

Quick Response Desk
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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.¹ 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 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 2021,² 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

¹ 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>).

² Available at: <https://www.turkeylitigationssupport.com/s/Tahir-Elci-UAL-to-the-UN-Special-Rapporteurs.pdf>

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’.³

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;
 - 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;⁴
 - 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

³ 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. 11, (https://protect-lawyers.org/wp-content/uploads/Final-OIAD_Rapport-de-mission-28-29.11.23-Tahir-Elci-VDef-EN.pdf).

⁴ 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>).

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.⁵ 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”.⁶ 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”.⁷ 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.⁸ 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.⁹ OIAD’s report notes that “insurmountable shortcomings of the investigation” appear to preclude meaningful accountability for Tahir Elçi’s killing.¹⁰
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.

⁵ <https://www.mlsaturkey.com/en/hsk-dismisses-torture-claims-against-prosecutor-in-tahir-elci-murder-trial>

⁶ 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.

⁷ Ibid.

⁸ Ibid., p. 11.

⁹ <https://lawyersforlawyers.org/trial-monitoring-mission-tahir-elci-case/>

¹⁰ 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.

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)