

## TURKEY

### **“Creating a silent society”: Turkish Government prepares to imprison leading human rights defender**

Less than a year after barely surviving an assassination attempt, Ak\_n Birdal, President of the Turkish Human Rights Association (HRA) and one of Turkey’s foremost human rights defenders, faces imminent imprisonment for “thought crime”.

On 27 October 1998 the General Council of Ankara’s Appeal Court upheld a sentence of one year’s imprisonment passed on Ak\_n Birdal, who had been found guilty by Ankara State Security Court in July of “inciting people to hatred and enmity on the basis of class, race or regional differences” under Article 312(2) of the Turkish Penal Code. Ak\_n Birdal also received a fine of 420,000 TL (US\$3). As a consequence of being found guilty under Article 312 he will be required to step down as President of the HRA, a post to which he has only recently been re-elected. He will not be permitted to be a founder or executive of any association for the rest of his life, although this ban is open to appeal after five years.

With the Appeal Court’s confirmation of sentence, Ak\_n Birdal’s legal remedies are now exhausted. According to the formula set out in the law on the execution of sentences, Ak\_n Birdal will serve five months and 18 days in prison. It is expected that the sentence will shortly be enforced, in spite of concern about Ak\_n Birdal’s state of health following the gun attack against him in May 1998.

### **“A DUTY, NOT A CRIME”**

The charges against Ak\_n Birdal related to a speech he made at a public “Peace and Freedom Meeting” in Ankara on 1 September 1996, in which he called for a peaceful resolution to the longstanding conflict between the Turkish state and the armed opposition Kurdish Workers’ Party (PKK). In his speech Ak\_n Birdal referred to “the Kurdish people” and remarked that the effects of the continuing conflict could be felt in every area of Turkish public life. “Peace will not only be a solution which will benefit the peoples, but a stimulus for economic development and democratic improvement in Turkey,” he is reported to have said.

The case against Ak\_n Birdal had not been without setback for the prosecutors. Ankara’s State Security Court first sentenced Ak\_n Birdal to one year’s imprisonment for the same offence in October 1997. At this trial a number of other speakers at the “Peace and Freedom Meeting” also received jail terms under Article 312 of the Turkish Penal Code or Article 8 of the Anti-Terror Law. However in February 1998 a division of the Ankara Appeal Court, while confirming the sentences against Ak\_n Birdal’s

co-defendants, annulled the decision against Ak\_n Birdal. The Appeal Court's view was that "...utterances such as 'Kurdish people' made during the speech ... may not be interpreted as an explicit incitation to hatred and enmity on the basis of class, race or regional differences... as stated in article 312(2) of the Turkish Penal Code, because the main theme of the speech is peace and freedom." The case was referred back to Ankara State Security Court, where prosecutors nonetheless decided to persevere with the case against Ak\_n Birdal. His retrial culminated in the July 1998 renewal of sentence and October's confirmation by the General Council of the Appeal Court (the court of last resort).

Ak\_n Birdal has a number of other prosecutions (it is believed about 20) pending against him for his public statements and activities as HRA President. Ak\_n Birdal himself has lost count and at one stage complained that the authorities had not kept him fully informed of the charges and trials in progress against him. In one such case, on 16 December 1998 Ak\_n Birdal was again sentenced to one year's imprisonment under Article 312, this time by Adana State Security Court in connection with a speech he made at Mersin in 1995, in which he reportedly did no more than advocate "human rights, democracy, fundamental freedoms and peace for all"<sup>1</sup>. This sentence has yet to be considered by the Appeal Court. In another case, Ak\_n Birdal received a two-month suspended prison sentence in connection with an HRA poster entitled "Find the 'Disappeared'". In April 1998 he appeared in court on charges that a speech he had made in Rome in April 1997 calling for a peaceful end to the Kurdish conflict gave encouragement to terrorists. At the hearing Ak\_n Birdal disputed the charges, saying "I believe that defending human rights is a duty, not a crime." Ak\_n Birdal has also been prevented from travelling abroad, most recently to receive medical treatment in Norway in November 1998 and to address the German Parliament in December.

Ak\_n Birdal's speech contained no advocacy of violence and Amnesty International considers the verdict and sentence against him to be in clear breach of Turkey's commitments as a state party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10 of which safeguards the right to freedom of expression, including the "freedom to hold opinions and to receive and impart information and ideas without interference by public authority..." Should he be imprisoned as a result of this trial, Amnesty International will adopt Ak\_n Birdal as a prisoner of conscience and campaign for his immediate and unconditional release.

## **LEFT FOR DEAD**

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<sup>1</sup>HRA public statement, 21 December 1998



Shortly after midday on 12 May 1998 two men entered the headquarters of the HRA in Ankara and asked to speak to Ak\_n Birdal. Once in Birdal's office they each drew a 9mm pistol and shot him repeatedly before fleeing the building. Ak\_n Birdal was wounded six times in the chest, shoulder and legs. Bleeding profusely, he had lost almost all his blood by the time he reached hospital; it is said that only the immediate attention of a doctor on the HRA staff saved his life.

A medical report detailed Ak\_n Birdal's critical condition shortly after his arrival at hospital: his "vital functions were very bad", no pulse was discernible and a blood pressure reading could not be taken; his heart was "intact, but empty and not contracting properly". The doctors had to fill Ak\_n Birdal's heart up with blood. Arteries in his thigh and shoulder had been ruptured.

There was immediate worldwide condemnation of the assassination attempt and, amid speculation that the Turkish state was behind the attack, a demand that the authorities find and bring to justice Birdal's would-be killers. In the immediate aftermath of the shooting Turkish Prime Minister Mesut Yilmaz reportedly made an unfounded and ill-intentioned claim that the attack was "...an internal settling of accounts, like a misunderstanding between those in the same camp... It is clear they [the HRA] were connected to the PKK."<sup>2</sup> In fact, inquiries led police shortly afterwards to an ultranationalist group, the Turkish Revenge Brigade (TIT). Sixteen alleged members or

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<sup>2</sup> *Milliyet* newspaper, 14 May 1998.

supporters of this group, including a retired army major, a serving gendarmerie officer and the two men thought to have carried out the shooting, are currently on trial accused of "attempted murder" and of "forming an armed gang to commit crime for social and political objectives". They face possible prison sentences of up to 24 years.

In Amnesty International's view the Turkish authorities created the climate for the shooting of Ak\_n Birdal through persistent attempts to discredit the HRA and falsely associate it with the PKK. In particular, Amnesty International drew attention to the authorities' irresponsible handling of purported confessions by \_emdin Sak\_k, a disenchanted former military commander of the PKK. In late April 1998 the Turkish press gave enormous publicity to uncorroborated statements attributed to \_emdin Sak\_k, which he has since denied making, that a number of prominent personalities critical of the government were active PKK supporters. Ak\_n Birdal was one of the targets of these accusations.

After surgery and a long period of hospitalization Ak\_n Birdal, who is 50, is slowly recovering his health. But the effects of 10 broken bones in his foot and extensive nerve damage to his shoulder are still evident. In late November 1998 Ak\_n Birdal was a speaker in Istanbul at an international conference on human rights in Turkey, organized jointly by Amnesty International and the Istanbul Bar Association. Movement in his right arm was severely limited and he could not walk unaided. There are fears that his medical condition will worsen if he is sent to prison.

Throughout this long period of recovery the trial against Ak\_n Birdal continued at Ankara State Security Court. The court had accepted that Ak\_n Birdal, who was confined to a wheelchair, could give statements from his home. However when a photograph appeared in the press in July 1998 showing Birdal eating lunch at a restaurant next to his house (Ak\_n Birdal explained that his condition prevented him from preparing his own meals), the court ordered police to bring Ak\_n Birdal forcibly to court. Ak\_n Birdal had to be carried up the stairs to the courtroom by HRA colleagues.

Asked what effect the assassination attempt would have on his human rights activism, Ak\_n Birdal replied:

*I will do from now on what I have been doing to date. I will do whatever an enlightened person living in this country, a Turkish citizen who thinks he owes something to his country and people, should be doing. I have done this until now and I will do this from now on<sup>3</sup>.*

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<sup>3</sup> Interview in the *Turkish Daily News*, 22 June 1998

## THE HUMAN RIGHTS ASSOCIATION - AN ORGANIZATION UNDER PRESSURE

Founded in 1986 by a group of lawyers and human rights activists, the HRA is Turkey's largest independent human rights organization, whose officials monitor and investigate violations and report on issues affecting human rights. The organization has some 20,000 members and 59 branches throughout Turkey, with its headquarters in Ankara.

The HRA carries out its work against the backdrop of a bitter conflict between the state and the PKK in Turkey's southeastern provinces, which has claimed more than 30,000 lives since 1984. Access to the region, which is under state of emergency rule, is severely limited. Attempts by independent agencies to monitor human rights violations are hindered in every possible way. The HRA has outspokenly condemned human rights violations committed by both the government and armed opposition groups, but the HRA's work is often presented by the government and mainstream media (under considerable influence from the government) as undermining Turkey's interests and reputation and damaging public confidence in the country's security forces. In such a highly-charged context, the HRA has been repeatedly targeted for attack. Its officials have been threatened, arrested, prosecuted, abducted and killed; its offices have been ransacked and bombed.

The attempt on Ak\_n Birdal's life is the latest in a succession of attacks on HRA officials. Since 1991 at least 10 HRA staff members have been killed. These killings have never been properly investigated by the authorities; in most cases the assailants have never been identified and in some cases members of the Turkish security forces were strongly implicated in the killings. In choosing to shoot him as he sat at his desk, Ak\_n Birdal believes that his attackers were intent on delivering a sinister message to all human rights activists:

*We know that the struggle for human rights and freedom is a long process. We also know that the history of rights and freedom is written through making great sacrifices. My friends and I knew that we would be subject to such attempts. In our 12-year history, several of our friends have been murdered. In particular our regional managers assigned to the Emergency Rule Region were under threat, but we did not expect danger to this extent. This is a threat against all human rights activity and all its members. They could have made this attack at the*



*entrance to the office, outside Ankara or around my home. But they wanted to give a message to all the democratic organizations. In other words they wanted to threaten everyone who with their pen, thoughts or words criticizes the government's policies which adversely affect people's rights<sup>4</sup>.*

The attempts by the Turkish state to discredit and sabotage the activities of the HRA entered a new phase in January 1997, when an apparently secret Interior Ministry circular ordered provincial governors and security chiefs to enforce a virtual information blackout in relation to southeast Turkey. The circular, which was later leaked, announced measures to suppress or disrupt the activities of certain non-governmental organizations including the HRA. Since that time, the Turkish authorities have made use of a battery of measures -- some of dubious legality -- in an apparent effort to disable the HRA permanently.

Beginning in May 1998 the authorities ordered the closure of branch after branch of the HRA, including Diyarbakır (22 May), Malatya (4 June), Izmir (20 June), Konya (24 June), \_anlıurfa (27 June), Balıkesir (9 July and again on 17 December), Mardin (5 August and 16 December) and Bursa (13 November). Some branches have since been permitted to reopen, but those in Diyarbakır, Mardin, Bursa and Balıkesir remain closed.

The Turkish authorities have used a range of pretexts to justify these closures. The Diyarbakır branch was closed on the grounds that “its activities threaten the unity of the

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<sup>4</sup> *Turkish Daily News*, 22 June 1998

state”. Other branches were closed because the associations were “acting outside their authority” or because “illegal publications” had been found in the course of police searches. Diyarbakır, one of the key offices in the southeast, faces the possibility of permanent closure, its 10 officials are on trial and its archives have been confiscated by police. No serious evidence has ever been produced to support the allegation that these HRA offices engaged in illegal or inappropriate activities.

Alongside these closures, national and regional HRA officials face a string of prosecutions under repressive legislation which restricts freedom of expression. In one such case, the 10 executives of the Diyarbakır HRA branch are due to return to court on 9 February 1999, accused of producing propaganda for the PKK and charged under Article 7(2) of the Anti-Terror Law. The prosecutor at Diyarbakır State Security Court is calling for sentences of from two to 10 years’ imprisonment for these individuals. They are not accused of violent offences and, if imprisoned, Amnesty International would consider them prisoners of conscience.

## **CONCLUSION AND RECOMMENDATIONS**

In spite of recent limited measures by the Turkish Government to improve human rights, Amnesty International fears that the closure of HRA offices and the prosecution of its officials are, in the words of Akın Birdal, an attempt “to create a silent society” in which human rights violations become more, not less, likely.

On 9 December 1998 the UN General Assembly adopted a Declaration on the Protection of Human Rights Defenders<sup>5</sup>. Article 1 states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”. Article 6(c) provides that “everyone has the right, individually and in association with others... to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.”

This Declaration was framed especially for the promotion and protection of organizations such as the HRA and individual human rights defenders such as Akın Birdal. While the Turkish authorities may at times be embarrassed or offended by the activities and statements of the HRA, they nevertheless have an obligation under international

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<sup>5</sup> “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”

standards to ensure that the HRA is able to perform its legitimate role of reporting on human rights issues free from interference or fear of attack.

Amnesty International appeals to the Turkish Government to abide by the spirit and provisions of the UN Declaration on the Protection of Human Rights Defenders by ending its harassment of the HRA and its officials and its obstruction of their work. In particular, the Turkish Government should:

- 1) ensure that Akın Birdal is not imprisoned for exercising his right, under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to peaceful freedom of expression;
- 2) permit the reopening of closed HRA branch offices and restore all confiscated archives;
- 3) ensure that HRA officials are not prosecuted in connection with their legitimate activities.

Amnesty International also calls upon the Turkish authorities to extend durable protection in law to the HRA and its staff in line with Article 12 (3) of the Declaration, which states that “everyone is entitled, individually and in association with others, to be effectively protected under national law in reacting against or opposing, through peaceful means, activities and acts ... attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.”

Finally the Turkish Government should reform those articles of the Turkish Penal Code and the Anti-Terror Law which restrict the right to peaceful freedom of expression, and bring these articles into line with international human rights standards. Until such time as the legislation is reformed, the authorities should ensure that individuals are not prosecuted or imprisoned for exercising their right to peaceful freedom of expression.