DIYARBAKIR BAR ASSOCIATION
LAWYERS’ RIGHTS CENTER

Report on Investigations and Prosecutions against the Diyarbakir Bar Association and Lawyers Who are members of the Board of Directors in 2020

January 2021
“Justice that is not based on strength is inefficient, strength that is not based on justice is cruel”

Blaise Pascal

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SUMMARY

This report was issued on the basis of the violations against our colleagues who worked as lawyers in Diyarbakır Bar Association and the investigations and prosecutions against the lawyers. The lawyers who worked on the report and work at Diyarbakır Bar Association Lawyers’ Rights Center, interviewed 52 lawyers who were investigated and prosecuted, vis-à-vis or on the phone. The names of the lawyers which interviewed in the criminal cases and mentioned in the report were not published upon their requests. However, the names of our colleagues and documents of investigation or case files are available in the records of the Diyarbakır Bar Association Lawyers’ Rights Center. While preparing this report, the police statement records, indictments, case files, hearing records and court decisions of our colleagues were examined.

The report includes a chronology regarding the murder of the President our Bar Association Tahir Elçi, investigations and prosecutions against the current and previous Bar Association Presidents and Board Members, prosecutions against our former Bar Association Presidents and colleagues for alleged participation in the activities of the Democratic Society Congress (Demokratik Toplum Kongresi /DTK) , initiated at different times by the Diyarbakır and Şanlıurfa Chief Prosecutor’s Office and data on the investigations in which many of our colleagues were detained. Also summary information and statistics regarding the investigations initiated against our colleagues are included, finally, our observations regarding the illegality of the investigations and prosecutions against our colleagues are included.
INTRODUCTION

The President of our Bar Association Tahir Elçi passed away as a result of an armed attack immediately after a press statement which he made on 28 November 2015. As a result of the intense efforts of the Diyarbakır Bar Association, a criminal case could be filed in March 2020.

The former President of our Bar Association and all members of the Board of Directors: the content of the commemoration statement dated 24 April 2017-2018 regarding the deportation that occurred in 1915 and also, the President of our Bar Association and all members of the Board of Directors, justifying the content of the commemoration statement dated 24 April 2019, a criminal case has been filed to incite ‘the Public to hatred and hostility and insult the Turkish Grand National Assembly’. This statement made by the Diyarbakır Bar Association was not considered within the scope of freedom of expression, with the conjunctural approach of the judiciary, it was claimed that there was an element of crime in the statement.

The Diyarbakır Bar Association has been systematically targeted by the current government and also subjected to unjust accusations and threats. With a delegation of non-governmental organizations in Diyarbakır and the Bar Association in the delegation that wants to report the armed attack against Şenyaşar family in Suruç so the Bar Association was targeted by the Minister of the Interior on 18 June 20181, upon the Bar Association’s response to this situation with a press statement2, Minister of Interior said that ‘Just as we did what was necessary because of the deputies’ aiding and abetting the terrorist organization, we will do what they need’3 and Minister of Interior continued his threats. On 7 September 2019, the Minister of Interior accused the Diyarbakır Bar Association of being the spokesperson of the terrorist organization4. After these statements, a significant increase was observed in the investigations and prosecutions against the Bar Association.
1) The Course of the Murder of the President of Our Bar Association Tahir Elçi, Summary of the Investigation and Prosecution of Tahir Elçi’s Murder

In Turkey the Diyarbakır Bar Association has long been except for its professional problems also it works about the law, human rights and social issues and preparing reports, the Bar Association helps awareness in society with these activities and also its identity is one of the highest, and the most influential professional organizations. For this reason, the Diyarbakır Bar Association and its members have also been affected by the systematic pressure on lawyers in recent years. In order to better understand what happened today, it is necessary to read the trial process that followed with the targeting and murder of Tahir Elçi, the heaviest price paid by the Diyarbakır Bar Association.

Tahir Elçi said ‘PKK is not a terrorist organization’ in the ‘Tarafsız Bölge’ program presented by Ahmet Hakan on CNN Türk Channel on 15 October 2015. For this reason, first, the TV channel was fined 700 thousand Turkish Liras and then Tahir Elçi was detained in Diyarbakır on 20 November 2015 in his bar association’s room and was brought to İstanbul.

Tahir Elçi was released by the Bakırköy 2nd High Criminal Court on the condition of judicial control, although the prosecution referred to the court for his arrest and indictment was prepared against Tahir Elçi, demanding a prison sentence of up to 7.5 years for making propaganda for a terrorist organization.

8 days after he was detained, the President of the Diyarbakır Bar Association was killed on 28 November 2015, while he was making a press statement in front of the Dört Ayaklı Minare (Four Legged Minaret) in Diyarbakır Sur.

After Tahir Elçi was killed, an ‘investigation commission’ was established in the Diyarbakır Bar Association to conduct the investigation effectively. According to the information which provided by the investigation commission, the crime scene investigation was requested at least 3 times after the murder but each time, the prosecution team, which would conduct an investigation on the scene, left the scene due to the sounds of the ongoing conflict.

Many illegal violations have been detected; these are; crime scene investigation only 111 days after Tahir Elçi’s murder, A 13-second interruption has been detected in some camera recordings including the shooting moment, two years after the murder, camera footage of a workplace was resolved in 2017 and some records were not available, the Public Officials under suspicion were heard not as ‘suspects’ but as ‘knowledgeable’ or ‘witnesses’, the report which prepared by the Chief Civil Inspector and sent by the Interior Ministry was hidden.

The indictment which prepared 4 years and 4 months later regarding the murder of Tahir Elçi, was accepted by the Court. At the first hearing held on 21 October 2020, due to the court’s insistence on hearing the defendants through the SEGBİS system and a series of unlawful decisions, the lawyers of the Elçi family demanded a refusal against the court members so the hearing was suspended.

A criminal investigation has been initiated for words spoken by a defense organization, a bar association president in a TV show, an arrest warrant has been issued for Elçi and then he was killed, and all of these are a part of the systematic attack on the Diyarbakır Bar Association and are the worst.

Attacks and harassments against our profession and colleagues continue to increase even after that day. Lawyers are detained, arrested and punished for their
proffessional activities. In this report, the investigations and prosecutions, which are the manifestation of the systematic pressure against the lawyers of Diyarbakır Bar Association, are analyzed in chronological order since Tahir Elçi’s murder. It gives the impression that a significant part of the investigations and prosecutions in question were opened in retaliation for the efforts of the Diyarbakır Bar Association to prevent human rights violations and its sensitivity in social issues.

2) 12 March 2020 Investigation by Şanlıurfa Chief Public Prosecutor’s Office

On 12 March 2020, within the scope of the investigation carried out by the Şanlıurfa Chief Public Prosecutor’s Office, an arrest warrant and detention were issued for 5 colleagues who registered in the Diyarbakır Bar Association during the operations based in Şanlıurfa.

Within the scope of this decision, two colleagues who are members of our Bar Association were detained, and an arrest warrant was issued for three colleagues who were not at home. Our colleagues who were detained, were released on condition of judicial control after 6 days of detention. Two of our colleagues, who were sued, for membership of a terrorist organization within the scope of this operation, were acquitted at the first hearing. Investigations and prosecutions against our other 3 colleagues are still pending.

Three of our colleagues, who had an arrest warrant, later went to Şanlıurfa and made statements at the Police Department and were released with a request for judicial control. At the first hearing of the lawsuits filed against these two colleagues, a verdict of acquittal was given.

Since there was a restriction decision on this investigation, it was not possible for our colleagues and their attorneys to have information about the investigation file. Our colleagues and their attorneys were only partially informed about the accusation made from the statements taken at the Şanlıurfa Police Department. Our colleagues were detained because of the statement of an ‘anonymous witness who doesn’t exist’ as revealed during the trial.

3) The Investigation which Conducted by the Diyarbakır Chief Public Prosecutor’s Office on 20 November 2020

On 20 November 2020, an operation was launched against 32 colleagues to arrest and detain them on the grounds of the decision made by the Diyarbakır Criminal Court of Peace. In this operation, the homes of 22 colleagues, 21 of whom are members of our Bar Association and 1 of whom are members of the Adıyaman Bar Association, were searched, their computers, phones and some books were seized and they detained.

20 colleagues who were detained, were released by the Police Department on the same day after their statements were taken. A colleague of ours was released by the Criminal Court of Peace on the condition of judicial control. Our 5 colleagues, who were not at home during their houses were searched, they went to the Prosecutor’s Office and gave a statement later. The investigation against our colleagues is still pending and their items which seized during the search have still not been returned.

Since there was a restriction decision about this investigation which conducted against 32 lawyers, we couldn’t access the investigation file. However, as understood from the decision of the Criminal Court of Peace, it was determined that our colleagues were...
given a decision to search, arrest and detain them because they had their names, surnames, and phone numbers on an alleged list of the Democratic Society Congress (Demokratik Toplum Kongresi / DTK). The list alleged to be in the Democratic Society Congress is the list that contains the names and contact information of our colleagues who work for election and ballot box security during election periods. In addition, some of our colleagues were accused of being a member of the Mesopotamia Lawyers Association (Mezopotamya Hukukcular Derneğii), which was closed by a decree law, and one of our colleagues of being a member of the Rosa Women’s Association (Rosa Kadın Derneği), which operates to prevent violence against women.

4) Investigations and Prosecutions against Our Colleagues Due to the Democratic Society Congress

Between 2017-2020, many of our colleagues were detained for allegedly participating in some of the activities of the Democratic Society Congress, which has been operating in Diyarbakır since 2007. Criminal cases were filed against at least 12 of our colleagues with the accusation of ‘members of the organization’ within the scope of Article 314/2 of the Turkish Penal Code due to some of the activities of the Democratic Society Congress. Lawyer Fethi Gümüş, who served as the President of the Bar Association between 1990-1994, was sentenced to 7 years and 6 months in prison, Lawyer Mehmet Emin Aktar, who served as the President of the Bar Association between 2008-2012, and a colleague of our Bar Association were also sentenced to 6 years and 3 months in prison.

According to the findings of our center, a verdict of acquittal has been made against five (5) colleagues of the same accusation, criminal cases against at least four (4) of our colleagues are still pending.

The activities carried out by the Democratic Society Congress in various fields in the solution process and with the participation, knowledge and approval of the state bureaucracy stemming from the nature of the solution process were criminalized with the end of the solution process, the investigation and prosecution and finally punishment of the addressees of the solution process clearly eliminates the ‘prescribed by law principle’. The interpretation of the Grand Chamber of the European Court of Human Rights in the Demirtaş decision in terms of the principle of prejudice is quite striking. The Court; one of the requirements arising from the phrase ‘prescribed by law’ is predictability. In the Court’s view; if a norm is not formulated with sufficient precision to allow individuals to regulate their behavior and does not allow individuals to anticipate at a reasonable level the relevant circumstances and consequences of their actions- if necessary, with appropriate advice- for the purposes of paragraph 2 of Article 10, is not considered a ‘law’ for its purposes. Grand Chamber continues; Referring to the report of the Venice Commission; ‘It stated that in the application of Article 314 of the Criminal Code, the domestic courts generally tend to decide on the basis of very weak evidence when assessing the membership of individuals to an armed organization (…).

The range of actions attributed to the applicant in relation to the serious crimes in Article 314 of the Criminal Code is quite extensive within the scope of this article and this, combined with the interpretation of the domestic courts, does not provide sufficient safeguards against arbitrary intervention by the domestic courts’.

The Grand Chamber described the Democratic Society Congress as ‘Democratic
Society Congress, which is a legal organization’ in the same decision, and that participation in the work of the Democratic Society Congress would not be sufficient evidence/justification even for detention.

5) Investigations and Prosecutions against the President of the Diyarbakır Bar Association and Members of the Board of Directors

a) Criminal Cases Filed against the President of the Bar Association and Board Members for the Period 2016-2018

1) Two separate criminal cases have been filed against Ahmet Özmen, the President of the Diyarbakır Bar Association who served between 2016-2018, and the members of the Board of Directors for Bar Association activities. Statements of our Bar Association subject to the case;

- The article titled 12 ‘April 24/ Great Catastrophe : Sharing the Pain of the Armenian People’ dated April 24, 2017.
- The article titled 13 ‘Punishing the Statement of Kurdistan is Shame, It is Unacceptable’ dated December 18, 2017.

Regarding these allegations, upon the request of the Diyarbakır Chief Public Prosecutor’s Office, the members of the Board of Directors of the Diyarbakır Bar Association ‘Inciting The People To Hatred And Hostility, Denigrating The Grand National Assembly Of Turkey And The Turkish Nation’ and similar crimes, it was decided by the Ministry of Justice to ‘permit investigation’ and the lawsuit was filed.

2) About Ahmet Özmen, who was the President of the Bar Association between 2016-2018, and the members of the Board of Directors; An investigation was initiated due to the statement titled ‘We Share the Unrelenting Great Pain of the Armenian People’ dated April 24, 2018, with the permission of the Ministry of Justice for investigation, the criminal cases have been filed about these crimes; ‘Inciting The People To Hatred And Hostility, Denigrating The Grand National Assembly Of Turkey And The Turkish Nation’. The President of the Bar Association Ahmet ÖZMEN, members of the Board of Directors of the Bar Association; Ahmet DAĞ, Cihan ULSEN, İmran GÖKDERE, Mahsum BATI, Muhammed Neşet GİRASUN, Nahit EREN, Nuşin UYSAL EKİNCİ, Senhat EREN, Sertaç BULUTTEKİN and Velat ALAN-These two criminal cases filed against these lawyers, were later merged and are still pending.

b) Investigations and Criminal Cases against the Current President and Board Members of Bar Association

1 - In summary, in the written press statement published on the website of the Diyarbakır Bar Association on April 24, 2019; ‘Diyarbakır once again shares with the public that it was aware of the great disaster experienced by the Armenian People who were living in various parts of Anatolia in 1915, shared their pain and felt this pain in the depths of their heart’.15 Due to this statement, an investigation was initiated by the Diyarbakır Chief Public Prosecutor’s Office against the President of the Diyarbakır Bar Association and Board Members. The investigation prosecutor sent the investigation file to the Ministry of Justice for permission to investigate.
in accordance with the provisions of Law No. 1136 on Attorneys. After the announcement on 19.06.2020, the Ministry decided to ‘allow an investigation’ for ‘public insulting’ ‘The Turkish Nation, The Republic Of Turkey, The Turkey Grand National Assembly, The Government Of The Turkey Republic and the judicial bodies of the state. Subsequently, as a result of the investigation which carried out, the file was again sent to the Ministry of Justice for permission to prosecute and the Ministry also gave permission to prosecute. Thereupon, the file was sent to the Batman High Criminal Court to decide whether to open a final investigation in accordance with the Provisions of the Attorneyship Law, as a result of trial made over the file, the Court decided to ‘open the final investigation’ and sent the file to the Diyarbakır High Criminal Court on Duty.

2 - A written statement was published on the website of the Diyarbakır Bar Association, stating that the statements made by the Head of Religious Affairs, Ali Erbaş, in the Friday sermon titled ‘Ramadan: Patience and Will Training’ on April 24, 2020 ‘Contain hate speech and violate the prohibition of discrimination16’ . Due to the complaint of a person named R.Y regarding this statement, an investigation was initiated against the Bar Association President and the Board Members, the investigation is still pending.17

3 - Diyarbakır Bar Association published a written statement regarding the ‘Armenian Deportation in 1915’ on its website and social media accounts on 24 April 2020

Due to the written pres statement published on the website of the Diyarbakır Bar Association on 24.04.2020 regarding the events and the subsequent genocide against the Armenian People, an investigation was initiated by the Diyarbakır Public Prosecutor’s Office against the President of the Diyarbakır Bar Association and Board Members. This investigation is still pending.

4 - The President of our Bar Association Cihan Aydin, who attended the interrogation of a colleague who was referred to the Criminal Magistrate’s Office for arrest on 28 June 2020, and during the hearing the Judge insulted our colleagues; Lawyer Yunus Muratakan and Lawyer Mehmet Nuri Deniz due to the procedural discussion with the Judge, the Judge did not record what happened in the hearing, the Judge did not refer the report of the incident, kept by our colleagues, to the file. A joint statement was made by 51 Bar Associations regarding this incident and the Judge was condemned for her /his insults and behaviour towards our Bar Association President and colleagues, and the Supreme Council of Judges and Prosecutors was invited to the necessary. After this statement, upon the criminal complaint made by the Criminal Judge of Peace, the President our Bar Association and our colleagues were informed about the Article 6/1 of the Anti Terror Law; ‘……… those who declare or publish the identity of Public Officials who took part in the fight against terrorism or those who target people in this way is punished with imprisonment from one to three years. ’ the investigation was initiated in accordance with this provision. There has been no progress in the complaint of our colleagues to the Supreme Council of Judges and Prosecutors about the Judge.

5 - An investigation was initiated against the President of the Bar Association, the members of the Board of Directors due to a written statement on behalf of our Women’s Rights Implementation Center of the Diyarbakır Bar Association on 11.10.2019, stating that ‘objecting to war and demanding peace are a human right, we say NO TO WAR!, PEACE NOW!20’ under all circumstances, and this investigation is still ongoing.
A) Unlawful Acts which Determined in the Investigations and Criminal Cases Conducted within the Scope of the Democratic Society Congress Investigation

Democratic Society Congress; It was founded in Diyarbakır on 26-28 October 2007 with the support and participation of various political party representatives, professional associations, non-governmental organizations and opinion leaders. Democratic Society Congress has received the support of many people and institutions with different views and it has carried out studies on many national issues, especially the Kurdish Question. Democratic Society Congress, which conducts its activities open to the public, also met with government officials from time to time. Events were organized with the participation of politicians, academics, lawyers, trade unionists, journalists and people from all walks of life. In these events, Democratic Society Congress brought together people and institutions with different ideologies, world views, beliefs and ethnicities regarding the solution of social problems.

Democratic Society Congress was invited to parliament by the President of the Grand National Assembly in 2012, on the other hand technical follow-up, media listening, wiretaps conducted between 2010 and 2014 within the scope of the investigation initiated by the Diyarbakır Chief Public Prosecutor’s Office with Judges, prosecutors and law enforcement officers, most of whom were dismissed due to Fethullah Gülen Terrorist Organization (FETÖ) and all activities, meetings, workshops, symposiums, press releases and panels by Democratic Society Congress until 2014, have been made the subject of criminal proceedings. Criminal investigations and prosecutions were initiated against almost everyone who participated in the activities of Democratic Society Congress, which from time to time also participated in the activities of the ruling party representatives. The Presidents of our Bar Association and Lawyers such as politicians, journalists, trade unionists and many others, are among those who undergo criminal investigation.

In order to preserve and develop a culture of participatory democracy, respect for pluralism and to strengthen the ideal of common life and criminal cases and judgments against lawyers who accused of ‘membership of the organization’, attended Democratic Society Congress meetings due to their institutional representation, are considered as an intervention to democratic values. These investigations and criminal cases produced by the judicial authorities ‘cyclically’ violate the legal security of citizens and ultimately the rule of law. At the same time, we would like to emphasize that these and similar practices that eliminate the ‘legal predictability’ criterion related to the rule of law and the principle of legality will undermine and eliminate the belief in law and judiciary. Therefore, as emphasized by the Minister of Justice, the judiciary should give up the habit of producing ‘conjunctural investigations and cases’. In addition, in paragraph 278 of the Selahattin Demirtaş decision of Grand Chamber of European Court of Human Rights, it is stated that Democratic Society Congress is a legal organization and we would like to emphasize that the evaluation of Democratic Society Congress activities as no evidence for membership of the organization is a binding determination for national courts.

The only ‘evidence’ in the investigation and prosecution files of our colleagues who have been tried for allegedly participating in Democratic Society Congress activities is the recordings obtained from media and wiretaps obtained illegally. The majority of those who were included in the investigation were subject to the determination of communication and physical follow-up decisions without any criminal charge.
and without the registration of National Judiciary Informatics System (Uluslararası Yargı Ağ Bilgisim Sistemi 7 UYAP) as suspects. The records which was obtained, the social media posts of the people under investigation, and the information about some peaceful demonstrations and meetings which they attended were added to the file as ‘evidence’, and the investigation and prosecution were carried out through them. At the beginning of the investigation, some of our colleagues were detained and their statements were taken, some of our colleagues were also detained on these allegations for a while. A colleague of ours who was registered in Diyarbakır Bar Association was detained within the scope of Democratic Society Congress investigation, this colleague of ours was detained in the indoor sports hall of the Police Department for 28 days and coincidentally escaped injury in the bomb attack on the Police Department where they were detained. Our colleague, who was released as a result of this investigation, was detained by raiding his/her house one more time after he / she was released.

B) Unlawful Acts Determined within the Scope of the Investigation Conducted by the Şanlıurfa Chief Public Prosecutor’s Office On 12 March 2020

Within the scope of the investigation initiated by the Şanlıurfa Chief Public Prosecutor’s Office on 12 March 2020, nine colleagues registered in Diyarbakır, Şanlıurfa and Şırnak Bar Associations were warranted to search, seize and arrest them. Our colleagues have been accused of being ‘a member of a terrorist organization’ based on Article 314/ 2 of the Turkish Penal Code on the grounds of the prison visits which they made within the scope of professional activities with an anonymous witness statement. It was recorded in the Court records that ‘this anonymous witness’ who served as a basis for the operation, ‘could not be reached’ at the prosecution stage.

Our colleagues were detained and taken to the Şanlıurfa Police Department after a search at their homes and law offices in the morning. After 7 days of detention, our colleagues were released on condition of judicial control by the court. With the request of the Prosecutor’s Office and the decision of the Criminal Judge of Peace, a restriction decision was taken regarding the investigation file, pursuant to Article 15323 of the Criminal Court Law (Ceza Mahkemesi Kanunu/ CMK). Both our accused colleagues and their advocates were prohobited from examining the file and taking a copy of it.

C) Unlawful Acts Determined in Relation to the Investigation Conducted by the Diyarbakır Chief Public Prosecutor’s Office On 19 November 2020

With the request letter of the Diyarbakır Chief Public Prosecutor’s Office dated 19.11.2020 and the decision of the Diyarbakır 4th Criminal Judgeship of Peace, 32 lawyers who registered in the Diyarbakır Bar Association were warranted to search, seize and arrest them. In line with this decision, our 25 colleagues who registered to the Diyarbakır Bar Association, were detained on 20.11.2020 after searching at their homes which started at 04.00 a.m. and continued until 07.00 a.m. A search was carried out at homes of 7 colleagues who were not at their homes. Our colleagues,
who were taken to the hospital for examination, were taken to the Diyarbakir Anti-Terrorism Branch, after only a few questions were asked, without physical examination.

On 20.11.2020, 22 of the 25 lawyers, who were detained since the early hours of the morning, were released from the Police Department at around 21.30 the same day after their statements were taken at the Anti-Terror Branch of the Police Department. Two of our colleagues were released on 21.11.2020 after their statements were taken, a colleague of ours was released on 23.11.2020 by the Criminal Court of Peace on condition of judicial control.

Our colleagues have been accused of ‘being a member of a terrorist organization’ due to their participation in the activities carried out by the Diyarbakır Bar Association for years in order to ensure the security of the ballot box in elections and to protect the citizens’ right to free elections.

With the request of the Prosecutor’s Office and the decision of the Criminal Court of Peace regarding the investigation file, a restriction decision was taken in accordance with Article 153 of the Criminal Court Law. Our colleagues who have been accused, and their attorneys are prohibited from examining the file and taking a copy of the file.

During the preparation of this report, in our Bar Association’s interviews with our colleagues who were detained, they stated that even the vases of the flowers on their balconies were distributed as a part of the search also they declared that their private letters were read, some of the colleagues’ phones were confiscated and prevented from reaching their families, colleagues and the Diyarbakır Bar Association Lawyers’ Rights Center.

While the memories of computers and mobile phones had to be copied and returned during the search, the phones and computers were confiscated and still not returned to our colleagues.

Our colleague, who lives abroad and who has an arrest warrant, his/ her family’s house was raided. During the search, Law Enforcement Officers stated that they knew that our colleague was living abroad. However, they searched the house.

Our detained colleagues were taken to Diyarbakır State Hospital for forensic examination, and some of our colleagues were taken to the military hospital. In the examination which performed at Diyarbakır State Hospital, it was stated that the place where the examination was made, was the department where the patients were registered at the entrance, and that doctor who carried out the examination only asked questions and made a rude examination and it was declared that there were 4-5 Law Enforcement Officers during the examination. Fingertips of all our detained colleagues were taken.

Our colleagues were sometimes kept with 6 people in detention houses that measuring approximately 4-5 square meters. Our colleagues stated that they had difficulties in accessing clean water, given two 50- milliliter bottles of water a day, and if the water was not sufficient, they drank tap water from the sink.

Our colleagues said that the detention houses are designed for two people, there are only two beds, but mostly there are at least 4 people staying, and blankets are given to those who want to rest on the floor, our colleagues stated that the detention
houses do not have ventilation which open to the outside and our colleagues stated that the hygiene rules that should be taken due to the pandemic, were not taken and that there were many people in the same place. Two colleagues who were detained, tested positive for Covid, a few days after they were released.

During their detention, the forensic examinations of our colleagues were not conducted at the hospital, they were examined by the doctor who brought to the Police Department and the doctor examined our colleagues in the attorney consultation room.

**Our Colleagues Who Were Investigated and Prosecuted in 2020**

The institutional activities of the Diyarbakır Bar Association are systematically subject to investigation and prosecution. At least 78 investigations and criminal cases were filed against at least 69 colleagues of our Bar Association in 2020, due to their corporate and professional activities, together with the President of the Bar Association and the members of the Board of Directors who served between 2016-2020.

1. In the investigation phase
2. In the prosecution phase
3. Decision not to prosecute
4. Acquittal decision
5. Imprisonment
6. Unknowns

The stages of 78 ongoing investigations and prosecutions against at least 68 colleagues who are members of the Diyarbakır Bar Association and due to their professional activities are as follows:

- 59% are under investigation.
- 23% are under prosecution.
- 1% are decision of non-prosecutions.
- 5% are acquittal decision.
- 3% are imprisonment.
- 9% did not want to give information.
Conclusions And Determinations

1. The President of our Bar Association Tahir Elçi, was killed just after he made a statement in front of the Dört Ayaklı Minare (Four Legged Minaret) in Surçi on 28 November 2015. In the investigation initiated after the murder of Tahir Elçi, many ordinary investigative procedures were either not carried out or carried out incompletely. We would like to state that we are worried that the same attitude will also be experienced during the trial phase. In crimes involving public officials, it is observed that the judicial and administrative authorities behave arbitrarily in conducting investigations and display a reluctant attitude to carry out investigations in accordance with the law. This attitude, which corresponds exactly to ‘the policy of impunity’, was also encountered in the murder of Tahir Elçi. Diyarbakır Bar Association emphasizes the state of law and calls for the abandonment of the policy of impunity and the revealing of Tahir Elçi’s murder in all its aspects.

2. Thousands of civil servants were dismissed as a result of the state of emergency declared after the coup attempt on 15 July 2016 and the decree laws published on various dates, press media, associations, foundations and trade unions have been closed (24). This public attitude towards non-governmental organizations, which are indispensable elements of democratic order and pluralism, continues with different methods after the end of the state of emergency. Membership of our colleagues, who were members of associations that were closed down by decree laws during the state of emergency, are included in the investigation and case files as evidence within the scope of the allegation of ‘membership in a terrorist organization’.

3. The Diyarbakır Bar Association is aware of the threats and dangers against fundamental rights and freedoms in our country, especially the peaceful solution of the Kurdish issue and strives to effectively investigate these violations and to bring the perpetrators to justice and to be fairly investigated and punished. Diyarbakır Bar Association is systematically subjected to pressure, threats and judicial harassment due to this struggle for rights carried out institutionally and with the individual support and efforts of its members.

4. We would like to inform you that the ‘systematic’ investigation and prosecution of the Diyarbakır Bar Association’s statements and other institutional activities poses a serious threat to the elected President of the Bar Association and Board Members regarding freedom of expression. The broad and ambiguous expressions in Article 301 of the Turkish Penal Code create a wide scope of application outside of prosecutors and courts and create results contrary to the ‘predictability’ criteria of the crime in Article 301 of the Turkish Penal Code. Therefore, the decision which subject to objection should be removed.

5. The judicial attitude towards eliminating personal and institutional freedom of expression has increasingly turned into a tool of pressure. The ‘freedom of expression criteria’ in the case law of the European Court of Human Rights are mostly not taken into account by the courts of instance.

6. The crime of ‘membership in an organization’ regulated in Article 314 of the Turkish Penal Code is widely interpreted by the courts. The social media posts of our colleagues (citizens, of course) over the years, professional activities, membership of the association closed by a decree law, peaceful meetings and demonstrations which they attended, abstract expressions of anonymous witnesses and investigation and criminal cases are filed against them on charges
of being a member of the organization. We would like to point out that in many cases within the scope of Article 314 of the Turkish Penal Code, the same procedure is followed at the national level, and this broad interpretation is against the ‘prescribed by law’ criterion. The current implementation of Article 314 of the Turkish Penal Code at the national level poses a serious threat to freedom of expression.

7. In all other investigations conducted under the Anti Terror Law (Including investigations against lawyers), lawyers are routinely restricted from examining and taking samples under Article 153 of the Criminal Court Law. In all investigation files in which our colleagues were tried in the court, a restriction decision was taken with the request of the Prosecutor’s Office and the decision of the Criminal Judge of Peace. Restriction decisions are made with ‘cliche’ justifications by repeating the law article without any concrete justification. Objections to restriction decisions are often left unanswered or rejected on ‘cliche’ grounds. This rule, which the law provides as an exception, has become a general rule especially in crimes within the scope of the Turkish Civil Code. The suspiciousness of the evidence and the concealment of the evidence from the attorneys, seriously threatens the ‘equality of arms’, ‘freedom and security of the person’ and the ‘right to a fair trial’.

8. In operations against lawyers as well as in operations against citizens, the Criminal Judges of Peace make decisions for search, seizure and detention on abstract grounds. Decisions are made to search, seize and detain our colleagues who spend most of their profession in the courthouse. The homes of our colleagues are raided and searched, as well as their offices and their information and documents, which are part of their professional activities, are sized. Cell phones and computers, which have become an indispensable tool of our profession, are seized without copying their memories. In this way, the Professional activities of our colleagues are prevented by the judiciary itself.

The attorneyship profession, which is one of the cornerstones of the principle of judicial independence, which is an indispensable part of the rule of law, should be exercised independently, fairly and freely. It should not be forgotten that lawyers who are the guarantee of independent defense; it is the guarantee of all citizens’ access to justice, fair trial, right and justice. Attacking lawyers means attacking democratic values. Diyarbakır Bar Association and its members will continue to protect and defend fundamental rights and freedoms against all kinds of oppression and unlawfulness.
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WEBSITE LINKS/ FOOTNOTES
NAVENDA MAFÊ PARÊZERAN A BAROYA AMEDÊ

Rapora Di Der Barê Şopandin ü Lëpirsinên Berpêyi Serokê Baroya Amedê, Endamên Desteya Birêvebir ü Parêzerên Baroyê di sala 2020'i de

Rêbendana Sala 2021'ê