

JUDICIAL OBSERVATION REPORT

Trial of the murder of Bar President Tahir Elçi

Diyarbakir, mission 05.03.24/07.03.24

9^{ème} hearing, 06.03.2024, 10.00-11.00 am

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A. CONTEXT OF THE HEARING

1. Background information

The President of the Diyarbakir Bar Association, Tahir Elçi, was murdered on 28 November 2015 in a shooting attack during a public lecture at the foot of the 500-year-old "four-legged" minaret. 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.

On that day, a taxi with plate number 21 TT 0980 in which PKK activists Mahsum Gürkan and Uğur Yakışır were travelling was intercepted by police. The latter retaliated by firing shots at police officers Ahmet Çiftaslan and Cengiz Erdur who had intercepted the taxi and killed them.

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

Aziz Aslan, a journalist with the Anadolu agency, was injured and Tahir Elçi lost his life after a gun battle in which he was hit by a bullet.

The judicial observation report for the 5^{ème} trial hearing on 15 June 2022 went into detail about the biography of Bar President Tahir Elçi and the circumstances surrounding his death¹.

In short, Tahir Elçi has been the target of insults and death threats on social networks, and has also been taken to task by the pro-government media for the positions he took during a television programme on 14 October 2015, during which he stated that the PKK was not a terrorist organisation.

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.

¹ [Judicial Observation Report - OIAD - Trial of the murder of Bar President Tahir Elçi - 5th hearing, 15 June 2022](#)

2. Summary of the investigation and legal proceedings

Timeline

28 November 2015: Bar President Tahir Elçi is shot in the head during a shootout under the so-called "*four-legged minaret*" in the old town of Diyarbakir.

The summary of the work of the Forensic Architecture Institute at the University of London, accessible via video, provides a clear understanding of how the events of 28 November 2015 unfolded. ²

17-18 March 2016: **Investigation begins at the** scene. This delay was justified by alleged security reasons, preventing access to the scene of the shooting.

The investigation in brief: The crime scene was open and accessible to the public for several months. The evidence may have been contaminated. It was not possible to find the bullet that killed Tahir Elçi, preventing the weapon and therefore the perpetrator from being identified with any certainty.

The numerous video recordings collected during the investigation have not made it possible to establish the precise circumstances of the crime. Camera 4 at the Mardin Kepab house, which was aimed at the minaret, allegedly did not work. The recording from camera 5 at the post office on Yenikapi street was incomplete, with a 17-minute gap. Finally, the police recording was cut off for 12 seconds at the very moment when Tahir Elçi was shot, making it impossible to identify the original shot.

20 March 2020: **Indictment by** the Diyarbakir public prosecutor. He requests a sentence of between 3 and 9 years' imprisonment for 3 policemen (Messrs Mesut Sevgi, Faut Tan and Sinan Tabur) for "*causing death by conscious recklessness*" and a sentence of three times the maximum life sentence for PKK militant Ugur Yakisir for "*murder of two policemen*", "*attempted murder of a policeman*" and "*murder of Elçi by possible intent*". The indictment states that "*Elçi was killed accidentally by three policemen and intentionally by Ugur Yakisir*", whereas in reality Tahir Elçi was hit by only one bullet ³ .

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

² YouTube - <https://youtu.be/iBESvMnd6Fs>

³ [Judicial observation report - OIAD - 5th trial hearing, 15 June 2022](#)

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.

3 March 2021: 2nd hearing

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.

14 July 2022: 3rd hearing

12 January 2022: 4th hearing

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.

15 June 2022: 5th hearing⁴

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.

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*"⁵.

23 November 2022: 6th hearing

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

5 July 2023: 7th hearing⁶

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

⁴ [Judicial observation report - OIAD - 5th trial hearing, 15 June 2022](#)

⁵ [Ibid](#)

⁶ [Judicial observation report - OIAD - 6th trial hearing, 5 July 2023](#)

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.

29 NOVEMBER 2023: 8th hearing⁷

The hearing was a long one, starting at around 10.20am and finishing at around 3:30/4pm, with a break of around an hour and a half.

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.

⁷ [Judicial observation report - OIAD - 8th trial hearing, 29 November 2023](#)

B. PROCEEDINGS OF THE HEARING ON 06.03.2024: 9th hearing

Background information on the hearing on 6 March 2024, 10:00 a.m.

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.

This was therefore a very important hearing, concluding the nine previous hearings. However, on Tuesday 5 March, we were told that the prosecutor had asked the court for more time, as he had not had enough time to prepare his closing arguments.

We have learned, incidentally, that in reality, in view of the approach of the municipal elections scheduled for 31 March 2024, the public prosecutor does not wish a decision to be handed down before that date.

In these circumstances, there is a risk that the Court will refer the case.

There are far fewer security services than in the past.

As a result, the prospect of a dismissal seems a foregone conclusion.

We meet with Bar President Tahir ELÇI's counsel in the lawyers' room. An initial update is given to the observers.

Names of observers:

- Gaëlle Girardon, lawyer at the Rennes bar, Défense sans Frontières, Avocats Solidaires, Bordeaux bar;
- François COTTA, lawyer at the Paris Bar, Défense sans Frontières, Avocats Solidaires;
- Adrien VERRIER, lawyer at the Nice Bar, OIAD, Former President of the Bar President;
- Barbara PORTA, lawyer at the Turin Bar, Italy, OIAD, CNF;
- Ezio MENZIONE, lawyer at the Pisa Bar, UCPI, LTI,

The hearing began at 10.00 am, with a full house and a large number of lawyers in attendance.

This is not the usual courtroom, which is normally larger.

However, given the prospect of the forthcoming postponement, this project has been assigned a smaller size.

A video link was set up with the police officers' counsel. It should be noted that at no time during the various hearings did the police officers physically attend the hearing. The counsels appear to be watching the proceedings from their home town, which is not Diyarbakir.

The civil parties' lawyers have repeatedly requested that the police officers be present, but they have been under no obligation to do so.

The list of lawyers present is drawn up by the court clerk at the beginning of the hearing. The President of the Diyarbakir Bar takes the floor and states the presence of the various observers at this hearing.

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.

A further ten or so 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. The public and the lawyers left the room and returned to the lawyers' chambers. Ten minutes later, the hearing resumed.

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.

There is every reason to believe that this hearing date will indeed be the last, for a number of reasons: firstly, the municipal elections will have passed; secondly, the magistrate presiding over the hearing is due to be transferred to another jurisdiction at the end of June; and thirdly, the president has clearly announced that this is a final hearing, so it cannot be postponed any further.

At this hearing, the prosecutor will present his closing arguments, the civil parties who have expressed a wish to intervene after the prosecutor has spoken (in order to hear his arguments) will plead second and the defence will plead third.

It is also important to point out that one of the defendants, the PKK militant who exchanged gunfire with the police, has never been arrested despite arrest warrants having been issued for him.

Consequently, he is not present or represented at this hearing.

The police officers are appearing free of any restraint and have not been imprisoned.

A press conference by the main lawyers involved in the hearing was held outside the court at the end of the hearing, under the watchful eye of the many police officers guarding the court premises.

C. CRITICAL AUDIENCE ANALYSIS

This was already the ninth hearing in this case, where the investigation and proceedings have deliberately stagnated. For the lawyers with whom we spoke, including our translator, the course and outcome of this new hearing were unfortunately expected if not written.

In this 9th hearing, all the lawyers who took the stand in turn denounced in unison the same errors and shortcomings in the investigation, as well as the passivity of the prosecuting authorities and the Court.

In fact, no new parts were discussed.

At the end of the hearing, the attitude of the colleagues was one of resignation in the face of an announced result.

They don't expect anything new at the next hearing and have told us in advance that the March hearing could well be the last one at which a not guilty verdict is very likely to be delivered.

Our Turkish colleagues, whose determination and courage we would like to emphasise once again, are already prepared to go through all the stages of the procedure at national level, and then to appeal to the European Court of Human Rights.

They expect nothing from the national justice system, to any degree whatsoever.

Still from the perspective of the critical analysis of the conduct of the hearing, there appeared to be a total lack of interest on the part of the court, whose judges appeared to us to be very young and probably inexperienced. There was no involvement or interest on their part, and the same attitude was observed among the public prosecutor.

Another procedural problem is the inability of the parties to appeal immediately against the Tribunal's decisions in response to requests for documents. This results in the following procedural cumbersomeness: the same requests may be presented again at each hearing and argued in a different way but will always be re-examined by the same Tribunal, which artificially lengthens the time taken to reach a decision.

Nevertheless, we can only salute the organisation and determination of the colleagues assisting the civil parties, who are perfectly familiar with the case, particularly in its technical aspects, and who are showing a constantly renewed determination to try to make up for the shortcomings of the investigation in order to obtain answers in this case.

Another point to note about this ninth hearing, which everyone expected to be the last, was the request for a postponement from the public prosecutor, which was received only the day before the hearing, as he was formally not ready for the final indictment.

Colleagues have told us that the real reason for this request for postponement, as mentioned above, is that municipal elections will be held in Diyarbakir on 31 March, and that the authorities have an interest in waiting for the result of these elections.

D. MEETINGS AS PART OF THE MISSION

Meetings with the Diyarbakir Bar Association.

On 6 November at 11.30am, we concluded our mission with a business meeting at the Diyarbakir Bar Association, in the Barosu Palace.

We are welcomed by the Bar President, accompanied by the widow of Bar President Tahir ELÇI and all the lawyers involved in these proceedings. He decided to answer our questions through a lawyer from Ankara who was present at the defence of the civil party and who translated for us.

Lawyers are asked a number of questions relating to the impartiality of the court, the evidence, the course of the investigations, the conduct of the trial, etc.

At the end of this meeting, we were told that the lawyers wanted to consider that, just as the policeman was intentionally killed by a PKK militant, Bar President Tahir ELÇİ had also been intentionally killed by one of the policemen.

With regard to the impartiality of the court, it is pointed out that the Diyarbakir court called upon to rule in this case is totally supervised by Ankara. The question is not whether they are good or bad judges, but simply whether they have any initiative or independence.

The question of the applicability or non-applicability of the rules of the emergency decrees granting impunity to the police for crimes committed in the performance of their duties is also addressed. Basically, the applicability or non-applicability of these rules is left to the discretion of the judge. The Diyarbakir Court, however, had already ruled out at the start of the trial that it would or could apply them in the present case. According to our colleagues in Diyarbakir, this was not due to a guarantee, but to a desire to move directly towards a full acquittal on the merits.

Then there is the question of the separation of the trial for the death of Tahir Elçi from that for the death of 2 police officers which occurred shortly before Elçi's death, several hundred metres away, at the hands of 2 terrorists who burst into the alleyway where Tahir Elçi was known to be giving a speech, thus triggering the fatal shooting. For their Turkish colleagues, this separation was deliberate and intended to give them a freer hand to acquit the police officers on trial for Elçi's death.

"The whole process is being monitored and closely guided by the government in Ankara", say the colleagues.

After an hour's press conference, we leave.

We are asking the Bar President and his team to send us proof of the expenses incurred using the funds provided by the OIAD, who have told us that they will do so as soon as possible.

E. CONCLUSIONS AND RECOMMENDATIONS

The hearing in the Elçi trial has been set for 12 June 2024, at 10am.

Given the course of the hearing on 20 March 2024 and the attitude of its president, it is to be feared that the Tribunal will once again remain passive, if not absent. In the absence of any new information, the lawyers can only insist, with one voice, on the shortcomings of the investigation and the complicit passivity of the Court.

As this is a highly symbolic trial in terms of the victim's personality, and now also the political involvement of his wife, who is now a Member of Parliament, the media attention is high and the presence of international observers essential to show solidarity with our Turkish colleagues and to indicate to the Turkish authorities that we are keeping a close eye on the outcome of this trial.

It seems that it is not possible for the OIAD to intervene either voluntarily or as *amicus curiae* in this trial; it is therefore imperative that we retain our role as observers and maintain the OIAD's link with this group of extremely courageous lawyers who wish to

benefit from our presence throughout the proceedings and in particular at the forthcoming hearings which may see some important developments.

Even so, we must remain clear-headed about our influence and impact on such a trial, where we sometimes had the impression that we were taking part in a form of staging.

We would like to point out that we were unable to meet representatives of the ÖHD association despite our repeated request to do so.

Nice-Turin, 18 March 2024

Adrien Verrier Av.

Barbara Porta Av.

APPENDICES



Tahir ELÇI, former President of the Diyarbakir Bar (deceased)



Jurisdiction of Diyarbakir - external / internal court



Observers (from left to right):

- Barbara PORTA, Member of the Turin Bar, Italy, OIAD, CNF
- François COTTA, Member of the Paris Bar, Défense sans Frontières, Avocats Solidaires,
- Ezio MENZIONE, Member of the Pisa Bar, UCPI, LTI
- Gaëlle Girardon, lawyer at the Rennes bar, Défense sans Frontières, Avocats Solidaires,
- Ezio MENZIONE, Member of the Pisa Bar, UCPI, LTI,





Lawyers' room





Courtroom



Defence of Bar President ELÇI and international observers



Bar President Nahit Ehren and the widow ELÇI (now a member of Parliament)



External press conference



Observer group



The "four-legged minaret" in front of which Bar President Tahir ELÇI was murdered

