Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02146/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
on 6th October 2014	**on 29th December 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HUSEYIN CAKMAK
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Rutherford instructed by Trott & Gentry LLP Solicitors.
For the Respondent: Mr Mills – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. On the 14th May 2014 the Upper Tribunal found an error of law in the determination of the First-tier Tribunal although all findings other than those relating to the adequacy of the changes in country conditions in Turkey are preserved. The scope of this hearing is limited to a consideration of whether the changes that have occurred in Turkey in relation to the treatment of Kurds and those who have come to the adverse attention of the authorities in the past is

such that it can be said that there will not be a predictable return to the conditions of persecution for the Appellant if deported.

2. The error of law finding document of the 4th July 2014 sets out the basis on which the error of law was found and the three ways in which an individual's status as a refugee can be removed which is by cancellation, cessation and revocation. This is a cessation case.

Background

3. The starting point must be the earlier determination of Adjudicator CJ Lloyd promulgated on 17 July 2002. Adjudicator Lloyd heard the Appellant's appeal against the direction for his removal from the United Kingdom to Turkey following the refusal of his claim for asylum. The Appellant was represented at that hearing although the Secretary of State failed to attend.

4. The Appellant was born on 13 February 1965 and is a Turkish national. He claimed to have fled Turkey following his detention and torture as a member of HADEP since 1994. He claimed to have attended political meetings and worked for HADEP which he stated was an illegal organisation. The Appellant claimed to have been arrested on many occasions between 1988 and 2000 and to have been detained for periods of several months. His claim was that he was not protected in Turkey and that the Turkish government was known to keep people in prison for years without evidence; although he also claims he was eventually released in each case as a result of their being insufficient evidence to warrant his continued detention or to bring charges. The Appellant claimed to have suffered injuries to his head, chest, and shoulder as a result of torture during detention and claimed he could not relocate within Turkey as a result of his ethnicity as a Kurd.

5. Adjudicator Lloyd summarises her findings regarding the Appellant's credibility at paragraphs 24 to 26 of the determination in the following terms:

> 24. I have therefore, as stated above, several reasons to query this Appellant's credibility. However, I have to say that I believe what he told me about his support for the Kurdish cause and about detentions in 1993 and 2000 when he was seriously ill treated.
>
> 25. There is no medical report which would have been very useful in this case but I have seen sizeable, physical scars on his body and head and I am prepared to accept that they were caused as he states.
>
> 26. He may well have been arrested upon reasonable suspicion of involvement in illegal acts or events in both 1993 and 2000, but clearly there can be no justification for the ill treatment of him. I accept his view of matters which is that his Kurdish background was a reason for this ill-treatment.

6. Adjudicator Lloyd concluded in paragraphs 31 and 32:

> 31. This Appellant is a Kurd with a history of political involvement and past detentions and I do not consider that ill-treatment can be ruled out. He bears visible body scars which I accept arose from previous ill-treatment by representatives of the Turkish authorities.
>
> 32. I consider that there is a real risk that this Appellant would have a well founded fear of persecution for a UN Convention reason and a real risk of a breach of his absolute rights under Article 3 if returned to Turkey, notwithstanding the progress made by the government in its attempts to deal with violations of human rights.

7. Adjudicator Lloyd allowed the appeal and there is within the bundle a letter dated 15 August 2002 confirming a grant of refugee status upon the Appellant.

8. The Appellant's wife and children also live in the United Kingdom and were granted British citizenship in 2012. The Appellant remains a Turkish citizen. He also found himself back before the courts in 2009 when he was convicted, after trial, of the offence of rape and false imprisonment. Although not relevant in other than setting out the background, Mr Justice Treacy in his sentencing remarks stated:

> You were convicted after trial of the offences of rape and false imprisonment. Those offences were committed on the same occasion in the small hours of 5th November of last year.
>
> Your victim was a young man, [LF]. He was 17 years of age at the time. You are in your mid-forties. [LF] was a young student out on his own in deserted streets making his way home at 4.00am in the morning. In my assessment he was in a vulnerable position.
>
> You subjected him to a frightening and disgusting ordeal once he had entered your car on the pretext that you were going to give him a lift. You kept him prisoner in your car until you were able to carry out a sexual attack upon him. You ignored his pleas for release and you physically forced him to have oral sex.
>
> The immediate impact upon him was to cause him to suffer fear, humiliation, and severe distress. I have seen a victim impact statement. It is clear that your actions have had a continuing effect on him. I saw him give evidence at the trial. I formed the view that he was a truthful witness and I therefore accept the content of his victim impact statement. He suffers from night terrors. He has had to consult his doctor and receive medication. He suffers from a loss of social confidence and is generally uneasy in his life. It is you by your action that has stolen that peace of mind from him.
>
> You displayed at trial not the slightest remorse for what you have done. You continue to show absolutely no remorse for what you did. You demonstrated your attitude at trial by lying and falsely accusing him of prowling the street for

> sex and of having produced a knife in your car. The jury disbelieved you. Your attitude to the offence, as I say, continues and troubled greatly the probation officer who was assigned to consider your case.

9. It was found the Appellant posed a risk to the public until he was able to understand and control his feelings and behaviour as a result of which the Sentencing Judge found he is a person who poses a significant risk of serious harm to the public by reason of the risk of serious sexual offences being committed by him in the future. A sentence of imprisonment for public protection was passed and the Court recommended that the Appellant is deported.

10. The Appellant appealed his sentence which was quashed and replaced by a sentence of seven years imprisonment on each of the two counts by the Court of Appeal (Criminal division) in January 2010. As a result of his conviction he was made the subject of an order for his deportation pursuant to section 32(5) UK Borders Act 2007 on 11th October 2013. His appeal against that order came before the First-tier Tribunal which is the decision in relation which legal error was found, although all other findings bar those relating to the adequacy of changes in Turkey are preserved. As a result, if the Appellant fails in this appeal he can be removed from the United Kingdom under the terms of the deportation order. If he succeeds and his status as a refugee cannot be taken from him he must succeed and be permitted to remain as a result of Exception 1 (Section 32(2)) which arises where deportation would breach the Refugee Convention.

11. The Respondent notified the UNHCR in advance of the decision being taken of her intention. In their letter of response dated 16th November 2012 UNHCR refer to submissions and representations made by the Appellant's representatives, Trott & Gentry LLP Solicitors, dated 4 September 2012 which are stated to be as follows:

    i. The problem which existed in Turkey which led to Mr Cakmak being granted asylum in the UK persists;

    ii. The persecution of persons involved with HADEP has continued to be experienced by those involved with the successor parties to HADEP;

    iii. Mr Cakmak's claim was based not solely on his Kurdish ethnicity but also on account of his involvement with Kurdish political parties regarded as "separatist " by the Turkish authorities ;

    iv. The risk of harm for those involved with Kurdish political parties remains as great today as it was in 2002 when Mr Cakmak was recognised as a refugee;

    v. To revoke Mr Cakmak's refugee status would breach Articles 2 and 3 of the European Convention on Human Rights.

12. The UNHCR also state in the letter that their role in such matters is supervisory under Article 35 of the 1951 Convention, commenting upon the appropriateness of applying the relevant legal source, not making representations in support of continued refugee status. In relation to the trigger of cessation clauses it is stated:

> UNHCR notes that the decision to cease Mr Cakmak's refugee status is linked to his criminal conviction. However, the fact that Mr Cakmak has been convicted of a criminal offence is irrelevant and should not be taken into account when making a decision on the application of Article 1C (5) of the 1951 Convention. The rationale of Article 1C (5) deals with situations where circumstances leading to the grant of refugee status have changed, and is not based on the individual conduct of the refugee concerned.
>
> UNHCR is seriously concerned about the invocation of cessation clauses where the individual has committed an offence. In it UNHCR's view the approach whereby a refugee's criminal conduct is used as a trigger for an individual consideration of Article 1C (5) runs the risk of introducing substantive modifications of the cessation clauses by adding the provisions of Article 33 (2) as a basis for consideration of the cessation of refugee status. The rationale of Article 1C (5) deals with situations where circumstances leading to the grant of refugee status have changed, regardless of the individual conduct of the refugee.

13. UNHCR highlight the fact the Respondent bears the burden of proof in establishing that Mr Cakmak is no longer entitled to refugee status by virtue of the changing circumstances in his country of origin. The Respondent must demonstrate that there have been fundamental and durable changes in the country of origin which can be assumed to remove the basis of fear of persecution.

14. In relation to a specific reference in the Respondent's letter to a Freedom House report of 18 December 2003 in which is it stated:

> While the government has made a great deal of progress on the legal aspects of these reforms, actual practices have changed far more slowly. It is considered that although Turkish citizens of Kurdish ethnic origin may face some unequal treatment or discrimination from the authorities and the general population, it is not considered that it reaches the level of persecution or breach of Article 3 of the ECHR.

It is the expressed view of the UNHCR that this singular extract is not considered sufficient to establish that there have been fundamental and durable changes of circumstances in Turkey such that they obviate the circumstances under which Mr Cakmak was recognised as a refugee in a sustainable way. It is stated all this article demonstrates is that some progress has been made by the government but that this in itself does not obviate the possibility that Mr Cakmak continues to have a well founded fear of persecution if returned to Turkey. That was the

position in the appeal on 17 June 2002 and UNHCR consider this position continues to be valid.

15. The UNHCR letter also refers to a number of additional reports published in 2012 before setting out their conclusion that on the basis of the material provided the Respondent had failed to substantiate their conclusion that Mr Cakmak's refugee status should be ceased. UNHCR are of the view this case is one in which the Respondent ought not to cease, and ask that their representations are taken into account when considering the cessation decision.

16. The Secretary of State did consider such representations but proceeded with the cessation decision. UNHCR were invited to consider whether they wish to become a party to these proceedings by the Upper Tribunal but declined.

Discussion

17. UNHCR are correct when they refer to the fact that the burden of proving the necessary changes have occurred falls upon the Secretary of State. There have been a considerable number of cases relating to Turkey and it is not disputed that there has been some improvement in relation to the situation for Kurdish citizens as a result of prospective EU membership. The Appellant's case is that such changes as have occurred are not sufficient.

18. The opinion of the UNHCR, and weight to be given to its opinions, has also been the subject of consideration in the domestic courts. There are a number of authorities dealing with this issue including The Queen on the application of Mohn Golfa [2005] EWHC 2282 (Admin) in which Mr Justice Moses said that it was not irrational for the Secretary of State for the Home Department not to follow UNHCR's recommendation against removals to Liberia. UNHCR should command respect and support but its policies were not co-extensive with those of individual states and it was lain from the terms of its reports that it did not confine consideration to persecution on the grounds specified in the Refugee Convention or whether removal would breach Article 3. The Secretary of State should take UNHCR recommendations into account but was not bound by them. In HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409(IAC) the Tribunal decided, though very considerable weight is almost always to be attached to UNHCR guidelines on risk categories in particular countries, it is not accepted that departure from the guidelines should only take place for a cogent and identified reason. Cases are to be decided on the basis of all the evidence and arguments presented to the Tribunal. In HF (Iraq) and others v Secretary of State for the Home Department [2013] EWCA Civ 1276 the Claimant failed asylum seekers unsuccessfully challenged the most recent country guidance decisions relating to Iraq. The Court rejected an argument that there was justification for conferring a presumptively binding status on UNHCR reports merely because of their source. The Court had to assess all the evidence affording such weight to different pieces of evidence as it saw fit. It was said that UNHCR was responsible

not merely for objectively assessing risk but also for assisting returnees and the court was entitled to be alive to the possibility that the latter function might colour the risk assessment even if only subconsciously.

19. Mr Mills opened his submissions by reference to the country guidance case of IK (Returnees-Records-IFA) Turkey CG [2004] UKIAT 00312. The following is a summary of the Tribunal's main conclusions in this determination:

    i) The GBTS comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. "Arrests" as comprised in the GBTS require some court intervention, and must be distinguished from "detentions" by the security forces followed by release without charge. The GBTS is fairly widely accessible and is in particular available to the border police at booths in Istanbul airport, and elsewhere in Turkey to the security forces.

    ii) In addition, there is border control information collated by the national police (Department for Foreigners, Borders and Asylum) recording past legal arrivals and departures of Turkish citizens, and information about people prohibited from entering Turkey as a result of their activities abroad, collated by MIT. (Note a returnee who arrives with a one way emergency travel document and about whom there is no record of a previous legal departure is likely to be perceived as a failed asylum seeker and is likely to be taken to the police station at the airport for further questioning rather than just waved through.)

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

    iv) The Nufus registration system comprises details of age, residence, marriage, death, parents' and children's details, and religious status. It may also include arrest warrants and if any of the people listed have been stripped of nationality. There is no evidence that it is directly available at border control.

    v) If a person is held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.

vi) If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation.

vii) It will be for an Adjudicator in each case to assess what questions are likely to be asked during such investigation and how a returnee would respond without being required to lie. The ambit of the likely questioning depends upon the circumstances of each case.

viii) The escalation of the violence following the ending of the PKK ceasefire reinforced the Tribunal's that the risk to a Kurdish returnee of ill treatment by the authorities may be greater if his home area is in an area of conflict in Turkey than it would be elsewhere, for the reasons described in paragraphs 90 and 116 of the determination.

ix) The Turkish Government is taking action in legislative and structural terms to address the human rights problems that present a serious obstacle to its membership of the EU. It has made its zero tolerance policy towards torture clear. However the use of torture is long and deep-seated in the security forces and it will take time and continued and determined effort to bring it under control in practice. It is premature to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention as per **IA and others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034** (also known as **ACDOG)** requires material revision on the present evidence. However the situation will require review as further evidence becomes available. For the time being as in the past, each case must be assessed on its own merits from the individual's own history and the relevant risk factors as described in paragraph 46 of **IA and others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034** (also known as **ACDOG) .**

x) Many of the individual risk factors described in **IA and others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034** (also known as **ACDOG)** comprise in themselves a broad spectrum of variable potential risk that requires careful evaluation on the specific facts of each appeal as a whole. The factors described in **IA and others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034** (also known as **ACDOG)** were not intended as a simplistic checklist and should not be used as such.

xi) A young, fit, unmarried person, leaving his home area and seeking unofficial employment in a big city, may not feel the need to register with the local Mukhtar, at least at the outset. Many do not. However, given the range of basic activities for which a certificate of residence is needed, and which depend upon such registration, the Tribunal concluded that it would

in most normal circumstances be unduly harsh to expect a person to live without appropriate registration for any material time, as a requirement for avoiding persecution. This does not necessarily preclude the viability of internal relocation for the reasons described in paragraph 133.13 of the determination.

xii) The proper course in assessing the risk for a returnee is normally to decide first whether he has a well founded fear of persecution in his home area based upon a case sensitive assessment of the facts in the context of an analysis of the risk factors described in **IA and others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034** (also known as **ACDOG)**. If he does not then he is unlikely to be at any real risk anywhere in Turkey.

xiii) The risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area.

xiv) This determination was intended to update and replace the various earlier decisions in the light of further evidence and argument, and now comprises the Tribunal's current country guidance on the issues described.

20. Risk in home area is the starting point. In R (on the application of Baydak) v SSHD [2008] EWHC 244 Judge Mackie QC said that IK made it clear that an assessment of risk on return should begin by deciding whether there was a well founded fear of persecution in the claimant's home area based on an analysis of the risk factors described in IA. If the claimant was not at such risk, then it was unlikely that he or she would be at any real risk elsewhere in Turkey, in terms of internal relocation.

21. In SD (Turkey) v SSHD [2007] EWCA Civ 1514 the Court of Appeal said that the starting point in IK had to be whether there would be information about a returning asylum seeker in his home area. The issue was whether that record was reasonably likely to lead to persecution outside his home area. The first question was thus whether the information from the home area would arrive at the point at the point where the claimant would first be questioned at the airport. Precise findings had to be made on these issues. The Court of Appeal then said

that the absence of a record under the GBTS system was not disparities as to the means which could be employed form enquiring about the background of a particular returning failed asylum seeker. The Court said that it was incumbent on the Tribunal to reach conclusions on the nature of the questions which could be asked. IK revealed there was a real risk persons returning on emergency documentation would be asked why they left Turkey. They were not expected to lie. In this case there was, in the Court's opinion, no reason to think that the Appellant would not explain when asked that he left Turkey because he had been ill treated by the authorities and because of the authorities' attitude to his brothers who were dissident Kurdish PKK supporters. The Court of Appeal said that then it required no imagination to perceive the likely consequences of such answers.

22. In IA and others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034 (also known as **ACDOG)** the Tribunal refined the factors which "inexhaustively" they considered to be material in giving rise to potential suspicion in the minds of the authorities concerning a particular claimant. In the latest case of **IK** the Tribunal said that these still have some relevance. They are referred to in more detail below.

23. There have been considerable changes in Turkey since the Appellant left in 2001. The sizeable Kurdish minority, which by some estimates constitutes up to a fifth of the population, remains although has long complained that the Turkish government was trying to destroy their identity and that they suffer economic disadvantage and human rights violations. The Kurdistan Workers Party (PKK), the best known and most radical of the Kurdish movements, launched a guerrilla campaign in 1984 for a homeland in the Kurdish heartland in the southeast. Thousands died and hundreds of thousands became refugees in the ensuing conflict with the PKK, which Turkey, the US and the European Union deem a terrorist organisation.

24. Kurdish guerrilla attacks briefly subsided after the 1999 capture of PKK leader Abdullah Ocalan, but soon began to increase again. Partly in a bid to improve its chances of EU membership, the government began to ease restrictions on the use of the Kurdish language from 2003 onwards. As part of a new "Kurdish initiative" launched in 2009, it pledged to extend linguistic and cultural rights and to reduce the military presence in the mainly Kurdish southeast of the country. Although fighting continued, the PKK signalled its readiness to join a cease fire in 2010. After months of talks, Abdullah Ocalan ordered his fighters to stop attacking Turkey and withdraw from the country from May 2013, effectively ending the insurgency.

25. It was conceded by Mr Mills that it could not be said that Turkey was a state in which all Kurds experienced no problems and that some from that country will still be entitled to refugee status depending upon their personal circumstances. I agree it is a fact specific assessment. I have been referred to a considerable

volume of country material all of which I have considered in detail even if not specifically referred to in the body of this determination. In relation to Kurds in Turkey both advocates referred to the most recent 2013 Respondents Operational Guidance Notes which in relation to Kurds states:

3.10 Kurdish Ethnicity

3.10.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Turkish authorities due to their Kurdish ethnicity.

3.10.2 **Treatment.** Restrictions remained on use of languages other than Turkish in political and public life. Children whose first language was Kurdish could not be taught fully in Kurdish in either private or public schools. However, with the introduction of the new ―4+4+4 education system in September 2012, Kurdish was taught as an elective course in the fifth grade, to be expanded into the next higher grade each year after that. At least three universities offered Kurdish language programs. The Kurdish inmates who conducted a hunger strike from 12 September to 18 November 2012 demanded, among other things, the right to use their mother tongue in schooling, courtroom defence and local government administration.

3.10.3 Fighting between security forces and the terrorist organisation PKK, which began in 1984 and continued during 2011, resulted in hundreds of thousands of citizens, the vast majority of whom were Kurds, living as Internally Displaced Persons in the country. The Internal Displacement Monitoring Centre reported as many as 1.2 million, while some human rights groups put the number significantly higher.

3.10.4 The government's ―democratic opening, announced in summer 2009 to address the minority rights of Kurds in Turkey, did not progress. Ground-breaking negotiations between the state and the armed, outlawed PKK to reach a settlement to end the ongoing conflict collapsed. In July 2011 violence escalated with the PKK stepping up attacks on the military and police, and the Turkish government in August 2011 launching the first aerial bombardment of PKK bases since 2008. Among a rising number of attacks on civilians were two on 2 September 2011: an Ankara bombing by the Kurdistan Freedom Falcons (TAK) ― a PKK-linked group ― which killed three and a PKK attack on a car that killed four women in Siirt. The non-resolution of the Kurdish issue remains the single greatest obstacle to progress on human rights in Turkey.

3.10.5 Following the general election of 12 June 2012 and the re-election of Prime Minister Recep Tayyip Erdogan's AKP government pledged to embark on a complete revision of the 1982 Constitution through consensus and negotiation with the opposition, parties outside of Parliament, the media, NGOs, with academics and with anyone who had something to say. Changes to the Constitution were crucial for Turkey's minorities, since only three minority groups were currently recognised, namely Armenians, Greeks and Jews. The others, including Alevis, Kurds and Roma, remain excluded. Even recognised minorities continue to face discrimination and the Parliament Conciliation

Commission had been set up to work on revising the Constitution. Representatives of minority groups had begun to push for their cultural, linguistic and civil and political rights to be incorporated in the new Constitution and to be recognised as equal citizens.

3.10.6 On a more positive note, on 12 June 2012 Al Jazeera reported that Turkey had announced plans to allow schools to teach the Kurdish language as an elective subject. The article stated that this was a step towards reconciliation but some Kurdish minority activists argued this did not go far enough. The report stated that Recep Tayyip Erdogan told his ruling party members in Parliament that if enough students came together, Kurdish could be taken as an elective lesson. Erdogan told Parliament the measure was 'a historic step'. The government was trying to stop decades of fighting with Kurdish fighters seeking autonomy in the largely Kurdish southeast. The teaching of Kurdish had long been banned in schools on the grounds that it could divide the country along ethnic lines.

3.10.7 According to a BBC News Report of 23 November 2011, Recep Tayyip Erdogan, has apologised for the killing of more than 13,000 Kurds by the Turkish military in the late 1930s. He was the first Turkish leader to make the apology for the killings that occurred when the army crushed a Kurdish rebellion in Dersim, using aerial bombings and poison gas. The unexpected apology came at a time of tension between Turkey and its minority Kurdish population. The killings took place between 1936 and 1939 when the Kurdish population of the south-eastern region of Dersim - now known as Tunceli - resisted the efforts of the newly formed Turkish republic to exert its authority there. The CHP was in office at the time of the Dersim operation and has been shaken by an internal debate sparked by one of its own deputies, who was from the area and called on the party to acknowledge its responsibility for the killings. Mr Erdogan's apology appeared to be part of a war of words with the leader of the CHP, Kemal Kilicdaroglu, whose family had strong links with Tunceli. Mr Erdogan's government has made some attempt to win over Turkey's large Kurdish minority, which lives mainly in the south-east of Turkey, by improving their legal and cultural rights and has also taken a tough stance towards the Kurdish insurgency and its supporters, with hundreds of Kurdish activists arrested in recent months.

3.10.8 According to an article in the New York Times, For Kurds in Turkey, Autonomy in Music, 1 June 2011, concessions by the government of Recep Tayyip Erdogan in 2009 made way for the first Kurdish national television station. Token gestures, they made front-page headlines: first because they were signals to the outside world that a democratic state run by an Islamic leader will not automatically become xenophobic or tribalist, and second because even small steps toward acknowledging Kurdish culture can provoke political firestorms inside the country. Turkish nationalists were very displeased as even the most basic Kurdish demand was seen as treason.

3.10.9 Inconsistent Court decisions regarding the use of languages other than Turkish were prevalent throughout the country. The country had active privately owned print media. Hundreds of private newspapers spanning the political spectrum appeared in numerous languages, including Kurdish, Armenian, Arabic, English and Farsi. However, authorities routinely censored media with

pro-Kurdish or leftist content, particularly in the Southeast, by confiscating materials or temporarily closing down the media source. The government's close business relationships with various media conglomerates further limited media independence and encouraged a climate of self-censorship.

3.10.10 **Conclusion** Although Turkish citizens of Kurdish ethnic origin may face some unequal treatment or discrimination both from the authorities and the general population this does not generally reach the level of persecution or breach Article 3 of the ECHR. Therefore it is unlikely that applicants in this category whose claims are based solely on persecution due to their Kurdish ethnicity would qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

26. Section 3.9 of the OGN considering involvement with Kurdish, Left Wing or Islamic Terrorist Groups or Political Parties, states:

3.9.1 Applicants may make an asylum and/or human rights claim based on ill treatment amounting to persecution at the hands of the Turkish authorities due to their involvement (or a family members involvement) at either a high or low level with illegal Kurdish, left wing or Islamic terrorists groups or Kurdish, left wing or Islamic political parties.

3.9.2 **Treatment.** Citizens of Kurdish origin constituted a large ethnic and linguistic group. More than 15 million of the country's citizens identified themselves as of Kurdish origin and spoke Kurdish dialects. Kurds who publicly or politically asserted their Kurdish identity or promoted using Kurdish in the public domain risked censure, harassment or prosecution, although significantly less so than in previous years.

3.9.3 As Turkey's biggest Kurdish-majority city and province, Diyarbakır is critical to any examination of the country's Kurdish problem and of the insurgent PKK. According to the International Crisis Group in their report, Turkey's Kurdish Impasse: The View From Diyarbakir of 30 November 2012, the armed conflict has deteriorated in the past year and a half to its worst level in over a decade, with increased political friction and violence leading to the deaths of at least 870 people since June 2011.

3.9.4 The International Crisis Group states that across the political spectrum in Diyarbakir, there is a shared desire for a government strategy to resolve the chronic issues of Turkey's Kurdish problem which includes official recognition of Kurdish identity, the right to education, fairer political representation, decentralisation and an end to all forms of discrimination in the laws and constitution. They also demand legal reform to end mass arrests and lengthy pre-trial detentions of non-violent activists on terrorism charges. Control of Diyarbakır is contested on many levels. The state wants to stay in charge, directing its influence through the Ankara-appointed Governor and control over-budget, policing, education, health and infrastructure development. The municipality, in the hands of legal pro-PKK parties since 1999, most recently the Peace and Democracy Party (BDP), is gathering more power against considerable obstacles. The Justice and Development Party (AKP) that rules

nationally has ushered in a more progressive approach to police, but this has not stopped confrontations and defused local hostility. According to the International Crisis Group, Turkey as a whole, and Kurdish speaking cities like Diyarbakır in particular, require a coherent, informed debate on decentralisation and a strategy to implement it.

3.9.5 During 2012 police routinely detained demonstrators for a few hours at a time, and human rights organisations claimed this practice sharply increased from previous years. In 2010 the government began trying cases against thousands of persons alleged to be members or supporters of the Kurdistan Communities Union (KCK), a part of the political organisation of the PKK terrorist group. The BDP and human rights organisations claimed that, over a three-year period, authorities detained approximately 20,000 persons, of whom they arrested 8,000 and approximately 4,000 remained detained awaiting trial, including 32 elected mayors, hundreds of political party officials and numerous journalists and human rights activists. Arrests and hearings continued throughout 2012, with judges normally rejecting defendants' requests for conditional release, permission to dispute the validity of the charges and permission for the defendants to use their mother tongue. Arrests and indictments continued at the end of 2012.

3.9.6 Following the PKK ceasefire declaration and subsequent decrease of clashes between the PKK and the security forces in 2010, violence escalated again significantly in 2011 with fatalities on both sides. There were also significant Kurdish civilian fatalities as a result of the attacks and upheaval within these communities continued, particularly in the south-east of the country and near the Iraq border. During an air raid in December 2011 near the Turkey-Iraq border, 35 Kurdish civilians were killed. The government stated that the attacks were targeting armed PKK forces and passed on official condolences to the bereaved families.

3.9.7 In addition, Kurdish officials and activists, most of them allegedly associated with the KCK and the PKK, continued to be arrested. In August 2011, 98 former Mayors and eight other politicians were arrested because they had stipulated better conditions for Abdullah Öcalan, the imprisoned ex-PKK leader. An estimated 9,000 individuals have been arrested since 2009 for alleged links to the KCK. In Spring 2011, trials of another 153 Kurds in custody resumed. The defendants in the Diyarbakir Heavy Penal Court asked to conduct their defence in Kurdish, but this was denied by the Court.

3.9.8 The law provides for freedom of assembly. However, the government selectively restricted meetings to designated sites or dates and banned demonstrations outright particularly if they were concerned with sensitive issues or were critical of the government. There were confirmed and/or credible reports that police beat, abused, or harassed demonstrators during 2012. A report by the main opposition Republican People's Party (CHP), sourced to the Human Rights Foundation (HRF), the Human Rights Association (HRA) and the Migration Foundation, stated that four persons were killed and 555 wounded during demonstrations through November 2012. According to the CHP report, police detained 46,529 persons and arrested 1,831 involved in demonstrations through November 2012 a significant increase from 2011. The

Jandarma reported that it detained 72 persons and later released them in 10 different demonstrations during 2012. The detentions varied in length from several hours to several days.

3.9.9 Diyarbakir Mayor Osman Baydemir continued to face multiple administrative, civil, and criminal charges and investigations for use of the Kurdish language, spreading terrorist propaganda and promoting terrorism. During 2011 prosecutors opened 13 new investigations or cases against Baydemir. Most of the cases involved Baydemir's expression of his political views or speaking Kurdish at public events. During 2011 he received at least two acquittals and four convictions but he remained in his position as Mayor. Many cases and appeals were pending at the end of 2011. Inconsistent Court decisions regarding the use of languages other than Turkish was prevalent throughout the country. However, the wide availability of satellite dishes and cable television allowed access to foreign broadcasts, including several Kurdish-language private channels. In addition to Turkish, the High Board of Radio and Television allowed radio and television stations to broadcast in Arabic, Armenian, Assyrian, Bosnian, Circassian, Laz and Kurdish during 2011.

3.9.10 The Courts continued to use terrorism laws to prosecute hundreds of demonstrators deemed to be PKK supporters as if they were the group's armed militants. Most spent prolonged periods in pre-trial detention and those convicted received long prison sentences.

3.9.11 The law does not provide a separate category for political prisoners. The HRA asserted that there were several thousand political prisoners from across the political spectrum, including journalists, political party officials and academics. The government stated that those alleged to be political prisoners were in fact charged with being members of, or assisting, terrorist organisations. Consistent with the broad definition of terrorism and threats to national security, prosecutors often did not distinguish between persons who incited violence, those who supported the use of violence by the PKK or those who rejected violence but sympathized with some or all of the political goals of the Kurdish nationalist movement. According to the Ministry of Justice, as of 31 December 2012, there were 4,446 persons detained and 3,699 convicted on terrorism charges.

3.9.12 The U.N Committee Against Torture, in their report of November 2010, stated they had grave concerns about numerous, ongoing and consistent allegations concerning the use of torture, particularly in unofficial places of detention. These allegations come despite the State providing information that combating torture and ill-treatment has been a 'priority item' and despite the fact that there had been a decrease in the number of reports on torture and other forms of cruel, inhuman or degrading treatment and punishment in official places of detention. The Committee was also concerned by the absence of prompt, thorough, independent and effective investigations into allegations of torture committed by security and law enforcement officers. Many law enforcement officers found guilty of ill-treatment receive only suspended sentences, which had contributed to a climate of impunity. Prosecutions into allegations of torture were often conducted under Article 256 (excessive use of force) or Article 86 (intentional injury) of the Penal Code, which proscribe lighter

sentences.25 Following its November 2010 review of Turkey, the United Nations Committee against Torture raised concerns about the failure to investigate numerous, ongoing and consistent allegations concerning the use of torture and asked Turkey to report again in a year regarding steps taken to address the problems identified. In September 2011 Turkey ratified the Optional Protocol to the UN Convention against Torture.

3.9.13 **Conclusion** Although relatives of members or supporters of Kurdish, left wing or Islamic terrorist groups or political parties may face some police harassment or discrimination there is no evidence to suggest that this, in general, will reach the level of persecution. However, each case must be considered on its individual facts.

3.9.14 The Turkish government has made changes to its legislation and has committed to a policy of combating torture and ill treatment. However, whilst there has been a decrease in the number of reported instances of torture and other forms of cruel, inhuman or degrading treatment instances of mistreatment still occur. Those who are accepted as being in leading roles, or otherwise significantly involved with Kurdish, left wing or Islamic terrorist groups or political parties are likely to face prosecution for activities against the state and may also experience mistreatment by the security forces amounting to persecution or a breach of Article 3 of the ECHR. If it is accepted that the claimant is, or is suspected of being a high profile member/activist of a separatist group and has or is being prosecuted by the authorities for separatist activity then there may be a real risk or persecution or ill treatment contrary to Article 3 and a grant of asylum or Humanitarian Protection in such cases may be appropriate.

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

27. Paragraph 3.9.14 is said by Mr Mills to represent the Secretary of State's position and to support the argument that there has been the necessary level of change in Turkey. It is submitted that rather than there being a general risk to members of Kurdish ethnic group it is only those seen as being in leading roles, or otherwise significantly involved with Kurdish, left wing or Islamic terrorist groups or political parties that are likely to face prosecution for activities against the state and who may also experience mistreatment by the security forces amounting to persecution or a breach of Article 3 ECHR. It was submitted that the Appellant was not in this category in 2002 as all it was found was that he was employed by local government, from which he was not dismissed, and that he had an association and no more that caused him to be at risk in 2002. That the substantial changes that have occurred are being maintained in relation to such low-level individuals supports the cessation decision.

28. In 2002 it is plausible that anybody thought or perceived to be a supporter of HADEP would have been targeted by the authorities as this was considered to be an organisation supporting Kurdish separatism which was eventually declared illegal by the authorities in 2003.

29. The progress being made was recognised by the Tribunal hearing the country guidance case of IK who reflect on the recent human rights developments in Turkey at that time, in 2003. They specifically comment upon HADEP/DEHAP from paragraph 18 of the determination in the following terms:

> 17. HADEP/DEHAP
>
> 18. HADEP (The Peoples' Democracy Party) was founded in 1994. It was a successor to the successively banned AGP, DEP and OZDEP. It is described in the Dutch report, to which we have referred above, as having around 60,000 members and as drawing support mainly from among Kurds. HADEP campaigns for greater cultural rights for Kurds and a peaceful solution to the Kurdish issue and is described as having kept to that position by never resorting to violence. It is said to be viewed by the Turkish authorities as the PKK's political wing and as a consequence they view it with suspicion. It is said that HADEP has no direct ties with the PKK but relies largely on the same supporters.
>
> 19. As we have noted above, HADEP was banned by the Constitutional Court in March 2003 on the grounds that it aided and abetted the PKK. DEHAP (The Democratic Peoples' Party) which was founded in 1997 claims not to be solely a Kurdish party but to be a party of Turkey. It is said in Annex B to the CIPU report that in early September 2002 HADEP, DEP and SDP (Socialist Democracy Party) decided to unite under the roof of DEHAP at the general election in November 2002. DEHAP has not been banned, but, as is noted above, the Public Prosecutor has filed a case to close DEHAP also, accusing it of becoming a faction contravening the principles of equality and an illegal state within the Democratic Republic. We note that in the November 2002 general election DEHAP claimed 6.2% of the vote but failed to win a seat in the Grand National Assembly of Turkey.
>
> 20. On page 25 of the US State Department report 2003 we find the following:
>
> "HADEP/DEHAP leaders said state harassment of the party has continued to decline gradually through the past few years, following a steep reduction in PKK related conflict. They said the party was able to operate more freely in the November Parliamentary elections than in the previous election in 1999. However, throughout the year, police raided dozens of HADEP offices, particularly in the south east, and had detained hundreds of HADEP officials and members. DEHAP and HADEP members were regularly harassed by Jandarma and security officials, including verbal threats, arbitrary arrests at rallies and detention at checkpoints. The security forces also readily harassed villages they believed were sympathetic to HADEP/DEHAP. Most detainees were released within a short period, many

faced trials, usually for "supporting an illegal organisation", "inciting separatism", or for violations of the law on meetings and demonstrations."

21. In G's bundle at page 706 and thereafter there is a report of the Turkish Human Rights Association of March 2003. The major activities of the Human Rights Association are described at paragraph 6.208 of the CIPU report. These are to collect and verify information on human rights violations and it publishes monthly reports and press releases on arrests, torture, disappearances in custody, violation of the right to freedom of expression. It has financial support from EU member states in organising courses for teachers and lawyers which also cover local procedures for the right of individual petition. There is a strong Kurdish current within the HRA. It is regularly harassed and obstructed by the authorities, and in recent years some of its regional offices have temporarily been shut down and criminal proceedings brought against various HRA workers for separatist propaganda or support for illegal organisations.

30. The UNHCR, together with Miss Rutherford on behalf of the Appellant, refer to the fact that the refusal letter appears to suggest that the Appellant was granted refugee status as a result of his Kurdish ethnicity which is stated not to be factually correct, as it was on the basis of his association with HADEP and his repeated detention and ill treatment at the hands of the authorities whilst detained which is the real reason. It is submitted on the Appellant's behalf that the Respondent's position is contrary to the information contained in the OGN dated May 2013 (see above) in which is it is accepted that those who have leading roles or who are otherwise significantly involved with Kurdish, left wing, Islamic terrorist groups or political parties will face a real risk. It is further submitted that the available material does not demonstrate a durable change.

31. In relation to more recent developments: in June 2014, the Turkish parliament adopted a law to 'bring a stronger legal foundation to the settlement process' aiming at providing a solution of the Kurdish issue. The law was adopted with broad support across political parties. It encompasses measures to eliminate terrorism, strengthen social inclusion, re-integrate those who leave the Kurdistan Workers' Party (PKK) and lay down their arms, and prepare public opinion for the return of former fighters. The law strengthens the basis for the settlement process and is said to make a positive contribution to stability and protection of human rights in Turkey.

32. The European Union Enlargement Report dated October 2014 also reflects a number of developments to date. Accession negotiations started in 2005 and there are a number of such progress reports available in the public domain on the EU website at http://ec.europa.eu/enlargement/countries/detailed-country-information/turkey/index_en.htm. These record developments in relation to he Kurdish issues, especially from September 2013.

33. A number of shortcoming are identified in Turkey which the authors of the report state "need to be addressed and the authorities need to enhance efforts to

protect other fundamental rights and freedoms so that all citizens can exercise their rights without hindrance". It is stated that "the signature of the EU-Turkey readmission agreement on 16 December 2013 in parallel with the start of the visa liberalisation dialogue created a new momentum for EU-Turkey relations. The readmission agreement entered into force on 1 October 2014, while the first report on Turkey's progress in the framework of the visa liberalisation roadmap will be published on 20 October 2014. It is important that these two processes move forward. Full and effective implementation vis-à-vis all Member States is crucial".

34. Interim progress is recognised by the statements that: "The government continued its work to ensure compliance with legal safeguards for the prevention of torture and ill-treatment. The downward trend in the incidence and severity of ill-treatment in official detention places continued. However, the frequent use of excessive force during demonstrations and arrests remains a matter of concern. Turkey needs to adopt clear and binding rules on the proportionate use of force in demonstrations, in line with the relevant Council of Europe Committee for the Prevention of Torture (CPT) recommendations and ECtHR case-law. Parliament's Human Rights Inquiry Committee started monitoring ill-treatment during military service. Instances of ill-treatment of conscripts continued to be reported. Law enforcement bodies continued to launch counter-cases against those alleging torture or ill-treatment. In many instances, these counter-cases were given priority by the courts. The absence of prompt, thorough, independent and effective investigations into all allegations of torture by law enforcement officers remains a concern."

35. In relation to the situation in the east and south-east the report states:

> The settlement process aiming at solving the Kurdish issue continued. Options for a solution were widely and freely discussed. Measures adopted in March allowed for campaigning by political parties and candidates in languages other than Turkish during local and parliamentary elections, extended state funding to political parties that receive more than 3 % of the vote, allowed for private education in children's mother tongue, and lifted the criminal punishment for the use of non-Turkish letters, addressing primarily problems stemming from the use of Kurdish letters X, Q and W.
>
> On 11 June, parliament adopted a law on eliminating terrorism and strengthening social integration. Its aim is to provide a stronger legal basis for the settlement process. The law grants legal protection to those involved in talks with the PKK, which is on the EU list of terrorist organisations and facilitates the rehabilitation of PKK militants who give up arms. Abdullah Öcalan and the pro-Kurdish BDP and HDP parties welcomed the law (*see above 2.1 — Democracy and the rule of law*).
>
> A positive atmosphere prevailed in general, including for Newroz. There was continued state engagement with the imprisoned PKK leader Abdullah Öcalan. The April revision of the law on the National Intelligence Service provided legal guarantees for intelligence officials conducting talks with Öcalan.

Sporadic violent incidents occurred, leading to some casualties, in particular in regions where military security installations were constructed or strengthened. The PKK kidnapped several persons throughout the year, including civil servants and soldiers. All kidnapped persons were released after intervention from Kurdish MPs. The PKK withdrawal from Turkey slowed and in January it was announced that it had stopped. Öcalan's Newroz message did nevertheless express hope for the process. The government-initiated committee of wise persons finalised its reports, containing recommendations for the settlement process. These were not published.

After the abolition of Article 10 of the Anti-Terror Law and the reduction of the maximum pre-trial detention period to five years, most defendants accused in cases relating to the Kurdish issue, including the KCK case, were released. Some remained in prison if they had been convicted on other charges, including under Article 314 of the Turkish Criminal Code on armed organisations.

The clearance of anti-personnel landmines continued. Turkey requested that the 2014 deadline to dispose of all anti-personnel landmines, whose number is estimated at around a million, be extended until 2022. The clearance of mines along the border with Syria stopped in the second half of 2013. Turkey became a party to the 'Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction' (Ottawa Convention) in 2003; however it was able to obtain an extension of the deadline until 2022 in order to fulfil its obligation.

The South-East Anatolia Project to improve the socioeconomic development of the region continued, with notable improvements in infrastructure. Dam projects were criticised for destroying or threatening historical heritage, natural habitats and agricultural land.

No steps were taken to abolish the village guard system, a paramilitary force of 46 739 people, paid and armed by the state.

In November 2013 the ECtHR decided (*Benzer and Others v. Turkey*) that Turkey had violated Article 2 (on right to life, inadequate investigation) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in a 1994 incident that included the bombing of civilians by the military in two villages in Şırnak. 18 In January, the General Staff Military Prosecutor's Office announced a decision not to prosecute in the case of the 2011 killing of 34 civilians by the military at Uludere/Roboski, on the grounds that the officers involved in the air operation were not at fault. The victims' families have launched an individual application with the Constitutional Court.

The statute of limitations for cases of missing persons and extrajudicial killings dating from the 1990s remained in force. Several cases were dropped as a result. Twelve court cases were ongoing regarding past crimes, all of which were transferred to western provinces for security reasons. There is an urgent need for effective investigation into these killings, involving forensic scientists, lawyers, victims' families, human rights organisations, academics, and international cooperation mechanisms.

Overall, the settlement process continued, despite sporadic tensions in the southeast. The law on eliminating terrorism and strengthening social integration provides a stronger legal foundation for the settlement talks. Legislative changes are needed to eliminate the

lack of accountability and the statute of limitations in cases of killings from the 1990s, as well as those perpetrated in recent years.

36. There is clearly a greater degree of progress than that referred to in earlier country evidence and reflected in other material to which the tribunal has been referred, including the US State Department reports.

37. It is not suggested that the Appellant has been active in relation to Kurdish issues in the United Kingdom and so there is no sur place element to his case. Family members have returned to Turkey and it is noted they were able to pass through the airport and remain and leave the country without experiencing any difficulties or adverse attention.

38. It was found by Adjudicator Lloyd that "I accept his view of matters which is that his Kurdish background was a reason for this ill-treatment". The involvement of the Appellant as a supporter/sympathiser of HADEP was enough to create a real risk on return which is a finding supported by the country material in 2002 when the decision was made. This was before the commencement of negotiations with the EU in 2005.

39. The Appellant was a sympathiser/supporter at a time when the Turkish State took a very hard line against supporters of Kurdish separatist groups. Adjudicator Lloyd found that the catalyst for his ill-treatment was his Kurdish ethnicity. His support for HADEP would have created an adverse perception in the minds of the authorities if they were aware he supported that group, as he claims he did, and was ill-treated in detention as a result. The country material from all sources reflects ongoing concern about the use of arbitrary arrest, detention and ill treatment in detention and the use of excess force to break up demonstrations in Turkey. In relation to a person of Kurdish ethnicity the country evidence demonstrates a material change in the approach taken by the authorities in Turkey in that being a Kurd does not create a real risk of ill treatment sufficient to amount to persecution or a breach of Article 3, per se.

40. In relation to supporters/members of Kurdish parties, the Appellant is not a leader or person with a profile (actual of imputed when viewed through the eyes of any potential persecutor) of influence. He is not and has never been a member of any illegal or proscribed groups. The change of attitude is demonstrated by the fact the authorities are willing to permit former members of the PKK, the most violent of the Kurdish opposition groups and a proscribed terrorist operation to return and live in Turkey without arrest and detention, based upon past activities if they renounce the same. These individuals have done far more to hurt the Turkish State and members of the security services than this Appellant.

41. The concerns expressed at the outset of the process of joining the European Union that action was needed to prevent abuse by the security services is a well

founded comment, but the same material reflects positive developments in relation to the actions taken although it is accepted that all is not as a neutral observer would like it to be. This is not, however the test. As UNHCR reminded the Respondent in the earlier correspondence, the test to be applied has a number of difference components. The first for which is the need for the Respondent to demonstrate change which is fundamental and durable. I find this element to be proved as change in relation to the attitude and treatment of Kurds in Turkey is amply demonstrated by the country material. I find it to be a fundamental change as it represents a change in not only engaging this group in dialogue and negotiations, but in relation to the perception of risk to the State and recognition that not all Kurds, be they members and/or supporters of legal groups or not, pose a threat that requires detention and ill treatment during such detention. There are those that still face such suspicion and it may be the case that those with influence or in a position of leadership in an organisation perceived as a threat still remain at risk at this time, but that is not the profile of this Appellant.

42. In relation to the issue of whether such change is durable, it is not possible to know what is likely to happen in the distant future. This is an issue that can only be assessed by a careful examination of not only the changes that have occurred but also the reason for such changes. One of the reasons for the delay in the promulgation of this determination has been due to the situation in Syria and developments in relation to the town of Kobane and the question whether the situation for Turkey in relation to its refusal to support the Kurds in that town from IS forces will result in a deterioration in the general situation. In this regard it is reported there have been demonstrates by some against the governments position which have resulted in interventions by the police although in October Turkey allowed some 150 Kurdish Peshmerga forces to cross its border and help defend the Syrian town. On the basis of the available information it has not been shown that the situation is likely to render the fundamental changes to date not of a durable nature. The Turkish Government clearly see the proposed membership of the EU as being beneficial to its long terms aims which appears to be a key driving force in the reforms to date.

43. The additional element of the test is that the changes need to have been shown to remove the basis of the fear of persecution. As stated above Mr Cakmak was granted refugee status as a result of it being found he faced a real risk on return as a result of his Kurdish ethnicity and his ill treatment in detention following arrest. He also claims to have been a supporter/sympathiser of HADEP.

44. Miss Rutherford submitted that any assessment of risk on return would have to be undertaken in light of the current country guidance case law. As a legal statement this is correct and an assessment of risk by reference to such factors will demonstrate whether the fear of persecution has been removed or not.

45. In **IA and others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034** (also known as **ACDOG)** it was held that an Adjudicator needed to consider:

i) The level, if any, of the Appellant's known or suspected involvement with a separatist organisation.

ii) Whether the Appellant has ever been arrested or detained and if so in what circumstances.

iii) Whether the circumstances of the Appellant's past arrests and detentions, if any, indicate that the authorities did in fact view him or her as a suspected separatist.

iv) Whether the Appellant was charged or placed on reporting conditions or now faces charges.

v) The degree of ill-treatment to which the Appellant was subjected in the past.

vi) Whether the Appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP.

vii) How long a period elapsed between the Appellant's last arrest and detention and his departure from Turkey. Whether the Appellant was under surveillance or monitored after his last arrest.

viii) Kurdish ethnicity.

ix) Alevi faith.

x) Lack of a current up-to-date Turkish passport.

xi) Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the Appellant since he or she left Turkey.

xii) Whether the Appellant became an informer or was asked to become one.

xiii) Actual or perceived political activities abroad in connection with a separatist organisation.

xiv) Whether the Appellant is a military draft evader.

46. These factors should not be treated simply as a checklist. Assessment of the claim must be in the round and none of these factors is necessarily determinative of the issue. In relation to the individual elements I find as follows:

i) The level, if any, of the Appellant's known or suspected involvement with a separatist organisation - it was accepted by Adjudicator Lloyd that the Appellant had worked for 18 years in local government in Turkey, but found to be scarcely credible that he would have been able to spend such a period of time in that employment yet at the same time claiming the government persecuted him, but that he was a supporter of the Kurdish cause. There is no evidence the Appellant held any rank or office within HADEP and his evidence to the Adjudicator was that he attended political meetings and worked for HADEP which he claimed in 2002 to be an illegal organisation. He claimed he could not become a member of HADEP as this was not allowed as a local government worker.

ii) Whether the Appellant has ever been arrested or detained and if so in what circumstances – the claim before the Adjudicator was to have been arrested on many occasions between 1988 and 2000. His evidence to the Adjudicator, however, as recorded in the determination, was that after the 2000 Nevroz celebrations he was detained and seriously ill treated as a result of which he suffered wounds to his chest, head and arm. He claimed to have been arrested along with others because the government said the celebrations for the Kurdish New Year were illegal after which he was detained for four and a half months. When attending the same celebrations in 2001 the police tried to disperse the crowd using violence. The Appellant stated to the Adjudicator that he was frightened he will be arrested as a result of which he ran away and did not return to his home or his employment. The Appellant told the Adjudicator of previous ill-treatment in police detention in 1993 when he was arrested for the murder and detained for 14 months although eventually released when the actual perpetrator was arrested, during which time he was ill treated. Although attendance at the Nevroz celebrations or demonstrations of Kurdish ethnicity were outlawed by the Turkish authorities in the past this is not the case presently and there is no indication of a wish to revert to the previous restrictive practices in the future.

iii) Whether the circumstances of the Appellant's past arrests and detentions, if any, indicate that the authorities did in fact view him or her as a suspected separatist - it is the Appellant's own evidence that one period of detention related to alleged criminal activity as he was suspected of having committed a murder although his claim this was only as a result of his Kurdish ethnicity is not substantiated on the material available. He was detained along with a number of others in 2000 although thereafter released without charge or evidence of any bail conditions. In relation to release without charge; in the case of Fatih Andic [2004] EWCA Civ 557 the Court of Appeal said that it was no flaw of reasoning to conclude from the fact that the applicant had been released without charge after each detention that the Turkish authorities had no further interest in him. That decision was dated 4 March 2004.

iv) Whether the Appellant was charged or placed on reporting conditions or now faces charges- there is no evidence the Appellant was charged or placed on reporting conditions or faces any outstanding charges, warrants, or other judicial processes outstanding against him in Turkey.

v) The degree of ill-treatment to which the Appellant was subjected in the past - the Adjudicator accepted that the Applicant was ill treated in detention as a result of which he has scarring. Such ill-treatment is in accordance with the country material reflecting the brutal methods employed by the Turkish security forces in suppressing the Kurdish ethnic groups or individuals at that time.

vi) Whether the Appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP - there is no evidence of family connections with separatist organisations. Such organisations have, as stated above, now ceased to exist in any event.

vii) How long a period elapsed between the Appellant's last arrest and detention and his departure from Turkey. Whether the Appellant was under surveillance or monitored after his last arrest - there is no evidence the Appellant was under surveillance or monitored after his last period of detention which must have ended around September 2000. He felt able, despite his experiences in 2000 to attend the New Year celebration in 2001 and eventually left Turkey later that year before arriving in the United Kingdom and claiming asylum on 23rd October 2001. He travelled to a named village and to Istanbul before travelling to the United Kingdom.

viii) Kurdish ethnicity - the Appellant is of Kurdish ethnicity.

ix) Alevi faith – the Appellant did not claim there is any risk as a result of being a member of the Alevi faith.

x) Lack of a current up-to-date Turkish passport - the Appellant does not have an up-to-date Turkish passport and it has been confirmed that he has not made an application to the Turkish authorities for his passport to be renewed. He will, therefore, be returned on an emergency travel document.

xi) Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the Appellant since he or she left Turkey - there is no evidence the authorities have been pursuing or otherwise expressing an adverse interest in the Appellant since he left Turkey. Other members of his family have travelled to Turkey since and returned without any evidence of adverse interest in the Appellant, or them as family members from the authorities, such as to indicate an ongoing risk.

xii) Whether the Appellant became an informer or was asked to become one - there is no evidence the Appellant was asked to become an informer or became one.

xiii) Actual or perceived political activities abroad in connection with a separatist organisation - there is no evidence of any actual or perceived political activities in the United Kingdom in connection with a separatist organisation.

xiv) Whether the Appellant is a military draft evader - the Appellant is not a military draft evader.

47. As stated above, this is not a checklist, and it is necessary to assess any risk to the Appellant cumulatively. It is clear from the guidance provided in the case law that the starting point in all cases is to consider the question of any risk in relation to the Appellant's home area. The Adjudicator notes that when the Appellant left Turkey his wife remained in his home area, Aksaray, indicating he felt it was safe enough to leave the family there rather than for them to flee to a place of safety with him. It has not been shown this is an area in which there is a heightened risk for those originating from there and there is no credible evidence of an ongoing interest in him in that area. In response to questions posed by the Secretary of State as part of the immigration/deportation process, the Appellant indicates that that is his mother's home area and has provided a residential address for her. This area is also stated to be the Appellant's place of birth in Turkey. It is also of note that in 2001 when the police tried to disperse the Nevroz celebrations the Appellant claims to have fled. He was not arrested or detained by the police and there is no evidence of any adverse interest being taken in him that necessitated a need to leave Turkey to come to the United Kingdom. At that time he had been released for nearly 8 months with no evidence of ongoing adverse interest being taken in him. It has not been established that the computerised records to which the Immigration and Security Services have access on return contain any material sufficient to create a real risk to the Appellant on return. As he will be returned on a one-way travel document he may be questioned at the airport and he cannot be expected to deny a fundamental aspect of his personal identity such as his ethnicity or belief in the Kurdish cause. If this prompts checks to be made it has not been shown that there is anything recorded that will lead to a real risk of ill-treatment or persecution. As stated, being a Kurd per se does not give rise to risk on return and the Appellant's profile is not such that he falls within the categories of those in relation to whom such risk can be found. The evidence does not objectively substantiate a claim to face a credible real risk of any adverse ill-treatment in his home area. As this is the case it is likely he can return to his home area or elsewhere in Turkey, if he so chooses, as no real risk has been established elsewhere either.

48. This is the case even if the GBTS system has no record and checks are made of the home area. Records may be held of a lawful arrest and detention in relation to the criminal proceedings but also his release without charge. If the detention following the 2000 Nevroz celebration was lawful and recorded it will also show the Appellant was released without charge or conditions.

49. On return the Appellant may be asked about the reason he left Turkey and his activities in the United Kingdom in the interim. His account is as set-out above that he left in 2001 to avoid the risk of further arrest and ill-treatment. The attendance at a Nevroz celebration is no longer illegal and it has not been shown such an event will create a real risk as vast numbers attend such celebrations annually now with no evidence of intervention. There is no evidence of any adverse activity in the UK. This is not case of an individual who was a member of the PKK or has family in that organisation and his attendance at HADEP meeting was prior to the time the PKK flag was displayed at that organisations meetings and a hard line adopted in relation to the same. It cannot be said that the likely consequences of the Appellant's answers will result in a real risk of ill-treatment. It is more likely he will be permitted to enter Turkey and proceed to his home area or elsewhere.

50. In conclusion: in relation to the Secretary of State's decision to cease refugee status for the Appellant and I find that the Secretary of State has discharged the burden of proof upon her to the required standard to show that the nature of the changes in Turkey are such that the test in law, set out with clarity in the letter from UNHCR, in relation to this Appellant is met.

51. Miss Rutherford raised an additional issue at the hearing namely that relating to Article 8; claiming the panel's findings in Article 8 have been challenged but no decision made upon the same. Article 8 was specifically referred to by the panel and the situation of the Appellant's wife and children carefully examined leading to a finding that the decision would not lead to a breach of Article 8 as the family and private life relied upon did not outweigh the public interest in deportation. The challenge to the Article 8 findings has been dealt with for in the error of law finding document it specifically states that all findings other than those relating to the adequacy of the changes recorded in country conditions shall be preserved. This includes the dismissal of the claim on Article 8 grounds. Although it is said there has been a change in circumstances in that Mr Cakmak has returned to the family home it would be necessary to assess any Article 8 claim by reference to the Immigration Rules which have been amended since the introduction of section 117A-D into the 2002 Act. The amendments to the Rules reflect the wording of the statutory provisions. In relation to the offence which the Appellant committed, for which he was sentenced to seven years imprisonment for rape and false imprisonment, it has not been established on the facts that he is able to succeed under the Rules by reference to the appropriate legal tests even if this was a live issue before the Upper Tribunal and his wife and children, as British citizens, remain in the United Kingdom. The risk of re-

offending referred to in Miss Rutherford's grounds is one but not the determinative issue. This is an automatic deportation case for a serious offence with a strong element of deterrent and public revulsion.

Decision

52. **The First-tier Tribunal Judge materially erred in law. That decision has been set aside. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

53. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 19th December 2014