



FEBRUARY 2023

INVESTIGATION AND DETERMINATION REPORT REGARDING ALLEGED TORTURE AND ILL-TREATMENT OF VOLUNTEERS IN ADIYAMAN TO PARTICIPATE IN AID ACTIVITIES DUE TO THE EARTHQUAKE

Diyarbakir Bar Association Presidency
Association of Lawyers for Freedom Diyarbakir Branch
Human Rights Association Diyarbakir Branch



ÖZGÜRLÜK İÇİN
HUKUKÇULAR
DERNEĞİ



İNSAN HAKLARI DERNEĞİ
DIYARBAKIR ŞUBESİ
"İnsan, haklarıyla insandır"

CONTENT

ON 11/02/2023 Y.A, İBRAHİM TANRIVERDİ, RECEP TANRIVERDİ, AYDIN TANRIVERDİ AND ERHAN TANRIVERDİ WERE IN ADIYAMAN TO PARTICIPATE IN VOLUNTARY AID ACTIVITIES DUE TO THE EARTHQUAKE. IT IS AN INVESTIGATION AND DETECTION REPORT ABOUT ALLEGATIONS OF TORTURE AND ILL-TREATMENT, INTENTIONAL INJURY, ATTEMPT TO KILL INTENTIONALLY, GROSS MISCONDUCT, PLUNDER, INSULT AND THREATENING CRIMES.

01

INCIDENT

02

FORMATION OF
THE DELEGATION

02

STATEMENT OF
VICTIMS AT THE
RESULT OF
INTERVIEWS

06

OBSERVATION OF
THE DELEGATION

06

DETERMINATIONS
OF THE
DELEGATION AND
LEGAL
REGULATIONS

10

CONCLUSION AND
RECOMMENDATIONS

INCIDENT

In summary, in the news that was reflected in the press with the headline “Police tortured volunteers and threw them out of the city”; After the earthquake on February 6, many volunteers worked in the disaster area. Y.A., İbrahim TANRIVERDİ, Recep TANRIVERDİ, Aydın TANRIVERDİ and Erhan TANRIVERDİ were also in Adıyaman for aid activities. When the gendarmerie found these people suspicious, they were detained by the law enforcement. The applicants were subjected to torture and ill-treatment, with a gun to their head, they were subjected to severe insults and threats, and they were thrown out of the city naked after being poured water on them. The applicants' phones were confiscated by the law enforcement forces, but when someone who managed to hide their phone contacted their friend, lawyers and other employees at the Crisis Coordination Center went to the area. Initial treatment was provided at the Crisis Center. Then, the applicants who went to Adıyaman State Hospital could not access the treatment on the grounds that the procedure could not be performed, and therefore had to go to Besni State Hospital. Aydın TANRIVERDİ was transferred to Dicle University Hospital.

In the examination of the images reflected in the media:

- It is seen that the applicants are out of the city.
- It is seen that they are not wearing any clothes other than underwear.
- It is seen that her hair and underwear are wet.
- It is seen that there are bruises and redness in the ear and nose areas, which are thought to be caused by cold, and they tremble.
- It is understood that they were exposed to the cold for a long time.
- It is seen that there are clear traces of torture on the back, chest, legs and face areas.
- In the published images, it is seen that the applicants' names and the voluntary permission document, which bears the seal of the district governor's office, are listed where the people who will volunteer in Adıyaman are listed.

FORMATION OF THE DELEGATION

After the images and the news that the disaster relief volunteers who went to Adiyaman from Diyarbakır on 11/02/2023 were tortured, Y.A., İbrahim TANRIVERDİ, Recep TANRIVERDİ, Aydın TANRIVERDİ and Erhan TANRIVERDİ applied to Diyarbakır Bar Association and the Diyarbakır Branch of the Lawyers Association for Freedom.

On 12/02/2023, the Diyarbakır Bar Association Commission for the Monitoring and Prevention of Torture and Ill-Treatment and the Diyarbakır Branch of the Association of Lawyers for Freedom interviewed those who had been tortured and ill-treated and their story was taken.

The committee formed by the Diyarbakır Bar Association Commission for Monitoring and Prevention of Torture and Ill-Treatment, the Diyarbakır Branch of the Association of Lawyers for Freedom, the Diyarbakır Representative of the Human Rights Foundation of Turkey, and the lawyers of the Diyarbakır Branch of the Human Rights Association, with the approval of the individuals, decided to work together to follow the judicial processes regarding the incident.

STATEMENT OF VICTIMS AT THE RESULT OF INTERVIEWS

In the meeting with the applicants on 12/02/2023, the applicants told the story of the incident as stated below.

“We obtained a voluntary permit from the Çınar District Governorship, through the headman, of 34 people from the Çümçelik village of the Çınar district of Diyarbakır to go to Adiyaman voluntarily due to the earthquake. This document was obtained from Çınar District Governorship by a person named D.A. on our behalf. He sent the photo of the document to our whatsapp group. We know that the headman contacted D.A. for these transactions. In this permit, our names and vehicle information with license plates 21 ABE 975 and 72 DS 205 that will provide our departure and return are included. 'D.A' covered the fuel costs of our vehicles.

BAfter our permits were prepared, we arrived in Adiyaman with 2 trucks of aid materials (we gathered them among the villagers). During the 2-day period we stayed here, we distributed the aid materials found in the trucks to the earthquake victims there. We participated in the rescue efforts in the debris caused by the earthquake. Some of our friends from the team we went as 34 people returned on Thursday. The rest of us returned to our residences on Friday.

On 11/02/2023, 7 people (including Recep TANRIVERDİ, İbrahim TANRIVERDİ, Erhan TANRIVERDİ, Y.A., Aydın TANRIVERDİ) went to Adiyaman again with a FİORİNA brand vehicle in order to help. Here, we participated in search and rescue efforts with AFAD officers in more than one wreck. During the work, we had vests on us that showed that we were volunteers. In one of the wrecks we worked with, a corpse was found during the work with the scoop. Nobody could interfere. We took the bodies of 4-5 people and put them in body bags. We're back in the wreckage again. Then a civilian person (with glasses, a gray beard, dark hair and a black beret on his head) came to us. They took us on the grounds that there were complaints about us by the families whose relatives were in the wreckage. These civilians were not in the wreckage until then. Meanwhile, the citizens around the wreck said that we were employees. However, they took us. One of the civilians was in front of us and the other behind us. The one behind us had a pickaxe. We asked him, 'What is this pickaxe?' He said, 'I'll hit you on the head if you run away'. The civilian handed us over to the gendarme and left. Gendarmerie and police took us. "Diyarbakir is over, did you come here?" they said. They looked at our IDs and permits. They searched us. They took us to a dark tent. Someone said show us your car. He took our friend (Aydın TANRIVERDİ), who is currently in the hospital, to show the car. They brought our friend back to the tent because you were keeping us busy before we got to the vehicle. There were 4-5 gendarmes and 1 policeman in the tent. They kicked and slapped us in the tent. These were the people who were present in the tent from the very first moment. We thought they were cops. We thought we were going to be deposed. We said we are innocent. "If you are innocent, I will kiss the bottom of your feet," said one of the policemen. After the police and gendarmerie beat us, they put us in the minibus. Two of the gendarmes who beat us got on the minibus with us and came to the police station. If one of them moved until a commander reached the station, he said to their heads. They kept us in the tent for about an hour.

After beating, they put him in the vehicle and took him to the police station by minibus. This minibus was white, like a 19-seater village van. Its driver was a civilian. He spoke Zazaki. There was another civilian next to the driver. There were 2 soldiers and 1 policeman in the vehicle. They took us to the police station. So we were told as the security building. We couldn't see the sign at the entrance because our heads were tilted forward. They took him towards the exit of Adiyaman. It was around ten in the evening. They took our IDs at the police station. We were beaten with sticks, fists and brush handles on the ground floor, in the hallway at the entrance, by recording the camera with their cell phones. They were saying, 'You are an animal', 'You are not a human', 'Where are you from, what did you come to eat, you came to steal'. There were more than thirty people. The majority of the police were civilians. They would stop for about a minute and say where are you from and beat them again. About 30 people beat us at different times at the police station. Then they robbed us. We only had our underwear on. In the meantime, they took our phones, IDs, wallets, everything. There were also outsiders. In one place, I heard one of the gendarmerie officers calling the police by calling them Yunus. I remember this cop with a shaved face and a bruise on his head. If I see it again, we can diagnose it. I guess that the person who asks them where they are from is a big person with a cap and a white beard. We did not sign any documents in this building, which we know as the police building. They took us out and threw us in the van without anything on us, without allowing us to put on our clothes. One of those battered said, "These are all right, we've softened it up, let's get it out now." We were tortured here for about an hour. The minibus they took was the same as the first vehicle. They beat him until he got into the vehicle. They did not allow us to sit on the seats in the vehicle. They piled on top of each other in the vehicle aisle, stepping on us with their feet. Someone told us, "We are sons of bitches." He asked us to shout. They wouldn't let us raise our heads. We repeated it for fear that they would kill us. We didn't see who had a gun, whether they were on camera or not, because they kept it naked and with our faces bent forward. They were taking us towards Şanlıurfa road.

They beat us with batons and kicks. They beat us as we tried to explain ourselves. They drove the vehicle for 10 km. They were saying, "You are a son of a bitch, a traitor" in the vehicle. They threw us naked into an empty field. The clock was approaching 12 at night. We had nothing but our underwear. They had 5 liters of water per person with them. They said take turns. They poured water on us on a road coming out of the main road and said to crawl. Then they gave us our IDs and said to run. They threw the plastic bottles on which they poured water on us. Those who said these things were wearing formal attire. We had nothing on us. The water they poured on us turned into ice in our hair. Only one of our friends hid his phone. Thanks to him, we were saved. We called Emin TANRIVERDİ, one of our 2 friends who came out. We sent him the location. We waited by the roadside for about an hour. We were by the roadside. The plainclothes police came in a police car. We hid. We waited there for almost an hour for help to arrive. Then our friends came and got us. They dressed us in some of their own clothes. While we were at the police station, law enforcement officers took our car keys. They didn't give it back to us. They knew where our vehicle was. In the place we arrived, we saw that 4 wheels of our vehicle were blown out, the rear view mirrors were broken and our vehicle key was thrown into the fire that the citizens lit to warm up. There are images of it. The owner of the vehicle is Aydın Tanriverdi. During the day, there was 800 TL on Ibrahim, more than 1000 TL on Yusuf, 150 TL on Recep. However, they took our money from us along with our belongings and did not give it back. Erhan and Aydın had no money on them

OBSERVATION OF THE DELEGATION

- In the interview with the applicants, who were subjected to torture and ill-treatment, it was observed that due to the incident, they had physical findings in the hands, face and arms, and that ecchymoses, swelling and tenderness were still present.
- In the photographs examined during the interview with the applicants, it was observed that there were intense ecchymoses on various parts of the bodies of the applicants, who were tortured and ill-treated.
- It has been determined that the physical and mental examinations of the forensic examination reports received by the applicants to document the torture were not taken in accordance with the Istanbul Protocol, and many findings were not recorded in the forensic examination reports.
- Applicants; During the interview, they reflected many similar behaviors such as clasping their palms together and standing with their head down, which made the delegation think that they were extremely stressed and tense and were subjected to psychological torture.

DETERMINATIONS OF THE DELEGATION AND LEGAL REGULATIONS

After the images reflected in the press on 12/02/2023, the applicants' application stating that they were subjected to torture and ill-treatment, the committee met with the applicants face to face and the following conclusions were reached as a result of the investigation studies:

- As a result of the stories taken during the interviews with the applicants, the impressions of their lawyers who reached the region, the reports of assault and the consistent statements made in the interviews about the incident, a strong opinion has emerged that the applicants were subjected to torture and ill-treatment.
- Existing policies of impunity, statements of political authorities to a particular person or ethnic group regarding allegations such as theft and looting in the disaster area have led to the spread of torture and ill-treatment in the disaster area, triggering the increase in the number of images on social media that clearly violate the prohibition of torture and ill-treatment, and It encourages the perpetrators, and therefore the applicants may have been screened in this way by the law enforcement officers.

- The applicants' statements that they were constantly asked where they were from and that they were beaten repeatedly by the perpetrators made us think that the prohibition of torture and ill-treatment was violated with discriminatory motives.
- While the applicants had all the injuries and health problems caused by torture and ill-treatment, they were left 10 kilometers outside of the city on a night when the temperature was below zero, by being denied access to communication tools, getting wet and not being allowed to wear their clothes. It is thought that the applicants are faced with the danger of violation of the right to life due to the foreseeable risk of life.

For this reason, an effective judicial investigation should be carried out in terms of revealing the judicial truth and identifying the perpetrators.

Thus;

1-) As provided in Article 1 of the United Nations- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *“Torture is a crime against a person, in order to obtain a confession from him or to obtain information about a third person, to punish him for an act he or a third person has done or suspected of doing, or to intimidate or coerce himself or the third person, or for any reason based on discrimination, against a public official or official. Any act that is committed by another person acting in a capacity or with the encouragement, consent or consent of that official or person, and which causes severe physical or mental pain or suffering to the person to whom it is committed.”*

As stipulated in the **article 17/3 of the Constitution;** *“No one can be tortured or tortured; No one shall be subjected to punishment or treatment incompatible with human dignity.”*

As stipulated in **Article 3 of the European Convention on Human Rights (ECHR);** *“No one shall be subjected to torture, to inhuman or degrading punishment or treatment.”*

As stipulated in **Article 94 of the TPC:** *“A public official who commits acts against a person that is incompatible with human dignity and that will cause him to suffer bodily or spiritually, affect his perception or will power, and humiliate him, is sentenced to imprisonment from three to twelve years. ”*

2-) In the decision of the Constitutional Court dated 28/09/2016, Application No: 2014/5097; *“Everyone has the right to protect and develop their material and spiritual existence, as guaranteed in Article 17 of the Constitution. In the first paragraph of the aforementioned article, it is aimed to protect human dignity. In the third paragraph, it is stipulated that "torture" and "torture" cannot be done to anyone, and that no one can be subjected to punishment or treatment "incompatible with human dignity." (Cezmi Demir et al., App. No: 2013/293, 17/7/2014, § 80)*

“The state's obligation to respect the individual's right to protect and develop his/her material and spiritual existence primarily requires that public authorities do not interfere with this right, that is, they should not cause physical and mental harm to individuals in the manner specified in the third paragraph of the aforementioned article. This is the negative duty of the state stemming from its obligation to respect the physical and mental integrity of the individual.” (Cezmi Demir and others, § 81).” They reminded the signatory state again of its obligations arising from Article 3 of the ECHR.

3-) In the decision of the 8th Criminal Chamber of the Supreme Court, dated 05.04.2017 and numbered E. 2016/5680- K. 2017/3721; they ruled that the accused, who was the Superintendent of the Police Station and had the duty to prevent him from seeing the assault, did not intervene and participated in the crime, and that he had committed the crime of torture. As a matter of fact, the ECtHR is also in the Izci/Turkey Decision (ECHR, App. No. 42606/05, § 99, 23 July 2013) to ensure that understandable rules are adopted, that law enforcement officers are properly trained, and that their control, supervision and surveillance is ensured during demonstrations. It stated that it was extremely important to develop the system and also to conduct an effective ex post facto review after the event took place as to whether any use of force was necessary, proportionate and reasonable, especially against those who did not show strong resistance.

In its Recommendation (2000)19 of the Committee of Ministers of the Council of Europe on the Role of the Prosecutor in the Criminal Justice System, it is stated that in all circumstances, prosecutors will be subject to public prosecution for crimes committed, in particular bribery and corruption, abuse of power, gross human rights violations and other crimes stipulated in international law. It is stated that they must be in a position to investigate their officials without hindrance (para. 16). Not only should police operations be permitted by national law, they must also be adequately limited within that law, within the framework of an appropriate and effective system of safeguards against arbitrariness, overpowering and avoidable incidents.

4-) In addition, the actions of the suspects that cause the crime of torture should be considered that it also constitutes the crimes and qualified cases of “*deliberate injury*” regulated by Article 86 of the TCK, “*insult*” regulated by article 125, “*threat*” regulated by article 106, “*deprivation of liberty*” regulated by article 109, “*qualified plunder*” regulated by article 148-149 ", regulated by Article 257, “*abuse of office*” regulated by Article 257 and “*forgery of official documents*” regulated by Article 203.

In Article 86 of the TCK; “*Anyone who deliberately inflicts pain on another person's body or causes his health or perception ability to deteriorate is punished with imprisonment from one year to three years.*”

In Article 106; “*Anyone who threatens another person with the threat of an attack on his or his relative's life, physical or sexual immunity is punished with imprisonment from six months to two years. (Additional sentence: 12/5/2022-7406/6 art.) If this crime is committed against a woman, the lower limit of the sentence cannot be less than nine months. If he threatens to cause great damage to his assets or to do other harm, he is sentenced to imprisonment of up to six months or a judicial fine upon the complaint of the victim.*”

In Article 125; “*Any person who attributes a concrete act or fact that may offend another person's honor, dignity and prestige or who attacks another person's honor, honor and dignity by cursing is punished with imprisonment from three months to two years or a judicial fine.*” The points are stated.

109/1 of the TCK No. 5237. Pursuant to the article, “*Anyone who deprives a person of his/her freedom to go or stay in a place unlawfully is sentenced to imprisonment from one year to five years.*”

148-149 of the TCK. Within the scope of its Articles, “*A person who compels another person not to resist the delivery or receipt of a good by threatening or using force, by threatening an attack on his or a relative's life, physical or sexual immunity, or inflicting great damage to his or her property. punishable by imprisonment of up to one year.*”

149/1-4-8 of the TCK. Pursuant to its articles, within the scope of the crime of qualified looting, “*In case of aggravated situations due to the result of the crime of willful injury during the committing of the crime of looting, the provisions regarding the crime of willful injury are also applied.*” matter has been specified.

CONCLUSION AND RECOMMENDATIONS

- Based on the principles of the Istanbul Protocol, allegations of torture should be investigated quickly, effectively and impartially, investigated by independent committees, and every stage of the judicial proceedings should be carried out in accordance with international ethical and legal rules.
- The rights of the tortured applicants to "compensation/reimbursement" in the international conventions and documents of which Turkey is also a signatory, must be fulfilled in all its dimensions.
- An investigation should be initiated ex officio on the possibility that torture and ill-treatment, willful injury, deliberate attempt to kill people, abuse of power, plunder, insults and threats have been committed. An effective judicial investigation should be carried out in terms of revealing the material truth and identifying the perpetrators.

In this context;

1. Based primarily on the mobile phone numbers of Recep Tanrıverdi, İbrahim Tanrıverdi, Erhan Tanrıverdi, Y. A. and Aydın Tanrıverdi; Collection of base station signals and HTS records between 21:00 and 01:00 on 11.02.2023
2. On 11.02.2023 and between 23:00 and 01:00, reconnaissance and collection of all evidences close to the base station where the signal is received,
3. Collecting and conserving crime tools such as sticks, water bottles, pickaxes used in torture and conducting fingerprint research,
4. Since the water bottles spilled on the applicants in cold weather were thrown into an empty land 10 km away from the police station on the Urfa Road, especially collect of the 5lt water bottles from the said area as evidence,
5. Transfer of the suspects to another police station with the descriptions of the applicants in Adıyaman Province, due to the fact that they are the police affiliated to the 3-storey Police Station located at the exit of Urfa Road, and one expert sergeant and the other gendarmerie, and on suspicion of blackening the evidence,
6. Identification of all police and gendarmerie in Adıyaman and close to the crime scene,

- 7.** Identification of the perpetrators and identification of those who have been subjected to torture and ill-treatment,
- 8.** Collection of all radio records between 11.02.2023 and 23:00-01:00,
- 9.** The collection of images between 11.02.2023 and 23:00-01:00 if there is a security guard at the crime scene and its route,
- 10.** Determining the identity of the law enforcement officers, whose physical appearance the applicants describe, and taking their statements,
- 11.** The white-colored minibus and the Zaza-speaking driver and his friend, as stated in the applicants' declarations, should be searched on the routes indicated by the HTS and mobile phone records, and their identities were determined and their statements were taken,
- 12.** Taking statements from the superiors and all police officers at the 3-storey Police Station located at the exit of Urfa Road in Adıyaman, because they did not prevent torture and ill-treatment and did not act ex officio to prevent it, because they participated in a crime,
- 13.** Due to the fact that the torture footage was recorded via the police phones, the phones of all police officers at the police station were confiscated and examined,
- 14.** D.A. and taking the statement of the headman of Çümçelik Village of Çınar district of Diyarbakır province as a witness,
- 15.** The persons who saw torture and ill-treatment working in the wreckage area should be identified and their statements should be taken as witnesses, therefore, the location of the wreckage area was determined immediately,
- 16.** Collecting all camera records of the emergency department of Adıyaman Besni State Hospital between 12.02.2023 and between 03:00 and 05:00,
- 17.** The officer who carried out the forensic examination, Dr. İ.A., was required to take a physical and mental examination in accordance with the Istanbul Protocol in order to document the torture, his statement should be taken on charges of torture, abuse of office, and forgery of official documents since he did not include any findings in the forensic examination report.
 - The obligations brought by the national and international conventions to which Turkey is a party must be fully and completely complied with by the judiciary and administrative authorities, and the specified matters must be respected.