



ASSOCIATION EUROPÉENNE DES AVOCATS
EUROPEAN ASSOCIATION OF LAWYERS

HUMAN RIGHTS COMMITTEE

Brussels, March 2, 2021

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Your Excellency,

Turkey – the case before the Diyarbakır 10th Heavy Penal Court concerning the killing of Tahir Elçi on 28 November 2015

We are writing to draw your Ministry's attention to the case before the Diyarbakır 10th Heavy Penal Court in the case concerning the killing of Tahir Elçi, a prominent human rights lawyer and the former president of the Diyarbakır Bar Association. He was among those who advocated addressing the increasingly violent situation in south-eastern Turkey during the violent clashes that had occurred between the Kurdistan Workers' Party (*PKK*) and the Turkish state forces in the summer of 2015 and after. He was shot dead during a press conference he helped to organise on 28 November 2015 as the president of Diyarbakır Bar Association to draw attention to the damage inflicted on the cultural and historic heritage in the region during the armed clashes.¹

Reports indicate that despite assurances given by the high-level government officials of the time, the investigation into the killing remained dormant until after a London based group, Forensic Architecture, published its report on the incident in February 2019. This report concluded, after a detailed forensic investigation of the video footage of the scene at the time Mr. Elçi was killed, that three police officers at the scene were engaged in active shooting at the time of the killing.²

According to information available to us, it was only following the publication of the Forensic Architecture report -more than 4 years after the incident- the prosecutor indicted the 3 police officers named in the report as the potential perpetrators. However, we are concerned about a number of aspects of this indictment, including its determination of the events, legal

¹<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16827&LangID=E;>
[https://www.amnesty.org/en/latest/news/2015/11/at-the-funeral-of-tahir-elci-a-giant-in-turkeys-human-rights-movement-the-sense-of-loss-is-deafening/;](https://www.amnesty.org/en/latest/news/2015/11/at-the-funeral-of-tahir-elci-a-giant-in-turkeys-human-rights-movement-the-sense-of-loss-is-deafening/) [https://www.hrw.org/news/2015/11/28/turkey-human-rights-lawyer-murdered;](https://www.hrw.org/news/2015/11/28/turkey-human-rights-lawyer-murdered) [https://www.ccbe.eu/NTCdocument/HR_Letter_Turkey_Tah1_1449055818.pdf;](https://www.ccbe.eu/NTCdocument/HR_Letter_Turkey_Tah1_1449055818.pdf)
[https://lawyersforlawyers.org/en/turkey-lawyer-tahir-elci-shot-dead/.](https://lawyersforlawyers.org/en/turkey-lawyer-tahir-elci-shot-dead/)

² https://content.forensic-architecture.org/wp-content/uploads/2019/03/FA-TE-Report_12_English_public.pdf

classification of the acts, and sentencing request against the police officers which does not correspond with the seriousness of the offence committed and its grave consequences; and the conclusions directly contradicting the findings of the Forensic Architects report.

We are also concerned that due process may not be followed in forthcoming hearings of the trial of the officers and that the rights of Mr. Elçi and his family may not be respected during the proceedings. These concerns are based on several serious violations of due process that took place during the first hearing on 21 October 2020, before the Diyarbakır 10th Heavy Penal Court. According to reports:

- The court did not take into account the detailed submissions of the Elçi family's lawyers addressing the flaws in the investigation leading to the trial in determining the course of the trial.
- The court, among other requests, refused the request of the Elçi family's lawyers to be heard at the beginning of the hearing. The court refused to allow Türkan Elçi, Tahir Elçi's wife, to take the floor and submit her requests as the complainant. Without hearing the complainants and their request to become formal parties to the proceedings, the complainants could not question the suspect which is a right that is granted to them clearly under the Code of Criminal Procedure.
- The court refused to hear the accused police officers in person, instead, insisting on hearing them through SEGBIS.
- The suspects were not visible to the family of Tahir Elçi or his lawyers, because the small screen was too far away from them to be seen. There were several technical issues making it difficult to hear the statement of the suspects, and these technical issues were not resolved by the court, even upon request of the family's lawyers.
- The court refused several times to allow the lawyers to speak and submit their requests. It threatened the lawyers and Mrs. Elçi that if they insisted on speaking, they would be expelled from the courtroom by force.

We have been informed that the lawyers asked the judges to recuse themselves from hearing the case based on these occurrences during the hearing. However, their request has been rejected on a later date. This was the first hearing in what may be a protracted trial of the police officers accused of the homicide of Tahir Elçi.

On 26 November 2020, over 40 international organisations joined in a call to the Turkish authorities³ and requested them, including your Ministry, to ensure that:


1. The case is heard by an independent, impartial, and competent court that is capable of establishing the facts and truth around the killing of Mr. Elçi;
2. All future hearings comply with international standards regarding the right to a fair trial, in which the victims' rights are also recognised.
3. The hostile attitude from the court towards the Elçi family and their lawyers and the court's persistent refusal to follow the rules of procedure and principles of both domestic and international law are not repeated in future hearings.
4. The lawyers for the Elçi family are given reasonable opportunities to be heard and to make their applications in relation to the procedure and the evidence.
5. Where submissions are refused, reasons for refusal are given in accordance with the case law of the ECtHR.
6. Following a fair judicial procedure, those who are responsible for Mr. Elçi's killing are held accountable and serve sentences appropriate to the gravity of the crime committed; and
7. 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 and the Minnesota Protocol.⁴

³ For the full statement see <https://eldh.eu/en/2020/11/27/case-concerning-the-killing-of-tahir-elci-and-lack-of-effective-investigation-into-his-death/>.

⁴ UN OHCHR, The Minnesota Protocol on the Investigation of Potentially Unlawful Death 2016. The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, 2016, available at: https://www.un-ilibrary.org/human-rights-and-refugees/the-minnesota-protocol-on-the-investigation-of-potentially-unlawful-death-2016_0389ae17-en

While the 3 March 2021 hearing is fast approaching, we would like to draw your Ministry's attention to this call once again. We would like to also inform you that our efforts to support the Elçi family in their quest for truth and justice and to monitor the developments in the case before the Diyarbakır 10th Heavy Penal Court will continue.

Yours sincerely,


Magdalena Witkowska

Chair
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European Association of Lawyers (AEA-EAL)

cc.

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