

Chapter 20

PKK–Related Asylum Applications from Turkey: Counter–Terrorism Measures vs. Refugee Status

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ABSTRACT

More than forty thousand people in Turkey lost their lives because of PKK terrorist organization. While fighting against PKK since 1984, it is necessary for Turkey to limit some rights of PKK-related people through arrest, detention and interrogation for the pressing objectives of national security, territorial integrity and public order. Based on such limitations, there are PKK-related asylum applications from Turkey. However, these asylum applicants are quite restrictively excluded from refugee status and are commonly found as credible witnesses for their well-founded fear of persecution mainly for reason of political opinion. This paper questions the reasons that make such applicants granted refugee status by examining six case laws with positive decisions. It identifies two reasons, first, restrictive application of exclusion clauses and second, the subjectivity in the understanding of ‘necessary’, which is one of the required conditions to limit human rights. Then, it provides three tentative suggestions for Turkey to enable applicants aiding and/or funding PKK to be excluded from refugee status and to prevent its counter-terrorism measures to be perceived as persecution by countries of asylum: a universally accepted definition of what constitutes terrorist offences, a stronger international presentation of counter-terrorism measures as necessary in a democratic society and a strict adherence to zero tolerance policy on torture.

INTRODUCTION

Kurdistan Workers’ Party (PKK) is a terrorist organization, founded in 1984. More than forty thousand people lost their lives because of PKK terrorism. Being founded on the revolutionary Marxist-Leninist and separatist ethno-nationalist ideology, “PKK wants to suppress the diversity of Turkey, prevent participation and integration of Turkey’s citizens of Kurdish origin and intimidate the people in the region”

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(MFA Turkey, PKK). According to the Report on the Investigation of Violations of Right to Life under the Scope of Terror and Violence Incidents, about 7900 members of armed forces and ministry employee and about 550 civilians lost their lives by the end of 2011 (TGNA, 2013, p. 63). In 2016 alone, 243 security guards and civilians were killed and 1108 people were injured by PKK terror organization (BBC, 2016).

The attack with the most civilian casualties in 2016 was the Ankara bombing on March 13, undertaken by Kurdistan Freedom Hawks (TAK), which is the masquerade organization of PKK. Since conducting terrorist attacks targeting civilians would harm the image of PKK, TAK was founded in 2003 to undertake such terrorist attacks in urban areas (Milliyet, 2016). The methods that TAK terrorists use have a significant resemblance to DAESH methods. The attack in Ankara targeted the civilians since a car bomb exploded at a busy square in central Ankara near a transport hub, Güvenpark, where there are 10 bus stations. The bus stations, as usual, were very crowded on the Sunday evening; most of the civilians there were the high school students making their way back to home after the university entrance exam. The result of this bloody attack was at least 35 civilian casualties and 118 wounded civilians. (NTV, 2016)

Only within one week in the last month of 2016, PKK killed 58 people and injured 222 people by using its masquerade organization, TAK. On 10 December 2016, 36 police members and 8 civilians lost their lives and 166 people were injured due to a double bombing in Beşiktaş, Istanbul (Middle East Observer, 2016). One week later, on 17 December, a car bomb targeted a bus carrying soldiers in Kayseri, on their weekend leave, 14 soldiers were killed while 56 people were injured (Hürriyet Daily News, 2016).

None of the terrorists who committed these bombings shall be granted refugee status. Because international refugee law obliges States not to grant refugee status to certain categories of people, including people who committed a terrorist offence. Besides, international human rights framework allows States to limit certain rights in very exceptional circumstances, such as fight against terrorism. Fighting against PKK terrorist organization for more than thirty years, Turkey has taken counter-terrorism measures to prevent and deter future terrorist attacks. Derived from its rights from international law, such measures may lead some limitations in human rights of PKK-related individuals such as their rights to freedom of expression, freedom of assembly and association and respect one's private and family life. However, such limitations through like detention, arrest and interrogation may be considered as persecution by a country of asylum. Accordingly, PKK-related asylum applications¹ from Turkey have been generally accepted with quite a few exceptions by countries of asylum owing to well-founded fear of being persecuted mostly for reason of political opinion.²

Thus, this paper questions the reasons why a PKK-related applicant is not excluded from refugee status and why countries of asylum generally perceive the limitations in certain human rights in Turkey as persecution, despite the limitations are for the pressing objective of countering terrorism. It examines six PKK-related case laws with positive decisions from countries of asylum of the UK (1), New Zealand (1) and Australia (4) between the years 1999 and 2014. The paper finds out two reasons: restrictive application of exclusion clauses and the subjectivity in the understanding of 'necessary'. Derived from the factors identified through case laws, the paper provides tentative suggestions for Turkey to enable applicants aiding/funding PKK to be excluded from refugee status and to prevent its counter-terrorism measures to be perceived as persecution by countries of asylum.

The paper first questions the application of exclusion clauses, as stated in 1951 Convention Relating to the Status of Refugees (1951 Convention), with the aim of identifying factors that may restrict the application of such clauses. In this part, the paper identifies two factors: UNHCR's restrictive stance on the application of exclusion clauses and lack of a universal definition of terrorist offences. Second,

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