

Dr. Abdullah Gül
President of Turkey
Cumhurbaşkanlığı Genel Sekreterliği
06689 Çankaya
Ankara

Brussels, 21 November 2012

Re: Concerns over alleged judicial malpractice in the “Sledgehammer case”

Your Excellency,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which, through the national Bars and Law Societies of the Member States of the European Union and the European Economic Area, represents more than 1 million European lawyers. In addition to membership from EU bars, it has also observer representatives from a further eleven European countries' bars.

The CCBE places great emphasis on respect for human rights and the rule of law. The CCBE is particularly concerned by the situation of human rights defenders in Europe and in the world.

The CCBE writes to express its concerns over the alleged judicial malpractice of the 10th Criminal Court of Istanbul against the fundamental principles of rule of law and right to a fair trial during proceedings which have become known as the “Sledgehammer case”.

On 19 July 2012, the CCBE and numerous national Bars in Europe received a letter from 43 Turkish defence lawyers denouncing violations of the right of defence and the right to a fair trial in the “Sledgehammer case”. The lawyers claimed that they had been subject to significant pressure that prevented them from practising their professional duties freely during the trial process. Their mobile phones and computers with cameras were seized, access to internet in the court room was denied, microphones were placed on the ceiling of the courtroom to record all private conversations and barriers were put up to interrupt communication with their clients.

The 43 lawyers reported also that one of their colleagues, who had insisted on having permission to raise an argument during a hearing, was finally dismissed from the courtroom. Following that incident, the defence lawyers jointly signed and submitted a letter declaring that the performance of their legal function within the justice system had become impossible. Subsequently, according to our information, charges have been brought against lawyers who signed the above-mentioned declaration, but also against the President and Board members of the Istanbul Bar Association, on account of their criticism of the situation.

The CCBE is deeply alarmed by these complaints and the manner in which the Court apparently acted towards the defence lawyers during these proceedings, since it left the accused with no due process and without independent legal representation.

In this context, the CCBE wishes to draw to your attention the following Articles of the United Nations Basic Principles on the Role of Lawyers (1990):

Article 16 states that:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be

threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Furthermore, Article 23 states that:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession.

Finally, according to Principle I of the Recommendation Rec(2000)21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer:

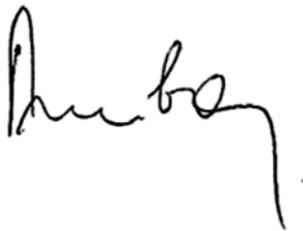
1. All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.

4. Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards.

6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship [...].

In view of the above, the CCBE urges you to take effective steps to secure the fulfilment of Turkey's obligations under the above-mentioned internationally recognised principles, and to ensure that rules of procedure to be applied by courts guarantee in all circumstances that lawyers in Turkey are able to conduct their professional duties without hindrance, harassment, improper interference or fear of prosecution.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Prunbauer-Glaser', with a long vertical stroke extending downwards from the end of the signature.

Marcella PRUNBAUER-GLASER

CCBE President