

Subject: FW: Supplementary submission in relation to the inquiry into the listing of the
PKK et al.

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Secretary:

From: Patrick Emerton [mailto:Patrick.Emerton@law.monash.edu.au]
Sent: Friday, 23 October 2009 12:04 PM
To: Little, Robert (REPS)
Subject: Supplementary submission in relation to the inquiry into the listing of the PKK et al.

Dear Robert

If possible at this late stage, I would like this email to constitute a brief supplementary submission in relation to the PKK listing inquiry.

According to Associated Press journalist Christopher Torchia, in Turkey, the crime of being a member of the PKK carries a penalty of several years in jail, but Turkish law pardons PKK members not involved in attacks (the report can be found on the Houston Chronicle website at <http://www.chron.com/disp/story.mpl/ap/world/6676195.html>).

Assuming that this is correct, it provides further reasons against the relisting of the PKK in Australia under the *Criminal Code*. If the listing goes ahead, the penalty for membership in Australia will be a maximum of 10 years - at least as, if not more, severe than in Turkey, the country in which the PKK actually operates. Furthermore, the criminal penalties associated with a wide range of conduct falling far short of involvement in attacks would be very severe (under the various offences found in Division 102 of the *Criminal Code*). It would be an absurd result for members of the PKK who have not engaged in violent actions to go free in Turkey, while being subject to extreme criminal penalties in Australia. (I would reiterate at this point that the Australian offences operate fully extraterritorially via the operation of extended geographical jurisdiction category D, per section 102.9 of the *Criminal Code*.)

Thank you again for the opportunity to appear yesterday, and (if it is possible) for accepting this supplementary submission.

Yours sincerely

Patrick Emerton
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Turkey releases Kurdish rebels, some face charges

By CHRISTOPHER TORCHIA Associated Press Writer © 2009 The Associated Press

Oct. 20, 2009, 9:26AM

ISTANBUL — Turkish authorities on Tuesday released a band of Kurdish rebels who surrendered in a peace gesture, as part of a broad government effort to persuade thousands of other guerrillas to end their decades-long fight.

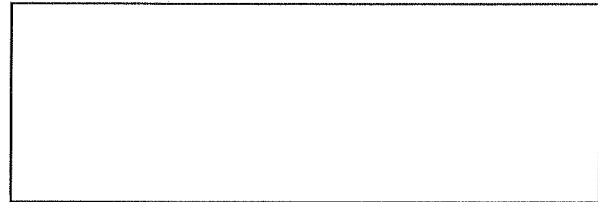
The legal fate of five of the eight rebels could influence any further moves toward reconciliation. They were freed pending trial on charges of membership in the Kurdistan Workers' Party, or PKK, said Ayla Akad Ata, a pro-Kurdish lawmaker. The crime carries a penalty of several years in jail.

Crowds of jubilant Kurds lined the road as the rebels, among a group of 34 people who crossed from northern Iraq into Turkey on Monday, headed in a bus toward Diyarbakir, the main city in Turkey's Kurdish-dominated southeast.

Television footage showed the passengers smiling and making victory signs, an image that was likely to anger hardline Turkish nationalists but could lead to more rebel surrenders and tentative steps by both sides toward peace.

Most of the group of 34 were refugees, and authorities released them without charges. Four were children and were not questioned.

Amnesty for fighters and more rights for Turkey's Kurdish minority are key demands of the PKK, which began attacks in 1984 and is labeled a



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terrorist group by the West. As many as 40,000 people have died in a war that reached its peak in the 1990s.

Turkish law pardons rebels not involved in attacks, but the PKK wants a broader amnesty that would include leaders who operate in northern Iraq, and jailed chief Abdullah Ocalan, a reviled figure for most Turks.

It backed the surrender of the rebels on Monday, apparently to test the goodwill of a government that is seeking reconciliation with its Kurdish citizens.

"They're evaluating implementation of the repentance law to see if, in fact, it represents an adequate amnesty arrangement," said David Phillips, a Turkey expert at the Atlantic Council, a research center in Washington D.C.

A civilian court, set up at the Habur border crossing, released the rebels after reviewing their cases.

Prosecutors said the five who face charges included people who traveled from PKK headquarters in Iraq's Qandil mountains, which were bombed in a Turkish assault last year. Others were from a refugee camp, Makhmur, that Turkey has been pressuring Iraq to shut down for alleged rebel activity.

Prime Minister Recep Tayyip Erdogan noted in parliament that the group was released in line with the law.

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"I find this to be an extremely positive and pleasing development," he said. "I would like to renew my call to those on the mountains, those at Makhmur and those in Europe: I recommend that they return to their country without delay."

Nihat Ali Ozcan, a terrorism expert at the Economic Policy Research Institute in Ankara, said the government should heed reaction from hardline Turks opposed to reconciliation.

"The television footage of celebrations, like the return of Caesar to Rome after a victory, is likely to trigger fault lines in the rest of the country," Ozcan said on NTV television.

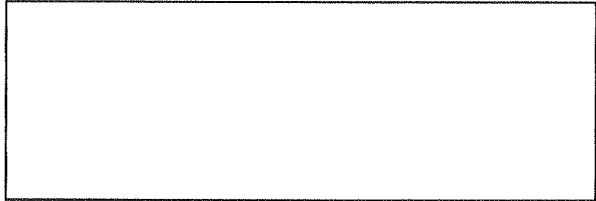
Turkey refuses to negotiate with the PKK, but Erdogan's Islamic-oriented government recognizes that military action alone cannot solve its conflict with Kurds, who have faced discrimination for years. Giving more social and economic opportunities to Kurds would also boost Turkey's struggling bid to join the European Union.

Kurds make up about 20 percent of Turkey's more than 70 million people and dominate the country's poor southeast region.

Critically, the Turkish military has let the government take the lead on Kurdish pronouncements, signaling its tacit support. The military has often intervened in politics and has sparred with the current government over its commitment to Turkey's secular principles.

"We are heading toward a conclusion with a good plan," Interior Minister Besir Atalay said.

Cemil Bayik, a PKK leader in Iraq, questioned Turkish sincerity and said the rebel group would not disband as long as "Kurdish identity" was not accepted.




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"The PKK will not come down from the mountains just because it has a positive outlook toward the peace groups," the pro-Kurdish Firat news agency quoted Bayik as saying.

Associated Press writers Selcan Hacaoglu, Suzan Fraser and Gulden Alp contributed to this report from Ankara.

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