***What sets apart the Sledgehammer case (Balyoz Harekâtı)? What did the defence lawyers face?***

Before the 2011 referendum, the judiciary supervised the government under constitutional law. The Prime Minister had openly expressed that the judiciary was impeding the government. A defamation campaign was launched against the judiciary and the Supreme Board of Judges and Prosecutors (HSYK) via the media, which is under government control. Likewise, a constitutional amendment package was drafted - and passed - to change the structure of the HSYK and the Constitutional Court, to place them under government control. The media reported that the change was for democracy. The result is that the judiciary has been a tool used to discharge and intimidate the opposition, under the *façade* of real trials, which then generates a sense of lawful legitimacy.

In the *Sledgehammer* case (Balyoz), prosecutors alleged that military generals attempted to destabilize Turkey by staging a coup, in an effort to overthrow the Turkish government. The 10th High Criminal Court hearing the case was a Court with Special Authority. Three days before the case began, the presiding judge was replaced. From the beginning, the court did not seem independent in the eyes of defendants or the defence counsel: there was no professional respect towards the defence nor was the constituents’ right to a fair trial taken into consideration. The presiding judge argued with the defence counsel and defendants, did not give enough time for the defence to present their case, and did not allow a discussion of evidence. Defence counsel speaking on the floor were removed from the courtroom under disciplinary sanctions and prohibited from attending hearings. Lawyers were physically attacked by police before court. Private conversations among lawyers, and between lawyers and their clients, were monitored and recorded. Barriers between lawyers and clients prevented contact and the exchange of documents. Insistent statements of falsified evidence were disregarded without any research into the issue. According to our Bar Association, who attended the hearings as an observer, most of the prosecution’s demands were accepted, while only a few defence counsel demands were accepted.

***How did you justify the decision not to appoint defence lawyers in this case?***

Our decision not to appoint lawyers concerns the legal process. When our lawyers could no longer fulfil their duty due to the restrictions determined by the court, they left the courtroom in order to protect the honour of the profession. As proceedings require mandatory defence counsel, the Court asked the Bar Association to appoint lawyers. However, in order for the Bar Association to appoint lawyers within the mandatory defence counsel mechanism, it is a must that the defendants shall not already have a defence counsel selected by themselves. The Bar Association, in a letter of reply to the Court, explained this legal situation. The Court insisted that lawyers were liable to attend the hearings and noted that criminal action would be taken against the President and Board Members of the Bar Association. The Ministry of Justice gave permission for an investigation and a criminal investigation was initiated.

Despite this, a Supreme Court precedent ruled that such a Bar Association appointment is not possible if there is no information or documents in the file concerning the discharge or resignation of the lawyer chosen by the defendant. In this incident, non-attendance of lawyers at the hearing was not arbitrary, but legitimate and honourable self-defence of the protection of the clients’ rights and the profession. The relevant Supreme Court decision was annexed to our letter of reply and the Court’s demand rejected, as there was no discharge or resignation. Furthermore, we highlighted ‘reciprocity in relations with the judiciary’ (Attorneys’ Code of Conduct, Article 15) in response to the Court indicating

imminent criminal action. We noted that the court is not authorized to force the Bar Association to act contrary to legislation and laws. Such action constitutes a blackmail offense under Article 107 of Turkish Criminal Code.

***What support have you received in Turkey? Is there an agenda behind the prosecution? What was the reaction (if any) to the Bar’s public statement on its fight against tyranny and for the independence of the judiciary?***

We have received huge support from bar associations and lawyers in Turkey. We have received similar support from non-governmental organizations and the public. There was a high level of national and international participation in our extraordinary general assembly held as a response to the attempts to discharge our Board of Directors. During this assembly, we banded together despite ideological differences.

What lies beneath these incriminations and the proceedings and investigations initiated contrary to law and legislation is an intimidation towards bar associations and lawyers in general. The Istanbul Bar Association steadfastly resists this intimidation. After the takeover of the judiciary in Turkey, the only remaining powers that survive to defend the law are lawyers—and bar associations as the lawyers’ organized power. As such, the Istanbul Bar Association has been targeted by the political power. The result of our public stance to not act in compliance with unlawful proceedings, has been for the government to initiate a case against us and to demand imprisonment of up to 4 years.

Unfortunately, certain officials within our Bar Association, known for their affinity with the government, demanded that the prosecutor’s office and the Ministry of Justice remove us from office. However, they must be aware that our presumption of innocence is valid. This was an attempted coup against the legitimately elected Board of Directors. It is worrying that the Ministry of Justice acted as a party to this issue.

***How do you see the case against you and the bar council from now on?***

It requires political, not legal, foresight to see how this case will develop. The case and the investigations are not lawful, but political—and aimed at intimidation. The determinant here is not the law, but the political powers that currently have influence on the judiciary. These types of cases and investigations, imprisonment threats, and attempts of removal from office cannot hinder our duty and determination to defend the law, the rule of law, the independence of the judiciary, the honour of our profession, and the rights and freedoms of our citizens. We are the warriors of justice. None of our problems are more valuable and important than our struggle for the rule of law, democracy, rights and freedoms. We are ready to pay any price in order to defend these values.

Our attitude and determination, and support from the Turkish people, from Europe and the world, are important. The support of lawyers and bar associations as well as the support of the CCBE is extremely important and invaluable for us. Having lawyers with us during our second hearing on January 7, 2014 would add to our strength. These unlawful attacks should be covered by progress reports of the European Union and European Parliament Resolutions, in which the CCBE could play an important role.

As one of our poets said, “At the very last point in history, resisters say the last word”. The last word has not yet been uttered.