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TURKEY: Unfair Trial of Lawyer Eşber Yağmurdereli

A blind lawyer, Eşber Yağmurdereli, has been imprisoned since 5 March 1978. It took more than seven years before Samsun Criminal Court, after trial, appeal and retrial, announced its final verdict. In March 1985 Eşber Yağmurdereli was sentenced to death for leadership of an organization "trying to change the constitutional order by force". Because of his blindness, this sentence was commuted to life imprisonment. On 12 February 1990 he was offered a pardon by the Minister of Justice on grounds of "ill-health". Eşber Yağmurdereli rejected the offer saying that to accept it would amount to admitting guilt. Instead, he asked for a fair retrial in which he could point out the injustice done to him and many other political prisoners since the military coup of 12 September 1980.

When Eşber Yağmurdereli was detained in March 1978, he was working as a lawyer in Bursa. He was defending many political prisoners including trade unionists and members of illegal political organizations. On 5 March one of his clients was detained in Bursa and found in possession of arms. Subsequently, Eşber Yağmurdereli's house and office were searched, but the police found only some political magazines and books with left-wing content. Four kilograms of gold and jewellery were found in the flat of a neighbour who said that the goods belonged to Eşber Yağmurdereli. The owner of a jeweller's shop in Samsun later identified the goods as having been stolen from his shop on 3 December 1977.

During the following days some nine people were detained in connection with this robbery and interrogated in Bursa, Samsun and Istanbul. They were held incommunicado for up to eight days and three of them "confessed" to having carried out the robbery in the name of the illegal organization THKP/C Acilciler-Halkın Devrimci Öncüleri (Turkey's People Liberation Party/Front Urgency-Avantgarde of the People's Revolutionaries). In their statements to the police they said that they had handed over the stolen goods to "their leader", Eşber Yağmurdereli.

In court virtually all the defendants alleged that their statements to the police had been extracted under torture. Eşber Yağmurdereli admitted to the possession of political magazines and books, stating that he did not believe possession of single copies to be illegal. He rejected all claims of involvement in the robbery and membership or leadership of an illegal organization and said that the court case against him was an attempt to prevent him from defending political prisoners.

The court case itself went through various stages. In summing up the case during a hearing on 19 July 1979 the prosecutor in Samsun stated that Eşber Yağmurdereli had not participated in the robbery and had not ordered it. He asked for a conviction under Article 512 of the Turkish Penal Code

for "hiding and/or dealing with stolen goods". Such an offence carries a maximum penalty of three years' imprisonment. However, on 9 November 1979 Samsun Criminal Court No. 2 convicted Eşber Yağmurdereli and five other defendants under Article 141 of the Turkish Penal Code for membership of an organization "trying to establish the domination of one social class over others". Eşber Yağmurdereli was also convicted of a leading role in the robbery and sentenced to a total of 36 years' imprisonment.

This verdict was quashed on 9 July 1980 by Appeal Court No. 9 ruling that the offence might fall under the jurisdiction of a military court. [Following the announcement of martial law in December 1978 all offences that led to its announcement - in particular violent political offences - had to be tried in military courts.] According to the Appeal Court's ruling, Samsun Criminal Court inquired at all martial law commands in Turkey whether court cases against such an organization involving any of the defendants were being carried out. In response Samsun Criminal Court was told that various court cases against alleged members of two separate organizations, Acilciler and Halkın Devrimci Öncüleri, were being carried out, but none of them involved any of the defendants from the trial in Samsun. However, Samsun Criminal Court sent the file to the Military Court for the 3rd Army in Erzincan, which was responsible for trying cases in Samsun. However, on 16 July 1982 the case file was returned stating that the offence had to be tried in a criminal court in Samsun. Another attempt to transmit it to Istanbul Military Court also failed, which in a reply of 8 August 1984 insisted that Samsun Criminal Court was responsible.

Without further evidence Samsun Criminal Court No. 2 convicted Eşber Yağmurdereli again on 8 March 1985; this time, however, under Article 146(1) of the Turkish Penal Code, carrying a mandatory death sentence, for leadership of an organization "trying to change the constitutional order by force". He was sentenced to death, but under Article 59 of the Turkish Penal Code this sentence was commuted to life imprisonment. In applying Article 59, Samsun Criminal Court ruled that because of his blindness Eşber Yağmurdereli may have suffered from an inferiority complex which might have contributed to him committing such a crime. The verdict was later confirmed [presumably in February 1986] and Eşber Yağmurdereli is currently serving his sentence in Bursa E-type Prison, one of over 40 high-security prisons built in Turkey since 1982 to accommodate mainly political prisoners.

Eşber Yağmurdereli's trial failed on a number of counts to conform to internationally recognized minimum standards governing fair trials Samsun Criminal Court did not investigate the defendants' claims that they were tortured into making confessions, despite the existence of medical reports for most defendants certifying injuries which could have been caused by torture. Referring to the defendants' torture allegations, Samsun Criminal Court ruled on 8 March 1985:

*"The declarations by the defendants that they were forced into testimonies by beatings and [medical] reports they submitted as evidence for their defence were not evaluated as weakening their confessions corroborated by facts and did not lead to the conclusion that their confessions should not be taken into account."*

In August 1988, Turkey ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 13 of this Convention provides:

*"Each State Party shall ensure that any individual who alleges he has been*

*subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."*

Article 15 of this Convention contains the following provision:

*"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."*

Article 90 of the Turkish 1982 Constitution provides that international conventions, once ratified, become domestic law which cannot be challenged as being unconstitutional. In accordance with this provision, Article 15 of the United Nations Convention against Torture should be directly applicable in Turkish courts.

The trial of Eşber Yağmurdereli also appears to be in contravention of Article 6 of the European Convention on Human Rights which provides the basic rules for a fair trial. Turkey has been a State Party to this Convention since 1954. The court case in Samsun Criminal Court does not only appear to have been unduly protracted -the retrial alone lasted some five years- but the court seems to have done little to remove severe restrictions on Eşber Yağmurdereli's right to an adequate defence. Eşber Yağmurdereli was not brought to court for much of his trial and retrial.

Shortly after his arrest, Eşber Yağmurdereli was transferred on 23 March 1978 from Samsun to Trabzon Prison, and on 15 June to Amasya Prison. Only once, on 19 July 1979, was he able actually to appear in court. In September of that year he was transferred to Mardin Prison and later to Diyarbakır Prison. Eşber Yağmurdereli appealed repeatedly for a transfer to Samsun Prison. Finally, on 29 January 1982, the Minister of Justice ordered his transfer there, but reportedly due to interference by local authorities this order was changed upon arrival and he was sent to Sinop Prison instead. According to Eşber Yağmurdereli's own account, he stayed there in isolation from January 1982 until April 1983.

In an application to Samsun Criminal Court of 22 September 1978, Eşber Yağmurdereli pointed out several additional deficiencies in his trial. He complained that he had been held longer than the [then] legal maximum detention period of seven days under Article 128 of the Criminal Procedure Code and alleged that the interrogation was conducted by members of the secret police, MIT, who he said participated in the torture of the detainees. [Under Turkish legislation lawyers have to be interrogated by a prosecutor.] In a separate (undated) application he alleged that he was tortured in Bursa Police Headquarters including by falaka (beating of the soles of the feet), electric shocks, hosing with ice-cold water and by having lighted cigarettes stubbed out on his body.

Eşber Yağmurdereli further alleged that newspaper articles published before his and the other detainees' formal arrest prejudiced the outcome of his court case. An article in the newspaper Tercüman of 11 March 1978, in particular, described him and the other defendants as "terrorists".

Amnesty International is calling on the Turkish Government to quash the sentence of Eşber Yağmurdereli and to ensure that he is given a fair retrial. Allegations of torture should be properly investigated by an institution independent of the police and the prosecutor's office. Its methods and findings should be made public. All internationally recognized standards concerning fair trials should be observed in the retrial, in particular:

- statements found to have been extracted under torture should not be admitted into the proceedings as evidence against the defendant;
- Eşber Yağmurdereli should be granted adequate time and facilities to consult with his lawyers and to prepare his defence, which he should be allowed to present in person in court.