

AS ISTANBUL BAR ASSOCIATION, WE HAVE NEVER OBEYED, WE WILL NOT. WE WILL NOT BEND IN FRONT OF PERSECUTION. WE WILL NEVER GIVE UP OUR DEMAND FOR RULE OF LAW, JUSTICE AND DEMOCRACY.

Distinguished President and Board Members of CCBE,

Distinguished colleagues,

We are very honored and happy to appear before you due to this meaningful award you have granted to us. I have believed all throughout my life that the most valuable heritage for one's children is an honorable life. Within this framework, I would like to extend my wholehearted thanks to you on behalf of my Bar Association, on my own behalf and on behalf of my Board of Directors for adding an honorable and meaningful value to both my and my colleagues' heritage and I greet you with respect.

Being one of the people shaping my life, a colleague of ours having graduated from Athens Law School, an important Greek author Nikos Kazantzakis in his *Letters to Greco* says: "If you have two paths in front of you, do not take the straight and easy one. Climb up the hill and follow in the bloody footsteps...". This is my world view. This is a wise statement for the struggle for some values, being ready to pay any price if necessary, suffering, an honorable resistance rather than remaining silent in the face of oppression and persecution, being ready to die if necessary. This is the philosophy of following in the footsteps of the great people, who have endeavored hard for the existence of some universal values, which are currently the protectors of all of us, by resisting, suffering and paying prices. This is the philosophy of respect to these people from different races, nations, religions, sects and professions.

Struggle for the rule of law, state governed by the rule of law, freedom and democracy has not been completed yet. We have two paths in front of us, as Kazantzakis said: To remain silent and to surrender in the face of attacks towards these values. Or showing respect to these people who introduced these values to us, to protect these values by resisting, in other words, to follow in their bloody footsteps... We choose the second: Resisting injustice, unlawfulness and persecution. However, it is not to seem as if we resist, it is to resist at all costs. It is evident that this is not the easy path to take. But this is the honorable and valuable one. This is the requirement of being a jurist or a lawyer. We, as lawyers, inherently have the historical and universal heritage that does not yield, obey, remain silent, but fight for justice.

It is due to this very reason, because we have taken the second path, we have not surrendered to oppressions, unlawfulness and persecution, we are here before you as defendants and suspects. I have served in every part law. I practiced as a lawyer. I sat on the lectern as a military prosecutor. I currently work as a faculty in the field of criminal law at a university. I have never been a defendant and suspect before, but

how happy am I that it also happened! As you can see, I do not only teach criminal law, but also put it into practice as a defendant!

However, as you know, it is a source of honor to be judged and to be a defendant in some periods of history. But to judge becomes a heavy burden. Is there anyone who knows or remembers the names of those who judged Socrates? Who were the judges in Dreyfus case, do you know or remember? Therefore, essentially, we are not the ones who are tried and we will not be. As we always say, the judiciary will try itself and will deliver a judgment about itself. We are also wondering about this judgment... The actual judgment about us will be delivered by the public opinion and history. We did not commit any crime, our trial is totally political and it aims at intimidation. It is the political power that initiated the proceedings against us and it is the political power that is making the judgement.

I also take this opportunity to express that we are in love with the Republic. We are bonded with Atatürk, the founder of our Republic, at heart. We love our country and we have no problems with our state. Therefore, our opinion and purpose is not to complain about our country or our state. We complain about the practices and unlawfulness of the current political power and we are struggling against this.

Today, Turkey has the outlook of a country in which principles of law and those of a state governed by the rule of law and the constitution are disregarded, the judiciary has been taken over and besieged, rights and freedoms have been restricted to a level that they can no longer be exercised, there are interventions to private lives, state has been regulated according to religious principles by destroying secularism, any type of opposition is suppressed by unlawful methods, freedom of expression is recognized only for those who support the political power. All sections of the society have their own shares from this. No one could enjoy legal security anymore.

As known, if law and judiciary head for justice and justness, this will be the ultimate guarantee of the freedoms and individuals. However, a dependent, pre-structured and systematized judiciary, which heads for persecution, oppression and dissolution will turn out to be the arch-enemy of the rights and freedoms, and the biggest weapon of the political powers. This is the situation Turkey has currently been undergoing. It is too sad that converted into a battlefield of power struggles and put under the supervision of the political power, the judiciary is now the biggest threat for rights and freedoms and has become the nightmare of the society. If the judiciary, which shall be the safeguard of rights and freedoms, if it has been converted to act as such, and it has become a mechanism to discharge, there is no graver danger for a society except for this. An independent and impartial judiciary to which no one or no power can tell "to do what is necessary" is the spine of a society. Therefore, Turkey currently suffers from paraplegia. If unlawfulness is carried out or legitimized via the judiciary, *per se*, this cannot be named as democracy.

Being seated up on the platform does not mean to be superior. The authorities granted to the prosecutors and judges under law are not blank checks that could be filled in and used in a desired manner. Fair trial is the right of the individuals whereas it is the duty of judges. We, as lawyers, are the safeguard of this and we follow up with this.

It is understood that it is now the turn of defense, lawyers and bar associations as their organized powers, being among the rare powers which have managed to survive after the judiciary was taken under full control and redesigned to fit for purpose. Besides the physical assaults, our colleagues are seen as formal elements in the litigation made especially in the courts with special authority, their defense is restricted, they are expelled from the courtrooms, they are exposed to unlawful and disproportionate sanctions, and there is an attack towards the honor of our profession. These attacks have gained physical dimension in the courtrooms. Furthermore, professional activities of the lawyers are questioned and defined as offense, and there is an effort for defamation of the lawyers putting their name next to those of terrorist organizations via intense media propaganda, there is attempt to criminalize our profession.

However, I would like to remind once again that; We are lawyers, we do not worship to power, we do not surrender in front of persecution and oppression, we will not be obedient to any political power. We will break down if necessary, but we will never bend. We will not hold our heads below the guillotine, dare it and take us there if you can. We do not take orders from anyone, we do not become slaves or equerry of anyone. We do not take our power from the political power, we derive it from law, rights and the people. Our pole star is justice and we always look for it. We do not become satellite to anyone.

We are not merchants, we are no businessmen. We seek for rights, we are the warriors of justice. Accept it or not, we are the constituent of the judiciary. We are the ones making trial a fair trial with our existence. If you expel us from the courtrooms, you would expel the justice as a whole. Any attack towards us would be a direct attack towards the people and their freedom to claim rights because we are the representatives of the people during trials.

We are lawyers. Our chest is our shield, no one or no power can suppress rights and freedoms by hiding themselves behind the laws, panels/lecterns without overriding us. We shall not let this be, we have never let it be and never and ever we will. We will not let you infringe the rights of our citizens. We will not let you infringe law, we will not let you choke rights and freedoms. We will carry on addressing torture, ill-treatment, irregularities and we will go on defending anyone's right to fair trial. We are ready to pay any price to this end. Everyone should be sure that we will exercise any of our democratic-legitimate rights against all sorts of attacks. Any attack towards our profession, our colleagues and the honor of our profession will get the reaction it deserves.

This statement of Mustafa Kemal Atatürk is our guiding principle: “There must be justice in the world, and the justice shall always supersede the power”.

We are lawyers, we are a bar association. We are Istanbul Bar Association. You cannot intimidate and suppress us with unlawful and groundless criminal complaints and cases, imprisonments threats, raids and detentions realized in the small hours, abstract accusations, threats to discharge from duty, with your courts with special authority. We are the warriors of justice, who set off in order not to surrender and not to get exhausted. We will not leave the courtrooms bending our heads, as desired by some, but we rather walk tall with our heads up. We are Istanbul Bar Association. We derive our strength from our glorious history of 135 years, our soul of resistance, our resistance against any type of coup or dictatorship, both military and civilian, and against sovereigns, imperialism, from universal law, from our rightfulness and from our people. Unlawful and groundless criminal complaints and cases cannot intimidate us.

We are lawyers. Although we have ideological differences and ideological struggles as a natural result of these differences, we go blind ideologically, we unite, we are unified in the face of attacks towards law, right to fair trial, or profession and the honor of our profession.

We take this opportunity to thank CCBE once again for this meaningful award. I would like to indicate that we accept this award not for us, but for Istanbul Bar Association and its members as well as all of our colleagues and the bar associations who struggle for law in Turkey.

We did what is required by our position and duty, we fulfilled the requirement of law and we will go on doing it at all costs. We are determined to give this struggle till the very end at all costs. We will go on walking on our path even if we are left alone and supportless.

After all, the support of lawyers and bar association worldwide as well as the support of CCBE, which is a crucial and respectable legal organization, is extremely important and invaluable for us. Therefore, having you with us during our second hearing on January 7, 2014 would add up to our strength. Within this framework, I think that these unlawful attacks should be covered in the progress reports by the European Union and European Parliament Resolution. I believe that CCBE could play an important role in this.

As one of our poets say, “At the very last point in history, resisters always say the last word”.

Last word has not been uttered yet...

Long live the rule of law. Long live the lawyers as the warriors of justice. And long live the bar associations as the organized power of lawyers. How happy is one who resists.

With my wholehearted regards,

Brussels, 28.11.2013

Atty. Assoc. Prof. Ümit KOCASAKAL

President of Istanbul Bar Association