurdish nationalist causes.

The Tribunal discussed the applicant's departure from Turkey to the northern part of Cyprus in the 1990s, around the time he finished his education, at length during the Tribunal hearing.

Based on the vague and sometimes contradictory evidence at the hearing about whether he was forcibly removed from Turkey and whether Turkish authorities actually escorted him out of the country, the Tribunal does not accept the applicant's claims that he was forcibly removed from Turkey by the authorities and sent to the northern part of Cyprus as a form of exile. However, the Tribunal is prepared to accept that the applicant felt some pressure from regular monitoring from the authorities and that his desire to avoid such monitoring may have been one of a number of motivating factors in his decision to move to the northern part of Cyprus in search of a better life for himself.

In relation to the applicant's claims that he objected to military service in the 1990s, the Tribunal accepts, on the basis of the applicant's previous involvement in Kurdish matters, his claim that he objected to serving in the military at a time when the armed forces of Turkey were conducting operations in the parts of Turkey where he came from that were targeted at people of Kurdish and Alevi background. Based on the vague and undetailed evidence provided by the applicant over time and based on the evidence at the hearing from person 3, which the Tribunal has already found lacked credibility, the Tribunal is not satisfied that the applicant was ever arrested, charged or sentenced to a term of imprisonment for his objection to military service but is prepared to accept that the applicant's objection was communicated to the Turkish authorities. The Tribunal accepts on this basis that his objection to military service increased his profile with the Turkish authorities as a person who was a known supporter of Kurdish nationalist causes.

Based on all of the above, the Tribunal accepts that the applicant has a profile with Turkish authorities as a known supporter of Kurdish nationalist causes and that pressure from those authorities as a result of this profile was one of a number of contributing factors in his decision to move from Turkey to the northern part of Cyprus in the 1990s.

The applicant has claimed that he would be targeted for harm by the authorities in Turkey if he returned to Turkey now or in the reasonably foreseeable future because of his profile as a known supporter of various Kurdish nationalist causes and because of his desire not to be silenced in promotion of such causes.

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

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

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

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

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

...

Individuals could not criticize the state or government publicly without fear of reprisal, and the government continued to restrict expression by individuals sympathetic to some religious, political, and Kurdish nationalist or cultural viewpoints. Active debates on human rights and government policies continued, particularly on issues relating to the country's EU membership process, the role of the military, Islam, political Islam, the question of Turks of Kurdish origin as "minorities", and the history of the Turkish-Armenian conflict after World War I; however, persons who wrote or spoke out on such topics, particularly the Armenian issue, risked prosecution. The Turkish Publishers Association (TPA) reported that serious restrictions on freedom of expression continued despite legal reforms related to the country's EU candidacy.

...

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

...

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

...

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

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

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

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

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

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

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

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

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

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

Unlike the previous year, police did not interfere in Nevruz celebrations. There was no information regarding police detention of DEHAP officials and students in connection with 2005 Nevruz celebrations.

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

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

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

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

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

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

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

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

Like many Kurds, he believes that Turkey's threat to clobber the PKK in northern Iraq is a cover for a full-scale invasion aimed at Iraq's Kurds. Warmongers in the Turkish media are howling for retribution against Mr Barzani for providing a haven for the PKK. Mr Barzani, who lost 200 of his own fighters helping the Turkish army against the PKK in the 1990s, says he would be happy to mediate but insists

that the Turks should first recognise him as the Kurds' legitimate representative. Nothing doing, says Turkey, which this week announced new sanctions against those who support the PKK.

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

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

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

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

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

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

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

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

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

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

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

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

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

Government under scrutiny

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

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

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

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

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

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

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

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

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

Targeted strikes

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

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

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

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

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

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

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

Belligerent mood

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

He was smiling, he looked happy.

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

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

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

Widespread support

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

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

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

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

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

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

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

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

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

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

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

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

'Oppressed minority'

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Outspoken

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

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

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

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

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

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

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

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

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

These reports from the BBC and from The Economist, appear to indicate a more hard-line approach from Turkish authorities to those who espouse causes associated with Kurdish identity and Kurdish nationalism. The current continuing animosity has heightened tensions in the region as a direct result of attacks by the PKK killing Turkish soldiers and counter-attacks by the Turkish armed forces on PKK positions on either side of the border between Turkey and Iraq. There is still a strong possibility that this current conflict may escalate with further attacks and even the possibility of all-out warfare.

The latest reports of the conflict indicate that in December 2007 the Turkish military conducted air raids on suspected PKK strongholds in the Kurdish-controlled northern region of Iraq (International Herald Tribune, *Turkey claims airstrikes against Kurdish rebels killed more than 150*, 25 December 2007, <http://www.iht.com/articles/2007/12/25/africa/kurds.php>, accessed 3 January 2008) and that police in Istanbul have used facial recognition technology to arrest 25 people who were “suspected of setting fire to vehicles in recent pro-PKK Kurdish separatist protests” (Reuters, *Press Digest – Turkey*, 31 December 2007, <http://www.reuters.com/article/rbssConsumerGoodsAndRetailNews/idUSL3130397420071231>, accessed 3 January 2008). These reports indicate that the conflict is continuing to escalate, which would increase the pressure on Kurds in Turkey who openly support the cause of increased rights for Kurds and who promote Kurdish nationalism at a time when the Turkish state is engaged in battles against the PKK.

The Tribunal has already found that the applicant has been imputed with a political opinion by authorities in Turkey in the past as a sympathizer with various Kurdish causes. In the context of events over recent months in Turkey and given the heightened tensions these events have caused within Turkey, the Tribunal is unable to completely dismiss the possibility that the applicant may be of some interest to the Turkish authorities in the reasonably foreseeable future if he returned to Turkey, particularly given the applicant’s strong assertions at the hearing that he did not want to suppress his ideology and his belief in the Kurdish causes he espoused.

In determining if the applicant’s fears are well founded the Tribunal must assess whether there is a real chance of persecution. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 percent. Based on all of the above, the Tribunal is unable to conclude that the possibility that the applicant would be harmed by Turkish authorities is one that is remote, insubstantial or far-fetched. Although the likelihood of such harm may be unlikely or even less than a 50% probability, the Tribunal is satisfied, based on all available evidence, that if the applicant was to return to Turkey now or in the reasonably foreseeable future there is a real chance that he would face persecution for his actual and imputed political opinion as a supporter of Kurdish nationalist causes.

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

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

As the applicant fears harm directly from the Turkish state, there is no issue in relation to effective state protection. Relocation within Turkey is not an option reasonably available to the applicant as the fear of persecution from Turkish authorities for his political opinion as a supporter of Kurdish nationalist causes would apply equally across the whole country. As the northern part of Cyprus is not and has never been a part of Turkey, the Tribunal finds that any possible relocation to this place to avoid the harm he fears in Turkey would not constitute internal relocation for the applicant.

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

The applicant has lived and worked in the northern part of Cyprus for many years. The Tribunal has therefore considered whether the applicant would have effective protection in Cyprus.

Cyprus is an independent nation which is a member of the European Union and the United Nations. However, in 1974 the northern part of the island of Cyprus was invaded and illegally occupied by Turkish forces and the nation continues to be divided by a “green line” some 34 years later. The northern part of the island that is controlled by Turkish occupying forces declared itself an independent state in 1983, however it has never been recognized as an independent state by any nation other than Turkey. Additionally a series of United Nations resolutions have stipulated that the northern part of Cyprus is illegally occupied by Turkish forces (United States Department of State, *Country Reports on Human Rights Practices – Cyprus 2006*, 6 March 2007; Freedom House, *Freedom in the World – Cyprus 2007*, <http://www.freedomhouse.org/template.cfm?page=22&country=7162&year=2007>, accessed 18 January 2008).

The applicant has made no claims that he is a national of the Republic of Cyprus or that he has ever lived in any part of Cyprus controlled by the government of the Republic of Cyprus. Therefore the Tribunal finds that the applicant has no right to enter and reside in Cyprus. As he outlined at the hearing, he has lived only in the Turkish-occupied territory in the northern part of Cyprus. To do so, the applicant has claimed that he needed to pass through border controls in both Turkey and in the northern part of Cyprus and he needed to obtain permission to remain in the northern part of Cyprus, presumably from the self-styled authorities in that part of the island.

The Tribunal must therefore determine whether the self-styled authorities in the northern part of Cyprus constitute a country for the purposes of section 36(3)-(5) of the Act. There is no case law examining the meaning of country for the purposes of section 36. In *Koe v MIEA & Ors* [1997] FCR 289 the Court considered the term country in relation to Hong Kong prior to its reversion to Chinese sovereignty for the purposes of Article 1A(2) of the Convention. In that case, Tamberlin J took the view that having regard to the humanitarian purpose of the Convention it was not appropriate to approach the term “country” in a narrow technical way that excludes colonies or other entities that are not independent sovereign states. His Honour held that the term “country” in “country of nationality” is used to denote a country capable of granting nationality but in the phrase “country of former habitual residence” it is used to denote a country that does not have this capability. He concluded that although Hong Kong

did not have an independent capacity to enter into legal relations it was appropriate to treat it as a country for the purposes of Article 1A(2) as it had a distinct area with identifiable borders, its own immigration laws and a permanent identifiable community.

The Full Federal Court in *NBGM v MIMIA* [2006] FCR 522 held that the law in relation to section 36(4) of the Act reflected Article 1A(2) and that considerations and case law applicable to Article 1A(2) should also be applied to provisions in section 36(4). Given this approach by the Full Federal Court, it would be inconsistent to approach the term “country” in a different manner under Article 1A(2) with that under section 36(3)-(5). Therefore the Tribunal finds that it is bound by the findings of Tamberlin J in *Koe*, above, and that “country” for the purposes of section 36(3)-(5) is, based on applicable case law, a distinct area with identifiable borders, its own immigration laws and a permanent identifiable community.

The self styled republic in the northern part of Cyprus is not recognized as a country by any nation other than Turkey. The Republic of Cyprus claims sovereignty over the entirety of the island of Cyprus and does not recognize any borders of the self-styled republic in the northern part of Cyprus. The United Nations does not recognize the self-styled republic in the northern part of Cyprus and also does not recognize its borders. Although United Nations troops patrol the “green line”, they do this to keep the peace between potentially warring parties and the United Nations continues to work on reuniting the island of Cyprus under one government. On the basis of the lack of any international recognition of the territorial claims of the self-styled republic in the northern part of Cyprus and on the basis of a lack of any international recognition of any actual borders of this self-styled republic, the Tribunal finds that the self-styled republic in the northern part of Cyprus is not a distinct area with identifiable borders and therefore does not meet the definition of “country” for the purposes of section 36(3) of the Act. Accordingly, the Tribunal finds that the applicant cannot access effective protection in a safe third country even if he had the ability to freely access the northern part of Cyprus. Therefore, the Tribunal finds that the first named applicant has no legally enforceable right to enter and reside in any third country for the purposes of section 36(3) of the Act.

CONCLUSIONS

The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria.

The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria.

No specific claims were made by or on behalf of the other applicants. The Tribunal is satisfied that they are wife and son child respectively of the first named applicant for the purposes of s.36(2)(b)(i). The fate of their application therefore depends upon the outcome of the first named applicant’s application. They will be entitled to protection visas provided they satisfy the criterion set out in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second and third named applicants satisfy s.36(2)(b)(i) of the Migration Act, being the spouse and dependant respectively of the first named applicant.

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