



## TÜRKIYE : LAWYERS AT RISK

20 June 2024

### **MOUVEMENT CONTRE LE RACISME ET POUR L'AMITIÉ ENTRE LES PEUPLES (MRAP)**

Is a French organisation born of underground resistance to Nazism and fascism, it was officially founded in 1949 on the initiative of former members of the Resistance and deportees. MRAP is member of the French National Human Rights Institution (Commission Nationale Consultative des Droits de l'Homme – CNCDH) and it enjoys UN-ECOSOC status since 1974.

The objectives of the organisation are to combat all forms of racism, promote friendship among peoples and equal rights for all human beings.

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### **KURDISH CENTRE FOR HUMAN RIGHTS (Kurd-CHR)**

Is a Swiss organisation created in 2000, whose main objective is to collect and analyse information about the violation of human rights of the Kurdish people in Türkiye, Syria, Irak and Iran and to inform the public, as well as the UN Human Rights mechanisms.

The organisation also develops cultural projects aiming to raise awareness of Kurdish culture and support the integration of the Kurdish population in Switzerland.

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## INTRODUCTION

The report documents cases where legal authorities criminalized lawyers for practicing their profession and associated them with their clients' alleged crimes without evidence. The report highlights issues that allow for interventions against human rights defenders through judicial activities, undermining the independence of the judiciary, the right to a fair trial, and the right to freedom and security.

The report concludes that targeting defence lawyers with baseless and threatening investigations and prosecutions by the authorities damages a significant mechanism that guarantees the right to a fair trial in Türkiye.

## DIYARBAKIR

On the morning of 25 April 2023<sup>1</sup>, it was reported by media outlets that approximately 3,500 police officers had gathered and an operation was ordered under the investigation conducted by the Diyarbakir Chief Public Prosecutor's Office. On the same day, video recordings were shared with media outlets, and Interior Minister Süleyman Soylu made statements on his social media account, linking the arrested individuals to the alleged practice of law on behalf of an organization.

(<https://twitter.com/suleymansoylu/status/1650854154141663232?s=20>)

It appeared that under the investigation conducted by the Diyarbakir Chief Public Prosecutor's Office, a search and detention order was issued by the Diyarbakir 3rd Criminal Court of Peace. Based on this order, searches and subsequent detentions were carried out at the homes and offices of 25 lawyers registered with various Bar Associations (3 from Mardin Bar Association, 1 from Batman Bar Association, 1 from Malatya Bar Association, 1 from Şanlıurfa Bar Association, and 19 from Diyarbakir Bar Association), as well as journalists, artists, and human rights defenders. The Freedom for Lawyers Association General Center was also searched.

The same day, home searches were conducted for 17 lawyers, and office searches were conducted for 5 lawyers, who were then detained. An appeal was immediately made against the arrest and detention order, but the request was rejected without any justification. The search warrant did not clearly state the accusations or the reasons for the decision.

The search warrant was obtained with vague and ambiguous statements, without specifying the subject of the accusation, contrary to Article 58 of the Attorneyship Law. During the home searches, the requirements of obtaining a court decision and having a Bar representative and a public prosecutor present were not met. During the office search of the 5 lawyers, Bar representatives and a public prosecutor were present.

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<sup>1</sup> See also OMCT (SOS Torture Network) statement at <https://www.omct.org/en/resources/statements/t%C3%BCrkiye-wave-of-detentions-and-arrests-against-human-rights-lawyers>

The office search of Lawyer Bünyamin Şeker was conducted at the Özgürlük İçin Hukukçular Derneği<sup>2</sup> (ÖHD) Diyarbakir Branch address, which is not used as a law office and is unrelated to the accusations. During the search, reports and statements on rights' violations prepared by ÖHD and newspapers were confiscated. At Lawyer Resul Temur's office, after the home search was completed, the search and seizure procedures in the law office were conducted under the supervision of law enforcement and a prosecutor at around 08:30. Lawyers present during the search documented that the institutional work of ÖHD had no relation to the accusation.

On 12 January 2023, the Diyarbakir 3rd Criminal Court of Peace decided to restrict access and examination of the investigation file by lawyers and defendants. On 28 April 2023, the Diyarbakir 4th Criminal Court of Peace rejected the appeal without providing any justification. On 26 April 2023, after the restriction on lawyer meetings, a meeting was held in presence with only one meeting room available for the defendants and their lawyers. On the same day, lawyers Gurbet Özbey Öner and Jiyan Sametoğlu exercised their right to remain silent during the police interrogation. They were brought to the Diyarbakir Courthouse at night and, following their statement taken by the prosecutor, were referred to the Criminal Court of Peace with a request for judicial control. The court issued a judicial control order, releasing two lawyers under the conditions of a travel ban and signing requirements.

On 26 April 2023, statements were taken from lawyers Berdan Acun, Halise Dakkalı, Pirozhan Karali, Özüm Vurgun, Fırat Taşkın, Zozan Acar, Büşra Eylül Özgültekin, Jiyan Sametoğlu, Metin Özbadem, Gurbet Özbey Öner, Serhat Hezer, Kenan Aygay, Ruşen Doğan, and Suat Mustafa Şenci. The accused lawyers exercised their right to remain silent. On 27 April 2023, statements were taken from lawyers Mehmet Öner, Resul Temur, Bünyamin Şeker, and Burhan Arta, who also exercised their right to remain silent.

After their statements were taken by the prosecutor, the accused lawyers were taken to the courthouse detention centre, where they waited for approximately 8 hours for the prosecutor's decision. During this time, the presidents of the Diyarbakir, Van and Şırnak Bar Associations, and the Deputy President of the Şanlıurfa Bar Association requested a meeting with the investigating prosecutor about the ongoing procedure and the abusive practices, but the request was denied.

In the investigation, out of the total 25 lawyers, 21 were released under judicial control with travel bans, while Özüm Vurgun, Burhan Arta, Serhan Sezer, and Şerzan Yelboğa were detained on charges of "being a member of an organization." The four lawyers were released after 28 days of detention following an appeal. The Diyarbakir Chief Public Prosecutor's Office prepared an indictment demanding up to 15 years imprisonment for Özüm Vurgun on charges of "being a member of an organization." The indictment cited Vurgun's participation in 14 press statements and involvement in the statements of detained individuals as criminal elements. Other investigations are ongoing.

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<sup>2</sup> Association of Lawyers for Freedom

## **INVESTIGATIONS AGAINST DIYARBAKIR BAR ASSOCIATION**

The Diyarbakir Chief Public Prosecutor's Office initiated an investigation on 24 April 2022, claiming that a statement entitled "Reconciliation and Confrontation Should Start from 24 April 1915," published on the Diyarbakir Bar Association's website, contained expressions exceeding the scope of criticism. The prosecution requested permission from the Ministry of Justice to open an investigation against the Bar Association's executives under Article 301 of the Turkish Penal Code, which covers the offense of openly insulting the Turkish Nation, the State of the Republic of Türkiye, the Turkish Grand National Assembly, the Government of the Republic of Türkiye, and the judicial organs of the State.

The Ministry of Justice granted permission to investigate Diyarbakir Bar Association President Nahit Eren and Board Members Atilla Berk, Diyar Rüknedin Çetedir, Hatice Demir, Mehdi Özdemir, Mehmet Erdem, Ali İsmet Girgin, Öykü Çakmak Usal, Serdar Özer, Seyit Rıza Karakaş, and Zuhul Sayılğan Işık.

The Bar executives refused to give statements to the prosecutor, arguing that the statement was within the scope of freedom of expression.

Between 2017 and 2024, eight investigations were initiated against Diyarbakir Bar Association executives under Article 301 for statements made on the anniversary of 24 April 1915. Six of these investigations turned into court cases. The courts acquitted the Bar executives in four cases on the grounds that their statements were within the scope of freedom of expression. While the cases initiated in 2021 and 2022 are still ongoing, investigations related to statements made in 2023 and 2024 are continuing.

## **VAN**

Van 5th Criminal Court of First Instance 2024/17 Main Case.

On 12 December 2022, a press statement regarding isolation, led by Van Tuhayder, was blocked due to the Van Governorship's event prohibition decision. Consequently, 47 people, including Mustafa Özoral and Ümit Dede, were detained, and a lawsuit was filed against them for violating Law No. 2911. The first hearing was held on 20 May 2024, with the next hearing scheduled for 11 October 2025.

Van Chief Public Prosecutor's Office 2024/6860 Investigation.

On 3 April 2024, following the local elections of 31 March 2024, a press statement was made in front of Van Courthouse by civil society organizations and lawyers against the decision not to issue a certificate of election to Van Metropolitan Municipality Co-Chair Abdullah Zeydan. Subsequently, as some lawyers began to march towards the city centre, they were disproportionately intervened by law enforcement. During these interventions, 9 people, including 7 lawyers, a journalist, and a passerby, were beaten and detained with reverse handcuffs. The investigation continues on charges of violating Law No. 2911 and resisting law enforcement. Ozan Başdinç and Eren Baskın were also detained on 2 April 2024, for participating in another protest march, and the investigation against them continues.

## **ANKARA**

Nine lawyers, members of ÖHD, face nine separate trials on charges of "Propaganda of an Organization," "Membership of an Organization," and "Financing of Terrorism."

## **ISTANBUL**

Lawyers Özlem Gümüştas and Sezin Uçar were detained for a year on charges of being members of an armed organization for attending the funerals of their clients and their relatives. The file also includes lawyers Gülhan Kaya and Ali Haydar Doğan.

Besides attending funerals, there is no concrete evidence in the file. Later, numerous testimonies from informant witnesses were added to the file. In 2023, a new investigation was launched against five lawyers (Özlem Gümüştas, Sezin Uçar, Kader Tunç, Mustafa Taylan Savran) based on similar witness statements. Gülhan Kaya was detained for six months; arrest warrants were issued for Sezin Uçar and Özlem Gümüştas.

This investigation was merged with another ongoing case at the Istanbul 27th High Criminal Court. The prosecutor presented their final opinion in the case, requesting punishment for all lawyers on charges of membership in and propaganda for an organization. The next hearing is scheduled for 3 July 2024.

## **TAHIR ELÇI'S TRIAL**

The final hearing of the case concerning the murder of Diyarbakir Bar Association President Tahir Elçi, who was killed while making a statement calling for an end to the conflicts in the Sur district in front of the Four-Legged Minaret, was held at the Diyarbakir 10th High Criminal Court. Significant security measures were taken around the courthouse and the courtroom before the hearing. The defendant police officers, Mesut Sevgi from Hatay, Fuat Tan from Elazığ, and Sinan Tabur from Malatya, attended the hearing via the Audio-Visual Information System (SEGBİS) with their lawyers. The prosecution requested the acquittal of the defendant police officers on the grounds that it could not be determined who shot Elçi.

## **ASRIN LAW OFFICE - İMRALI**

Lawyers from Asrin Hukuk Burosı (Asrin Law Firm) have reported severe difficulties in accessing and communicating with their clients detained at İmralı F-Type High Security Prison. According to received information, lawyers were allowed to meet their clients anytime and in any form until 2005, when the law changed and visits were restricted to one hour per week only. Lawyers then had to apply to the public prosecutor for permission for visits. In addition, the visits were to be held in the presence of a prison guard and subject to being recorded. Since July 2011, no visits by lawyers have been granted. Even after lifting the state of emergency in July 2018, all prisoners in İmralı Island Prison continued to be denied visits by their lawyers (and family).

Decisions to refuse access to lawyers were repeatedly taken by the competent enforcement judge, each time for six months, based on section 59 of the Law on the Execution of Sentences and Security Measures. Clients detained since 2015 were also not allowed to correspond with their lawyers via email or telephone. From 6 to 17 May 2019, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited İmralı Island Prison. Prior to this visit, the judicial ban on lawyers' visits was lifted, allowing Asrin lawyers to visit their client Abdullah Öcalan for the first time since July 2011. Following the visit, protests by prisoners demanding their right to visits, including widespread hunger strikes, erupted. Consequently, Asrin lawyers were able to visit their clients four more times before requests were systematically refused again from 7 August 2019, onwards. Since March 2021, clients have been kept in complete isolation and they couldn't meet neither their relatives nor they lawyers. Complaints of torture or ill-treatment have been reported.

## **CONCLUSION**

The judiciary in Türkiye protects violators of human rights and freedoms, thus ensuring their impunity. It covers up the truth about violations, silencing human rights defenders with baseless claims to deter them from advocating for rights and freedoms. This arbitrary and unlawful process undermines the rule of law, with lawyers being penalized for their legitimate professional activities.

The special status of lawyers places them in a central position as intermediaries between the public and the courts, playing a key role in maintaining public confidence in the judiciary. Attacks on lawyers are often rooted in specific legal provisions in the Turkish Penal Code and the Anti-Terrorism Law, which have been found to be excessively restrictive of fundamental rights and freedoms. Lawyers defending clients in politically sensitive cases frequently face judicial threats merely for their advocacy, violating international human rights laws.

Such judicial harassment aims to punish lawyers solely for conducting their professional activities and to sanction the right to defence.

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