

THE EUROPEAN CRIMINAL BAR ASSOCIATION

RESOLUTION CONCERNING THE PROTECTION OF LAWYERS IN THE EXERCISE OF THEIR PROFESSIONAL DUTIES

Whereas, on the one hand

1 By Article 3 of its Constitution the European Criminal Bar Association (ECBA) is obliged “(...) to promote the administration of justice and human rights under the rule of law within the member states of the Council of Europe and among the peoples of the world”;

2. Principle 16 of the United Nations Basic Principles on the Role of Lawyers (Basic Principles) provides 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, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”;

3. Principle 18 of the Basic Principles provides that lawyers “shall not be identified with their clients or their clients' causes as a result of discharging their functions”;

4. Principle 20 of the Basic Principles provides that lawyers “shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority”;

5. Principle 17 of the Basic Principles provides that where “the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”;

6. The Tenth Recital of the Basic Principles declares, inter alia that “professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest”;

7. The Tenth Recital of the Basic Principles also declares that these principles “ should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general (...)”

8. The Basic Principles, being indispensable for political democracy and the rule of law fall under the protection of the European Convention on Human Rights and Fundamental Freedoms (ECHR) in general and in particular of Recital 4 and Article 6 thereof;

9. Turkey is a signatory of the ECHR;

Whereas, on the other hand

10. It is stated at § 65 of the Report of the UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, following her mission to Turkey that the “increase in the number of cases of arrest, detention and prosecution under terrorism-related charges of lawyers defending individuals accused of terrorism-related crimes is of particular concern (...); it is far from uncommon for investigations to be initiated against lawyers on grounds of an alleged link to, or the provision of support for, their clients’ alleged criminal activities”, which “(...) regrettably seems to be increasingly the case in Turkey”;

11. The statements made by the Special Rapporteur are corroborated by reliable testimony from the European Lawyers for Democracy and World Human Rights, the International Association of Democratic Lawyers, the CCBE, the International Bar Association, the German Federal Bar and from the Istanbul Bar Association itself all of which detail the mass arrests and detention of lawyers in Turkey defending persons accused of acts of terrorism, whose clients are thereby denied a fair trial;

12. According Article 76 of the Law governing the profession of advocate in Turkey the duty of the Turkish bars is to defend the supremacy of law and human rights; according to Article 95 of the same law the duty of the board of every bar is to defend the profession against encroachments on the rights particular to the profession; according to Article 97 of the same law the duty of the president of every the bar is to defend the dictates of law and professional rules (...) in matters involving the honour and independence of the profession;

13. Defence counsel in the so-called Sledgehammer case (Balyoz Harekâti) pending before the 10th Criminal Court with special authority in Istanbul refused to appear because they were prevented by the court from discharging their duty to defend the accused and consequently the President and Board of the Istanbul Bar Association formally requested the court orally and in writing to conduct the trial according to law and fair trial principles, pursuant to Articles 76, 95 and 97 of the above law;

14. As a result of this intervention the President and the Board of the Istanbul Bar Association have been indicted on criminal charges of attempting to influence judges unlawfully pursuant to Article 277 of the Criminal Code;

15. By acting as required by the Law governing the legal profession, the President and the Council of the Istanbul Bar Association cannot have been acting unlawfully within the meaning of Article 277 of the Criminal Code;

16. The ECBA is gravely concerned that the trial against the President and Council of the Istanbul Bar Association is going ahead on 17 May 2013,

17. To demonstrate this concern the ECBA will be present during the public trial in Istanbul as European observer in terms of the rule of law and the Basic Principles.

Now therefore the ECBA resolves urgently and respectfully to call upon Turkey:

- i) To comply with the UN Basic Principles on the Role of Lawyers in respect of all cases tried within its jurisdiction, including cases being tried under its terrorism laws;
- ii) To release all lawyers detained in breach of the UN Basic Principles on the Role of Lawyers and to permit them to return to their professional duties;
- iii) To ensure the personal and professional safety of all lawyers including those defending persons accused of anti-state activities;
- iv) To desist from the prosecution of lawyers' representatives or associations who, in compliance with the UN Basic Principles on the Role of Lawyers, as required by Articles 76, 95 and 97 of the Law governing the profession of advocate and who in good faith seek to protect their members from persecution and improper restrictions and infringements;

So resolved and entered in the records of the European Criminal Bar Association at London on 13 May 2013 and sent to the President of Turkey and the Turkish Justice Minister on 13 May 2013.



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