

Lawyers Under Attack in Turkey *A Commentary by Richard Pena*

The president and board members of the Istanbul Bar Association are going on trial Jan. 7, 2014. They are facing two to four years in prison, as well as disbarment. They are being charged for the actions of asking a judge, in open court, to permit a fair trial for defendants in a high profile case. The technical charge is “attempting to influence a member of the judiciary.”

Many are concerned that this prosecution is one in a long line of attempts by the government to intimidate lawyers in Turkey who are defending the rule of law. Below are the facts as I found them during my recent visit to Turkey as the leader of a legal delegation. But to be fair, my delegation of 11 U.S. lawyers and guests found Turkey to be beautiful country with thoughtful, caring people. However, we also found a country divided between citizens who understood that the government was embarking on a consolidation of power and on a systematic campaign to intimidate, silence, and imprison any opposition, and citizens who were content with the government subsidies they were receiving. We also found it to be a democratic and stable country that is a member of NATO, is rich in natural resources, and by geography is in one of the most sensitive regions of the world. There is no question that Turkey is a country that is powerful in its region, just as there is no question that Turkey is at a crossroads. On the one hand is a secular, democratic state. On the other is the slide toward a religious state with the suppression of freedoms, individual and human rights, and the rule of law.

During our eight days in Turkey, we went to law schools, bar associations, and a courthouse. We met and discussed rule of law issues with numerous lawyers, law school professors, students, bar association officers who are also lawyers, and other non-legal people. Again and again we were told the same thing. Lawyers in Turkey are being arrested and detained because they are fulfilling their duty to their clients and to the justice system.

The charges and upcoming trial of the president and the board of directors of the Istanbul Bar Association are a good example. The Istanbul Bar Association is a voluntary bar of approximately 30,000 lawyers and one of the largest bar associations in the world. Those of us who are members of one or more bar associations can sympathize somewhat with their plight. I did when I sat in the same room with them and listened to their story. At first it was difficult to comprehend their struggle. My first reaction was to doubt that this suppression was occurring. But after listening to similar accounts by all the people we spoke with, the truth became evident.

There is disturbing systematic and ongoing activity by the government to criminalize lawyers in Turkey. This takes the form of detention, prosecution, and imprisonment of lawyers who dare to stand up for the rights of their clients, fair trials, and the rule of law. We were told that the government could bring charges against anyone. The government is concerned with opposition and categorizes activity it views as a threat broadly. We were told that some lawyers who represent defendants charged with organized crime are themselves being charged with organized crime. They cannot continue their representation of the defendant. The lawyers are also put in jail.

To make matters worse, in Turkey a defendant is guilty until proven innocent. For example, evidence is not needed to charge a person. In many cases, first there is the arrest; the gathering of the evidence to substantiate the charges comes later. Many cases that are deemed political are diverted into “special” courts where there is no limit on how long it takes to go to trial. Presumably, it can be up to 30 years. Additionally, one can be held in jail up to 10 years without charges being filed. Some that are charged are found innocent and released after serving 5 to 10 years in prison. Others are released from prisons after lengthy stays because of lack of evidence. In these “special” courts there is no bail. Bail is used in regular courts.

We were told that the courts are used to prosecute lawyers, journalists, and others who disagree with the prime minister. Lawyers are being arrested and detained while their confidential client files and other property is being seized. These cases are pending before the “special” courts, which have jurisdiction over terrorism proceedings. There is no question that lawyers are being targeted. There is deep concern about the arrest of at least 51 lawyers pursuant to raids simultaneously carried out throughout Turkey. These actions came after threats by prosecutors and courts against the many lawyers defending 152 individuals in a mass trial. The CCBE, a European lawyers group, protested these arrests and threats against lawyers in Turkey. (Prunbauer-Glaser, 2012) Nine of 15 lawyers arrested on Jan. 18, 2013, for representing unpopular clients remained in custody this summer without charges or access to legal justification for their arrests. Police raided the offices of a progressive lawyers organization and 12 officers or members were violently detained under terrorism related allegations. (Cohn, 2013)

The European Association of Lawyers for Democracy & World Human Rights (ELDH) issued a letter to the minister of justice, on May 13, 2013, stating that it was, “...Gravely concerned about the prosecution of the President of the Istanbul Bar Association as well as his board members ... The prosecution was initiated after the President of the Istanbul Bar Association and the Board asked for a fair trial, compliance with the procedural rules and respect towards the attorneys from the court ... known as Sledgehammer case.” ELDH continues that the bar association was exercising the rights and authority granted to it by Articles 76, 95, and 97 of the Turkish Attorneyship Code and that the presiding judge gave permission for the statement to be made by the bar association representatives and did not find the statement improper in any way. The letter continues, “ELDH is extremely concerned

that this prosecution is another attempt to intimidate lawyers in Turkey who fulfill their professional duties." The letter from the lawyers association to the minister of justice continues that not only are thousands of trade unionist, media workers, politicians, and their lawyers in danger but also the Istanbul Bar Association with its more than 29,000 members. It continues, "For the functioning of the legal system it is essential that lawyers and bar associations can fulfill their professional and legal duties without interference and without intimidation." (Schmidt & ELDH, 2013)

As for the officers of the Istanbul Bar Association that are going on trial on Jan. 7, 2014, they understand that this is part of a larger government crackdown on lawyers. They understand that they had a duty under their Attorney Code to speak out, demanding fair trials for defendants in the Sledgehammer case, which is politically charged with many defendants. The defense lawyers for the accused went to the bar association seeking assistance in allowing them to fulfill their duties as defense lawyers as the prosecution was rejecting all their requests including not allowing them to interview witnesses. The bar association, through its officers, appeared before the presiding judge and pled for a fair trial. As the president and board members of the Istanbul Bar Association were leaving the courtroom, the many defendants all stood up to show respect.

The next day the president and board members that were in the courtroom were all charged. I spoke with some of those who are going to trial and are facing two to four years in prison and disbarment for asking for a fair trial for defendants. They know what they are facing but feel they had no choice but to stand up for their duty as outlined in their Attorney Code. The impression I got is that all members of their bar association, other bar associations, and the people of Turkey support the Istanbul Bar Association because everyone understands the right to a fair trial. These brave lawyers that will be going on trial in early January 2014 were, of course, concerned but determined. I told them that there were similarities between them and the lawyers in Pakistan and China who are also prosecuted for standing up for the rule of law. I told them that lawyers throughout the world support fellow lawyers who do not give in to intimidation but instead bravely stand up for fair trials and rule of law principles. They were comforted that they were not alone in defending justice.

The Istanbul Bar Association has submitted a Petition to the Presidency of Istanbul 10th High Criminal Court, in Docket No.: 2010/283 E, which reads in part that they are asking the court to, "abolish the practices breaching the right to fair trial and equality..." The bar has also written that, "CASES AND PRESSURES CANNOT INTIMIDATE US! WE SHALL GO ON, WITH DETERMINATION, PROTECTING RULE OF LAW, STATE GOVERNED BY THE RULE OF LAW, DEFENSE, HONOR OUR PROFESSION AND VALUES OF REPUBLIC!" (Kocasakal, 2012)

The Istanbul Bar Association in its General Assembly of March 17, 2013, states that this is, "... an extremely special period which will be memorized as 'exceptional' in Turkish Legal History." It continues, "Today our colleagues are hindered from practicing their duties in the courts. ... 38 of our colleagues are arrested due to their

professional activities ... as lawyers, as of the current situation, we deem it necessary to scream out the requirement for justice for the period we breath in. ... We Are Lawyers!" It says that they will never give up the demands of human rights, equality, and freedom for, " We Are Lawyers." (Istanbul Bar Association, 2013)

But this is not the end of the story. This past summer thousands of protesters gathered peacefully at Gezi Park in Istanbul. Those that were protesting came from all walks of life, many were students. These people came together to protest the government's policies ranging from economic, agricultural, mass detentions, attacks on freedom of the press, and human rights abuses. After about three weeks, the violence began. (Cohn, 2013) The reports in the media and the stories of those I spoke with tell of frightening scenes, of police tear gas, beatings, and people being dragged out of the park. I spoke with one law student who was peacefully assembled with her 70-year-old father when the tear gas started. She describes sheer panic as she and her father were unable to breath and were thrown to the ground. She feared that she and her father would be trampled or beaten. The police contend that the protesters threw Molotov cocktails at police. The protesters contend these were undercover police officers that were acting as provocateurs. Accounts report of lawyers issuing a press statement objecting to the mass detentions of their clients. Fifty of these lawyers were arrested and dragged on the ground by riot police. Many lawyers were injured before they were released 10 hours later, and nearly three thousand lawyers gathered at the courthouse to protest the detentions. We were told that demonstrations for democracy occurred throughout the provinces.

The feeling is that the government is singling out lawyers, journalists, doctors, teachers, and other professionals. To be fair, I did not speak with a government official but the many, credible professionals I did speak with all tell similar stories. I was told that, "The courts are used to prosecute lawyers, journalists, and others that disagree with the prime minister." We were told that the media are being co-opted by the government and that many journalists and lawyers are in jail. There is a high level of paranoia, we were told, among lawyers and professionals as they feel their emails are being read and websites tracked.

But there is some humor by students and other protesters. During the heat of this summer's protests, the government-run television station was showing a program that featured penguins. There was no mention of the protests in Istanbul and throughout the country. The students have now taken to putting penguins on their backpacks. You can also see stairs to buildings painted in rainbow colors, which was done by the protesters.

We were told that many protesters, especially students, were and are being arrested and being charged as terrorists. Some are charged because they were carrying gas masks and swim goggles as protection from the tear gas. One story for which lawyers can be proud involves one mass detention of students. We were told that lawyers had gathered at the courthouse and as one student at a time was being charged, the question was asked if the student had a lawyer. A lawyer would stand

and announce that he or she represented the student protester. It went on and on. When I heard this story from a group of lawyers, I thought I would never look at pro bono the same again.

Respected lawyers told us that protesters ran into buildings to escape from the tear gas. One bar association building was tear gassed because some protesters had run into it. Tear gas, which is described as suffocating and burning, affected all lawyers and staff in the building. We were told that doctors who attended the protesters were arrested. There is a story of a nurse who took an emergency 911 call and sent an ambulance to an injured protester being arrested. I was somewhat taken aback when told that architects who designed buildings that the protesters ran into are also being charged. Hospitals also came under attack by police tear gas and water cannons when a protester sought shelter there. (Traynor & Letsch, 2013)

Upon learning that the government classifies the protesters as “terrorists,” I began to understand why Turkey has one-third of the world’s suspected terrorists. Of course, classifying someone as a terrorist diverts this person into the “special” courts, which lack due process and fair trial protections. Turkey currently has approximately 10,000 people suspected of “terrorism” per the 2010 U.S. Department of State report on Turkey.

Another disturbing issue is the crackdown on military officers. As background, Turkey’s military elite and their allies have long seen themselves as the protectors of Turkey’s secular constitution. They are suspicious of the current government’s religious intentions and fear the movement toward establishment of an Islamic republic. (BBC News, 2013) The prime minister is fearful of a military coup. The end result is that hundreds of military have been detained, arrested, and convicted of charges ranging from involvement in an alleged coup plot to an alleged Internet campaign to discredit the government.

Lawyers, journalists, academics, and politicians have also been charged with plotting to overthrow the prime minister. In total, 17 people have been given life sentences. The Istanbul Bar Association is demanding a fair trial for defendants in what is dubbed “Operation Sledgehammer,” which has hundreds of defendants with the government alleging a conspiracy to create conditions for a military takeover.

There is much we do not know and were not privy to in the time we had in Turkey. We *do* know that the indicators are that the government is becoming increasingly authoritarian and anyone who dares to question its oppression is deemed an enemy of the state and is dealt with harshly. A crackdown appears to be on for professionals, with lawyers having a bull’s-eye target on them individually and as a profession. We also know that lawyers throughout the country are standing up for the rights of those charged in order that they receive a fair trial and are courageously attempting to defend the rule of law. For this they are being arrested, thrown in jail, and tried.

My purpose in writing this article is to bring you the story of what lawyers, and others, are enduring in today's Turkey. I have purposely not used names of individuals or groups unless it was necessary for the article. The dangers are very real and this was a request made by a lawyer in Turkey who spoke to me. The lawyers who are defendants in the upcoming trial do not want to go to jail. They do not want to be disbarred. Are they sad? Definitely. Are they scared? Probably. Are they courageous? Absolutely. They told me that if needed, they were willing to pay any price to uphold the principles of a fair trial. They have said in their writings the reason is because "We Are Lawyers."

Notes

1. Prunbauer-Glaser, Marcella. (2012). Concerns regarding the current situation of lawyers in Turkey. Retrieved from The Council of Bars and Law Societies of Europe. http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/HR_letter_Turkey_ban1_1334567684.pdf.
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5. Istanbul Bar Association. (2013). Final Declaration of Extraordinary General Assembly of Istanbul Bar Association: President and Board Members on Duty.
6. Cohn, Marjorie. (2013). The Turkish Spring: Lawyers Rounded Up. Retrieved from Truth-Out.org. <http://www.truth-out.org/opinion/item/16951-the-turkish-spring/>.
7. Traynor, Ian & Letsch, Constanze. (2013). Turkey divided more than ever by Erdoğan's Gezi Park crackdown. Retrieved from The Guardian. <http://www.theguardian.com/world/2013/jun/20/turkey-divided-erdogan-protests-crackdown>.
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