

## TRIAL OBSERVATION REPORT

### Trial of the murder of Bar President Tahir Elçi

#### Diyabakir

10<sup>th</sup> hearing, 12.06.2024, 10.00 am -16.00 pm

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## I. CONTEXT OF THE HEARING

### A. Reminder of the facts

Tahir Elçi was a lawyer and the President of the Diyarbakir Bar Association after being elected in 2012.

The judicial observation report for the 5ème trial hearing on 15 June 2022 went into detail about the biography of Bar President Tahir Elçi and the circumstances surrounding his death<sup>1</sup>.

In short, on 14 October 2015, after attending the TV programme titled “Tarafsız Bölge” (Neutral Territory) hosted by Ahmet Hakan on CNN Turk channel, Tahir Elçi was targeted by a smear campaign especially on social media. He was subjected to numerous insults and received death threats.

On 15 October 2015, he stated on his Twitter account that he had been subjected to swearing, insults and death threats since the CNN Türk broadcast. Subsequently, Elçi faced an investigation on the accusation of making propaganda for an illegal organisation and on 19 October 2015 he was detained by officers of the Anti-Terror Branch of the Security Forces and brought to Istanbul. Elçi also described the threats he had received during his hearing at the Court.

An indictment was issued against him as early as 23 October 2015 by the Chief Public Prosecutor of Barkirköy for "disseminating propaganda for a terrorist organisation through the press" and a prison sentence of between one and a half and seven and a half years.

On the 28 November 2015, Barrister Tahir Elçi was shot in the head in a shooting attack during a public lecture at the foot of the « four-legged » minaret in the old town of Diyarbakir. He was about to make a statement on the destruction that had occurred in recent months in the historic district of Sur, the old town of Diyarbakir, during fighting between special forces sent by Ankara and Kurdish militants.

The sequence of events which led to the shooting attack and the death of Tahir Elçi were only known later.

The investigation showed that, on that day, two members of the PKK Mahsum Gürkan and Uğur Yakışır were followed all morning by the police. They took a taxi with plate number 21 TT 0980, which was intercepted by police. They retaliated by firing shots at police officers

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<sup>1</sup> <https://protect-lawyers.org/en/item/turkey-court-observation-report-trial-on-the-assassination-of-barrister-tahir-elci-5th-hearing-15-june-2022-3/>

intercepting the taxi, Ahmet Çiftaslan and Cengiz Erdur, and killed them.

While armed, Mahsum Gürkan and Uğur Yakışır began to flee taking Yenikapı Street, where Tahir Elçi was delivering his press statement under the Minaret on all fours.

As they passed to the four-legged Minaret, an exchange of fire took place with the police officers in charge of Tahir Elçi security. Aziz Aslan, a journalist with the Anadolu agency, was injured and Tahir Elçi lost his life, being shot in the head.

### *1. Reminder of the inquiry*

The investigation could only be conducted on 17 and 18 March 2016, several months after Tahir Elçi's death, allegedly for security reasons.

The crime scene was opened to the public very quickly and for months before any investigation. In consequence, the bullet which killed Tahir Elçi was never found. Furthermore, it is now impossible to know with certainty from which weapon the fatal shot came from.

Some CCTV cameras covered the place, but either they weren't functional or the others had a gap in the recording from a few seconds to several minutes.

In that way, the best view of the shooting and death of Tahir Elçi could have been obtained from camera num. 4 installed at the Mardin Kebap house, facing the four-legged minaret. Of the three cameras in the Mardin Kebap house, camera 4 was indeed the only one facing the "four-legged" Minaret, and yet it was the only one that turned out to be non-functional.

And the CCTV recordings of camera num. 5 at the post office on Yenikapı Street, which also faced the crime scene, showed a 17-minute break between 11:34 and 11:51 on the day of the incident.

The camera recording which belonged to the security forces showed also a 13 second gap at the very moment of the killing.

Despite persistent requests from the defense, no thorough investigation has been launched in this regard by the prosecution.

As for the individuals who were to be intercepted that day, it should be noted that the first PKK member, Mahsum Gürkan, was killed on 13 March 2016 in a shootout in the Sur district. The second, Uğur Yakışır, was arrested.

The Diyarbakir General Prosecutor's Office has taken numerous witness statements as part of the investigation. For four years, however, excluding the two PKK militants, there was only one "suspect" in the investigation file, namely taxi driver Ahmet Sanlı. A subsequent ruling ordered he not be prosecuted. Despite the evidence in the case file and Tahir Elçi's family lawyers' insistent requests, the statements of three police officers present were taken as mere "witness" statements without further investigation despite the fact that they were in the same street, close to the Barrister Elçi, and had undoubtedly fired their weapons at the time of the shooting in which he was killed.

Due to the Diyarbakir General Prosecutor's office passivity, the Tahir Elçi Investigation Commission of the Diyarbakir Bar Association commissioned Forensic Architecture (FA), a research agency working within the University of London's Goldsmiths College, to prepare a report on the murder of Tahir Elçi. The report was published on 13 December 2018 and a summary is accessible via video on Youtube<sup>2</sup>.

The report reached the following conclusions:

*"Tahir Elçi was killed when he was hit by a single bullet fired in the time frame of 7.12 seconds (07:12), at approximately 10:55 on 28 November 2015.*

*Neither PKK member appears to have fired the fatal shot.*

*All the shots fired in the time interval under investigation have similar sound profiles and there is no auditory evidence of a long-range weapon firing at a significantly different distance.*

*Three police officers had a direct line of fire to Elçi, and are seen discharging their weapons on several occasions. Although the investigation does not determine which of the police officers present at the scene was responsible for Elçi's death, it identifies them as the most likely suspects. The investigation does not determine whether the fatal shooting was done with the intention of hitting Elçi."*

Following the FA report that the organization's militants could not be held responsible for Tahir Elçi's death, on 9 January 2020 police officer Sinan Tabur, and on 10 January 2020 police officers Fuat Tan and Mesut Sevgi gave their testimonies as "suspects" for the first time, four years after the events.

Four years and six months after the murder of Tahir Elçi on 28 November 2015, an indictment regarding his death was finally served on 20 March 2020. The Diyarbakir Prosecutor General's

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<sup>2</sup> <https://www.youtube.com/watch?v=iBESvMnd6Fs>

Office requested a sentence of three to nine years' imprisonment against the three policemen Mesut Sevgi, Fuat Tan and Sinan Tabur for "causing death by conscious recklessness", and a sentence of three times aggravated life imprisonment for militant Uğur Yakışır for "murdering two policemen", "attempted murder of a policeman" and "potentially intentionally murdering Elçi."

It appears from the indictment that "Elçi was killed accidentally by three policemen, and intentionally by Uğur Yakışır." However, he was killed by a single bullet.

Furthermore, the court refused to join the charges against this militant and the police officers who will subsequently be charged.

## *2. Reminder of the legal procedure*

### **First hearing before the Diyarbakir 10th Criminal Court - 21 October 2020:**

This hearing was marked by the rejection of the requests made by the Elçi family's lawyers and, more generally, by the denial of their rights to request investigative acts.

The court refused to allow the lawyers representing the Bar President's family to be heard first, as provided for in the Turkish Code of Criminal Procedure, and refused to allow the lawyers representing Tahir Elçi's widow to be recognised as a party to the proceedings and therefore to be able to file requests for documents.

The court refused to hear the police suspects face-to-face and upheld their appearance by videoconference (via SEGBIS). The suspects were not visible to the Elçi family's lawyers due to the small size of the video screen and they were not in the presence of a designated magistrate, in accordance with the rules of Turkish criminal procedure, which prevented the suspects from being identified with certainty. A number of technical malfunctions affected the hearing of the suspects.

The court repeatedly refused to allow the Elçi family's lawyers to speak and support their claims. It threatened the lawyers and Mrs Elçi that if they insisted, they would be forcibly removed from the courtroom. The lawyers asked for the magistrates to be recused, to no avail.

The extremely tense atmosphere at this first hearing led several international organisations and European bar associations to refer the matter to various United Nations special rapporteurs in a letter dated 2 March 2021 (see appendix 1), in anticipation of the second hearing in the trial.

**2<sup>nd</sup> hearing - 3 March 2021:** The court's attitude towards the civil parties' lawyers changed for the better. The lawyers were able to express themselves and the court asked the suspects questions that observers considered relevant.

The court reversed its decision to question the suspects first and gave the floor first to the family of President Elçi and his lawyers. The court agreed that only the Bar President's relatives and the Diyarbakir Bar Association should formally become parties to the trial.

The three police suspects were interviewed by videoconference (SEGBIS) from different cities. They denied any responsibility for the death of Bar President Elçi and disputed the findings of the Forensic Architecture Institute at the University of London. The suspects were questioned by the Elçi family's lawyers.

The lawyers' requests to remand the suspects in custody were rejected.

**3<sup>rd</sup> hearing - 14 July 2022:**

**4<sup>th</sup> hearing - 12 January 2022:**

Further rejection of requests to hear witnesses in person rather than by videoconference (via the SEGBIS system). Requests to interview intelligence officers and camera officers were also rejected.

**5<sup>th</sup> hearing<sup>3</sup> - 15 June 2022:**

Brief hearings of 3 of the 4 defendants, by videoconference. The Diyarbakir President of the Bar made various requests, including that the 59 main witnesses be heard by the court in person; that the prosecutor in charge of the investigation be heard; that the police officers present at the scene of the shooting and the coordinating police officer be heard; and that former Prime Minister Ahmet Davutoglu be heard; investigations to verify whether the PKK members and Tahir Elçi were indeed under surveillance by the intelligence services on the day of the events; the testimony of members of the intelligence services and the inclusion of the intelligence file in the proceedings.

The court accepted the request to hand over the annexes of the "research report" of 23 June 2017 concerning the investigation ordered by the Ministry of the Interior, as well as the hearing of former Prime Minister Ahmet Davutoglu. The return of the forensic institute's expert report on the CCTV cameras is awaited. The other requests have been rejected.

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<sup>3</sup> <https://protect-lawyers.org/en/item/turkey-court-observation-report-trial-on-the-assassination-of-barrister-tahir-elci-5th-hearing-15-june-2022-3/>

At the end of September 2022: the Court informed the parties of the cancellation of the hearing of Mr Davutoglu following a request made by the Prosecutor. As it stood, the hearing would not contribute to the ascertainment of the truth. "*Observers can only conclude from this that the judge was subjected to intense pressure in the meantime and that the meagre progress made at the hearing on 15 June 2022 has thus been practically wiped out. The concern about the future course of the proceedings is therefore all the greater*"<sup>4</sup>.

**6<sup>th</sup> hearing - 23 November 2022:**

Intermediate hearing at which, to the best of our knowledge, there were no pleadings.

**7<sup>th</sup> hearing<sup>5</sup> - 5 July 2023:**

Hearing of a first witness working in a restaurant (Mardin Kebap) close to the scene. This was the first hearing of a witness called in person since the trial began.

Pleadings by numerous lawyers, including the lawyer for Tahir Elçi's wife, Türkan Elçi.

All the lawyers who spoke criticised the lack of investigation and the absence of evidence and said that the prosecutor's job was to gather evidence and protect it, but that he did nothing.

All the lawyers who spoke emphasised the contradictory testimony of certain witnesses who were forced to give false statements. It was also pointed out that the surveillance camera recordings are not entirely available and that certain parts are still missing, even though they are essential for establishing the facts. The lawyers did not have access to all the camera recordings.

All the lawyers denounced the length of the proceedings, the flaws in the investigation, the lack of evidence and the complicity of the Court in this case, which is as political as it is symbolic. The lawyers reiterated their support for the victim's family and expressed their determination, although they were unable to work towards finding the truth or establishing responsibility.

Brief intervention by the Public Prosecutor and deliberation by the Court, which rejected all the requests made during the hearing by the civil parties' lawyers, in particular to hear the Chief of Police, the police officers present and the reconstruction at the scene.

The case has been adjourned until 29 November 2023, the day after the eighth anniversary of Tahir Elçi's murder.

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<sup>4</sup> - *Ibid.*

<sup>5</sup> <https://protect-lawyers.org/en/item/turkey-judicial-observation-report-trial-of-the-murder-of-bar-president-tahir-elci-5-july-2023/>

### **8<sup>th</sup> hearing<sup>6</sup> - 29 November 2023:**

During this hearing, the first to speak was one of the clerks, who did not even stand up and read out the Tübitak report (technical forensic investigation). The state of the security cameras was explained. Problems such as malfunctioning security cameras, etc. were examined. The last camera images were taken before the incident.

Then around twenty lawyers took the floor, including the lawyers for the civil parties (Tahir Elçi's wife and family and the Diyarbakir Bar Association), who all highlighted the unfair way in which evidence had been gathered, the fact that the crime scene had remained open for around five months, the lack of a proper preliminary investigation, the failure to hear witnesses and a long series of serious omissions in the case.

The failure to collect evidence, the fact that the crime scene was left open for around five months, the lack of a proper investigation, the failure to interview witnesses and a long series of serious omissions in establishing what really happened.

All the requests made by the various lawyers who intervened and by the civil parties were rejected, as on every occasion and with absolute and total inertia on the part of the prosecutor.

The case has been adjourned to the hearing of 06.03.2024, a hearing that is likely to be the last, and all colleagues expect a verdict of not guilty for the defendants.

### **9<sup>th</sup> hearing<sup>7</sup> – 6 March 2024:**

Initially, counsel for the civil parties, the prosecutor and the defence were due to speak at this hearing. Deliberation was to be made at the end of the hearing.

However, the prosecutor requests a postponement of the hearing to allow him sufficient time to make his closing arguments.

Next, the various lawyers for the civil parties, namely the widow of Bar President Tahir ELÇI, took the floor one after the other to criticise this new request and the lack of investigation by the court throughout the investigation and the various hearings.

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<sup>6</sup> <https://protect-lawyers.org/en/item/turkey-judicial-observation-report-trial-of-the-murder-of-bar-president-tahir-elci-29-november-2023-2/>

<sup>7</sup> <https://protect-lawyers.org/item/turquie-rapport-dobservation-judiciaire-proces-de-lassassinat-du-batonnier-tahir-elci-6-mars-2024/>



At least ten requests were made for various investigations to be carried out including the production of video expertise from a foreign company, which would have provided relevant evidence, various witness hearings, etc...

One of the counsels, Avv.Mehmet Emin Aktar, addressed the court directly, asking why it was afraid to issue a ruling.

A certain amount of tension ensued and there was a fairly violent exchange between the chairman and this lawyer, the former considering that he could not express himself in this way to the court. The defendants' lawyers did not make any particular request.

At the end of the hearing, the Court ordered a ten-minute recess. In one sentence, the court announces the rejection of all the requests that were made and informs of the postponement of the case to 12 June, the date on which the verdict will be delivered.

## **II. PROCEEDINGS OF THE HEARING OF THE 12<sup>th</sup> JUNE 2024**

### **A. Start of the hearing**

This is the last hearing in the case of Tahir Elçi's murder.

The hearing was set for 10 am on Wednesday 12 June 2024.

The OIAD delegation arrived with the others observers from "Lawyer for Lawyer", "Défense sans frontière – avocats solidaires", "the French conference of the head barristers", "Union of Italian Penal Chambers", "The european bars federation", "RAV and European Democratic Lawyers", "Observatory for the Protection of HRDs and FIDH", "the European lawyers for democracy and human rights", the "World organization against torture", a representant of the Bologna Bar (Italy) and the head Barrister of Nantes Bar (France).

There were some journalists outside the Court. There were also a lot of policemen but no military. A lot of policemen were wearing red sleeveless shirts like they were here only for reinforcement.

Ayşe Bingöl, a Turkish lawyer who was not at the hearing but who organized our arrival, had prepare a list of the observer for the court. The policeman at the entry controlled our identity from this list and we had no difficulty to enter into the court. Our bags were not controlled or passed through a metal detector.

The hearing took place in a spacious courtroom (capacity of around 200/300 people), mostly used also for the previous ones, with air-condition and equipped with a large central screen and two other large side screens, for a total of three screens. Bottles of water were also distributed all day to all those who wished to drink.

The courtroom was crowded with lawyers from all over Turkey. Despite the size of the courtroom, many people were unable to find seats. Many lawyers remained standing, or sat on the ground to follow the pleadings.

We can reasonably assume that more than 300 lawyers were present for the hearing. At least one member of the parliament was present. There were also plainclothes police.

The panel on the Court consisted of three magistrates, one President and two judges all of whom are very young for a trial of this size and importance. Some clerks were seated under the magistrates.

A video link was set up with three accounts online, probably with the policemen and the police officers' counsel. However, the cameras filmed empty rooms where neither the accused police officers nor their lawyer actually attended the hearing. A non-identify person came from time to time to check that the connection was still working.

Considering the crowd, we couldn't seat in the central part of the courtroom and we took place to the right of the room, next to Elçi Family's lawyer and not far from the Prosecutor.

The hearing began at around 10.15am.

We were unable to obtain a precise schedule for the hearing. At most, we were told that the hearing would be long because a lot of lawyers intended to speak.

## **B. Prosecutor's requisition**

The prosecutor spoke barely a minute asking for the acquittal of the three policemen. He didn't speak again.

However, at 11.45am he came out of the courtroom for almost 5 minutes without the hearing being suspended.

## **C. Pleadings by lawyers and Mehmet Elçi, Tahir Elçi's brother**

The first to speak was Mehmet Elçi, Tahir Elçi's brother. Then, it was the family's lawyer and the Diyarbakir Head Bar. After that, a large number of Head Bar pleaded, asking the true for Tahir Elçi but also to support the legal profession, the rule of law and Justice.

In all, there were 40 lawyers to speak.

### *1. Mehmet Elçi's intervention*

Mehmet Elçi reminded the Court that his brother was killed while asking peace and that his family was unable to accept the Public Prosecutor's request. He explained how, at the beginning, they could not understand his choices but that now they can see how all the investigations (and then the trial itself from the first hearing during which the attendance of other bars' representants was at first denied) were carried to hide the truth on Tahir's murder.

### *2. Family lawyers' interventions*

Then it was the turn of Nahit Eren, Diyarbakir's Bar Association's President who started thanking national and international colleagues to be there. He expressly mentioned OIAD and gave the court our names' list.

He continued recalling that day as an historical moment, almost nine years from Tahir Elçi's assassination.

He asked to the Court if they happen to wonder why this case was so followed? Seeing in the courtroom members of parliament, lawyers, civil society, international NGOs.

Even if a lot of injustice can be found in Turkey, he claimed the case as special: because the assassination speaks for itself but moreover, as said by Orhan Pamuk, Nobel Prize winner, because it was the "horrendous assassination in front of a thousand cameras, a killing we watched live, of a symbol of Kurdish community".

He said that everyone knows the responsible is hiding.

In 2014 the back then Prime Minister made a promise to the family to shed light on the killing. A member of the Parliament released a statement on the trial: "the lynching campaign against him started with public statements and then an indictment against him. The, in last than a month, he was killed".

All of this, he said, shows this case is political. Political killing, political trial.

We all remember of political murders from the 1990s in Turkey and this one doesn't divert. Everyone is very much hurt by this case; murderers have to be held accountable.

He then blame the Court for the missing part of CCTV's recordings, for the unheard witnesses, for the choice not to proceed with a shooting's analysis, and generally for the refusal of everything is usually normal in a proceeding.

On these grounds, he told the Court they don't intend to accept its final decision, not matter which will it be. As Diyarbakir Bar Association, he delivered the believe that this case should

have followed a regular procedure and that saying Tahir Elçi was killed by terrorists doesn't make sense.

He finished saying not to expect a just decision from the Court.

After this institutional intervention it was the turn of Tahir Elçi's family lawyers, five of them spoke.

The first colleague, Turkan Elçi's lawyer Orhan Kemal Cengiz, stated "One phrase can summarize this case: in order not to shed the light on this assassination this court did its best". He said to the three judges sitting in front of the crowd "you are not impartial, you are not independent; same can be said for the Public Prosecution. You showed you are not impartial. Witnesses have been tortured and put under pressure not to speak. This crime is supported by institutions. Everyone one, including this court, has done his best to obscure the truth".

He then recalled the crucial minutes missing from all CCTVs' recordings and the fact that all the footages were handled by the police, blaming it not as coincidence, or negligence, but as an institutional precise will.

He continued stating that just because of Forensic Architecture's work the trial begun and that, in any case, thanks to the court all the work was expected to be thrown away.

Why, he asked, the Public Prosecutor did not restrain from manipulate the witnesses?

On that road, that day, more than one intelligent officer was standing: why their phone records weren't heard?

The militants weren't stopped, why?

They were followed and bugged for more than a year, how come that the police could not predict the situation? They for sure knew, and a letter from a former intelligence officer confirm it but it was considered irrelevant.

The colleague left the stand claimed that what was till the end politely called "not collected evidences" were in fact "destroyed ones" and that even if this case will take other 9 years to get to an end they won't cease their fight.

Lawyer Gamze Yalçın, then, start speaking confirming the previous speech and adding that no investigation was done on the provenience of the bullet that killed Tahir Elçi and that the article 2 of the Convention of Human Rights set an obligation on investigation that was clearly violated. Indeed, many bullets were found on the street but the analysis couldn't be done allegedly for "security reasons" and lawyers are still wondering on the criteria set for the forensic analysis of the site, rooting their untrust in the trial from being excluded since then. She said that Tahir Elçi's murder turn this in an obscure era and that the Court, not undertaking its responsibility, is partner in crime with his killers.

Without English University support, she reminded, there wouldn't even have a court case, joining the rusty files waiting for justice in Turkey.

Severely, she said to the judges that the fault of the described situation is neither of the Public Prosecutor nor of the Police, but of the Court itself, that made everyone wait for more of seven months after the indictment for the first hearing and then long time from one hearing to another, proving the lack of interest in making justice right.

Why, she asked the Court, were they so scared to hear the former Prime Minister Ahmet Davutoğlu in the trial to refuse it? Was it because the Public Prosecutor did really just one thing during all the eleven hearing, and it was asking for the rejection of his witness' statement.

Another among Tahir Elçi's lawyers started her speech recalling how Tahir was not just the President of their Bar, but also a great human rights advocate who devoted his life to fight against impunity: the trial for his murder has been conducted in great contradiction with his values.

She then pointed out how there was a lynching campaign against the victim from the well-known TV program where he was hosted and the fact that at least one of militants was followed and intercepted, that is why for sure the Turkish police knew that they took a taxi as well as where they were headed.

On the other hand, the event attended by Tahir Elçi was communicated to the public authority, they even have to send the day before his speech. That is why, she continued, context has to be taken into account: no procedure was set to prevent this to happen.

She also underlined how not even an ambulance was called to assist the victim, policemen (through transceivers) didn't even speak about it, and this can be considered as a severe violation to the right to life of Tahir Elçi.

The community, she continued, has a simple request: this case to be concretely addressed but not even the bullet that costed his life was searched; moreover there were multiple violations to the right to a fair trial, in light of the Convention of Human Rights (reminding Anna Politkovskaya's murder case and ECHR sentence), such as the dismissal of all evidences' requests, the constant absence of the defendants, the wait of more than four years for an indictment and nine for a decision.

The following colleague, Tuğçe Duygu Köksal, started reminding the Court the principle spread by the Constitutional Court for which proofs has to be collected and the indictment has to be issued in accordance but in this case the Public Prosecutor made a mistake since the very beginning with the bill of indictment, assessing all three policemen on the site while just one was clearly in a shooting position, the Forensic Architecture reconstruction leaves no doubt. Moreover, there were other police officers not even heard as witnesses, how could the court miss such an important issue? The scene should have been reconstructed and an assessment should have been made, but this never happened: not even knowing the shooter makes impossible to clear the boundary between recklessness homicide or under intention.

The last lawyer speaking in the interest of Tahir Elçi's family, before representatives from the Turkish bar association and many local bar associations, joined the criticism to the indictment, founded on some wrong presumptions: first of all, the fact that policemen were using guns for role's duty, secondly that the victim was killed by "possible intent" by all the defendants, not even bothering into the effort of identify the shooter.

Moreover, she continued, that the different among recklessness homicide and intent is crucial, but it wasn't clarified why policemen were assessed for recklessness. For sure, the terrorists were not armed or killed, and this make unbelievable for them to be police's target. And this seems to be confirmed also by the context, given the fact that the policemen responsible for the security of the press release, attended by Tahir Elçi, were called and sent to stop the car with terrorists. And they died of it. That call was the beginning of the action, the mixing up of the two situations. And it is not believable that Turkish police can be so undertrained, incompetent, and what is left is willing.

She concluded her statement saying that there is no mistake or failure in this story.

The assassination of Tahir Elçi had to happen, and he, who was against violence and fought against impunity, wouldn't deserve this kind of trial.

### *3. Lawyers' interventions*

After the pleadings of the family's lawyers, the bars' representatives spoke.

The following were present:

- The President of the Union of Turkish Bar Associations
- The President of Istanbul Bar
- The President of Ankara Bar
- The President of Izmir Bar
- The President of Antalya Bar
- The President of Bursa Bar
- The President of Adana Bar
- The President of Mersin Bar
- The President of Şanlıurfa Bar
- The President of Kocaeli Bar
- The President of Zonguldak Bar
- The President of Giresun Bar
- The President of Sinop Bar
- The President of Samsun Bar
- The President of Tekirdag Bar
- The President of Barman Bar
- The President of Aiyaman Bar

- The President of Mardin Bar
- The President of Isparta Bar
- The President of Bitlis Bar
- The President of Tunceli Bar
- The President of Agri Bar
- The President of Bingöl Bar
- The President of Van Bar
- The President of Kars Bar
- The President of Siirt Bar
- The President of Mus Bar
- The President of Sirnak Bar
- The President of Hakkari Bar
- The President of Ardahan Bar
- A member of Kocaeli Bar
- A member of Malatya Bar

The first to begin was Erinc Sagkan, President of the Union of Turkish Bar Associations. With irony, he explained that it was the first time that the defense lawyer was not opposed to the Prosecutor. In contrary, this time it was the victims' lawyers who criticized him.

Lawyers' arguments overlapped around common themes.

They claimed who Tahir Elçi was: a human rights lawyer and a peace maker. They exposed the death threats he was receiving after attending a TV programme on 14 October 2015.

They discussed the circumstances of his death and the role played by the three policemen that day as well as the concealment of evidences as for the CCTV recordings.

The family' lawyers tried to bring evidences to the court but either the judges rejected them, or they refused to order further investigations<sup>8</sup>.

Then, all the lawyers put the trial on trial.

They denounced with one voice:

- The prosecutor' negligence;
- The attack against the rule of law, the human rights involved and especially the right to a fair trial;

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<sup>8</sup> See for exemple the rejection of the requests made during the 7th hearing : <https://protect-lawyers.org/item/turquie-rapport-dobservation-judiciaire-proces-de-lassassinat-du-batonnier-tahir-elci-5-juillet-2023/>

- The impunity that rots the Country.

Over all, they deplored that the case became a political trial which revives the discrimination against the Kurds and allows the police to commit crimes without being worried.

Even if they all claimed that they had no hope in the justice of their country, they were unanimous in saying that they would continue the fight before the national courts and then supranational justice.

#### *4. Pleading of the defence lawyer*

The defence lawyer, who was in videoconference, spoke last and only one minute to demand the acquittal of the three policemen.

One of them was also present and said he was not guilty and asked for release.

#### *5. Hearing incidents*

At first, the hearing began with an incident because the Prosecutor wanted to film the hearing and more particularly the public. He said that it could be a problem with the videoconference system (SEGBIS) and the camera would only be used if a problem occurred.

The Lawyers asked that the camera only recorded the speaking lawyers and not the public.

In fact, we didn't really know what was recording because the camera wasn't broadcast on the screens.

Then a second incident took place at the end of the hearing when all the lawyers attending decided to leave the courtroom in protest and with a long applause. At this point one man, a member of the Turkish Parliament who was in the courtroom, started yelling that a policeman physically attacked him and tried to force him to leave the courtroom.

The president asked him to calm down and told him that he was now disturbing the hearing and that he might be forced to leave. At this point, a lot of armed policemen entered the courtroom.

After that, the president saw a woman recording with her mobile. He asked a policeman to take it and a new discussion began between the woman, who said to be a journalist, the Court's president and the Diyarbakir Head Barrister. It seemed that the president took the phone.



The lawyers who were still there decided to leave the courtroom.

The hearing continued without them; only the deputy, the observers and a lot of policemen stayed until the end.

#### *6. The Court's deliberation*

After the lawyers decided to leave the courtroom in protest and that the incident with the deputy took place, the court called for a 30 minutes break to deliberate.

The judges returned at 5 pm. In a single sentence, the president declared the three defendants acquitted. He asked them if they had understood correctly and closed the hearing.

### **III. CRITICAL ANALYSIS OF THE TRIAL AND HEARING**

For those observing the trial, all lawyers were guaranteed the opportunity to speak. The magistrates listened patiently without ever interrupting.

However, this is no more than the appearance of a fair trial. Indeed, previous hearings have clearly demonstrated that the rules of fair trial and Turkish procedure have not been respected.

In the opinion of all the people with whom we spoke that day, the course of the hearing was widely expected.

The lawyers expected nothing from this last hearing. The nine previous hearings had failed to produce any investigations or witnesses. So there was no reason that this hearing should be any different. The presence of over 300 lawyers and a dozen foreign lawyers didn't change the situation.

The lawyers, who had not stayed to hear the verdict, went to the four-legged minaret where Tahir Elçi lost his life and a press conference was held. They reiterated their disappointment that the court had failed to conduct a fair trial and deliver justice to Tahir Elçi.

They must be credited with courage and determination.

### **IV. CONCLUSION / RECOMMENDATIONS**

The end of this first instance trial concerning Tahir Elçi's murder does not determine the end of the proceedings nor of the search for truth by his family and the dozens of colleagues involved in the case.

On the contrary, the colleagues, already aware of the probable acquittal outcome, have already expressed to us several times how they are aiming to reach the European Court of Human Rights. Right now, they are certainly preparing an appeal against this first decision.

We believe it is crucial that we continue to show solidarity and closeness to them, publicly and otherwise, because this very outcome risks reducing public attention and interest in the case.

It is imperative that we continue to stay connected with these courageous colleagues, who on several occasions in recent months and most recently at the end of the trial have valued and thanked our presence in the courtroom.

**TURIN and LYON, June 20th, 2024**

**Benedetta Perego**



**Mailys Tetu**



## V. APPENDICES

### A. UN Urgent Action Letter sent to the UN Special Rapporteurs together with other organisations

Quick Response Desk  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
8-14 Avenue de la Paix  
CH-1211 Geneva 10  
Switzerland

E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

June, 3rd 2024

#### FOR THE ATTENTION OF:

- Special Rapporteur on the independence of judges and lawyers
- Special Rapporteur on the situation of human rights defenders
- Special Rapporteur on extrajudicial, summary or arbitrary executions
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- Special Rapporteur on the promotion and protection of human rights while countering terrorism
- Special Rapporteur on minority issues

#### URGENT ACTION:

Dear UN Special Rapporteurs,

The undersigned organisations request your urgent action ahead of the next hearing on 12 June 2024, expected to be the last, in the criminal trial of those accused of killing lawyer Tahir Elçi. We urge you once again to request the Turkish authorities to ensure a fair trial by an impartial and independent tribunal (respecting the procedural rights of Tahir Elçi's family), as well as to ensure that all those responsible for Tahir Elçi's death are held accountable and serve adequate sentences.

#### I. Background

1. Tahir Elçi, a prominent and internationally recognised human rights lawyer and President of the Diyarbakır Bar Association, was killed while holding a press conference in Diyarbakır on 28 November 2015. He was shot while two PKK members, fleeing from a police chase, passed by the location of the press conference.
2. Mr. Elçi's death took place against the backdrop of his long-standing legal and advocacy efforts to end armed violence in the predominantly Kurdish southeast of Turkey and to ensure accountability for human rights violations against civilians committed during the prolonged armed clashes between state security forces and the PKK<sup>9</sup>. He was involved in legal actions against unlawful security measures of the government and local administrative personnel in the region after the collapse of the peace process in

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<sup>9</sup> In the 1990s, Tahir Elçi was taken into custody in relation to these activities, leading to a finding by the European Court of Human Rights that he had been arbitrarily detained and subjected to torture, in violation of his rights under the ECHR (Elçi and others v Turkey, <http://hudoc.echr.coe.int/eng?i=001-61442>).

the summer of 2015. After a series of televised interviews in October 2015 in which he questioned the appropriateness of the renewed use of armed violence by the State for solving the “Kurdish issue”, Tahir Elçi was targeted by pro-government news outlets and exposed to harassment and death threats on social media. He was then formally charged with “disseminating terrorist propaganda”. At the time of his death, Tahir Elçi was taking part in a press conference he had organised to draw attention to the damage inflicted on the cultural and historic heritage in the region during the armed clashes.

3. In a letter sent to the Special Rapporteurs on 2 March 2021<sup>10</sup>, we highlighted very serious defects in the investigation conducted into Tahir Elçi’s death and the subsequent criminal proceedings, including:
  - Serious delays in the onsite investigation (that started 110 days after the incident) resulting in the disappearance of critical evidence and a failure to meet international human rights standards for an effective investigation;
  - Failure to treat the police officers present at the scene as suspects;
  - Failure to conduct any genuine investigative actions into the incident and starting the prosecution of the police officers only after a 2019 report by London based group Forensic Architecture. In this report it was concluded that Tahir Elçi was killed by a single bullet, that neither of the PKK members appeared to have fired the fatal shot, that three police officers were engaged in active shooting at the time of the killing, and that one of them had a clear, unobstructed view towards Elçi;
  - Serious flaws in the indictment, including the prosecutor’s description of events, legal classification of the acts, and classification of the offence and sentencing request against the police officers in the indictment;
  - Serious violations of due process during the first hearing before the Diyarbakır 10th Heavy Penal Court on 21 October 2020, in terms of the treatment of the complainants, such as the court’s arbitrary and continuous rejection of the requests of the lawyers representing the Elçi family to ensure an effective, thorough and genuine investigation into the events.

## II. Developments in the criminal proceedings since 2 March 2021

4. Since our letter of 2 March 2021, 8 more hearings have taken place in the criminal proceedings before the 10th Assize Court of Diyarbakır against the police officers suspected of killing Tahir Elçi (on 3 March 2021, 14 July 2021, 12 January 2022, 15 June 2022, 23 November 2022, 5 July 2023, 29 November 2023 and 6 March 2024). The International Observatory for Lawyers in Danger (OIAD) pointed out that throughout this process ‘the investigation and proceedings have deliberately stagnated’<sup>11</sup>.
5. Similar deficiencies and due process violations to those identified in relation to the first hearing have characterised subsequent hearings, indicating improper bias and a lack of impartiality of judicial authorities. These include, but are not limited to:

Rejection without adequate and sufficient reasons of motions for the investigation of key evidence regarding potential negligence and responsibility of the country’s intelligence forces, as well as for investigation of security measures in place during the press statement;

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<sup>10</sup> Available at: <https://www.turkeylitigationssupport.com/s/Tahir-Elci-UAL-to-the-UN-Special-Rapporteurs.pdf>

<sup>11</sup> Judicial Observation Report, Trial of the murder of Bâtonnier Tahir Elçi, Diyarbakir, mission from 28.11.23 to 30.11.23, 8e hearing, 29.11.2023 from 10.00 to 15.30, p. 11, ([https://protect-lawyers.org/wpcontent/uploads/Final-OIAD\\_Rapport-de-mission-28-29.11.23-Tahir-Elci-VDef-EN.pdf](https://protect-lawyers.org/wpcontent/uploads/Final-OIAD_Rapport-de-mission-28-29.11.23-Tahir-Elci-VDef-EN.pdf)).

Failure to answer requests for clarification regarding tampering of video footage and missing footage;

Rejection without adequate and sufficient reasons of requests for an onsite visit to the crime scene attended by defendants, witnesses at the scene, lawyers of the plaintiff and the Court panel with the goal of reconstructing the incident to determine the direction of the fatal shot;

- The defendants being exempted from in-person presence at the hearings;
  - Systematic and hostile interferences by the court with statements of the lawyers for the Elçi family, and threats to remove them from the courtroom<sup>12</sup>;
  - Arbitrary adjournment of hearings; and
  - Dismissal of requests for the recusal of judges justified on the basis of their systematic bias in terms of dealing with applications made on behalf of the complainants, and their failure to give any, or any adequate, reasons for their decisions.
6. At the third hearing, on 14 July 2021, grave allegations of torture and ill-treatment emerged in connection with witness statements forming part of the case. One of the individuals concerned wrote a letter to the Diyarbakır Bar Association, on 17 August 2021, stating that he was subjected to torture in 2016, while in detention, and forced by a public prosecutor at the Diyarbakır Courthouse to give a statement attributing the murder of Tahir Elçi to the two PKK militants who had fled the police on the day of the murder. The Diyarbakır Bar Association and the Tahir Elçi Human Rights Foundation filed a complaint to the Council of Judges and Prosecutors on these grounds, against two prosecutors allegedly involved. However, the Council rejected the complaint without providing reasons and declined the request for a re-examination of the case<sup>13</sup>. The case is now pending review by the Council's General Assembly.
7. At the hearing on 29 November 2023, OIAD reported a "total lack of interest on the part of the Tribunal, whose judges appeared [...] very young and probably inexperienced", and that the same lack of involvement and interest in the case "was observed among the public prosecutors"<sup>14</sup>. OIAD's judicial observation report points to "a very serious breach of procedure" arising from "the prosecutor's departure for about half an hour and the continuation of the hearing as if nothing happened"<sup>15</sup>. The Court rejected once again requests by the complainants' lawyers that the Chief of Police be heard, that the police officers present and other witnesses be heard, and that the crime scene be reconstructed at the scene<sup>16</sup>. Addressing the gaps identified by the Forensic Architecture report in the CCTV footage of the scene, the Court concluded that this footage had not been tampered with and argued that hearing the requested witnesses would not reveal anything new<sup>17</sup>. OIAD's report notes that "insurmountable shortcomings of the investigation" appear to preclude meaningful accountability for Tahir Elçi's killing<sup>18</sup>.

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<sup>12</sup> One of the family's lawyers claims to have been locked in a room at the Diyarbakır Courthouse on orders of prosecutor U.İ. during the hearing of 15 June 2022, allegedly in retaliation against his efforts to uncover a 13-second gap in the police's camera footage related to the case (<https://www.mlsaturkey.com/en/hsk-dismisses-torture-claims-against-prosecutor-in-tahir-elci-murder-trial>).

<sup>13</sup> <https://www.mlsaturkey.com/en/hsk-dismisses-torture-claims-against-prosecutor-in-tahir-elci-murder-trial>

<sup>14</sup> Judicial Observation Report, Trial of the murder of Bâtonnier Tahir Elçi, Diyarbakır, mission from 28.11.23 to 30.11.23, 8th hearing, 29.11.2023 from 10.00 to 15.30, p. 13.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid., p. 11.

<sup>17</sup> <https://lawyersforlawyers.org/trial-monitoring-mission-tahir-elci-case/>

<sup>18</sup> Judicial Observation Report, Trial of the murder of Bâtonnier Tahir Elçi, Diyarbakır, mission from 28.11.23 to 30.11.23, 8e hearing, 29.11.2023 from 10.00 to 15.30, p. 12.



8. In the most recent move towards impunity, the prosecutor submitted a motion to the 10th Assize Court of Diyarbakır on 25 April 2024, demanding the acquittal of three suspect police officers in the case. The prosecutor argued in the motion that while the defendant police officers fired shots in the direction of the two PKK members to "neutralize" them, and Tahir Elçi was fatally shot, it was impossible to definitively determine which officer's bullet caused the death. In the absence of evidence identifying the direct source of the fatal shot, and given the principle of the presumption of innocence, the prosecutor argued that the police officers must be acquitted. The next hearing, expected to be the last, is scheduled for 12 June 2024. Considering the serious and persistent issue of impunity for security forces and state officials in Turkey, the human rights and legal community is concerned that the case of Tahir Elçi will be yet another example of this.

### III. Actions Requested

9. We request the Special Rapporteurs to urgently call on the Turkish authorities to ensure that:
  - i. The court hearing the case complies with its obligation, under the right to life, to ensure that all those responsible are brought to justice and serve appropriate sentences for the killing of Mr. Elçi, and considering, inter alia, the legal responsibility of superior officials for violations by their subordinates;
  - ii. To this end, in light of the severe shortcomings in the investigation as well as serious allegations of torture and ill-treatment by prosecutors and security forces involved in the case, the court take into account the requests by Tahir Elçi's family concerning important evidence and witnesses in the case capable of elucidating the killing;
  - iii. Judicial authorities take all necessary steps to redress the improper bias and serious procedural breaches identified in this letter, which have undermined the victims' rights in the case, including by giving the Elçi family's lawyers reasonable opportunities to be heard and to make requests and refraining from an attitude appearing hostile to the Elçi family or its lawyers;
  - iv. In light of Tahir Elçi's professional activities, the court explores whether there was a possible political motive for his murder, whether the relevant authorities have taken adequate measures to safeguard Mr. Elçi and whether certain State officials could have been involved;
  - v. The very serious complaints alleging prosecutors' involvement in the torture and ill-treatment of witnesses in the case is examined by an independent and impartial judicial body and in case of a credible claim, a criminal proceeding to be instigated against them, the Council of Judges and Prosecutors to start a disciplinary proceeding against those involved and the related evidence is excluded from the file before the Diyarbakır 10th Assize Court;
  - vi. Mr. Elçi's family is provided with appropriate redress for the violations they and their loved one have suffered in accordance with the international obligations of Turkey, including under the ECHR, the UN Basic Principles on the Role of Lawyers and the Minnesota Protocol.

Yours faithfully,

Ayşe Bingöl Demir, the Turkey Human Rights Litigation Support Project (TLSP)  
(and on behalf of the following organisations)

American Association of Jurists (Asociación Americana de Juristas, AAJ)  
Association of Democratic Lawyers (Vereinigung Demokratischer Juristinnen und Juristen, VDJ, Germany)  
Bar Human Rights Committee of England and Wales (BHRC)  
Bruxelles Bar Association (Ordre des avocats du Barreau de Bruxelles)  
Bruxelles Bar Association - Human Rights Institute (Institut des droits de l'homme du barreau de Bruxelles)  
Defence Without Borders - Lawyers in Solidarity (Défense sans frontière avocats solidaires, DSF-AS, France)  
Democratic Lawyers (Giuristi Democratici, Italy)  
Democratic Lawyers Association of Bangladesh (DLAB)  
European Association of Lawyers for Democracy and World Human Rights (ELDH)  
European Democratic Lawyers (AED)  
German Bar Association (Deutscher Anwaltverein, DAV)  
Indian Association of Lawyers  
International Association of Democratic Lawyers (IADL)  
International Association of People's Lawyers  
International Association of People's Lawyers-Australian Branch  
International Observatory for Lawyers in Danger (OIAD)  
Lawyers for Lawyers  
Monitoring Committee on Attacks on Lawyers  
Nantes Bar Association, France  
National Union of People's Lawyers (NUPL, the Philippines)  
Observatory Endangered Lawyers - Italian Union of Criminal Chambers (Osservatorio Avvocati Minacciati, UCPI)  
Rennes Bar Association (Ordre des Avocats du Barreau de Rennes, France)  
Rotterdam Bar Association, the Netherlands  
Seine-Saint Denis Bar Association, France  
The Council of Bars and Law Societies of Europe (CCBE)  
The European Bars Federation (FBE)  
The International Bar Association's Human Rights Institute (IBAHRI)  
The Law Society of England and Wales (LSEW)  
The Republican Lawyers Association (Republikanische Anwältinnen- und Anwälteverein, RAV, Germany)

**B. Photos**

June, 12<sup>th</sup>, 2024. Press conference at the minaret where Tahir Elçi was killed



June, 12<sup>th</sup>, 2024. OIAD's observers together with other international observers attending the trial

