

## TURKEY

### **17 years in the balance: Lawyer E\_ber Ya\_murdereli returns to prison in freedom of expression case**

E\_ber Ya\_murdereli, a lawyer by profession but currently barred from practising because of his previous conviction (see below), was arrested by police acting on a court order in the early hours of 20 October 1997 and now faces more than 17 years' imprisonment for challenging the Turkish Government on the status of the Kurdish population in Turkey. E\_ber Ya\_murdereli is to serve the remainder of a life sentence he received following his arrest in 1978. This sentence, imposed as a result of an unfair trial, was suspended in 1991 on condition that he commit no more offences of a political nature.

E\_ber Ya\_murdereli is 52 years old, and blind as a result of a childhood accident. As a lawyer he acquired a reputation for defending trade unionists and others charged with political offences, and he has since received public notice not only for his criticism of current restrictions to freedom of expression in Turkey but also for his mediation in resolving a hunger-strike in a Turkish prison. He was first arrested in March 1978 in connection with a robbery and charged with "trying to change the constitutional order by force" under Article 146 of the Turkish Penal Code. The trial, appeal and retrial were extremely protracted, but in March 1985 E\_ber Ya\_murdereli was sentenced to death. Because of his blindness this sentence was commuted to life imprisonment: in effect, 30 years. His trial was a travesty of justice (see panel on page 2).

In a report published in July 1990, *Turkey: Unfair trial of lawyer E\_ber Ya\_murdereli* (AI Index: EUR 44/119/90), Amnesty International drew attention to the grave deficiencies in his trial, noting how it failed to conform to internationally recognized minimum standards for the fairness of trials. E\_ber Ya\_murdereli's co-defendants, whose confessions in police custody had incriminated him, withdrew their statements in court, stating that they had been extracted under torture. Amnesty International pointed to the failure of the court to investigate these allegations, despite the existence of medical certificates certifying injuries consistent with the defendants' claims. Amnesty International's report detailed the international standards which E\_ber Ya\_murdereli's trial and retrial had contravened: Articles 13 and 15 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In 1990 E\_ber Ya\_murdereli was offered a pardon by the Minister of Justice on grounds of "ill-health". E\_ber Ya\_murdereli rejected the offer, saying that to accept it

### *The unfair trial of E\_ber Ya\_murdereli*

When E\_ber Ya\_murdereli was arrested in March 1978 he was working as a lawyer in Bursa, defending many trade unionists and others charged with political offences.

On 5 March police found one of his clients in possession of weapons. Subsequently police searched E\_ber Ya\_murdereli's house and office, but found only some political literature. Stolen gold and jewellery were found in the house of a neighbour. The neighbour said that the goods came from E\_ber Ya\_murdereli.

Nine people were detained and interrogated in connection with the robbery. They were held incommunicado for up to eight days and three of them confessed to having carried out the robbery in the name of an illegal organization. In their statements they said that they had handed over the stolen goods to "their leader", E\_ber Ya\_murdereli.

In court virtually all the defendants withdrew their confessions, claiming that these had been extracted under torture. E\_ber Ya\_murdereli denied all claims of involvement in the robbery and membership or leadership of an illegal organization. He believes that the prosecution brought against him was an attempt to prevent him from defending political prisoners.

E\_ber Ya\_murdereli himself reported that he had been tortured in Bursa Police Headquarters by beating of the soles of the feet, electric shocks, hosing with pressurized water and by having lighted cigarettes stubbed out on his body.

Under international standards the authorities should have investigated these allegations of torture and ensured that any statement established as having been made as a result of torture was not used as evidence in court.. Moreover, there were severe restrictions on his right to an adequate defence. E\_ber Ya\_murdereli was prevented from attending many hearings in his trial at Samsun Criminal Court.

E\_ber Ya\_murdereli has pointed out other deficiencies in his trial. He protested that he had been detained in police custody for longer than the then legal maximum of seven days and that newspaper articles published before his formal arrest prejudiced the outcome of his trial.

would amount to an admission of guilt. Instead he asked for a fair retrial. His request was denied.

In 1991 the Turkish Parliament adopted the Anti-Terror Law (Statute 3713), which made changes to a number of articles of the Turkish Penal Code dealing with political crimes, but also granted a conditional amnesty which suspended four-fifths of prison sentences for offences such as those contained in Article 146. As a result E\_ber Ya\_murdereli was released on 1 August 1991, having spent 13 years and five months in prison. However, E\_ber Ya\_murdereli's sentence was suspended only on condition that he commit no further offences within the extremely broad scope of the Anti-Terror Law. If convicted of any such offence, he would be required to serve the remainder of the 30-year sentence without remission.

On 8 September 1991 E\_ber Ya\_murdereli spoke at a meeting in Istanbul organized by the Turkish Human Rights Association. His speech made reference to the situation in southeast Turkey and to the aspirations of the Kurdish minority, declaring that the Turkish Government had suppressed their human rights. "The Kurdish people has risen up for the first time in its history for liberty and democracy, and found its leadership," he is reported as having said. "They have reached a crucial point where they refuse oppression and inhuman conditions which they have endured for thousands of years.... If we are not many here today it is because we are many in the mountains and there will be more and more of us every day." As a result, E\_ber Ya\_murdereli was

Anti-Terror Law (Statute 3713), Article 8 states: "~~Written and oral propaganda and~~ ~~Articles 81, the Anti-Terror Law~~ ~~constitute the crime of a~~ ~~magisterial~~ ~~in~~ ~~the~~ ~~which~~ ~~of~~ ~~the~~ ~~State~~ ~~of~~ ~~the~~ ~~Republic~~ ~~of~~ ~~Turkey~~ ~~in~~ ~~the~~ ~~Anti-Terror~~ ~~Law~~ ~~of~~ ~~1991~~ ~~Other~~ ~~is~~ ~~include~~ ~~Article~~ ~~158~~ ~~(~~ ~~insulting~~ ~~the~~ ~~President~~ ~~)~~ ~~which~~ ~~carries~~ ~~a~~ ~~term~~ ~~of~~ ~~six~~ ~~to~~ ~~eight~~ ~~years~~ ~~;~~ ~~and~~ ~~Law~~ ~~5816~~ ~~(~~ ~~insulting~~ ~~Mustafa~~ ~~Kemal~~ ~~Atatürk~~ ~~,~~ ~~the~~ ~~founder~~ ~~of~~ ~~the~~ ~~Turkish~~ ~~Republic~~ ~~).~~

charged under Article 8 of the Anti-Terror Law with "disseminating separatist propaganda" and in June 1994 was sentenced to 20 months' imprisonment. The court judgment stated that in E\_ber Ya\_murdereli's speech "...part of the country was named as Kurdistan and the inhuman activities of the PKK [Kurdish Workers' Party] terrorist organization's supporters were called the struggle of Kurdish people for independence; ...the Turkish Republic was slandered by praising these illegal activities". Amnesty International has examined the content of E\_ber Ya\_murdereli's speech and concluded that it did not advocate violence.

In October 1995 the Turkish Parliament slightly amended the wording of Article 8 of the Anti-Terror Law (see News Service 205/95, AI Index: EUR 44/120/95) and all those convicted under the former wording of the law were retried. As a result E\_ber Ya\_murdereli's sentence was reduced to 10 months' imprisonment, but in August 1997 Samsun Criminal Court - the court which had originally put E\_ber Ya\_murdereli on trial in 1978 - ruled that he had broken the terms of the conditional release granted him in 1991. In consequence E\_ber Ya\_murdereli will now be required to serve the remainder of the original 30 year sentence - 16 years and seven months - in addition to the remainder of the 10-month term imposed for the speech he made in 1991, of which he served five weeks in 1995: a combined total of 17 years and three months. E\_ber

Ya\_murdereli has no redress under Turkish law since the life sentence had already been confirmed by the Appeal Court at the time of his original appeal in 1985.

E\_ber Ya\_murdereli is being held in Çank\_r\_ Central Closed Prison. In spite of the long term of imprisonment now facing him, E\_ber Ya\_murdereli has no regrets: "I am hoping that my situation will help to solve the problem of freedom of expression in Turkey", he says. He still maintains that he will refuse to accept a pardon should one be offered, because to do so would simply postpone the reforms that he believes the Turkish Government will sooner or later be compelled to introduce.

While in prison in the 1980s E\_ber Ya\_murdereli became known as a gifted short-story writer, winning a national competition in 1986. His reputation as a human rights activist has also increased. In 1996 mediation by E\_ber Ya\_murdereli, novelist Ya\_ar Kemal, Welfare Party parliamentary deputy Mukadder Ba\_e\_mez, and musician, writer and politician Zülfü Livaneli was critical in resolving a prison hunger-strike in which 12 prisoners died.

E\_ber Ya\_murdereli has recently written a stage play, *Akrep* ('Scorpion'), which opened at the Ankara Arts Theatre on 24 October 1997. The play describes five days he spent in the company of \_ahabettin Oval\_, a common criminal, before he was hanged at Sinop prison on 12 June 1982. The play comments on the injustices of the martial law courts following the 1980 military coup in Turkey.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which Turkey is a State Party, guarantees the right to freedom of expression. Amnesty International considers that the imprisonment of E\_ber Ya\_murdereli is in breach of Article 10. Amnesty International has adopted E\_ber Ya\_murdereli as a prisoner of conscience and is calling for his immediate and unconditional release.

E\_ber Ya\_murdereli's situation is quite well known in Turkey and the Turkish Government is under pressure from within to reform the Anti-Terror Law. On 13 October 1997, speaking to a meeting of the Istanbul Bar Association, Hüsamettin Cindoruk, President of the Democratic Turkey Party - a partner in the coalition government - commented: "One cannot countenance this punishment, inflicted on a member of your bar. This sentence is incomprehensible to me and inexplicable to anyone in or out of prison. We must prevent this punishment, with the bar's help."<sup>1</sup>

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<sup>1</sup> Reported in *Cumhuriyet* (Republic), 14 October 1997.

In response to E\_ber Ya\_murdereli's predicament, five Republican People's Party (CHP) deputies have prepared a draft bill calling for amendments to the Anti-Terror Law. CHP is also a partner in Turkey's coalition government. In written statements the deputies "explained E\_ber Ya\_murdereli's situation and stressed that in a democratic country this method of levying a penalty from which a person has gained amnesty should be made illegal"<sup>2</sup>.

E\_ber Ya\_murdereli's continuing plight shows that the government has so far failed to act. But it is not too late. Amnesty International calls upon the Turkish Government to reform or repeal Article 8 of the Anti-Terror Law without delay to ensure that E\_ber Ya\_murdereli does not remain in prison for exercising his right to freedom of expression.

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<sup>2</sup> Reported in *Turkish Daily News*, 26 July 1997.