



# LAWYERS EXPOSED TO JURISDICTION THROUGH THE OPERATION

*Dated 25 April 2023*

**Diyarbakir Bar Association**  
**Association of Lawyers for Freedom**  
Diyarbakir Branch

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*As Of 25 April 2023*

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## SUBJECT OF THE REPORT

As a result of the detention of 191 people, including 25 lawyers, artists and journalists, legal processes were followed by the Diyarbakır Bar Association and the Diyarbakır Branch of the Association of Lawyers for Freedom. We have identified the rights violations experienced during the investigation process, which resulted in the arrest of 4 lawyers and the release of 16 lawyers with judicial control, following the deposition and interrogation procedures.

criminalized lawyers for the practice of their profession and linked them, without proof, to the crimes against their clients. An evaluation will be made of the existing problems that allow rights defenders to intervene through judicial activities, on the basis of the independence of the judiciary, the right to a fair trial, and the right to freedom and security.

In the report, it is concluded that the targeting of the defense lawyers by the prosecution investigations and prosecutions, which are devoid of legal basis and threatening, undermines an important mechanism that guarantees the right to a fair trial in Turkey.

## AIM

With this study, ignoring the right to personal freedom and security, the right to a fair trial, the prohibition of torture and ill-treatment; It is aimed to report the violations of rights by making the necessary determinations regarding the unfair trial processes, and to make the required national and international legal applications and criminal complaints as a result of the reports created.

## EVENT

In the morning hours of April 25, 2023, it was learned that approximately 3,500 police officers were gathered from the news contents of the media and an operation order was given within the scope of the investigation carried out by the Diyarbakır Chief Public Prosecutor's Office.

On the same day, the video recordings were served to the press organizations, and the Minister of Interior Süleyman SOYLU made a statement on the social media account named twitter regarding the number of people detained within the scope of the operation and the fact that he was acting as a lawyer on behalf of the organization .

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

, 3 registered to Mardin Bar, 1 registered to Batman Bar, 1 to Malatya Bar, 1 to Şanlıurfa Bar, pursuant to the search and detention decision of Diyarbakır 3rd Criminal Court of Peace within the scope of the investigation conducted by Diyarbakır Chief Public Prosecutor's Office . A total of 25 colleagues, including 1 registered and 19 registered with the Diyarbakır Bar Association, as well as journalists, artists and rights defenders were searched in their

homes and offices and at the Headquarters of the Lawyers' Association for Freedom and subsequently detained.

As a result of the arrest warrant against 17 lawyers on 25 April 2023, a house search was made, a search was carried out in the offices of 5 lawyers and they were taken into custody . An appeal was lodged against the arrest and detention decision on 25 April 2023 through their attorneys . However, the request was rejected without giving any reason.

In the content of the search warrant, the subject of the accusation and the reason for the decision were not clearly stated. Pursuant to Article 58 of the Attorneyship Law, a search decision was taken with vague and ambiguous expressions and without including the subject of accusation.

pursuant to Article 58 of the Attorneyship Law , and the presence of the bar association representative and the public prosecutor were not fulfilled.

5 During the lawyer's office call, representatives of the bar association and the public prosecutor were present.

Attorney Bünyamin ŞEKER on trial The office search was carried out at the ÖHD Diyarbakır Branch address, which was not related to the accusation and was not used as a lawyer's office. During the search, the rights violations report and statements prepared by the ÖHD and the newspapers were seized.

After the search in the house was completed by the prosecutor in the office of one of the lawyers on trial, Resul TEMUR, the proceedings were started under the supervision of the law enforcement and prosecutor at around 08.30. The lawyers who were present during the search recorded this situation and stated that the institutional work of the ÖHD had nothing to do with the accusation.

Meanwhile, lawyer Resul Temur, who was present, stated that the search and seizure decision was in violation of the CMK procedural provisions; At the same time, the search and seizure operations were carried out in an unlawful manner, the seizure of the computer, digital goods, and digital materials related to the files belonging to the clients, which he used in his professional activities, was carried out, that all the digital materials seized were related to his professional activities, and that the entire case file, books and books were seized. and journals; He objected, stating that the journals and books were related to the files of journalists and his clients working in the field of press and broadcasting. Meanwhile, the meeting of the defense lawyers who were present in the search with Resul TEMUR was prevented due to the lack of detention, and the police were ordered to remove the lawyers from the office where the search was carried out. When the defense lawyers objected, the prosecutor demanded that they be taken out by loudly saying 'come on'. The search and seizure proceeded despite objections stating that. The Public Prosecutor decided to confiscate the trial files, documents and books.

For Resul TEMUR, the lawyer on trial, the seized documents were placed in evidence bags, sealed and not kept under protection, the necessary examination was not made by the

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Criminal Judgeship of Peace, instead of a determination regarding professional activity, the law enforcement determined whether they contained a criminal element, and they were returned on 6 May 2023 at 17.55. has been done.

The search process in the offices of the other 4 lawyers was carried out while the public prosecutor and bar association representatives were present, without a court decision, and personal belongings that were not related to the subject of the accusation were confiscated.

The arrested persons are informed of the reasons for their arrest and the allegations against them, presumably in writing and, if this is not possible, verbally, immediately, until they are brought before a judge at the latest in case of collective crimes (Any. m. 19 , f . 5; PVSK. m. 13; YGAİAY. m.). 6, f. 4). The arrested person must be informed in writing of the reason for his arrest. After the residence and office searches, the lawyers on trial reported that they were not informed about the crimes against them and their reasons.

Due to the earthquake that took place on February 6, 2023, the campus of Diyarbakır Provincial Security Directorate TEM Branch Directorate cannot be used as it is found to be heavily damaged. The lawyers, who were apprehended and detained, were kept in custody at the KOM (Smuggling and Organized Branch Directorate), Immigrant Smuggling Branch Office, Bağlar Police Headquarters, Peace Police Station and Public Security Branch Office, together with other detained persons. All of the lawyers were kept in KOM .

, the restriction of meeting with the lawyers of the detainees for 24 hours was introduced. An objection was lodged against the said decision on 25 April 2023. However, the request was rejected by the Diyarbakır 4th Criminal Court of Peace on April 28, 2023, without giving any reason, and after 24 hours, which is the implementation period of the decision regarding the restriction of vision.

Diyarbakır 3rd Criminal Court of Peace on January 12, 2023, the access and examination of the investigation file by lawyers and those on trial were prevented. The appeal application was rejected by the Diyarbakır 4th Criminal Judgeship of Peace on 28 April 2023 without giving any justification .

On April 26, 2023, after the restriction of the lawyer's view, the lawyers on trial were interviewed in physical conditions where there was only one meeting room. On the same day, Gurbet Özbey ÖNER and Jiyan , among the lawyers whose statements were taken, Lawyers named Sametoğlu exercised their right to remain silent at the law enforcement stage. They were brought to the Diyarbakır Courthouse at night. As a result of the statement taken by the prosecutor's office, they were transferred to the Criminal Judgeship of Peace with a request for judicial control. Two lawyers were released on the condition of leaving abroad and signing, after a judicial control decision was made by the judge .

On April 26, 2023, Berdan Acun, Halise Dakkalı , Pirozhan Karali , , Özüm Vurgun, Fırat Taşkın, Zozan Acar, Büşra Eylül Özgültekin , Jiyan Law enforcement statements of lawyers named Sametoğlu , Metin Özbadem , Gurbet Özbey Öner, Serhat Hezer , Kenan Aygay , Ruşen

DOĞAN, Suat Mustafa ŞENCI were taken and the lawyers on trial exercised their right to remain silent. On April 27, 2023, police statements were taken from lawyers named Mehmet Öner, Resul Temur, Bünyamin Şeker and Burhan Arta and the lawyers exercised their right to remain silent.

Lawyers named Berdan ACUN, Özüm VURGUN, Fırat TAŞKIN, Büşra Eylül ÖZGÜLTEKİN, Suat Mustafa ŞENCI, Serhat HEZER, Halise DAKALI were brought to the courthouse on April 27, 2023 at 13.00. They were held in the place where the courthouse is located, on the minus 1st floor of the Courthouse. There are a total of 6 rooms in the detention room, and the lawyers were held together with the other persons who were taken to the courthouse to take statements from the prosecutor's office.

Considering the number of people in custody, the investigation prosecutor being 1 person, a division of labor was made with the other 4 prosecutors.

The prosecution statements of Suat Mustafa ŞENCI and Büşra Eylül ÖZGÜLTEKİN , who were tried by the public prosecutor, were taken and with the decision taken by this prosecutor, Suat Mustafa ŞENCI's verdict was taken. He was referred to the Criminal Judgeship of Peace for his arrest and Büşra Eylül ÖZGÜLTEKİN's release with judicial control. Diyarbakır 5th Criminal Court of Peace decided to release both lawyers at around 18.00, with a judicial control decision in the form of a signature and a ban on leaving the country.

The prosecution statements of Bünyamin ŞEKER, Berdan ACUN, Özüm VURGUN, Fırat TAŞKIN, Burhan ARTA, Serhat HEZER, Halise DAKALI were taken by a total of 4 prosecutors. The prosecutors in question only took statements and were informed to the lawyers and their lawyers on trial that the decision would be taken by the case prosecutor . Request that Bünyamin ŞEKER, Berdan ACUN, Fırat TAŞKIN, Halise DAKALI be released by judicial control; Özüm VURGUN, Burhan ARTA and Serhat HEZER were requested to be arrested.

After the prosecution statements were taken, the prosecuted lawyers were taken to the courthouse custody. Here they waited for about 8 hours for the prosecutor's decision. Meanwhile, the request of the Diyarbakır, Van and Şırnak Bar Association President and Şanlıurfa Bar Association Vice President to meet with the investigating prosecutor regarding the current situation and the practice constituting ill-treatment was rejected.

On April 27, 2023, at approximately 23.00, the investigation proceedings of the Criminal Judgeship of Peace started. The request regarding the lawyers who requested judicial control against them was accepted, and a decision was made to ban signature and travel abroad. It was decided to arrest the lawyers who requested their arrest, on the grounds of acting as a lawyer for the persons who participated in illegal organizational actions and activities and who were in custody during the investigation phase.

On April 28, 2023, at 10:00, Pirozhan Lawyers named Karali , Zozan Acar, Metin Özbadem , Kenan Aygay , Ruşen DOĞAN, Resul TEMUR, Mehmet ÖNER were brought to the Diyarbakır Courthouse, and they were detained in the custody room located at minus 1. At around 14:00 in the afternoon, the statements of the lawyers who were tried by 4 different

prosecutors began. The prosecutors who took the statement stated that the decision regarding the lawyers on trial would be made by the investigating prosecutor.

Following the completion of the statements, the prosecutor requested the release of lawyers Zozan ACAR, Metin ÖZBADEM, Kenan AYGAY, Ruşen DOĞAN, and Resul TEMUR with a request for judicial control, with the request for the arrest of Pirozhan KARAALI and Mehmet ÖNER .

Diyarbakır Criminal Judgeships of Peace , by imposing signature and travel ban.

The unidentified witness Ü.A. Based on the statement of the witness named, whether the follow-up of the trial files is carried out with an organizational instruction, whether there are power of attorneys for the persons whose cases are followed, whether they are charged or not, whether there is a document if they are received, whether the advocacy activity is carried out based on the guidance regarding the persons prosecuted in politically-based proceedings . Questions were asked about whether it carries out activities as a shadow bar association.

One of the lawyers on trial, Gülistan ATAŞ was taken into custody on 28 April 2023, after a residence search was conducted in accordance with the detention order against her. On the same day, a police statement was taken and he was brought to the Diyarbakır Courthouse at around 12:00 on 29 April 2023. During the deposition taken by the investigating prosecutor, while he was present in the prosecutor's room, together with his three lawyers, a request was made for the lawyer who was tried by Mehdi ÖZDEMİR, to sit down with the lawyers and to have one missing chair brought from outside. This request was rejected by the prosecutor without giving any reasons. Thereupon, Gülistan ATAŞ, who was on trial with the defense lawyers, was forced to continue the statement-taking process standing up, and this situation continued for approximately 1.5 hours. As a result of the deposition, the prosecutor requested the release of lawyer Gülistan ATAŞ with a request for judicial control , and the transfer to the Criminal Judgeship of Peace was carried out. Gülistan ATAŞ, who was on trial, was decided to be released by the Criminal Judgeship of Peace , by signing and imposing a travel ban .

the detention order against lawyers Muhittin MUĞUÇ, Adile SALMAN, Şerzan YELBOĞA, Süleyman ŞAHİN, Fırat YILDIZ, Şirin ŞEN and Bahar OKTAY could not be executed. An appeal was lodged against the arrest and detention decision on 25 April 2023 through his lawyers . However, this request was rejected without giving any reason.

On 2 May 2023, the prosecuted lawyer Şirin ŞEN came to Diyarbakır Courthouse and her statement was taken by the investigating prosecutor. The Prosecutor's Office requested his release with a judicial control request. The judicial control request was rejected by the judge and it was decided to release the lawyer Şirin ŞEN, who was put on trial.

On May 4, 2023, lawyers named Muhittin MUĞUÇ Adile SALMAN, Şerzan YELBOĞA, Fırat YILDIZ and Bahar OKTAY came to Diyarbakır Courthouse and declared that they wanted to testify. As a result of the statement taken by the prosecutor of the investigation, it was requested that Muhittin MUĞUÇ Adile SALMAN, Fırat YILDIZ and Bahar OKTAY be released under judicial control. YELBOGA's arrest was requested. Bahar OKTAY's request for judicial

control was rejected by the judge ; For Muhittin MUĞUÇ Adile SALMAN, Firat YILDIZ, a judicial control decision was made in the form of an international travel ban; In terms of Şerzan YELBOGA, it was decided to arrest him.

In the content of the letter written by the Diyarbakır Chief Public Prosecutor's Office to the Diyarbakır Bar Association on May 9, 2023, the identity information of the Diyarbakır Bar Association President Nahit EREN and the lawyers on trial, Bünyamin ŞEKER and Gurbet Özbey ÖNER were requested. When the investigation file is examined, it is seen that a criminal complaint was filed by the investigation prosecutor by keeping an untrue report. In the content of the report, it was stated that the complained lawyers were speaking loudly in the courthouse corridor and their work was prevented. The lawyers in question were subjected to judicial threats in the face of a baseless and unfounded accusation.

### **Disclosures on Violation of National and International Guarantees of the Legal Profession**

Attorneyship in Turkey is defined in Article 1 of the Attorneyship Law No. 1136 as follows: “Attorney is a public service and a self-employed profession. The lawyer freely represents the independent defense, which is one of the founding elements of the judiciary.”

Although advocacy is claimed to be one of the three founding elements of the judiciary, the number of lawyers prosecuted for their professional activities and the identity and actions of their clients is increasing significantly in Turkey. Professional activities such as advocating for the social opposition and the public, following the proceedings of the alleged members of the organization and making their defenses are considered a crime, and even it is claimed that these activities are carried out by the order of the organization. Arbitrary and unlawful judgments are made within the scope of membership of an illegal organization regulated in its articles.

All of the targeted advocacy activities are a requirement of the internationally protected right to a fair trial and defense.

- 1. Articles 6 to 11 of the Universal Declaration of Human Rights regulate the right of everyone to equal protection, to be tried by fair and impartial and independent courts, to have an effective judicial remedy, to enjoy all the guarantees for defense, and to be presumed innocent until proven guilty.**
- 2. Parallel to this, the right to a fair trial and defense is regulated in Article 6 of the European Convention on Human Rights.**
- 3. of the Basic Principles on the Role of Lawyers (Havana Rules), adopted by the United**

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Nations Conference on the Prevention and Correction of Crime, convened in Havana from 27 August to 7 September 1990, everyone has access to a lawyer and judicial service, immediate access to a lawyer in custody . and the right to meet the lawyer and the suspect in complete confidentiality.

According to Article 14, lawyers, while protecting the rights of their clients and trying to achieve justice, try to promote human rights and fundamental freedoms recognized by national and international law, and act freely in accordance with the law and the accepted standards and moral rules of the legal profession.

According to Article 16, Governments are obliged to ensure that lawyers carry out all professional activities without any pressure, hindrance, harassment or corrupt interference and that they do not face any inconvenience or threat due to prosecution or administrative, economic or other sanctions for their activities.

According to Article 18, lawyers cannot be identified with their clients or their clients' cases due to the performance of their duties.

According to article 23, lawyers shall in particular participate in public debates on matters relating to the law, the justice system and the promotion and protection of human rights, and to form or belong to local, national or international organizations, without being subject to professional restrictions due to their legal activities or membership of a legal organisation. and have the right to attend their meetings.

of the Council of Europe Recommendation No. 9 on Freedoms in the Practice of the Lawyer Profession, it is regulated that all necessary measures should be taken to protect and promote the freedom in the exercise of the profession of lawyer without discrimination and without inappropriate interference from the government or the public, and to respect the principle of independence.

Morelia Charter adopted by the International Association of Lawyers on August 2, 1991 , in any case, the duty of the legal profession is to actively participate in the legal aid system, without reservations and in full independence, with all skill and effort, only considering the best interests of the litigant. should be kept in front of it.

the Turin Principles , adopted by the International Lawyers Association on October 27, 2002, lawyers have the right to practice their profession in full professional immunity without interference or restriction. It is the duty of lawyers to do everything in their power to ensure that the rights of their clients are protected and that their clients receive a fair trial by any court or other competent authority.

Mentioned as one of the first assurances of attorneyship activity; assurance that the lawyer can perform any professional activity without being pressured, hindered, harassed or unduly interfered with; business is violated in this trial.

## **DISCLAIMER OF PROCEDURE GUARANTEE**

The purpose of criminal proceedings is to reveal the material truth regarding an allegation of crime, without relying on assumptions, as a result of a trial conducted with concrete evidence in accordance with the law and in compliance with procedural safeguards. Procedural guarantees are the set of principles that must be followed in order to conduct a fair trial.

### **Law of Attorney 58-61. Explanations on the Absence of the Condition of Reason Due to the Investigation Activity Contrary to Articles**

Pursuant to Article 1 of the Attorneyship Law No. 1136; Being a public service and a free profession, advocacy is one of the founding elements of the judiciary and freely represents the independent defense, and the independent defense activity constitutes one of the guarantees of the freedom of seeking rights regulated in Article 36 of the Constitution. As a requirement of these qualifications of the legal profession, in line with the law no 1136, 58-61 of the Law no. special provisions are included.

As it is clearly stated by the Supreme Court decisions; “Since all the details are not regulated in the provisions of the Law No. 1136 that stipulate the special investigation and prosecution, this regulation should be applied in the matters with clear provisions, and the general provisions should be applied in the matters that are not regulated or referred to in the relevant articles. In other words, if there is a clear regulation in the Law No. 1136, even if the same issue is regulated contrary to the general provisions (CMK numbered 5271), the provisions of the Law No. 1136 should be applied in this regard.” (Decision of the 5th Criminal Chamber of the Court of Cassation No. 2019/2654 E. 2019/5916 K. dated 29.05.2019).

procedure stipulated for the investigation and prosecution of lawyers in Articles 58 and 59 of the Attorneyship Law is clearly and specifically regulated. On the other hand, it is unlawful that the investigation activity at hand was carried out in accordance with the general investigation procedure stipulated in CMK article 160 and the following. The unlawfulness followed in the investigation procedure renders the prosecution unlawful for this reason, among other reasons. It is revealed that such a material event is also associated with the practice of attorneyship by the Court of Cassation and thus the necessity of applying the special investigation/prosecution procedure of the Attorneyship Law;

Within the scope of the trial, it is seen that the trial continues without the permission of the investigation against the criminal charge, which includes the professional activities of attorneyship. In this context, first of all, obtaining the permission for the investigation, meanwhile, the proceedings are under Article 223/7 of the CMK . If it is decided to stop in accordance with the article, and if permission is given, the trial should continue from where it was left off. Continuing the trial without permission within the scope of the investigation carried out by the prosecutor's office shows that lawyers are exposed to judicial threats without procedural safeguards.

Constitution 138/1. As per the article, the courts are bound by the laws, and your court is subject to the Attorneyship Law 58 and 223/7 of the CMK no 5271 . Continuing the trial and making a decision without the permission of the investigation pursuant to its articles is unlawful.

### **Clarifications on Searching Lawyer's Residence and Office**

Article 130 of CMK No. 5271 and Attorneyship Law No. 1136 58-61. Articles regulated searches and seizures in the attorney's office and residence as separate and exceptional from the general provisions. The protection of the lawyer's duty of confidentiality is an important indicator of the right of defense . In Article 36 of the Attorneyship Law, it is stated that "Lawyers are prohibited from revealing the matters entrusted to them or learned due to their duties as lawyers or their duties in the Union of Turkish Bar Associations and bar associations". however, it was stated that they had the right to abstain from testifying in this case.

seizure protection measures against lawyers are also specially arranged. As a result, it has been prevented that the documents, which are in the possession of the lawyer due to his profession, related to the defense and related to his client, from being revealed in the search and seizure to be made according to the general rules, and rules in accordance with the lawyer's obligation to keep confidentiality have been introduced.

Within the scope of Article 58 of the Law on Attorneyship No. 1136, it is stated that in the case of a search for the residence and office of the lawyer within the scope of the proceedings regarding the professional activity of the lawyer, a duly court decision must be taken and the representative of the bar association and the public prosecutor will be present.

Within the scope of the file, it is seen that an unlawful search and seizure decision was taken pursuant to Articles 116 et al . of the CMK , on the suspicion of an unfounded crime, and the search was carried out in a way that the relevant persons were not present during the house search. In this context, the search process is unlawful.

of CMK numbered 5271 , it is stated that the determination of the documents confiscated showing professional relationship will be made by the Criminal Judgeship of Peace within 24 hours during the investigation phase and a decision will be made to return them immediately. Resul TEMUR, one of the lawyers on trial , was given a decision to confiscate the files of the proceedings followed in his attorney 's office. An investigation was carried out by the Diyarbakır TEM Branch Directorate, in line with the instructions of the investigating prosecutor, and it was determined that he was not the subject of an accusation, and he was extradited on 6 May 2023. Within the scope of the legal legislation, the documents to be examined by the Criminal Judgeship of Peace should be examined by the police and a decision should be made after 24 hours of examination, but 11 days

later, the decision taken by the prosecutor's office shows that the proceedings are carried out arbitrarily and unlawfully for the lawyers who were deprived of the guarantees .

**Explanations on the Obligation of Confidentiality (Article 36 of Law No. 1136)**

The lawyer, who represents the defense independent from the constituent elements of the judiciary, performs public service as a member of the judiciary. The lawyer representing the defense and providing legal assistance to the person he represents should be able to fulfill his defense duty without the intervention of the public authority or anyone else, and should not be restricted or pressured during this time.

Lawyers' confidentiality obligations; It is clearly regulated in paragraphs 1 and 2 of Article 36 of the Attorneyship Law No. 1136. In the article, it is regulated that lawyers have the obligation to keep professional secrets and their ability to testify in matters that fall within the scope of professional secrecy depends on the consent of their client. At the same time, in accordance with the 36th article of the Attorneyship Law and the 46th article of the CMK numbered 5271 ; lawyers have the right to refrain from testifying, even if the client's consent is in question.

The lawyer's obligation to keep his client's secret is valid against third parties as well as courts, prosecution offices and administrative units. Professional secret of attorneyship is information about private life that the attorney learns while performing his/her profession, which is not known by everyone, and that if disclosed, the attorney will suffer material or moral damage, and which is hidden from third parties. The place or address of the attorney, such as his/her private relations, health information, financial situation, personal information, which he learned in connection with his profession, are also included in the scope of confidentiality. The obligation to keep secrets imposed on the lawyer is directly related to the attorney's making a more effective, appropriate and comprehensive claim or defense against the judicial/administrative authorities. The protection of the professional secrecy of the lawyer is not only the result of the confidentiality of private life guaranteed by international treaties and our Constitution, but also related to the content and quality of the public service performed.

While the Supreme Court of Appeals explains the relationship between the lawyer and the person he represents in its decision; stated that the basis of this relationship is based on the principles of trust/loyalty and that the obligation to keep secrets applies to courts, prosecutors' offices and administrative units as well as third parties. The obligation to keep secrets imposed on the lawyer in the Supreme Court decision; It has also been emphasized that the attorney is directly related to making a more effective, appropriate and comprehensive claim or defense against judicial/administrative authorities. The obligation to keep secrets should be considered as a right for a lawyer to be able to perform his duties properly before both judicial and administrative units.

Within the scope of this investigation, when the questions asked to the lawyers on trial are taken into consideration, it is seen that the works carried out within the scope of the professional activity of attorneyship are the subject of accusations and the lawyer-client

relationship is tried to be explained. Pursuant to the confidentiality obligation within the scope of Article 36 of the Attorneyship Law, it is unlawful to be prosecuted in accordance with his professional activity and to be forced to disclose this situation.

## **VIOLATIONS OF RIGHTS DETECTED DURING THE INVESTIGATION PROCESS**

Fundamental rights and freedoms are interfered with in a very arbitrary way, and there is a process in which rights defenders, especially lawyers, professional organizations and non-governmental organizations are targeted by the judiciary and exposed to criminal threats.

It is observed that the interventions against lawyers, who are among the groups most affected by the repression regime restricting the civil space, have become extraordinarily harsh and widespread. This oppression regime makes lawyers a target in order to hinder the pursuit of rights, to scare and intimidate the society.

Professional activities of lawyers to defend and develop human rights are subject to accusations within the scope of the investigation; Lawyers working in rights-based non-governmental organizations are tried on the basis of their human rights advocacy activities.

### **1- Judicial Threat Practice**

The judiciary, which protects the perpetrators responsible for violations of human rights and freedoms with the armor of impunity and covers up the truth about the violations, tries to silence the rights defenders who speak out against rights violations, speak the truth and demand accountability with baseless claims and discourage the struggle for rights and freedom. A pattern of judicial proceedings targeting rights defenders and an unprecedented arbitrary and unlawful process are being run in the functioning of the criminal law system. The legal data examined show that decisions such as arrest, detention, detention without any concrete evidence, investigations and prosecutions, and sentencing/conviction decisions are made against rights defenders only because of their lawful and legitimate advocacy activities.

16 Lawyers, including Tahir Elçi, the former President of the Diyarbakır Bar Association, were similarly detained on the basis of the statements of a confessor, with their professional activities as a subject of accusation. Lawyers' offices were illegally searched and their belongings confiscated. The European Court of Human Rights, in its *ELÇİ and Others v. Turkey* judgment, affirmed that Turkey committed gross human rights violations, and clearly emphasized the following:

*“As a profession, lawyers have a central role in administering justice and maintaining the rule of law. The freedom of lawyers to practice their profession without undue hindrance is one of the essential components of a democratic society and one of the essential prerequisites for the effective implementation of the provisions of the European Convention on Human Rights, particularly the guarantees for the rights to a fair trial and personal security. Therefore, the pressure and harassment of members of the legal profession are blows to the heart of the system established by the Convention. Therefore, allegations of any form of such coercion, particularly the mass detention or detention of lawyers and their offices searched, will be subject to particularly scrutiny by the court.” (Application No : 23145/93 and 25091/94)*

The unpredictable practice of judicial authorities makes it almost impossible for rights defenders to know for which actions they may be held criminally responsible and what punishment they may face, and constitutes a serious violation of legal guarantees that prohibit interpreting the scope of existing crimes to include actions that were not previously considered crimes.

## **2- Instrumentalization of the Judiciary for Political Purposes**

It is seen that the judiciary, which has surrendered to political manipulation more than ever in recent years in Turkey, has become an extension of the political power that wants to regress the human rights struggle due to its dependent and open structure and has turned into a tool of oppression. As stated in the EU progress evaluation report of 2021, there has been a regression in democracy, rule of law, independence of the judiciary, democracy and fundamental rights in recent years, and the judiciary has lost its independence bases due to legal and de facto interventions by the executive and legislature, and is completely open to political influences. appears to be.

On April 25, 2023, about 3500 police officers gathered in the morning, the operation to be carried out within the scope of the investigation was carried out with one-handed instruction and this issue was recorded and served to the press, and the Minister of Interior Süleyman SOYLU posted on his social media platform twitter account. In the content of the tweet, accusing the lawyers of crimes and sharing the footage of the operation, and the fact that the subject of the accusation constitutes an unwarranted intervention because it only includes the professional activities of lawyers, shows the level of the political influence over the judiciary.

## **3- Explanations Regarding the Right to a Fair Trial**

### **Restriction of the investigation file**

With the decision of Diyarbakır 3rd Criminal Judgeship of Peace dated 12 January 2023, Article 153/2 of the CMK numbered 5271. Pursuant to the article, it was decided to restrict the attorney's authority to take copies by specifying the possibility of jeopardizing the purpose of the investigation.

In terms of the lawyers on trial, it has been determined that the confidentiality decision regarding the investigation file, objections to the arrest decision and requests for release are an obstacle to effective execution, and that the restriction decision violates the right to a fair trial within the scope of the principle of equality of arms and the freedom to seek justice.

### **Lawyer restraining order**

the defense counsel was arranged in CMK Art. 154 numbered 5271. In the first paragraph , “The suspect or the accused can meet with their lawyer at any time and in an environment where others cannot hear what is being said, without seeking a power of attorney. Correspondence of these persons with their counsel cannot be subject to inspection.” The form has been edited. According to this statement, the suspect can always meet with the suspect in an environment that others cannot hear without seeking a power of attorney, and the content of the correspondence cannot be examined by anyone, only whether the document was given by the lawyer or the suspect or not.

With the decision of Diyarbakır 3rd Criminal Court of Peace on April 24, 2023, lawyers who were tried by simply referring to the law without any justification were restricted for 24 hours, as of the time of their detention.

The objection application made in the morning, right after the detention on 25 April 2023, was rejected without giving any justification, 3 days later on 28 April 2023, although it was made while the restriction of view was still in effect.

The subject of the right of defense is the accused person. It is the most natural right of the accused to be represented by a lawyer by needing the help of the defense.

The restriction of the lawyer's opinion for the lawyers on trial, without any justification, constitutes a violation of the right of defense. Likewise, the appeal application regarding the termination of the restriction of opinion was concluded and rejected 2 days after the expiry of the limitation period, in violation of the right to effective application. This situation shows that arbitrary and unlawful judicial practice violates the right to a fair trial and effective application rights of our colleagues who are on trial.

### **Arbitrary and Unlawful Application of Protection Measures**

Precautionary measures, such as catching, confiscation, detention, detention, applied to preserve evidence when there is a suspicion of a crime of a certain intensity, to keep the suspect or accused ready before the competent authorities, to conduct a fair trial and, ultimately, to carry out the execution of a conviction. It refers to a legal process used for applications . All of the protection measures, by their nature, have to be implemented in accordance with certain rules, as they cause consequences that limit rights and freedoms. In any case, the measure must be based on a legal regulation, it must be an apparently justified suspicion of crime, it must be exceptional, temporary and proportionate both in the decision-making and in the implementation of the decision.

Article 18 of the European Convention on Human Rights prohibits any restriction on rights and freedoms by states for any purpose other than those for which they are stipulated in the convention. The purpose of this article is to prevent the abuse of power. Examples of violations of the Article include numerous cases in which lawyers and other human rights defenders were detained, arrested and prosecuted in bad faith on criminal charges not based on “reasonable suspicion” .

On 25.04.2023, Minister of Interior Süleyman SOYLU made a statement on the number of people detained within the scope of the operation and the fact that he acted as a lawyer on behalf of the organization, with video recordings from his social media account named twitter.

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

seen in the decisions regarding the application of protective measures against the lawyers on trial, the tweet content of the Minister of Internal Affairs and the video recordings, it is seen that the investigation is carried out with political motives . Protection measures such as apprehension, detention and detention are misused on the lawyers on trial in an unwarranted, unnecessary and disproportionate manner for other purposes. Arbitrary and unlawful detention and detention of lawyers due to their professional activities violates Article 18 of the ECHR.

### **Failure to Justify Decisions**

The right to a reasoned decision, which constitutes a fundamental element of the right to a fair trial, is an important requirement of the principle of fair trial. Judicial authorities should justify their decisions and the rationale should contain clear and understandable explanations, sufficient to enable the establishment of a cause-effect relationship as to the legal basis of the decision and the evaluation of which evidence. Thus, in a democratic society, both the defense and the public in general are provided with the opportunity to know the reasons for judicial decisions, as well as to enable those concerned to use their right to take legal action effectively. The right to a reasoned decision is also guaranteed in the Constitution and legal regulations. According to the relevant regulations, it is necessary to explain not only the claim and defense, but also the evidence on which they are based and collected by the court, which evidence is rejected or favored and accepted in terms of proof during the discussion and evaluation of the evidence, and the reasons. In the light of all these, it is obligatory for the courts to characterize the actions of the suspect, which are considered to constitute a crime, in a way that includes legal elements, and to show the applicable law article.

It is seen that all of the decisions taken regarding lawyers during the investigation process were taken for the same reasons and did not contain these elements and were not justified in a reasonable and legal way. Decisions on protection measures are unclear when viewed from an objective point of view, evaluations are unwarranted, inconsistent and lacking in

justification, there is no detailed evaluation of evidence in the decisions, and it is not understood what conclusion was reached and why.

Decisions regarding the implementation of these measures against rights defenders, which impose serious restrictions on the right to personal security and freedom, almost never contain a justification specific to the concrete case. In this context, “strong indication” is based on stereotypical abstract reasons such as “the nature and nature of the alleged crime, the upper limit of the penalties stipulated in the law for the alleged crime, the understanding that the implementation of judicial control measures will be insufficient”. These statements seem to have been repeated over and over in different decisions, and the decisions seem to be written in hard copy. Although the statements of suspects/witnesses, whose reliability is highly questionable, cannot constitute a basis for a judgment on their own, they can be the sole basis for detention decisions made about lawyers. While deciding to arrest the lawyers, no effort is made to prove concretely that the judicial control measures will be insufficient.

#### **4- Explanations Regarding the Right to Personal Freedom and Security**

In accordance with Article 19 of the 1982 Constitution, first of all, the existence of a strong suspicion of crime is required in order to deprive the suspect/defendant of his/her freedom . It has been stated that an arrest warrant may be issued based on the reasons stated in the articles.

The right to liberty and security of person is guaranteed by Article 5 of the ECHR. 5/1. The article states that the right to liberty and security of person may be restricted. Pursuant to article 5/1-c of the contract, he stated that the suspect/accused should be caught and detained in case of reasonable suspicion. However, 5/3 of the Convention. In the presence of the conditions set forth in Article 5/1-c, the person arrested/arrested must be brought before a judge immediately and has the right to be tried and released within a reasonable time.

Within the scope of the investigation file, it is seen that the suspicion of crime was determined based on the contents of the declaration of the person named Ümit A., that the persons mentioned in the statements did not verify the witness, and that there was no criminal charge against the persons for whom the lawyers acted as defense , and that the suspicion was not concrete and strong.

#### **5- Explanations on the Violation of the Prohibition of Torture, Inhuman and Inhuman Treatment:**

17/3 of the Constitution. According to the article, no one can be tortured or tortured; No one shall be subjected to a punishment or treatment incompatible with human dignity. Pursuant to Article 3 of the ECHR, it is stated that no one can be subjected to inhuman treatment, torture or ill-treatment.

In terms of the lawyers on trial, they were kept in the courthouse on 27 and 28 April 2023 for a time that cannot be considered reasonable. As a result of the statements taken by the prosecutor's office, the lawyers, who were taken to the courthouse custody and kept on hold, had to wait only for the decision of the prosecutor's office and the interrogation process of the Criminal Judgeship of Peace for approximately 6 hours on April 27, 2023 and approximately 8 hours on April 28, 2023 . The fact that the detention room is on the minus 1st floor and , considering the physical conditions and hygiene , waiting for a long time just for the sake of making a decision shows that there is ill-treatment.

While the statement of Gülistan ATAŞ, one of the lawyers on trial, was taken, her request to sit down with the defense lawyers was rejected. Accordingly, the lawyers and the prosecuted Gülistan ATAŞ stood together with the lawyer for approximately 1 hour and 30 minutes. This issue was stated by the defense lawyers in the statement of the prosecutor's office and it was stated that he had been mistreated . Although there were enough seats in the place where the statement was taken and in the courthouse corridor, this issue was ignored by the investigation prosecutor and acted in a way that would constitute ill-treatment.

## **LEGISLATION AND CLAUSES USED TO PREVENT RIGHTS ADVERTISEMENT**

The special status of lawyers places them in a central position in the administration of justice, acting as intermediaries between the people and the courts. Lawyers therefore play a key role in ensuring that the courts, whose mission is so important in a State based on the rule of law, can win the public's trust ( *Morice v. France* [GC], §§ 132-139; *Schöpfer v. Switzerland*, §§29-30; *Nikula v . Finland*, §45; *Amihalachioaie and Moldova*, §27; *Kyprianou and Cyprus* [GC], §173; *André et al. , France* , §42; *Purple and France*, §42; and *Bagirov and Azerbaijan*, §§ 78 and 99 ) . For the public to have confidence in the administration of justice, they must have confidence that the legal profession provides effective representation for them ( *Morice and France* [GC],§132; *Kyprianou and Cyprus* [GC],§175 ).

The source of attacks against lawyers is usually the Turkish Penal Code and certain legal regulations in the TMK . It has been determined many times at the national and international level that these regulations contain restrictive provisions that touch the essence of fundamental rights and freedoms.

Threats of prosecution against lawyers in politically sensitive cases simply because they defend the rights of their clients are not new and have been happening quite frequently in recent years. Many lawyers face judicial threats because they identify with their clients or because they accept the defence. In particular, lawyers defending in politically based trials are tried on

vague charges of "membership", "support" and "propaganda". These practices are in clear violation of international human rights laws. Other lawyers also face harassment because they support the development of universal human rights standards. This trend is in particular a serious obstacle to the strengthening of the rule of law.

Judicial harassment against these lawyers is largely aimed at punishing and sanctioning the right of defence, purely for carrying out their legitimate professional activities.

## **ANTI-TERRORIST LAW AND JURISDICTION PRACTICE**

Although many revisions have been made in the TMK within the scope of the harmonization process with the European Union, a judicial practice is applied in which rights defenders are put under pressure due to the fact that the problems arising from the law are not resolved and the practitioners are given a wide margin of appreciation.

### **Illegal Organization Membership Crime**

Article 314 of the TCK No. 5237- (1) Any person who establishes or manages an armed organization in order to commit the crimes in the fourth and fifth sections of this section is sentenced to imprisonment from ten to fifteen years.

(2) Those who become members of the organization defined in the first paragraph are sentenced to imprisonment from five to ten years.

(3) The other provisions regarding the crime of forming an organization with the aim of committing a crime are applied exactly in terms of this crime.

Based on the provisions of the law and the case law of the Supreme Court; organization membership crime; The member of the organization is the person who adopts the purpose of the organization, is included in the hierarchical structure of the organization and leaves his will to the will of the organization in order to be ready to fulfill the duties to be assigned in this way. Organization membership means joining the organization, being attached to the organization, and being under the command of the hierarchical power that dominates the organization. The member of the organization should establish an organic bond with the organization and participate in its activities. The organic bond is a living, transitive, active bond that keeps the perpetrator open to receiving orders and instructions and determines his hierarchical position, and is the most important element of membership.

Anti-terrorism legislation numbered 3713 does not comply with the principle of legality. The provisions in question are interpreted to punish individuals for exercising their rights protected under international conventions to which Turkey is a party. 314/1 and 314 of the Turkish penal code, the judicial authorities, the public prosecutors who conducted the

criminal investigation and accused the applicant of the crime, the peace judgeships that decided on the first and/or ongoing detention, the judges of the high criminal courts who decided to continue the detention, and finally the judges of the constitutional court. /2. It is seen that they have adopted a wide interpretation in terms of the crimes in the articles.

The 2012 United Nations (UN) Human Rights Council's Turkey report found that Turkey's anti-terror laws and practices are inconsistent with the UN International Covenant on Civil and Political Rights : The incompatibility of the article with the Convention has been described as a matter of “concern” and the following issues are listed in particular;

- Include vague and ambiguous definitions of crime
- Restrictions on the right to a fair trial,
- It is a matter of concern that human rights defenders, lawyers, journalists and even children are accused under the TMK for freely expressing their opinions and comments, particularly in the context of nonviolent discussion of the Kurdish issue. (CCPR/C/TUR/CO/1, art. 16).
- It is criticized that the prevention of civil society activities under the pretext of national security and the expression of ideas under the name of combating terrorism are considered a crime.

of **the Venice Commission on the compatibility of Articles 216**., 299, 301 and 314 of the Turkish Penal Code (TCK) with human rights law and freedom of expression, prepared as a result of the visit to Ankara, was held in Venice on 11-12 March 2016. It is known that it was accepted in a session held in Turkey and in this opinion it was recommended that the application of TPC 314 be abolished as it turns into a tool for human rights law and restriction of freedom of expression. This opinion of the Venice Commission should be accepted as a source on which the ECtHR judgments are based, and its bindingness in terms of domestic law is indisputable;

*“ .. The Venice Commission stated that, in the application of Article 314 of the Criminal Code, the domestic courts tended to decide on the basis of generally weak evidence when assessing the membership of individuals in an armed organization . (see paragraph 160 above). The present case appears to back up this observation. The range of acts attributed to the applicant in relation to serious crimes in Article 314 of the Criminal Code is quite extensive within the scope of this article, and this situation, combined with the interpretations of the domestic courts, does not provide sufficient guarantees against arbitrary interference by the domestic courts. In the Court's view, such a broad interpretation of the provisions of the penal code cannot be justified in the absence of any concrete evidence showing the link in question, while the crimes of founding, directing and being a member of a terrorist organization should involve a balancing act with the right to freedom of expression.*

In order to determine the accuracy and reliability of the statements of the person who wants to benefit from the effective repentance provisions, who were tried in the same case and gave statements as a witness, and who led to the establishment of a conviction as a result of these statements, it should be supported by other evidence. U. It is seen that there is no evidence other than the statement of the person named A., the content of the statement is inconsistent in itself and contains a vague, ambiguous and unpredictable accusation of purely legal professional activities. In accordance with this situation, it has been determined that an arrest warrant was issued for the lawyers on trial, based on unfounded and baseless criminal charges based on vague and ambiguous statements.

## **CONCLUSION AND RECOMMENDATIONS:**

The special protection and support of lawyers, who are defenders of rights, is guaranteed by international conventions and documents. Lawyers are seen as indispensable elements of a democratic process that respects human rights all over the world. They have a warning and supervisory function against violations of rights arising from both laws and practices.

criminalized , targeted, faced with administrative or judicial pressure, detained, arrested or sentenced for criticizing the decisions and actions of public authorities and related third parties/institutions, in violation of national and international law, while carrying out their legitimate activities that do not contain any criminal elements. Exposing them to judicial threats is unacceptable.

Rights defenders who continue to be detained unlawfully due to their legitimate and legal advocacy activities should be released.

being subject to investigation or prosecution, in part or in whole, for the clients they represent or for whom they act as attorneys, or for the activities they perform within the scope of their duties as a lawyer, should be abandoned .

The practice of making arbitrary and unlawful accusations against lawyers, especially in mass lawsuits, in an uncertain, ambiguous and unpredictable manner, such as membership of an illegal organization, should be ended.

