daha iyi yargı

COMMENTS and SUGGESTIONS
on the
JUDICIAL REFORM STRATEGY 2019 DOCUMENT

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Proclamation

As the members of the Better Justice Association, we hereby declare and undertake that:

We shall work to improve our Judicial System, which is one of the essential pillars of democracy, and is a keystone to lead our country to a better future, as well as to its functioning;

During our activities to that effect, we shall make every effort to embrace all stakeholders in the Judicial System, including related official and private bodies, non-governmental organizations, judges, prosecutors, advocates, other judicial officers, and academicians and representatives from the business world, to have them meet on common ground, as well as to generate innovative, progressive and reformative solutions, through multi-voice thinking and harmonizing different ideas, and to put these theoretical solutions into practice;

We shall contribute to the Constitution and law-making activities by bringing forward proposals aimed to reform the Judicial System;

Within the scope of our activities:

1. We shall abide by the fundamental and universal judicial principles;
2. We shall safeguard our country's greatest interests;
3. The Rule of Law, Honesty, Transparency and Accountability are our highest priority values;
4. We shall take a stand against misconduct in judicial proceedings, and shall make every effort towards honesty, as well as full and frank disclosure of all facts of disputes and evidence;
5. We shall take a conciliatory position in every kind of public dispute;
6. We shall make concerted efforts to ensure that our Association embraces all segments of society;
7. We shall be impartial and treat equally all public, private institutions and organizations, non-governmental organizations and political parties;
8. We fully support the ten fundamental principles addressing matters of Human Rights, Environment, Fight against Corruption and Labour Law, which constitute the basis for the UN Global Compact initiative.

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Better Justice Association History

The Better Justice Association is a politically neutral non-governmental think tank, founded to identify the problems of the Turkish judicial system, to design solutions grounded in certain core principles, including the Rule of Law, independent judiciary, transparency and accountability of legal institutions, and to raise informed social debate with the goal to reach social consensus on proposed solutions that are necessary for their sustainable implementation.

Our Association was first established under the name of Better Justice Movement, comprised of willing, determined, and socially aware lawyers, academicians, and opinion leaders, under the leadership of Attorney Mehmet Gün, in order to design applicable solutions for the problems of Turkish judicial system, and to raise awareness as to the importance of the actualization of the principle of “Full and Frank Disclosure.”

The Movement then acquired the status of association, taking the name of Better Justice Association with the will and purpose to enhance the scope of the works planned, as well as to institutionalize, in November, 2014.

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Publications and Activities of Better Justice Association

Since 2012, the Better Justice Association has carried out and supported the studies and activities, listed below:

Identification and Recommendations to Improve the Judiciary System

In August, 2012, a statement comprised of 195 comprehensive articles in 35 pages, consisting of specific recommendations for improvement to the judiciary system, was published. This was sent to the Ministry of Justice and higher judicial authorities on the occasion of the opening of the judicial year, and was enthusiastically accepted by the Ministry of Justice and Presidency of the Turkish General National Assembly.

Quality and Aspects of Quality in Judicial Services

The main purpose of this Report, which was written by our President Attorney, Mehmet Gün, during his chairmanship of the Judicial Reform Working Group of the TUSIAD (Turkish Industrialists' and Businessmen's Association) after 4 years of work, was to establish and agree on a clear objective for judicial reform. The Report was accepted as a TUSIAD document and announced in 2014, fully endorsed by the Better Justice Association.

In 2016, the Report was shared with the public, including leading business representatives, via meetings conducted in Samsun, Bursa, Izmir, Mersin and Şanlıurfa, and received high accolades.

Full and Frank Disclosure Principle to Change the Understanding of Dispute Resolution

Regarding dispute resolution and the disclosure of facts and evidence that are the subject of disputes, through this report, the principle of “Full and Frank Disclosure,” a proposition of a judicial mechanism that provides sincere, complete and correct disclosure and submission of material truth and evidence was proposed. It was advocated to introduce mechanisms and processes to prevent misconduct and complication of proceedings, and to impose serious sanctions for non-compliance, thus building confidence in claims, defense, and the courts, as well as providing quality and prompt judicial services.

This creative and innovative solution was proposed to improve the unbalanced distribution of workload throughout the judicial process, to distribute more proportional duties and responsibilities to the parties and their attorneys, and to achieve higher success and raise efficiency, utilizing fewer judges in the judiciary system.

In 2017, this proposal was shared with the Izmir and Bursa Bar Associations and the public and, in particular, with attorneys and academics. It was presented to the Minister of Justice and the Ministry's top bureaucrats, and was warmly welcomed. It was also shared with the public at a conference held with Transparency International – Turkey, in Istanbul. Activities concerning the Honesty Rule in Purpose 8 of the released “Judicial Reform Strategy 2019” document was taken from this presentation of our Association.

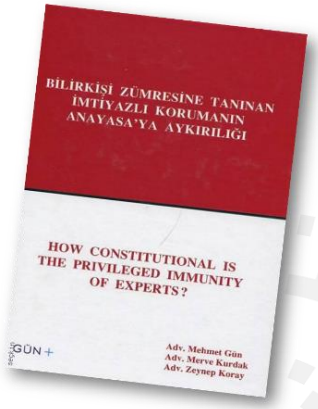
Opinions and Recommendations on the Expert Draft Law

As a result of the intensive collaboration of its members over approximately three months, the Better Justice Association established a comprehensive opinion report and submitted it to the relevant authorities. The Association has put forward practical suggestions on many issues, such as the identification and commissioning of experts, as well as the supervision of their rendered opinions.

The Report, with its compilation of the criticisms, problems of the institution, and also recommendations that would help to eliminate disruptions, delays, and complaints of the judiciary system rooted from the institution of expert opinions, did not receive the deserved acceptance.

Our Association insists that the disruptions rooted from the expert opinion regulation, of which our Association had warned even prior to the enactment of the current law, should be taken into consideration and should cease, and that the judiciary should only retain the records of the experts.

How Constitutional is the Privileged Immunity of Experts?



Under the leadership of our President Attorney, Mehmet Gun, the study that was prepared with Intern Attorney, Merve Kurdak and Intern Attorney, Zeynep Koray, under the title, “How Constitutional is the Privileged Immunity of Experts?” is a comprehensive and reformist study, which questions, criticizes, and gives caution to the place of the “Experts” group within the Turkish Judicial System.

The study positions the experts group as an institution that responds solely to questions, clarifies technical issues, and is fully accountable to the court and the parties.

High Institution of Justice for Judicial Independence

With the proposal of the High Institution of Justice for Judicial Independence, an institutional structure with the goal to ensure accountability in the judiciary is proposed. Through this structure, a model will emerge in which all stakeholders will have a say in the judicial superstructure, in which policy formulation and implementation will be separated, in which political considerations will be dampened before being submitted to the operational stage of judicial services, and judicial application paths will be aligned with the decisions of all judicial institutions, in accordance with the fundamental provisions of the Constitution.

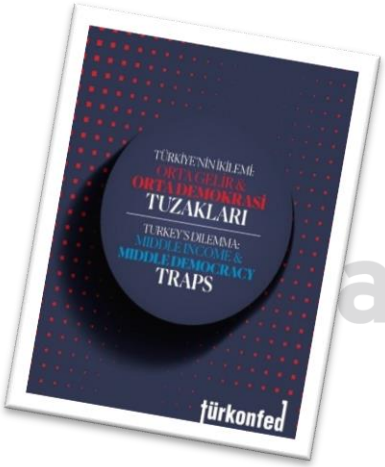
The proposal was presented to lawyers and civil society representatives in November, 2017, within the scope of the Turkish Economic and Social Studies Foundation (TESEV) Democratization Discussions; a joint workshop was held with TESEV, and the proposal was welcomed by the public.

Turkey's Middle Democracy Issues: Judiciary, Accountability, Fair Representation, and The Way to Solve Them

"Turkey's Middle Democracy Issues, Judiciary, Accountability, Fair Representation and The Way to Solve Them," which was published in May, 2018, revealed the need for Turkey to have more democratic institutions. The "inured" problems of Turkey that cause the country to be looked at as having a "mid-level of democracy," and their root causes, were considered in the book, solutions were recommended from a legal perspective, and a comprehensive reform recommendation was presented.

Recommendations were made through three main channels: (i) A better "Judiciary;" (ii) "Accountability" in all institutions, particularly in the judiciary; and (iii) "Justice in Representation" for all institutions with electoral mechanisms.

Turkey's Dilemma: Middle Income Trap and Mid-Level Democracy



The executive summary of the book entitled "Turkey's Middle Democracy Issues, Judiciary, Accountability, Fair Representation and The Way to Solve Them," was formed as a policy recommendation, separate from the book. This policy recommendation was also adopted by our close stakeholder, the Turkish Enterprise and Business Confederation (TURKONFED). With this policy recommendation, paths for Turkey to break out of the perceived middle path of democracy are suggested.

The policy recommendation was shared with leading business representatives, academics, and opinion leaders at meetings held in 10 cities between 2017-2019.

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Preface

Please find, below, the assessments, comments and suggestions of Daha İyi Yargı Derneği (Better Justice Association) concerning the "Judicial Reform Strategy 2019" document, released to the public on May 30, 2019, by President Recep Tayyip Erdoğan.

The reforms intended for the further development of businesses and organisations can attain the desired goals, only if consensus is reached by the public concerning the direction, goals, and methods of the reform. However, to reach a public consensus on vital and critical issues is an uphill battle, and will take time.

Judicial reform is a very complicated and complex issue through which it is rather difficult to reach public consensus. Public consensus may not be reached on a certain document, but the thinkers who structure debates on a specific document may, in fact, read when a consensus has occurred and demonstrate this to the public. A clash of ideas results in improvement and development by the opposing parties. Although improvements may be achieved in a short period of time, through wisdom and good communication, absent of these essential tools, debates on public issues can take years to come to fruition for the public. For this reason, nations develop at speeds different from each other, and some of them, even though they are developing, remain behind other nations.

To ensure that our country scores a faster pace of development and improvement in our judicial system, our Association seeks to exhibit a positive and constructive approach in the assessment and criticism of the Judicial Reform Strategy 2019 document, and to formulate constructive suggestions of any gaps detected therein. We seek not to refrain from expressing criticisms and opposition, but also not to employ any injurious or harmful words, or insinuations, while expressing comments and suggestions. We also believe that all criticisms of the 2019 Strategy document should be heard, and that the positive and constructive aspects therein should be acknowledged and taken into consideration.

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Executive Summary

President Recep Tayyip Erdoğan shared the “Judicial Reform Strategy 2019” document, which updates the previous 2009 and 2015 strategies, with the public on 30 May 2019, thus exhibiting that this strategy has been accepted and committed to at the highest level of executive power.

To honour non-derogatory criticisms and constructive suggestions is the key to establish a consensus and achieve success in our judicial reform, which is urgently needed.

The “Judicial Reform Strategy 2019” document was prepared in tandem with the basic objective of becoming an EU member state, as well as the 2009 and 2015 strategies. It accurately states and stresses that “It has relied upon some certain social demands,” and “Has arisen from the background of social demands.” Judicial reform is not a formality required to be fulfilled in order to be accepted into the EU, but is an urgent and vital need of society, in practice; however, as it was made public on May 30th, it created the impression of having been prepared in response to the EU progress report that was made public the day prior to its release, i.e. on 29 May 2019.

Appreciated aspects of the “Judicial Reform Strategy 2019” document is that a wider stakeholder population has been included in its scope in comparison to the previous versions, and that intensive efforts have been expended in order to determine and set down the demands and concerns of the citizens.

Within a rather short period of time of approximately one year, starting from the convening of the Justice Council on 1 October 2018, and ending on 30 May 2019, when the strategy was made public, the self-sacrificing efforts of the officials from the Ministry of Justice who organised and held many workshops, conferences, meetings and negotiations that required intense planning and coordination efforts, and which have resulted in this document are, alone, independently and separately from the document itself, indeed worthy of commendation.

The most important statement made in the strategy highlights the close relationship between the Rule of Law and the economy, stating that an efficient legal system will further improve the investment environment, as well. This statement is, however, inadequate. The Rule of Law and economy are not separate disciplines, because one can liken the Rule of Law to the nerves and veins of the economy; as the law functions more fluidly in a country, the higher the economic successes that will be realised.

On the Methodology

Firstly, whereas it is required to design and define the **"target state"** to be achieved, to determine the **"current state,"** and to describe how the gap between the two will be closed, the "Judicial Reform Strategy 2019" document has suffered from the lack of scientific methodology, much the same as the previous 2009 and 2015 strategies, most probably because it is an update of the previous strategy documents. However, scientific methodology plays a critical and vital role by securing some critical success factors, such as **determination of a problem and its root cause,** and **identification and inclusion of all stakeholders**, preventing lack of planning, and the presumable failures thereof.

On the Stakeholders and Inclusion

It is noteworthy that a wide range of stakeholders has been identified during the preparation of the "Judicial Reform Strategy 2019" document, but it is unclear whether the relevant stakeholders are adequately represented, because despite the fact that the Better Justice Association has declared its readiness and willingness to work, voluntarily, it was not even invited to the meeting that was held by the 30 non-governmental organisations working in the field of law.

In this respect, it is worthy of mention that the **35 page report,** covering a total of **195 determinations and suggestions and,** as declared by our Association's founders in August of 2012, is rich enough to be the basis for comprehensive judicial reform. The Better Justice Association's proposal, entitled "**Full and Frank Disclosure,"** is arguably the most critical proposal for our legal system, and has been adopted in Target 8.2(a); its proposal to form a **"Supreme Justice Board"** has been generally accepted by the public.

Furthermore, **Mehmet Gün,** the Chairman of the Association, with contributions by Association members, authored the widely acknowledged book, **"Turkey's Middle Democracy Issues and the Solution: Judiciary, Accountability and Justice in Representation,"** addresses the various **structural problems** of the Turkish judiciary, along with analyses of **root causes** thereof, and offers comprehensive reforms proposals, including the evolution and transformation of organisations, as well as reforms to existing procedures and processes.

Participation of only the supporters of a single opinion, or by only one interest group, is by no means adequate for the success in the creation of a strategy but, to the contrary, it guarantees failure thereof.

On Determination and Analyses of Problems, and Diagnosis of Root Causes

The determination of complaints, the formulation of suggestions for solutions, and the making of plans for their resolution, are neither adequate, nor healthy, to address underlying problems. For a real solution, the existing problems should be precisely determined, and the root causes thereof should be thoroughly investigated.

For example, while each person or entity endeavours to increase the volume of its works, why does the Judiciary lament over a heavy workload, and what are the underlying problems and **the root causes thereof? The "heavy workload" problem can never be resolved unless the above questions are answered, accurately;** however, and to the contrary, methodologies are adopted that actually lead to the denial of the raison d'être (reason for being) of the Judiciary, and these problems are ignored. As observed in the said document, the functions of the Judiciary are transferred to various alternative organisations and to the executive power and administrations; thus, leaving aside any resolution, the problems become even more complicated than before.

Many problems, such as the heavy workload of the Judiciary, loss of prestige and reputability of legal professions, and unemployment of lawyers, despite the fact that there are less lawyers per capita as compared to developed countries, as well as degeneration of the society as a whole are, in fact, rooted in the severe failures to implement the honesty rule set down in Article 29 of the Civil Procedures Code, as formulated in Objective 8, which has been adopted from the presentation of the Better Justice Association, as we have learned with great appreciation.

However, and despite this fact, the strategy document, lacking the root cause analysis of problems, has not yet fully established the relationship between the existing complaints and these problems.

The same picture is valid also for the dream of concluding lawsuits “in a single court hearing,” as detailed in Objective 4, Objective 7 and Target 4.8. The root cause of these problems is the single and common failure: **“Failure in the implementation of the honesty rule in trials!”**

So long as the parties and their counsel are encouraged to ensure the full, accurate and frank disclosure of any and all material facts and evidence concerning the subject of dispute, all of the problems mentioned, hereinabove, will automatically have been eliminated. It will then be possible to hear and conclude lawsuits in a single court hearing, and to hear and adjudicate on disputes, as deserved.

The deeper this issue is further analysed, it will be observed that while lying is considered to be perjury in United Kingdom courts and in many other countries, our scholars have legitimised lying to the courts in our country as a defence right; this, in turn, has led to the aforementioned problems. As a result, civil proceedings fail to establish the material facts, and citizens and their counsel have become accomplished in twisting the truth and in inventing falsehoods to tell the court. This, in turn, causes deterioration and degeneration of our society, while depriving the Turkish courts of modern trial techniques.

How may the act of lying to the court be admitted as a right of defence in Turkey? Whereas being convicted of the crime of perjury in the United Kingdom is not considered to be a human rights violation, how could the same rules be perceived as a violation of human rights, in Turkey, and for which reasons?

Likewise, the “strange” concept of “**prohibition of amendment of claim and defence”** that is a gross mutation of the actual “**prohibition of amending the nature of lawsuit**” into a “freak” mechanism has, in practice, rendered ineffective the trial processes and procedures in the Turkish courts, transforming trials into **“wild west” -like performances.**

A Brief Assessment on Objectives and Activities:

Objective 1: Protection and Development of Rights and Freedoms

For the sake of the survival of our state, and for the peace and security of our society, it is every person's sincere wish that terrorism and terrorist organisations are fought effectively, and resolutely.

However, the fight against terrorism does not justify unjust, unfair, and unreasonable restrictions on the rights and freedoms of innocent people. Judicial authorities, through their rulings and verdicts, draw the sensitive and fine line between these two sides.

On the other hand, the statement of, *"The document should at the same time be read and interpreted as a guide for law enforcers and practitioners,"* in Article 9, on Page 7 may, as well, be easily perceived as if this document is issuing instructions or an order to the "*independent and impartial"* judicial authorities.

The awareness training and performance scoring said to be implemented in the future will, alone, be insufficient to prevent the breaches of rights caused by the judiciary.

Appeals of the decisions of criminal judges of peace should be decided, not by another criminal judge of peace, but by more senior and specialised courts, and the responsibility in this respect should not be limited to a group of criminal judges of peace, but distributed throughout the entire judicial community. This action will help to eliminate the negative prejudices that the public holds against the criminal judges of peace.

The modus operandi by **the public prosecutors** regarding their exercise of powers **should be regulated to the fullest extent,** and **all of their actions and decisions that may limit or restrict** the rights and freedoms of people, **even to the slightest degree,** should be made **subject to a decision of the courts,** which should be established and authorised specifically for this purpose. A public prosecutor should be assigned to each police station and, thus, individual rights and freedoms should receive the maximum protection.

Objective 2: Improving Independence, Impartiality and Transparency of the Judiciary

Firstly, we would like to state that the executive power's desire to rehabilitate the judiciary, which should indeed be capable of auditing and balancing itself, and be fully independent for the sake of rule of law, is self-contradictory and peculiar.

As a result of this self-contradiction, the document does not address the criticism against the election of members of the Council of Judges and Prosecutors by the Executive, nor against the non-functionality of the Council of Judges and Prosecutors without the Ministry of Justice and his Undersecretary which is, in fact, considered as "backward movement" in the EU Progress Report, but the document defends the existing problematic structure. Our Association is strongly against this view and the stance of the document.

The document states that judicial power also establishes and maintains balance among powers in the system of the separation of powers, and stresses the importance of the principle of the separation of powers, strengthened [by transition to the Presidential Executive system], and adds that the Constitutional function of the judiciary is vital for a strong and complete democracy. However, the document fails to explain how a balance should be established between the National Assembly and the President, and what the roles and functions of the judiciary are to be in relation therewith, nor does it make reference to the objectives or activities of the judiciary as to protection of the ule (supremacy) of law against the President or other public servants and officers.

By stating *"There are many fundamental instruments that can be employed for assuring the independence of the judiciary. All of these instruments indeed serve the aim to strengthen judges and prosecutors"* and, *"Targets are formulated for professional strengthening of judges and prosecutors,"* the strategy entirely derogates from the most important aspect of the independence of the judiciary, i.e. **"the judiciary's inability to function independently,"** thus seeing the independence of the judiciary only as a matter of the strengthening of judges' and prosecutors' independence, thereby promising only very limited progress.

It is easily discerned that this strategy **is not built on a healthy ideal of "independence of the judiciary."**

By stating that a right of opposition will be recognised in various disciplinary decisions of the Council of Judges and Prosecutors, the strategy does not acknowledge, as an adverse historical development, the **"closure of judicial review and auditing channels with respect to the decisions of the Council of Judges and Prosecutors"** which was, indeed, cancelled by the Constitutional Court in 1977, *"due to being in contradiction with the republican state, rule of law and equality before the principles of law,"* but has since been re-introduced by the military junta into law, in 1981, and into the Constitution, in 1982.

The suggested action as to granting geographical security **"to some judges,"** as cited in Target 2.1(a), will not be meaningful, and will not provide any institutional assurance, unless judicial remedies are provided against the appointment decisions of the Council of Judges and Prosecutors.

Amongst the activities listed in Target 2.1, it states that the **interviews** conducted to identify candidates for the profession of judges and prosecutors will be held by **a committee that is based on a wide foundation of representation. However, the public complains not about the interview, itself, but about the manner in which it is conducted, and the process followed.**

The reason for this is that interviews and the resulting decisions do not meet and satisfy the transparency and accountability criteria that are the fundamental conditions of democratic governance.

Where the judiciary is not transparent and is unaccountable, and where there are no judicial reviews or legal remedies against the decisions made by the Council of Judges and Prosecutors concerning judicial organs or components, or to the decisions made by judicial organs concerning their own colleagues, i.e. judicial review is not available in any respect, discussion of ethics in the judiciary remains unconvincing. For instance, is it not unusual that the Court of Cassation espouses transparency and accountability on the one hand while, on the other hand, it keeps in strict confidence the reports of its investigating judges, relying upon its own internal regulations; this, itself, has no merit in law.

Objective 3: Improving the Quality and Quantity of Human Resources

Firstly, we would like to emphasise that it is impossible to improve and enhance the qualities of human resources without enhancing the overall level of quality in trials - in other words, the quality of judicial services and processes. Qualified human resources may be acquired only for and through high-quality job functions.

It should be noted that in the absence of effective and productive works, quantitative increases in human resources will augment the chaos and complications, weighing down efficiency and productivity, and will aggravate the problems.

Given the fact that we are suffering from “brain drain” (our young minds are being drawn to foreign countries solely due to entrance examinations), Turkey needs to establish, and as soon as possible, a new system in which education, through its educational institutions and the examinations they produce, as well as the results of such exams, are accredited and honoured, without hesitation.

In law-based professions, before the initiation of exams, career plans should be laid out, and if exams are offered in any event, they should be available to everyone and at every stage. Just like judges and prosecutors, also for attorneys and counsel, a comprehensive career plan that also provides vocational retraining, should be prepared and put into practice so as to encourage the transfer of knowledge and experience from seniors to young colleagues, and to speed up and institutionalise professional and vocational development.

Objective 4: Improving Performance and Productivity

For judges to find, assign, appoint and monitor experts, and to treat the experts, all being private persons, as if they are **unofficial judges,** and to bring them almost to the position of assistant judges, thereby granting protection to them, indeed constitutes **flagrant and unfair intervention with the rights of allegation, claims and defence on both sides** at trial.

Court appointed experts have, over time, morphed into **a rather degenerated** institution. To institutionalise it even more firmly through the process of time, and to adopt and back this degenerated mechanism, both institutionally and administratively, indeed injects into the judicial system the degeneration, deterioration and corruptness of the expert mechanism.

The root cause of this expert problem is the manner in which the experts are used. It is the right and the duty of both sides and their counsel to obtain expert opinions, and the courts should never interfere with this, but should only allow the discussion of expert opinions in court hearings.

It is, in fact, possible to resolve disputes and conclude lawsuits that are **currently taking 4 or 5 years,** on average in the courts, in only **50 to 100 days,** on average, in a single court hearing, and at a reasonable cost and, thus, to allow both sides to use their time in a more constructive and more efficient manner, rather than unnecessarily wasting their time by going to the courthouse 15 times, on average, as is done at the present time.

The UYAP has brought many innovations and conveniences to the judiciary but, nevertheless, given that the data processing and informatics systems have developed so greatly, the UYAP's achievements are too little in comparison to what it should have achieved thus far, and what should be expected from a good data processing and informatics system.

The UYAP (National Judiciary Informatics System) should not be used as a means of saving the judges from humanistic accountability situations through facing both sides and their counsel in the courts.

Development of new applications and software programs satisfying the needs of tens of thousands of users, and integration thereof with the UYAP, should be facilitated and encouraged.

The UYAP should already be contributing to, and directly participating in, the creation of artificial intelligence in the field of law in this country. It should also participate in the generation of solutions for the performance of existing job duties and functions in a more effective and efficient manner.

Objective 5: Ensuring the Effective Use of Right of Defense

It should be stated at the outset that lawyers who are indisputably and unequivocally public servants should be granted not only with a green passport but all of their rights, and all of the status, powers, and privileges required for the performance of their profession, should be granted to them.

As properly and correctly stated in the strategy, it should be ensured that decisions concerning lack of jurisdiction, and decisions of rejection of venue (foreign pleas), are resolved without any delay, in court. If the citizens cannot, or do not know exactly to which court they should go, the government is, thusly, responsible, and the government should take action to ensure that its citizens can easily and smoothly find the correct courts so that their lawsuits are commenced and heard as soon as possible.

Objective 7: Improving the Effectiveness of the Criminal Justice System

Our Association opposes the actions suggested in Target 7.1 formulated under the heading of "Both pre-prosecution remedies and means of resolution and investigation processes will be strengthened," due to the reasons explained, briefly, below:

a) Contrary to the suggested actions, the discretionary powers of public prosecutors should not be expanded, as their decisions bring charges against persons, or cease investigations, but should be made subject to the audit and decision of the courts of evidence and inquiry;

b) "Return of indictment" mechanism should be transformed into, and be replaced by, the "approval of indictment" mechanism. A specialised court should be created to approve the prosecutor's charges, which may lead to criminal proceedings, or decisions of non-prosecution, as well as auditing and monitoring the evidence collection and inquiry stages, and to ensure that lawsuits are ready to be heard, tried and concluded in a single court hearing.

To this end, the existing Criminal Courts of Peace should be transformed, and the powers transferred to public prosecutors during those years should be returned to these courts; thus, the courts of evidence and inquiry that had been removed in the 1980s should be re-established with a more developed structure.

Instead of the rules as suggested in Targets 7.1(f) and (g), which will inevitably create a new, additional and more complicated bureaucracy, **the public prosecutors and judicial police should be turned into an integrated service unit and,** other than the attorneys representing the prosecution in court hearings, **those prosecutors should be assigned to the sites of the security forces, and be appointed as the superiors of the security forces in judicial matters.**

Objective 8: Simplification and Increasing the Efficiency of Civil Justice and Administrative Procedure

Firstly, the process and operations designs that are specified by the Civil Procedures Code for civil law trials and proceedings contain critical errors, and are contrary to, and inconsistent with, the nature, requirements, and realities of dispute resolution activities.

The law takes both sides on an adventure ride, with the risk of unpredictable results, rather than correctly putting forth their rights before the courts and taking the correct legal actions.

The preliminary examination institution should be annuled as soon as possible, be redesigned as “the preliminary issues hearing,” be used only to quickly decide as to jurisdictional and statutory limitation issues or any other such exception that requires immediate suspension and stoppage of court trials and hearings, and be concluded with a final decision or verdict thereon.

The archaic evidence production and collection order should be abandoned, which was also available and maintained in the Civil Law Procedures Code, and has been replaced by contemporary and modern processes.

“The prohibition on amendment of claims and defense,” which is a dominant theory in the Civil Procedures Code, has almost ossified today as a result of a simple theoretical error made in the 1950s, and should be reviewed and annuled. It should be specified that only the nature or type of a lawsuit cannot be changed; therefore, to expand on material facts that are brought before and claimed in the court, this should be without cost and, likewise, the monetary value of the subject matter of the lawsuit should also be freely increased or reduced, if needed.

The problem of court duties, as mentioned in Target 8.1(e), leads to an increase in the workload of the judiciary and to procedural chaos, as well as unnecessary generation of new types of lawsuits and legal actions.

Almost all of the entirely unnecessary matters under discussion, such as “partial actions of debt and determination,” and “whether or not a declaratory action alone can be pursued,” and “an action of indefinite debt” that are brought through Article 107 of the Civil Procedures Code, and which entrap 100% of the ethical parties, have divided even the most distinguished jurists, bombarding them with trivial matters, all of which have arisen due to inaccurate provisions pertaining to judicial fees and duties.

The law provisions on judicial duties consider these duties as a means of earning income for the national treasury. While solely due to fiscal officers’ arguments of “revenues for the treasury,” the state is unfairly intervening in the rights of citizens, without any justification.

The state cannot act as though it is a mafia organisation, and should not charge a court fee merely by considering the citizens who are the subject matter of a given dispute. Court fees should be either symbolic or fixed.

Failure to pay court fees should not preclude the court from hearing and trying cases. Current court fees are outrageous for some types of lawsuits. For instance, it is not logical, nor is it reasonable, to charge court fees to pay travel allowances in family law suits and transactions. To the contrary, it can be compared with parasitical feeding by the state, at the expense of its citizens.

In multilateral lawsuits, particularly in thousands of consumer rights lawsuits that are very similar or identical to the other, the state should relinquish its existing approach of protecting itself and neglecting its citizens. Group lawsuits should also be allowed under the Civil Procedures Code, and a class action lawsuit procedure that resolves thousands of identical disputes or claims arising out of the same material cause at the same time, such as subscription and product liability for objects of litigation in financially meaningless amounts, which do not even equal the cost of notification, should be allowed and, at the same time, the "summary judgment" procedure should also be adopted and applied in Turkey.

Turkey lags behind in "disputes arising out of family law," as cited in Target 8.3. This should be given priority in the action plan, and the steps to strengthen the family system should be taken as soon as possible.

Court fees and expenses should not be charged on lawsuits, and proceedings regarding family law, as well as a significant part of the attorney fees charged therein, should be paid or reimbursed by the state.

Child support and supplementary welfare alimony decisions should not be based on the judge's personal perceptions, or on the investigations performed by the security forces at the instructions of the judge, but should be made decisively, to the highest degree of accuracy according to the declarations of financial status, which pave the way for serious legal sanctions if found to be untrue, are required to be confirmed and verified by relevant documentary evidence, save for exceptions, are required to be timely completed and submitted to the court, and are to be certified to be true, under seal.

Just like the example of supplementary welfare alimony decisions, although the economic and financial status of both sides should be reviewed at regular intervals, these decisions should be reviewed and removed at some time in the future, if and when appropriate. These decisions are currently given permanently and this, in turn, leads to great injustice committed by the courts, and even gives rise to the imprisonment of some innocent subjects who can no longer afford to pay alimony to the other side.

When such alimony decisions are made, the sides should not be obliged to convince the judge concerning a change in their financial situation causing them harm but, to the contrary, the relevant judge should be obliged to regularly review whether the alimony decision has led to a an error to the disfavour of either side and, if so, to revise and change the decision, without the necessity to file a claim.

“Delivery of child and maintenance of personal relations with child,” as stated in Target 8.3(b) should no longer be a duty of the execution offices, and both sides should be encouraged and required to take these steps by themselves, without any intervention by juridical authorities.

Objective 9: Spreading Alternative Dispute Resolution Methods

Different dispute resolution methods that are very familiar to, and can be easily applied by, law practitioners and enforcers in a developed law system, should be identified, and those that are most appropriate should be selected from amongst them. These alternative methods should be permitted to become an alternative of jurisdictional power and function of the state.

COMMENTS AND SUGGESTIONS

ON THE

JUDICIAL REFORM STRATEGY 2019 DOCUMENT

daha iyi yargı

Introduction and General Evaluation

Even though Article 24 in the Introduction states, "The need for reform is mainly based on social demands," and Article 24 states, "The will for reform rises on the basis of the system's needs and social demands, beyond political objectives related to the EU accession process," and although in the Introduction, the main perspectives of “Rights and Freedoms,” the “European Union,” and "Operation of the Justice System" are given, it is clear that the “*European Union Perspective*” is the basis for the preparation of the strategy document. As such, Target 4.14(e) states that “*Action plans will be drawn up upon evaluating the European Commission's [...]-year progress reports.*”

The strategy documents of 2009 and 2015, which were substantially updated by the JRS 2019, were also prepared with the main purpose of becoming a member of the European Union, and besides, the reform initiative is about the “Operation of the Justice System.” ”Rights and Freedoms" would actually be the subject of law reform, not judicial reform, except in the case of violations caused by the judiciary, which are under the heading, Operation of the System.

The “Judicial Reform Strategy 2019” document, which was announced on 30 May 2019, immediately after the announcement of the EU Progress Report on 29 May 2019, was in response to the EU Progress Report from the highest level - the President.

However, at this stage, it is still unclear if the strategy document, whose action plan has not yet been declared, is adequate to eliminate the criticisms set out in the EU Progress Report, or to provide real reform, because:

a) Firstly, it should be stated that the action plans which, in the strategy document, are indicated to be prepared in the future, remain unclear. Therefore, it is not known to what extent, how and when the commitments in the document are going to be fulfilled. In the absence of a clear goal in the strategy document, it is difficult to predict what the action plan will achieve.

b) The strategy document does not propose any change in the fact that the members of the CJP (The Council of Judges and Prosecutors) are directly and indirectly elected by the Executive and that the CJP cannot function without the members of the Executive, namely, the Minister of Justice and the Undersecretary of Justice, which is a situation that is harshly criticized, and considered to be “retrogression” in the Progress Report; to the contrary, it glorifies the current problematic situation.

The document, "Judicial Reform Strategy 2019," is the third document produced on judicial reform in Turkey, preceded by the first judicial reform strategy document prepared in 2009, and the second one produced in 2015.

Having the will towards judicial reform in this regard, which society considers to be its first priority, and presented as a serious commitment at the Presidential level is, indeed, heartening.

As stated in Article 4 of the Introduction, starting on page 5 of the strategy document, judicial reform is a vital requirement, as clearly expressed by society, which has a thirst for justice and for quality judicial services, and is urgently required to be established. Therefore, the public will assess this document to see (i) whether or not the needs of society have been correctly determined; (ii) whether the long-term goal (vision) is appropriate to fulfill this need; (iii) whether the objectives are sufficient and adequate to meet the needs of the society and the vision in the document; and (iv) whether these will express including, but not limited to, their positive or negative responses.

The JRS 2019 document sets forth the long-term objective (vision) of Turkish jurisdiction for 2023 as **“An Assuring and Accessible Justice System.”** In order to achieve this vision, seven aspects, below, have been stated under **“Principles and Values:”**

(i) Increasing confidence in the judiciary;

(ii) Improving judicial independence and impartiality;

(iii) Facilitating access to justice;

(iv) Improving the concept of people-oriented services;

(v) Protecting and promoting rights and freedoms more effectively;

(vi) Strengthening legal security; and

(vii) Observing the right to trial within a reasonable time.

Listed in the order of importance and attached by our Association, we do not find it correct to call these seven aspects “Principles and Values" because, in our opinion, these are not “values” or “principles,” per se, and can only be considered to be “objectives.”

Indeed, these seven aspects can be considered as sub-headings/objectives that must be addressed in order to achieve the vision for 2023.

However, the nine main Objectives and various numbers of targets set out in ‘Goals and Targets’ do not completely align with these seven aspects.

On pages 96 to 98 of the JRS 2019 document, the activities carried out during preparation of the document are listed under 38 headings, in total. It is understood that a study process conducted under great pressure was performed, and interviews, surveys, workshops and conferences were held with domestic and foreign stakeholders from 10 August 2018 to 30 May 2019, when the document was publicly announced.

Contrary to expectations, it was preferred to list the activities instead of sorting them in choronogical order. As stated on the first line on page 96, it was, in fact, possible to start the preparation process for the document with the Council of Justice held on 10 January 2018.

Indeed, on said pages 96 to 98, it states that opinions and assessments obtained during workshops, conferences, meetings and similar events held with the European Council, the European Court of Human Rights, the EU Commission in the international arena, governmental agencies, such as the Justice Commission of the Grand National Assembly of Turkey, the Supreme Court and the Council of State, the CJP (Council of Judges and Prosecutors), the Presidency, the Board of Law Policies, the Ombudsmen, the Union of Turkish Bar Associations, the Law Faculties, the General Directorate of Security and, additionally, representatives of the business world, in particular, TOBB, MÜSİAD and TÜSİAD, as well as “approximately 30 representatives from various law associations” and the survey results from the “Social Demand Survey,” which was conducted face-to-face in the cities as noted on line 24, and the opinions and recommendations of 66 people, comprised of journalists, writers and academicians, were included when drawing up the JRS 2019 document.

When the intensity of planning, coordination, and execution requirements for each of these studies is considered, it is necessary to be aware of, and to appreciate, the efforts of the selfless bureaucrats of the Ministry of Justice who have created the Document by carrying out this work in a relatively short period of time, in approximately one year, and whose names were not even given mention in the document.

These explanations indicate that a broader group of stakeholders was included in the preparation of the document as compared to the previous ones. Not only the judicial organs and elements that provide judicial services, but also the business world as recipient of the service, the relevant professional interest groups, and the public, which is the final receiver of the service, were attempted to be included. The involvement of various bars and the Turkish Bar Association, whose participation in previous strategy studies was limited, and the fact that their opinions were taken into consideration, should be noted as important positive developments.

Issue of Methodology in Preparation of JRS 2019

In Article 5 of the Introduction in the strategy document, the following statement is made: "Reform documents can only be prepared by analyzing different factors that directly or indirectly affect the area. Assessment of the need for this JRS is based on a broad status analysis from a systematic and holistic perspective," but the methodology of the activity mentioned here is not explained.

To explain briefly, strategy is a plan about how and through which manner the "**target state,**" intended to be achieved from the "**current state,**" shall be attained. Therefore, the strategy document should include at least one **"current state"** determination, one **"target state"** determination intended to be reached, and a plan explaining how the gap between these two states will be closed (also the details about what will be done by whom, when and where).

For the strategy to be accepted, and for the expected goal to be reached, in other words, for the strategy to succeed, all relevant stakeholders must be identified, and it must be ensured that such stakeholders agree as to the "current state" and the "target state," as well as to the plan. To monitor how successful the activities are in achieving the strategy, and also to act as an indicator of determination to reach the intended milestone, it is obligatory that the strategy is clear as to what the outputs will be, how they will be monitored, measured and reported, and how they will be updated. The facts that the JRS 2019 document is an update of the 2009 and 2015 Strategy Documents, and that most of the strategic goal headings in these three documents are the same or similar one to the other, show the importance of "monitoring, measuring, assessing and updating" the strategy.

As was the case with the previous strategy documents of 2009 and 2015, it is not clear what type of methodology was followed, or what preferences were adopted, nor the purpose for the preparation of the JRS 2019 document.

From the statements in Articles 1 and 2 of the “Introduction” section of the document, it is clear that although “significant developments” have been made, the need for "rationale-oriented” reform continues and, therefore, the JRS 2019 document was prepared by updating the previous - 2009 and 2015 - strategy documents. As such, the statements on the progress made in the “Second [2015] JRS Period” of Articles 36 to 66 on pages 12 to 16, confirm that the JRS 2019 document is an update of the 2015 document as well as the previous one.

Still, it is not possible to deduce the methodology used to prepare the document by looking at these facts, because the strategy documents in 2009 and 2015, as well, did not reveal a clear methodology. The lack of methodology caused the 2015 strategy document to be considered as a "general plan" in the 2015 EU Progress Report. It is clear that in the drafting of the JRS 2019 document, certain methodology was not followed, as was the case in the previous documents. The 2019 document, which is an update to the previous documents is, therefore, considered to have fallen victim to the lack of methodology just as the previous strategy documents.

During the formation of a strategy document, the existence of a healthy, **fully efficacious scientific methodology serves** vital and critical objectives, such as the **identification of the problem and the root cause**, identification **and inclusion of all the stakeholders** related to and affected by the problem, as well as ensuring focus in discussions and efficiency in the process. Lack of methodology may lead to disruptions throughout the entire process, including planlessness and uncertainty. For example, although the “prominent main topics” set forth in Article 6 in the Introduction are topics that are related to judicial reform and, therefore, must be stated in the strategy document, these might not be enough to reach the intended final goal unless a scientific methodology is followed, and the said topics correlate to a plan.

In addition, failure to follow a scientific form of methodology may cause the resulting strategy to be disapproved, ignored, or rejected without being reviewed, whatsoever, no matter how well-intentioned it is, and how much effort has been expended. Under these circumstances, if the strategy, which is not accepted nor adopted by the public, is implemented by those who have prepared it, this might be considered to be an imposition and create other problems. The lack of a scientific methodology in the JRS 2019 document may lead to these concerns.

Descriptions under the heading, “**Main Perspective Regarding Rights and Freedoms**” on pages 7-8 in the Introduction, are “**The European Union Perspective**” on page 9, and “**Main Perspective on the Operation of the Justice System,**” on pages 10-11, are matters sensitively followed by people from all regions of Turkey, and may be agreed to, easily, to determine a shared final goal.

However, to ensure that the proposals made can be broadened and accepted, it is critical to identify and include all stakeholders, to obtain their opinions, and to agree with them; otherwise, even the right discourse may not be accepted, well-intentioned studies may lead to doubts, and sincerity may be questioned. For example, it can be thought that what is said about fundamental rights and freedoms is not meant for the needs of society, but merely for the purpose of opening the door to EU membership.

Judicial reform methodology should be prepared with the participation and contribution of specialized and experienced industrial engineers, and it should be noted that the judiciary is comprised of tens of thousands of people, providing services throughout the country, and whose procedures of rendering services are subject to universal and local principles and standards. Conformity of the design to be created by engineers to the basic legal principles and standards should be confirmed by jurist stakeholders and agreed to by internal, external, local and international stakeholders.

The **Better Justice Association** believes that the **Judicial Reform Strategy Formulation Methodology** may be outlined, as follows, in light of the interviews made with strategy experts and its members who are experienced in strategy formulation. The outlined structure should be put into a comprehensive scientific framework by evaluating the data related to the problem intended to be solved, together with subject-matter experts:

1. The country's goal (determination and explanation of goals, briefly, such as long-term: 2023 or 2071; medium-term: 2030 or 2040; and short-term: 2023);
2. The role and responsibility of the judiciary in achieving the country's objectives (setting forth as long-, medium- and short-term objectives that are sufficient to determine the long-term objective);
3. Determining which issue, why the judiciary will reform, and its ultimate aim;
4. Mapping and grading the stakeholders
    a) 1st Group: Service providers
    b) 2nd Group: Receivers of the service
    c) Organizers
    d) Opinion leaders;
5. Main topics to achieve the ultimate goal of the judiciary
    a) main topic 1: For example: Structural Issues
    b) main topic 2: For example: Human Resources Issues

c) main topic 3: For example: Service Procedures and Processes

d) main topic 4: For example: Production, Outputs, Services

e) main topic 5: For example: Financing and Financial Issues

f) main topic 6: etc.

6. Mutual agreement as to the long-term goal in compliance with the responsibility of the judiciary;
7. Current state, identification of problems and opportunities, and root cause analysis;
8. Designing and agreeing on a formal and final goal in conformity with the objectives;
9. The elements to achieve the intended final goal
   a) structural Issues
   b) human resources and management elements
   c) applicable or new procedures and processes
   d) production and outputs
   e) etc.;
10. Determining the method - strategy - to achieve the objective;
11. Determining the intermediate goals and actions to be taken;
12. An action plan that is responsible, suitable for the identified terms, and ensures accountability; and
13. Monitoring, measurement, evaluation and updates.

Inclusiveness, Stakeholder Map and Rating

It is gratifying that a much wider stakeholder circle was reached as compared to the documents in 2009 and 2015, and their views were compiled when creating the JRS 2019 document. For example, the fact that lawyers were involved through bar associations, observations and complaints of the receivers of the service were heard via an opinion survey, and the drafts were discussed in circles with broader participation, indicating progress as compared to the previous documents.

Inclusion of all stakeholders without discrimination is essential for both the determination of the current state in a healthy manner, and designing the objective intended to be achieved in a more accurate and achievable way. In order to realize this objective, it is essential to ensure that the stakeholders accept it and feel responsible for it from the very beginning. All of these are critical factors for the strategy to be successful in achieving the objective.

However, it is doubtful that the document covers stakeholders in such a way that every relevant person and entity can participate in the activities.

For example, although it was stated that meetings were held with 30 non-governmental organizations in the field of law, our Better Justice Association was not contacted during the preparation of the strategy document, nor during the mentioned NGOs meeting.

The Better Justice Association was established to identify problems of the judiciary and to come up with solution proposals. To date, the Association has prepared root cause analyses on judicial reform, and has created the Full and Frank Disclosure proposal, which is the most critical proposition for our legal system. It has released this proposal to the senior executives of the Ministry of Justice and to the public, at an event to which the representatives of the Ministry of Justice were also invited. The issue mentioned in Objective 8.2(a) is the original proposal of our Association, and has been accepted by the legal community.

The proposal of the Better Justice Association to establish a **"Higher Institution of Justice"** is also known to the public. In addition, with contributions of members of the association, in the work written by **Att. Mehmet Gün**, president of the Association, named **"Turkey's Middle Democracy Problems and Solutions: Judiciary, Accountability and Justice in Representation,"** the structural problems of the Turkish judiciary and the root causes of these problems are examined, and comprehensive recommendations are made for the evolution of institutions, as well as for the reform on procedures and processes. In addition, a **35-page** declaration was accepted, which was announced in August, 2012, by the **Better Justice Movement** before the establishment of the Better Justice Association and which was sent to the Ministry of Justice and the top judicial authorities on the occasion of the commencement of the judicial year. The said declaration included identifications and recommendations **in 195 articles** addressed under main headings. When the issues mentioned in all three strategy documents are compared with these 195 articles and headings, our Association's declaration, by itself, can be the basis for comprehensive judicial reform.

It is not clear from the document as to which aspect of strategy creation the institutions and individuals participating in the studies expressed their opinions in conferences, meetings, or bilateral meetings held amongst them, and whether these views serve the purpose of the strategy; if so, in which direction it is headed. The questions asked, or the answers received during these meetings, or how these meetings were evaluated in the creation of the strategy cannot be derived from the content of the document. What is known are the statements, which were reflected to the media by some judicial officers and elements that are responsible for providing the service.

We would like to state that for the upcoming strategy studies, the inclusion and mapping of stakeholders, and ensuring that each stakeholder makes the highest contribution by establishing a methodology in accordance with scientific principles, will help to determine the situation and obtain the results in a much more effective way. Our Association is, voluntarily, ready to work.

Detection and Analysis of Problems, and Detection of Root Causes

It is not enough for the strategy only to determine the complaints, and to make a plan and commit to eliminate these complaints. Public opinion surveys and explanations of different segments in different environments related to the service may allow the identification of complaints and, perhaps, the recognition of some problems. Full detection and scientific evaluation of complaints enable identification of the problems that cause such complaints.

The detection of problems can often be put forward and accepted as an excuse for complaints.

For example, the reason for the delay in the proceedings is the heavy workload in the judiciary. If we stop at this identifying point, it will not be possible to solve the problem, nor to eliminate the complaints. If we proceed with the same example and continue to ask questions, such as, **"Why is there a heavy workload problem in the judiciary?"** or **"Why does the judiciary, which charges their services as they wish, complain about a heavy workload while everyone is striving to increase their work?"** We will set out to determine the root causes of the **problems that we put forward as excuses**.

As a matter of fact, with the explanations made under Objective 8 of the JRS 2019 document, the determination of the Better Justice Association as it disclosed to the public regarding the fact that the root cause of the problem of extension in the legal proceedings is the failure of the "honesty rule" in Article 29 of the Code of Civil Procedure, it has been stated, and is accepted that improvements will be made in this regard. However, the document does not contain the basic and common results of the failure to identify this root cause. As a result of this failure, the trust amongst the main elements of the judiciary, namely, judges, prosecutors and attorneys, was destroyed, giving rise to complete distrust, and this made a healthy trial impossible. Even worse, the judiciary has corrupted society even though it was expected to rehabilitate society. These issues have not been taken into consideration.

From this perspective, the Judicial Reform 2019 document does not fully identify the complaints and the problems that cause such complaints; it states their generalities, but attempts to find solutions without examining the relations between the problems, on the one hand, and without examining the root causes of these problems, on the other hand.

For example, in the document, the completion of cases in a single hearing is addressed in Objective 4 and Objective 7; it is stated to be an activity objective in Target 4.8, but the reasons why the cases cannot be concluded within a "single hearing" are not investigated.

However, when the reasons for the continuous and systematic violation of the "single hearing" principle are investigated, many problems will appear, such as:

(i) A hearing is opened before the files are completed, and a hearing is required to collect evidence;

(ii) The procedural rules for the submission of evidence are archaic and primitive, and their collection is both laborious and deferred;

(iii) The authority given to lawyers to collect evidence is disreputable, insufficient and unenforceable;

(iv) The parties cannot rely on counterparty declarations even in the face of facts, and that no case admissions of the facts have taken place; thus, collection of evidence becomes a requirement to be carried out;

(v) The obligation of the judge to have an expert examination conducted, instead of just evaluating expert opinions to reach a conclusion, and the fact that not the parties, but the judge, must to call for expert examination (depending on the complex problems of the experts), requires postponement of hearings;

(vi) The working habits and procedural rules of the courts are inappropriate for, and even prevent, the expert witness and other sources to be presented in a single hearing.

These problems have a common cause, **which is the fact that "the rule of honesty in the proceedings" has not been realized!** Being unable to rely on the statements made by the parties and their lawyers to the court on the subject of the dispute is the root cause of these problems. When the facts and evidence are provided to the court, honestly and completely, and when mechanisms to do this are established, all of the above-mentioned problems will be eliminated, and it will be possible for cases to be completed in a single hearing, and concluded through discussions as should be done.

When these problems are solved, it will be very easy to realize the principle of a single hearing. The first and fundamental step to the solution of this problem is that the parties (as well as their attorneys and 3rd parties) must tell the truth in their statements to the court and to each other during the dispute resolution process, and that they must, fully and frankly, disclose the facts, as they know them, as well as evidence that is under their control.

Academicians made a mistake in this regard. They took lying to the court to be within the scope of the right to remain silent, identified the concealment of evidence from the court as necessary for the settlement of disputes as the prohibition of self-accusation, despite the fact that they are in hand and controlled. By combining the constraints of proof with this, they have rendered legal proceedings incapable of revealing the material truth, allowing citizens and lawyers to lie in court, causing corruption in society.

Likewise, **they considered the prohibition to amend a case** as not to expand the facts as explained to the court, nor to increase the subject matter of the case/object of litigation. As a result, they developed an unusual notion of prohibition of amendment of claim and defense, and have rendered the dispute resolution processes useless, just like in the days of the wild west.

All of these issues have prevented the judiciary from generating added value for society from which it emanated and whose sources it utilizes, and has made the judiciary a burden and a cost to society. The parties may, of course, remain silent in court! However, the fact that they have the right to remain silent does not justify lying to the court; lying cannot be considered a right of defense. Of course, converting a compensation case into an eviction case cannot be accepted due to the nature of the judgment! However, this prohibition cannot be the justification for not seeing the deficiencies in the material facts, preventing them from being seen, and preventing the evidence required for the proof of defense from being revealed because of procedural restrictions. So long as Turkey does not wholly and radically change its approach in this regard, it cannot resolve its judicial problems. Therefore, these issues (the fact that the rule of honesty is not realized; to the contrary, dishonest behavior is accepted in the court and considered to be a good thing) are the main root causes. It is clear that radical solutions cannot be found for problems until the root cause is identified and accepted.

Another example showing that the Judicial Reform Strategy 2019 document acts without investigating the root of the problems that cause complaints is found in the perspective and action statements regarding the main objective of “fundamental rights and freedoms.” The document aims to "resolve complaints" about this critical issue, as well. It identifies the problem by acknowledging that these complaints result from the application, but it does not go beyond that point.

If the rules of law are as they are stated in the document, then why do unlawful situations that are the subject of complaints arise in practice? In other words, why do prosecutors and judges enforce the law in a manner that causes complaints, and not as described in the document?

As a result, it should be stated that reaching the root cause of the problems by asking the right questions will make it possible to determine a strategy that will bring solutions, and make the targets set, and within reach.

About Main Perspectives (Point of View and Framework) and Assumptions

There are some pleasing expressions in the document, such as “Strong emphasis on strengthening democracy as well as improving, expanding and strengthening rights and freedoms in Turkey,” the zero-tolerance approach to torture and ill-treatment, and the achievements in this regard will be maintained, as well as the statement, “detention should be an exception, and it must be applied in compulsory situations in a limited manner, and the duration of detention should be reasonable; the legislation will be assessed and amended together in practice.”

It is human desire to fight terrorism and terrorist organizations in an effective and determined manner for the survival of our state, and to enjoy peace and security in society. The fight against terrorism, however, cannot justify unjust and unreasonable limitation of the rights and freedoms of innocent persons. The sensitive and fine line in this regard will be drawn by the judicial bodies through their decisions. This will also eliminate the excuses that have been put forward to avoid cooperation in the fight against terrorism; international cooperation will strengthen Turkey’s hand and in arguments in the fight against terrorism.

Therefore, instead of the statement, "We are committed to protecting fundamental rights and freedoms, we can compromise if it comes to the fight against terrorism." It is a more appropriate statement to say, in line with the indicated intention of the document, that "measures will be taken to minimize the restrictions on rights and freedoms that may be caused by the fight against terrorism, and to prevent innocent persons from being accused or deprived of their rights, and the judiciary will be strengthened, accordingly.”

On the other hand, the statement, “The document should also be read as a guide for practitioners," in Article 9, on page 7, can be perceived as though “independent and impartial” judicial authorities are being instructed through this document. Such perception would contradict the will of "strengthening the democracy," as proposed in Article 7 on page 7 of the document, and may undermine the credibility of the document, because the existence of a fully independent, effective, transparent and accountable judicial power is essential for democracy.

On page 9 of the JRS 2019 document, in Articles 19 to 24, it is stated that Turkey sees EU membership as a strategic target, and that for this reason, it attaches importance to liberal and participatory democracy. As well, Part 23, titled “Judiciary and Fundamental Rights,” is of particular importance, and that Turkey's integration into the EU will be a historic milestone in achieving international peace and stability.

Page 9, Article 24, states that “the will for reform arises on the basis of social demands, going beyond political objectives [required for accession to the EU].”

Taking into account the part, "Justice, Freedom and Security," No. 24 in the upcoming studies will further improve the strategy document.

By having a fully independent, effective, transparent and accountable judiciary, Turkey can attain a liberal and participatory democracy by way of spreading the rule of law across all sectors of society, particularly the public, preserving and developing freedom of thought and expression; it can increase its prosperity to the level of developed countries. Having an advanced legal order and democracy, Turkey acts as the key to a better understanding between the East and West, and the formation of effective interaction and cooperation between them. If this happens, Turkey can open the door to great opportunities, not only for itself, but also due to its sensitive geography, its neighbors and the world, by making important contributions to ensuring peace and stability at the international level and preventing conflicts in the world.

Therefore, it is incorrect to bind and condition Turkey's efforts -to democratize and reform its institutions accordingly- to membership in the EU. At the same time, it should be noted that the perspective of EU membership is a very important anchor for Turkey in the field of democracy, law and the judiciary, and that every step to be taken in this direction will bring Turkey closer to its supreme ideal. Turkey should heed the need to reform for its own future and purposes.

In Articles 25 to 35 on pages 10 and 11 of the JRS 2019 document, it is stated that judicial power also provides balance in the system of separation of powers, and the importance of the principle of separation of powers, which has been strengthened [with the introduction of the presidential executive system], and the constitutional function of the judiciary is vital for a strong and complete democracy. However, other parts of the document do not include purposes or activities; for example, the type of balance between parliament and the president, and what the judiciary can do for it, or how the judiciary can use the Rule the Law as it concerns the President or public officials.

Therefore, it is an important deficiency to note that no complaints or problems have been identified to ensure that the balance between the legislation and the executive power, or that the organs and elements of the executive power, are in compliance with the law. It should be underlined that a judiciary that cannot ensure the Rule of Law against the executive power and the elements of the executive, cannot ensure the lawfulness of the executive or justice among natural persons.

The most important finding in the document is, in our opinion, that the close relationship between the law and economy, and a well-functioning legal system, will improve the investment environment. In order for the law to contribute to economic success, it is necessary to create a foreseeable and predictable investment environment where long-term plans can be made, and to build trust in this regard. The first condition hereof is to protect the fundamental rights and freedoms at the highest level, and the second condition is the compliance of the executive power with the law. However, among these important issues, the document remains silent about the executive's compliance.

The document emphasizes that the right to be heard, the right to trial within a reasonable time, and the right of access to justice, which are among different elements of the right to a fair trial, are being violated in the functioning of the justice system. It is stated that in order to minimize such violations, systems are needed to protect against inefficiencies due to insufficient preparation in cases [which is considered to be the possible cause], to reduce disputes [to lessen inefficient processes that are seen as the cause of violations], and to eliminate these before coming to court.

Although it has relatively broader coverage than other perspectives, it is still incorrect to limit the perspective of the "Operation of the Justice System" to what is stated in the document, and to the extent it is included. As the reform document aims to improve functioning of the justice system, and to ensure that it provides better services, this perspective should have been put forward in the most comprehensive and sufficient way. In addition, considering the main issues related to the functioning of the justice system, it would be more appropriate to sort them in the following order:

(i) System structure;

(ii) Human resources;

(iii) Procedures and processes applied and obeyed while providing services;

(iv) Generated products and outputs;

(v) Whether the services and products meet the needs of the receivers, their quality, and the satisfaction level of the receivers;

(vi) Content, duration, method of delivery, value and cost balance of services;

and present them in such configuration. This configuration is also vital with regard to how the team carrying out this study considers the issues, how they see the current situation, and how the current situation is identified in the studies carried out. However, the statements given in this respect in the document are insufficient.

daha iyi yargı

About Developments in the Second JRS Period

On pages 12 to 16 of JRS 2019, Articles 36 to 66 describe the developments in the Second JRS period, i.e. between 2015 and 2019. Since the 2019 document is an update, the information here is considered to be provided for the purpose of monitoring and evaluating the realization of the objectives and targets in the 2015 document. However, it would have been correct to provide the information given for this purpose by, scientifically, following the structure and numbering as set out in the 2015 strategy document. It is almost impossible for the reader to make an assessment of how many of the targets and objectives in the 2015 document have been achieved, and why those that remain unfulfilled have not been achieved, unless special effort and an exhaustive comparison is made.

The abolition of the military courts referred to in Article 37 is a positive development; however, such development is not one of the objectives nor targets of the 2015 document.

The establishment of a Human Rights Compensation Commission referred to in Article 39 is a positive development, but there is no information about the performance of this institution to date, nor about the reasons that make it necessary to transfer individual applications made to the Constitutional Court to this Commission through a subsequent law. The reader would be correct to consider that violations of the right to a fair trial are at a very high level and that the Constitutional Court cannot cope with this load. The possibility to apply to the European Court of Human Rights was effectively closed by directing applications to the Commission.

Positive developments include the publication of activity reports by the courthouses, and the development of alternative dispute resolution methods. It is incorrect to make matters related to the free will of the parties, such as conciliation and arbitration, compulsory, and the coercion in this respect is inconsistent with the theory of the judiciary, as well. Although it seems to provide a solution in the short term, it is likely to cause more serious problems in the future.

Disputes are not **"goods and chattels"** of the courts; the subjects of disputes belong to the parties and they may dispose of them as they wish. The duty of the court is to resolve disputes fairly. It is wrong, both in terms of principles and process management, to consider disputes as property left to the will of the court, and to involve the courts overly much in the matter of expertise, which directly concerns the parties' claims and defenses, and forms part of the claims and defense.

It is direct and unjust interference **with the claims and defense right of the parties that to make the judge identify, assign and monitor the expert,** as if said judge were the **attorney for both the claimant and the defendant**, to treat experts, who are all natural persons, **as if they were informal judges**, and to protect them by almost bringing them into the position of deputy judge. Expertise in its traditional form in judicial practices, in Turkey, is an institution that has caused **corruption of the courts and is, itself, corrupt**. The fact that the institution of expertise is being institutionalized more stringently each day, as well as the fact that this corrupt institution is being protected, both administratively and judicially, carries the corruption and degeneration in expertise directly to the judiciary. Regarding the matter of expertise, which even inspired a song with the lyrics, "I am your expert; I will examine you!" the role of the state and the courts should be limited to maintaining a solid record of the experts, and to enforcing dissuasive sanctions against those who fail to perform their duties, properly.

If the claims and defense of the parties require opinions of an expert, the parties should be able to obtain the opinions, themselves, and submit the same to the court, subject to a discipline to be determined according to law by the courts. In such a case, those who write the reports that are issued to convince the court and the other party on a given topic should be held responsible as if they were assigned by the court, and they should be obliged to attend the hearings, which will be "single hearings," and to answer questions.

The UYAP (National Judiciary Informatics System) has introduced many innovations and conveniences to the judiciary. However, in today's world, where information systems are quite advanced, what UYAP does is very little as compared to what it *must* do, compared to what a good information-communication system *can* do.

For example, the UYAP should carry publicity at contemporary levels by offering the option of viewing proceedings, which are of interest to thousands of people, on a screen.

Today, many known websites can simultaneously transmit millions of live video recordings to millions of people.

The UYAP must not be a means of releasing judges from humanitarian accountability they undertake by looking at the faces of lawyers and parties. A citizen should receive the decision on their petition announced by a judge, not through it being made visible on a computer screen.

On the other hand, the instant recording functions by the UYAP should be used for judges' performance evaluations and similar procedures. Performance management systems should be developed for this purpose.

The UYAP is also directly related to tens of thousands of law practitioners working outside courthouses. The UYAP should enable, guide, encourage, and benefit from the development and integration of applications and software in line with the needs of these sectors.

The UYAP should also participate in the creation of artificial intelligence for the legal field in our country, and in the creation of solutions to do the work more efficiently, and with better quality.

daha iyi yargı

Assessment About Objectives and Activities

Objective 1: Protection and Development of Rights and Freedoms

Under the Objective 1: "Protection and Promotion of Rights and Freedoms," it is stated that: (1) Legislation shall be amended to improve standards; (2) A new human rights action plan shall be prepared and implemented to eliminate the violations determined in the Constitutional Court and the ECHR (European Court of Human Rights) decisions by taking into consideration the international observation reports with NGOs; (3) Training activities shall be held on human rights, particularly in terms of justification of arrest warrants; (4) Compliance with the decisions of the Constitutional Court and the ECHR shall be observed during audits to progress in the profession.

The most important reason for the existence of the judiciary is to protect rights and freedoms. **Violations of, and damage to, fundamental rights and freedoms** through judicial decisions are not an acceptable flaw in a constitutional state. On the other hand, protecting the rights and freedoms of individuals, especially the freedom of thought and expression, is one of the most important conditions for democracy. Within this framework, the existence of a pluralist media operating freely will be the guarantee for fundamental rights and freedoms by ensuring that such rights and freedoms are not violated and, if so, it can be seen by whom, when and where. For this reason, a pluralist media is considered to be the 4th power of democracies.

The awareness trainings and performance ratings stated to be performed are insufficient to prevent violation of rights perpetrated through decisions that judicial bodies take or do not take, or the actions they approve or do not prevent.

For example, it is not a performance or disciplinary issue that an artist, who has the right to remain silent, is taken to a police station at any time of the night or day to give a statement because a complaint has been filed against him/her in a place where he/she has performed, and are then taken to the public prosecutor only after their working day begins, then released.

This attitude restricts that person's freedom for one night (or more) and prevents them from doing their job; not to mention the hardship and psychological difficulties they would have experienced.

Let us take a look at a very simple example from a newspaper in the UK: It seems like there is nothing important when a prosecutor, who wants to investigate a book of the author Elif Şafak, sends a police officer to the publishing company to obtain copies of the book. However, in a civilized country where there is freedom of thought and expression, and where the media is free, the police cannot go to a media organization, although they know that people will fear them. Cannot the prosecutor, who wants to investigate the issue and file a lawsuit, pay the money to buy the book from a bookstore?

Another example is the manner in which the dean of a law faculty was treated, a man who is one of the most valuable scientists in our country. The police were sent to the house of this scientist, at dawn, although it was known from the very beginning that he would never have run from the police, and would have appeared if a letter had been sent to him, is an example of the serious violation of fundamental rights and freedoms, even if the judicial authorities were performing their legal duties; there was, however, no disciplinary nor performance problems in this situation, according to current law.

Another point that must be stated here is that **prosecutors give the law enforcement officers the duty and authority** to take statements, and then they also take statements, themselves. Having duties limited to assist in the investigation and to collect evidence, **the law enforcement officials cannot be authorized to take the suspect's statement.** While everyone knows that this situation harms the reputation of law enforcement in the eyes of the citizens, and this is the reason that the citizens are afraid to go to the police, it is unimaginable that the judicial authorities are unaware of this. If this practice continues, and citizens give statements at the police station, there must be a prosecutor at all police stations to ensure that rights and freedoms are protected.

In order to prevent judicial authorities from violating fundamental rights and freedoms, in addition to what is stated in the document, especially **the way the public prosecutors can exercise their authority, it must be regulated in a very detailed manner. All actions and decisions that might limit a person’s rights and freedoms, even to the lowest degree possible,** must be subject to decisions to be made by the **courts that are established with this particular purpose.**

Another aspect concerns judicial polices. Although judicial polices were brought with the aim to protect rights and freedoms, their arrest warrants, especially when it comes to offenses, such as insults stated only one time, have created the impression that personal freedom in this country is up to people outside of the courts.

The fact that objections to the decisions of judicial polices are decided by other judicial police, and that appeals are not decided by the competent court, which is the expert in the subject, is also effective in creating this impression. Most likely, the most important reason for this is that the CJP members who appoint judicial police have been appointed by executive and legislative political parties.

This has caused public concerns that politicians can manipulate the judiciary as they wish, and that they can arrest and imprison anyone.

It must be ensured that evidence and courts of inquiry are established in this regard, and that all actions that limit freedom (except for those cases where prosecutors invite suspects by letter) are subject to the decision of these courts, and that the decisions of this court may be appealed to a higher court. Additionally, in applications, such as taking the suspect at night or at dawn from their room, or from the airport, which has recently raised public concerns, it must be ensured that the suspect is brought to trial and released as soon as possible.

Objective 2: Improving the Independence, Impartiality and Transparency of the Judiciary

Although the strategy document acknowledges that the independence of the judiciary has universal criteria, it also defends the situation that contradicts established universal principles by stating that the choice of countries is determinant in this regard, and that countries also have historical experiences and traditions.

Regarding the said historical experiences, the strategy document only states that when judges and prosecutors are elected members, twice for the CJP, as per Constitutional amendment in 2010, right before the Constitutional amendment in 2017, judges and prosecutors, as well as the public, got the idea that this situation affected the judicial labor peace in a negative fashion and caused political polarization. It is not mentioned that this result was caused by the applied election method, and that serious politicization in the judiciary already existed at that time. Factors that had more effect in the creation of this result are left unmentioned, as well. The capability of judicial elements to elect members for judicial boards is a requirement accepted across the EU. On the other hand, the fact that other employees are represented at the management level in modern management systems is critical in the taking of healthy management decisions and ensuring the efficiency of institutions.

The strategy document, where it is stated that some disciplinary decisions of the CJP will be appealed, does not consider the following historical facts to be negative experiences. In this respect, with the amendment made in 1977 concerning the closure of judicial review and auditing channels of the CJP (CHJ) decisions, the Constitutional Court decided for annulment as it considered it to be *"in contradiction with nature of the republic, the state of law, and equality before the law,"* and that the military junta introduced this unconstitutional arrangement into law in 1981 and into the Constitution in 1982. In this manner, "the way to legal auditing against the decisions of the CJP was closed."

To the contrary, by stating the fact that the members are elected by the executive and judicial (political parties) as per the Constitutional amendment in 2017 means strengthening the democratic legitimacy of the CJP, the strategy document adopts the political rhetoric, *"It has been based on the principles of 'independence' and 'impartiality' through the Constitutional amendment in 2017."* It does not acknowledge any problem with the current structure of the CJP.

Of course, the adoption of this rhetoric is not a problem for a political policy document. For this reason, the strategy document is considered to be a policy document by our Association.

The fact that the strategy document was not built on the idea of healthy "judicial independence" *can be understood from the statement, "There are many basic instruments to ensure judicial independence. They all serve to* strengthen judges and prosecutors."

This is because the document completely ignores the **"ability to function independently,"** which is the most important aspect of judicial independence; it does not acknowledge that the judiciary cannot function **unless its superiors give permission regarding executive officials, and that even the CJP, the judicial supreme body**, cannot function without the elements of the executive, i.e. the Minister of Justice and the Undersecretary.

The document considers judicial independence only as strengthening judges and prosecutors; however, it only promises limited progress in this regard. In addition to acknowledging that the said judicial elements cannot be independent or impartial, even regarding the promises to strengthen their independency and impartiality, the strategy document states, *"Targets have been set for professional strengthening of judges and prosecutors,"* does not contain anything new or significant in this regard.

The most exciting aspect of the document is the proposal for action to provide geographical guarantees to a number of judges in Target 2.1(a). Unless a way for judicial review and auditing is created against the assignment decisions of the CJP, the said guarantees shall not constitute a provision or provide organizational trust.

In other words, these guarantees will only be effective if the possibility of appealing the decisions of the CJP is also introduced.

In the activities in Target 2.1, it is stated that the interview examination at the entrance to judgeship and prosecution will be performed by a **committee composed of a wide delegation**.

For entering these important professions, it is important and required not to settle for written exams that only test the professional and general knowledge of the candidates, but to conduct interviews, as well.

The public complains not about the interview, but the manner in which it is done. It is quite normal for many of the people who received a very high score in the written exam, but were eliminated at the interview level, to believe that the interviews are not impartial, and that those who are on the interview commission, and those who are influential, give preferential consideration to some candidates. On the other hand, it is not clear what kind of principles are used for this exam, what questions are asked for what purposes, and what criteria are used to evaluate the answers. Interviews, which were previously recorded, are now not being recorded. Thus, the non-recording, hence the non-accountability that was also used by FETÖ (Fethullahist Terrorist Organization) to favor its members when it was active, continues. The public has voiced strong concerns that after FETÖ was cleared by the judiciary, decisions were made in these interviews according to the preferences of the government. As it is widely known by the public the fact that candidates who are called to attend an interview, try to find influential politicians; this fact is enough for the interview process to have any credibility.

Having the trust of the ruling party cannot be considered sufficient or necessary to be assigned to these professions. If a person has a history that prevents them from being appointed to these professions, it is the responsibility of the security and intelligence units of the state to investigate and bring to light such situation. Interviews cannot function as a reliability test or intelligence verification at the last stage. Moreover, the interviews and the resulting decisions do not meet the transparency and accountability criteria, which are the basic conditions for democratic management.

The main function of the interviews should be to reveal the competencies of those who have proven in the written exam that they have sufficient knowledge.

Interviews are, basically, mini tests for aspects that cannot be questioned in the written examination, but may be revealed, verbally, and provide more accurate results when supported with psychological tests. The said interviews assess the person's discernment, personal attitude, stance and approach, competency in acquiring, compiling, evaluating and dissiminating information, and in determining and solving questions.

Therefore, it must be ensured that these interviews are structured; that the topics to be asked or discussed are categorized based on these main aspects; that these interviews are recorded to ensure that objections and lawsuits are possible, when required; and that the interviews are supported by psychological tests, which are quite advanced in determining the areas of tendency and competency of persons.

Moreover, Target 2 states that the interview for entering the profession is to be conducted by a **wider delegation committee**; that the legislation for the appointment and transfer of judges and prosecutors will be restructured; that the system will be in line with a reasonable and predictable schedule; that the appointment, transfer and promotion system will be reconstructed based on performance and qualifications in an objective manner; that the said system will be improved; that geographical guarantees will be ensured for judges and prosecutors who hold a certain level of seniority; that the power of the Minister of Justice to delegate temporary duties will be annulled; that the minimum seniority conditions for certain tasks will be renewed; that the judicial ethics will be strengthened by determining ethical principles, monitoring practices, and providing pre-service and post-service trainings; that the disciplinary procedure will be reconstructed; that the scope of activity reports will be expanded in the ordinary and administrative judiciary; that a report assessment system will be introduced; that the reports will be analyzed to take measures to improve performance; that the recognition of reports will be increased through central and local press releases; that stakeholders will be included in the process to draw up legislation proposals; that regulatory impact analysis reports will be shared with the public; that the culture of participation and negotiation in the judiciary will be improved; and that it will be ensured that relevant institutions, organizations, civil society, as well as persons from academic and social environments, participate in the processes.

All judges should be provided with geographical and seat guarantees and, just like the judge himself/herself, the public should also know from the very outset the court and courthouse where the relevant judge will be working, as well as the working period. **It should also be ensured that each case is concluded with a decision by the judge who was in charge at the time it was filed.** The performance of a judge should not be judged by the number of files they rule on, but by -for example- how quickly they have made a decision on the application made, and the **quality of the decision.**

Written examinations and oral interviews for admission to the judicial profession must be designed to ensure that competent persons are chosen, and that there is no doubt that discrimination or favoring exists; that said examinations and interviews must be designed and audited to allow for transparent and judicial auditing.

Judges and related parties should be given the opportunity to file a case before a specially created court against the decisions of the CJP and the Justice Commission as to appointments, determination of the place of duty, dismissal, designation and advancement, and other similar issues.

Target 2.3 states, “Judicial ethics will be strengthened.” Ethics is, of course, a good thing to be achieved. **Ethics is the science of social morals,** and morals tell us what is right and what is wrong. Things that should be done and should not be done are sometimes turned into positive rules. Then, morals show up again to tell us if positive rules are to be applied and, if so, how they are to be applied. Ethical rules require proper and virtuous behavior; however, **if there are no appropriate sanctions,** behaviors depend on what the relevant person seeks, deep inside, and personal ego and needs often prevail over universal ethics and rules.

Where the judiciary is not transparent or accountable, and where there is no possibility for legal application against the decisions made by the CJP about the judicial elements or decisions made by judicial elements about their colleagues; in other words, where there is no judicial auditing, merely talking about judicial ethics prevents the judiciary and the document from being taken seriously by the public.

For these reasons, ethical rules must be created and published to strengthen judicial ethics, and sanctions must be determined for non-compliance to ensure that the said rules are followed.

Objective 3: Improving the Quality and Quantity of Human Resources

In order to **improve the quality and quantity of human resources** of the judiciary, in the strategy document, it states that (1) a new model will be developed to enhance the quality of legal education; (2) an examination will be introduced for entry to legal professions, and those who are successful will take the exams to become deputy judges, deputy prosecutors and deputy notaries public; (3) deputy judges and prosecutors will participate in the justice service, and they will also take further examinations to become judges and prosecutors; (4) pre-vocational and on-the-job training will be improved, as well as being continuous and compulsory, and the number of judges and prosecutors who study foreign languages and obtain postgraduate degrees will be increased; (5) the training of judicial staff will be increased; (6) the

curriculum of vocational schools of justice will be diversified and the graduates will be given priority; (7) and the number of judges, prosecutors and employees will be increased in proportion to the actual workload.

It must be stated, firstly, that it is not possible to improve the quality of human resources without improving the quality of the judiciary, i.e. the quality of the work processes and services. This is a simple matter of management. Qualified human resources can only be procured to perform qualified jobs.

If the work performed is of low quality, the human resources -no matter how qualified- will deteriorate and derogate to the quality level of that work. Improving the quality of the work performed, and being patient and disciplined to render services in line with this quality, is enough to improve the quality of human resources - this is a prerequisite.

For this reason, and importantly, the focus must be to ensure that the methods for rendering services in the judiciary are on a level that is comparable to its contemporaries. In this regard, quality can be improved by ensuring that the principle of honesty is applied through full and frank revelation of facts and evidence in dispute resolution; that in the judiciary, the workload is distributed evenly among the human resources; and that it is made obligatory for the defendants, attorneys and prosecutors to be adequately prepared. To do this, while improving the quality of work, the focus should be to improve the quality of human resources in parallel with this. In the order of importance, a quantitative increase in human resources should come thereafter. It should be noted that in the absence of efficient work, a quantitative rise in human resources increases the complexity and complications, reduces efficiency, and makes problems even worse. In this regard, experience in the United Kingdom should be taken into account, which achieved a conciliation rate of 98% in cases, and lessons that might be beneficial for Turkey must be learned from the difference between the experience of the United Kingdom and that of Germany, which achieved a conciliation rate of around 38%, which had a greater number of judges and a higher budget as compared to the former.

In Target 3.2, the examination to enter the legal professions is regarded as a quality-improving measure that can be taken in the fastest way possible, and maintained in the current status of legal education. However, this examination also shows that the education in law faculties, and the exams held to obtain a faculty degree, are inadequate and unreliable. After the examinations are taken for secondary and higher education, introduction of another examination to enter the profession means that the whole future of young people depends on the answers they will give in this one- or two-hour examination, causing promising young people to move to foreign countries only because of these exams.

Turkey must establish a system as soon as possible to ensure that the education offered at universities, examinations held during the educational period, and the results of such examinations can be relied upon, without hesitation. To this end, centralized examination methods can be introduced for educational periods to find much more modern solutions that improve the quality of education. In law courses, which are already subject to approval of the YÖK (The Council of Higher Education), using a fully centralized examination system throughout the educational period, may help eliminate the inequality between people who graduate from different faculties and, in some cases, faculties that have limited number of academicians. In this way, the quality of the education at such faculties can be improved.

Introduction of an entrance examination to enter legal professions must be designed in a way to ensure that it will not violate the vested rights of students who are already studying at law faculties; current students of law faculties must not be victimized. In light of the above, it must be considered to centralize course-passing examinations -at least for basic courses- at the faculties, instead of introducing an exam to enter the legal professions. The state must not make our young people pay the price for its own failure to provide quality education.

On the other hand, holding an examination for the relevant persons to start working as deputy judges, prosecutors and notaries, and to commence law internships, would be appropriate for the desired quality improvement, as it would ensure that those who pass these exams will then take the entrance exams to the professions only after working enough to gain adequate experience and maturity and becoming -not symbolically or perfunctorily- but fully competent in what they do, on the condition that they are paid during this preparation period a suitable fee in line with their educational status. However, if the idea of examination at different stages of the profession is accepted to improve quality, it must be ensured that these examinations are **not held only** at the stage of entrance into the profession, **but also at each stage that represents a milestone of progress in the profession**. Moving up to higher levels in the profession should provide monetary benefits in a manner that compensates for the personal investment in education, including the additional costs caused by the high performance in the profession. In legal professions, this necessitates the harmonization of the competency and capacity of human resources with the requirements of the work to be performed.

Currently, the aim is to bring together the requirements of legal work and the competencies of human resources while determining the duties of the courts. Our judges have seniority according to their working time and performance; more difficult, heavier and specialized work is assigned to those who are more senior. A similar career path must be made for prosecutors, lawyers and notaries public.

Attorneyship also begs a career plan to be made in a manner to ensure that attorneys rapidly improve; that the transfer of knowledge and experience from seniors to younger ones is accelerated and institutionalized; that personal and professional rights of attorneys who are new to the profession and working with others are protected and improved; and that the best service possible is offered to society.

In legal professions, career plans should be parallel to and compatible with each other, and the transition between professions should be smooth, according to the needs of the society.

Regarding career planning in legal professions, and attorneyships in particular, there are many good examples from all over the world with respect to the benefits that such plans offer to society and the compatibility of such plans with the culture.

As a case in point, the culture of the Ahi community, which is contained within Turkey's rich history, provides a solid system in conformity with human nature for career planning.

In addition, the separate trial advocacy system, in operation in the UK and Japan, ensures that the trials in these countries are of high quality and in compliance with the highest standards. This reduces the number of disputes submitted to the courts, and increases the number of conciliations in the cases. Turkey needs to take steps **towards** a similar system. For example, trials before the Courts of Peace, First Instance, High Criminal Courts, or Commercial, Appeal and Cassation Courts can be separated, and suitable seniority and specialization for these can be planned, accordingly.

Objective 4: Improving Performance and Productivity

"Expert reviews taking long periods of time and requiring repetition by the expert do not present a rational appearance. [….] it is expected that the new system of expertise will be implemented in this period in all aspects by **eliminating the disruptions seen in practice**." This quotation from the JRS is a sign that the strategy lacks root cause analysis.

Why do expert reviews take a long time and require repetition? Well-known answers are as follows: The experts found by the courts are, in fact, not experts, nor are they specialized in their fields. It is difficult to find an expert, and it takes a long time to search for one. The work to be done by the expert when they are found is not explained to them; experts spend time on summarizing the case, advising on the decision to be made, etc., which are activities that they should not actually be doing, thus, almost replacing the judges.

The experts' works are undisciplined, their reports are not auditable, and are often inadequate. It is not possible for an expert report to satisfy both parties, as well as the judge.

How could these and similar other issues be resolved? It is clear that using the experts as is done now will continue these problems, and that these cannot be corrected, whatever is done under the present system. The root cause of the problem with the experts is the way they are being used.

“What could be the method to resolve these problems? “If we assign this task to the attorneys of the parties, or to the parties themselves; if two parties come together to find an expert; if each party determines what needs to be done for their own claim and poses this to the experts; if they keep questioning expert answers until they are satisfied; if the reports obtained in this manner are submitted to the court, discussed before the judge, and the judge passes his/her own opinion about this, will these problems be resolved?” Asking such questions will bring with it the solution to these problems.

All issues that might lead to concerns in leaving these authorities to the attorneys and parties can be resolved through simple arrangements. For example, in the case of any doubt as to who may be an expert, records of the expert candidate can be submitted to the court and court approval can be sought. A list of experts can be created effectively by keeping records of experts. The oath text of the expert can be written at the beginning of the report to ensure that they swear an oath before a notary, attorney or the court. Upon any hesitation concerning the questions to be asked to the expert, the court may make the required acceptance or rejection decision on these matters.

If the expert's opinions **are obtained by the parties and presented to the court**, the proceedings may be finalized in a single hearing and, at such time, the powers to collect evidence are given to the lawyers. Thus, it is possible to resolve cases **in a single hearing** (which now **last for 4 - 5 years** in first instance courts, and where parties must attend at the courthouse 15 times, on average, and valuable time is wasted), and at a reasonable cost, **within 50 to 100 days,** on average.

Only after the implementation of modern methods of **“time management in the judiciary,” “target durations,”** and **“performance,”** as mentioned in the document, some of which are said to be implemented and are localized, shall these be realized.

In other words, so long as all the necessary steps are not taken to implement, fully, the single-hearing system, **a perfectly functioning system** remains without design, and the work load in the judiciary is not **distributed reasonably and proportionately** among the human resources, concepts such as time management, target time and performance management will remain hollow, and be considered to be "ornamental."

We believe that in order to fulfill the aim of improving performance and efficiency, **facts and evidence** must be stated honestly and **completely** through the **right disclosure mechanism** in the applications to the courts; the required evidence must be collected in the fastest means possible, a**expert opinions** must be obtained, jointly, **by the parties**, and individually if they cannot agree, **in the shortest time possible,** and as per the standards set by the court; the trial may commence only when **the files are completed,** and the trial must conclude **in a single hearing.**

The points stated under this objective heading must be left to the stage that follows the performance of the above-mentioned actions. When this first objective is realized, it will then be revealed that the issues which present themselves as problems are no longer problems, and they are seen as problems only because other matters are wrong and, probably, most of them will be abandoned.

For example, it is, of course, useful to trace the proceedings that exceed the target periods, to determine the reasons and to take appropriate measures. However, target times must not affect the quality of the trial, nor cause the violation of basic trial principles.

Delays in the collection of information and documents are the second most crucial problem in trials, following the matter of the institution of expertise. As stated, above, this must be addressed and improved upon as an element of the entire picture.

Judges should be specialized, not only in the disciplines of law, but also in the sectors where specialized courts offer services, and in non-law disciplines. For example, judges who will be adjudicating in fields such as patents, marine, energy, etc. must have expertise in the related fields of science. In this manner, the foundations of a system -for legal professions- can be laid that accepts only those who have, at a minimum, an undergraduate degree in at least one field of the positive sciences, in addition to a legal education, as is the case in developed countries. Until such arrangements are made, it must be ensured that the existing legal professionals are provided with intensive training in their areas of specialization, and that they have expert-level knowledge in the field of science in which they will be applying the law. The said training will also ensure that the courts do not consult experts when it is not actually necessary.

Ensuring consistency and uniformity between judicial decisions provides predictability and improves both accountability and faith in justice. Moreover, it reduces the number of disputes submitted to the courts. It must be taken into account that the appeal system introduced to ease the appeal burden of the Court of Cassation -which it cannot handle- increases contradictions between decisions and reduces uniformity; it must be ensured that there is not only self-auditing for appeal decisions through appeals and precedents, and that there is also a stringent and efficient observation and assessment mechanism to ensure compliance in precedents.

A more practical method must be developed for notifications, setting the systems in developed countries as examples. A party who has been duly notified once in a trial must not receive another notification except for the final decision. Considering that the digitization level of society in Turkey is relatively low, it must be avoided to make the electronic notification system compulsory. Electronic notification must start gradually from the institutions throughh individuals that have professional management of such, and should spread to every section after ensuring that no problems will arise. Initially, it should be introduced as an addition to the existing postal notification, and as a facilitator (as a forerunner of the future notification system); critical transactions must definitely be sent via normal post, and relatively less important procedures may be performed via electronic notification.

Advanced video conferencing systems allow for important decisions to be made on many subjects without the need for travel. In all proceedings, apart from single-hearing trials, the courts and parties must hold hearings via a video conferencing systems and render decisions, accordingly. The UYAP must be developed in this direction, and it must be ensured that crowds of people do not attend at the courthouses, so as to prevent them from wasting their valuable time in courthouse halls and in courtrooms.

It must be highlighted that **lawyers waste most of their time in courthouses, walking around the corridors, and waiting in line for hours, just for simple hearings that do not last even 5 minutes.** In Istanbul, a lawyer **will spend at least 2.5 hours for a 5-minute hearing.** Implementing this system will completely resolve the complaint of not being able to comply with the time of hearing, which is a result of the current situation. The fact that the action proposal set out in Target 4.8, which does not cover enough ground to resolve the complaint, is the result of the fact that the root cause of the problem has not yet been not analyzed.

It is possible to categorize the actions of parties and judges during trials, as follows:

(i) To identify the subject of the dispute, to collect evidence and documents that can be used as proof, and to create the factual evidence, in full;
(ii) To assess the evidence collected, and to clearly identify the subject of the dispute;
(iii) To determine the rules, laws and regulations regarding the subject of dispute;
(iv) To compile doctrine views about how these should be interpreted;
(v) To compile judicial precedents related to the practice;
(vi) To determine how these rules should be understood and implemented;
(vii) To apply these rules in every case; and
(viii) To formulate and explain the decision to be rendered.

From these items, number (ii) can be defined as **clearly determining the data** to be processed; (iii) to (vi) as determining t**he rule for the procedure** to be carried out; and (vii) as **carrying out the said procedure**. Information technology, especially software robots, can be effective in all of the above; however, **even having these robots to scan the mentioned items (ii) to (vi), which is the most important part of the work load of legal professionals in the courts, can provide labor savings of 40-50% or, in other words, a capacity increase, right at the beginning**. To do this, there is no need for artificial intelligence algorithms, or to make the computers able to understand and apply the relevant rules.

Artificial intelligence is the ability to have the actions mentioned in items (vii) and (viii) done. To this end, **(i) to (vi) must be robotized, first.**

When evaluating the fact explanations of courts and evidence, information technology can also be used to ensure that the courts comply with objective principles, and for monitoring purposes. For example, information technology can be used to match the alleged facts to the evidence presented, to examine the presented evidence with OCR technologies after the judge has determined the objective criteria to be used to assess the evidence, to record these assessments, and to ensure that all of them are assessed when rendering a decision. For example, it is possible to record, on an evidence review note, the date of the evidence, whether it is forged or falsified, the result obtained from the evidence, and the points justifying that result to ensure that the decision, which is the deduction of the judge, is more correctly controlled.

The architecture for the new courthouse must be designed in such a way so as to ensure that trials are finalized in a single hearing; for example, next to the hearing rooms, there must be suitable working rooms for the parties during the hearing, and the hearing should be held in the middle of these rooms. Citizens should be able to easily access the relevant places in the courthouse, such as the court offices or the courtroom, and gigantic courthouse buildings should not be turned into a labyrinth, as in Kafka novels.

Objective 5: Ensuring the Effective Use of the Right of Defense

Target 5.1 states that radical changes will be made for attorneyship, which is a public service, and it is understood that an examination will be introduced for entrance to the profession of attorneyship with the aim of improving the quality of legal services, that intern lawyers will be able to work with insurance, that studies will be carried out regarding the duration and efficiency of the internships, and that working lawyers, including public defenders, will be granted special passports.

Firstly, it must be highlighted that depriving lawyers -who are inarguably public officials- of their rights, as are granted to public officials, is unjust and clearly a contradiction. All of these rights must be granted to **lawyers**, not just a green passport; **the status, importance and authority required by this profession must be acknowledged.**

The most important point to be highlighted in this respect is that the Document contains improvement of the quality of attorneyship. Different ideas can be stated about the “examination for entrance to legal professions,” which is also envisaged for judges, prosecutors, attorneys and notaries.

The low quality of today’s inconsistent law education makes such examinations inevitable.

However, adopting this idea will ensure that **all legal issues are classified based on the level of importance and difficulty of the tasks**; that the more experienced professionals perform the more difficult jobs; and that the less experienced ones are guided. Such arrangements exist in developed countries, and they strengthen the justice system and improve the competitiveness of the country by ensuring on-the-job training, specialization and focus. A country can be as strong as its legal professionals are in the international area. In this regard, Turkey lags behind in the international arena.

In the document, Target 5.2 states, "It will be ensured that the defense participates effectively in trials" and, as to the actions, it is stated that the lawyers' limited authority to collect evidence will be expanded; there will be more confidence in documents submitted by lawyers; it will be ensured that some work and procedures will be performed through lawyers; that the idea of making representation by an attorney obligatory in some cases is being discussed, and that the tax burden on legal services will be reassessed.

Firstly, the rule of honesty, concluding cases in a single hearing mentioned in Target 8.2(a), lawyers' authority to do certain tasks and collect evidence, as well as the confidence in the evidence they submit, as stated in Target 5.2, must be considered, together, as a whole.

For example, when clients are obliged to fully and frankly disclose the facts and evidence to the lawyer or to the court, the lawyer must then perform his/her duty in accordance with the purpose of this obligation, and to ensure that the client fully conforms with this rule.

For this obligation to be fulfilled, it is required to grant the lawyer the authority to collect adequate evidence and information that will help to decide if the case is worth submitting to the court, and the parties involved must meet the demands of the lawyer.

When the lawyer, awarded with these authorities and opportunities, is provided with the obligation to apply to the court, having readied their own file, and where the sanctions and measures for non-compliance are determined; for example, to be held accountable for the costs of the proceedings, disciplinary proceedings, the shifting of the order of the case, etc., the lawyers will be very productive in a short time and, at the same time, their trust and dignity will increase, both for their clients and for the courts and society.

It will be easier for judges to rely on the information found in files prepared and submitted as per this legal framework and, in particular, it will be possible to take timely preliminary and protective measures.

In such an environment, it will automatically become compulsory for lawyers to monitor their lawsuits. No one will object to the introduction of this type of rule of obligation. This will also eliminate 9/10 of the workload of the judges in civil proceedings, which can be done by lawyers in a very short time.

On the other hand, in such an environment, it will become apparent that the current practice is unnecessary, where experts are found and assigned by the judge, with no one being satisfied with the study performed or the resulting report. The parties will find the experts, themselves, where needed, and will be able to obtain their reports and submit them to the court in the shortest timeframe possible.

In the 1990s, the United Kingdom, which corrected proceedings in this direction, made tremendous progress. While advancing the attorneyship profession very quickly, its courts gained global respectability, and succeeded in attracting cases for the settlement of disputes from other countries. According to statistics for 2012 from The Financial Times, they managed to create a law economy of 17 Billion Pounds, through 100 major law offices.

To solve its inured problems, Turkey must urgently implement proceedings similar to those in the United Kingdom.

Effective participation of defense in the proceedings, whether in the private or public sectors, requires lawyers to perform their duties in accordance with basic principles, taking accountability for their work from the beginning until conclusion, by giving advice and explanations to the client, as well as asking their clients for explanations. In line with this principle, in-house attorneys, public and treasury attorneys, attorneys in insurance and in banks' legal departments who do not practice as independent attorneys, or attorneys in independent law firms, should be prohibited from representing their institutions as attorneys in courts and other jurisdictions. There should be no restriction placed on them in representing their institutions in an official capacity; however, they should not be allowed to represent them as attorneys, or to assume the powers and responsibilities that we propose for recognition, above.

Objective 6: About the Target of Facilitating Access to Justice and Improving Satisfaction from Justice Services

It is more appropriate to regulate satisfaction as a separate target, from access to justice and services of justice, and to carry the topic of satisfaction to the headings of monitoring, measuring and assessing. However, it is also appropriate to set service satisfaction as a separate target.

Setting different periods and principles for procedural processes, subject to a limited time in civil, criminal, administrative and tax proceedings traps practitioners; unjustified loss of time and other reasons may result in loss of rights, with no recompense.

Unifying the times may eliminate this, but care must be taken regarding the differences of trials that are of different natures. Likewise, a core procedure must be provided to be valid for all proceedings, in accordance with logical and scientific requirements, and as the nature of trials differ, there must be additions to this basic core process.

With respect to time, an additional period of time must be introduced to compensate for the times missed due to humanitarian reasons, and the waste of time due to humanitarian reasons must be compensated without causing any loss of rights.

For example, when administrative leave is taken for religious holidays, but the media reflects this as official leave, causing people to lose time, those who are confused about whether the announcement was an administrative one or a legislative act must be allowed to compensate for this by providing an acceptable excuse. Adding several days -as a compensation period- to the exact times specified in law brings no harm to anyone, nor does it cause any delay, especially in the courts.

As accurately identified in the document, it must be ensured that lack of jurisdiction and foreign pleas are handled quickly, without delaying the trial. It may be considered that when filing cases to this end, and instead of with the court shown in the case, it should be sent to the court to be determined by the front office, or continue with the current practice, but a quick decision and a final and accelerated decision as to appeal review might be taken.

Rules of duty and authority were introduced for the benefit of the state, not the citizen. The state is responsible for the fact that the citizen is not completely knowledgable of the rules. The state must ensure that the citizen who needs its help finds the right court as soon as possible, and should immediately commence that person’s proceedings.

Objective 7: Improving the Effectiveness of the Criminal Justice System

Care must be taken when transforming the acts defined as crimes in the legislation into administrative sanctions. Transferring matters within the scope of the duties and functions of the judiciary into the scope of the duties of the administration may mean compromising the principle of the state of law.

In Target 7.1, our Association does not agree on the action proposals introduced under the heading, "Pre-prosecution resolution instruments and **investigation processes will be strengthened."** Our reasons in opposition are as follows:

a) Contrary to the proposed items, **the discretionary power of public prosecutors should not be extended. To the contrary, their decision-making as to indictments and non-investigations should be subject to the control and decision of the courts of inquiry and evidence.**

Prosecutors are the first judicial authority that comes to the minds of citizens who believe that they have suffered injustice. Therefore, being able to complain to prosecutors (although it may seem like unnecessarily occupation of judicial time) has an important function, which is to ensure that there is no resort to violence in society.

This also leads to the dissolution of the belief in justice through the prosecution offices. It is unfair for prosecutors to indict innocent people by filing an indictment, and not to investigate criminals by deciding not to prosecute; this is a cause of great public concern and dissatisfaction. On the other hand, the fact that criminal prosecutions cannot be opened because of the prosecution's failure to issue indictments in some crimes that affect individuals constitutes another reason for injustice. In this regard, there is a need for careful distinction between the crimes that should be pursued by the prosecution offices, and the crimes that can be sued for, in civil court, and in person, considering the elements of public interest and personal benefit.

b) For matters such as prepayment, postponement of public prosecution, effective repentance, and agreement with perpetrators, prosecutors should be required to obtain permission and approval from the court for their actions.

c) **Quality of the "return of indictment" institution should change, the "return of indictment" should be replaced by the "approval of the indictment" institution, and the prosecutor's accusations that may be the subject of criminal proceedings** must be subject to the approval of a court specialized in these matters, **which checks whether a case is ready to be tried in a single hearing with the evidence collection and interrogation stages.** To that end, present-day criminal courts of peace should be transformed, new and improved versions of the interrogation and evidence courts that were abolished in the 1980s should be re-established, and the powers delegated to prosecutors at that time should be returned to the mentioned court.

Instead of introduction of the arrangements proposed under Target 7.1(f) and (g), which will inevitably bring along new, **additional and complex bureaucratic formalities, prosecutors' offices and the judicial police should be merged into an integrated service,** and it should be ensured that prosecutors, except for those acting as **counsel for the prosecution** at hearings, act together **with the judicial police and as their superiors in judicial proceedings.** There is no reason that justifies the separation of law enforcement officers' public order and crime prevention duties from their judicial duties in investigating and prosecuting the offender, nor to be subjected to a different authority. For both types of duties to be fulfilled in a lawful and effective manner, and the function of the police to be fulfilled in a lawful manner, it is obligatory that the duty and function of the prosecutor's office, and the duty and function of the police, should be integrated.

The action proposal in Target 7.1(g) stipulates employing law school graduates in law enforcement forces. Prosecutors must be present with the police force as their supervisors; other functions of the police force, such as border security, intelligence, and the fight against terrorism, must remain outside the control of prosecutors. If such arrangement is made, situations identified when fulfilling these duties can be brought to the investigation fields of prosecutors as soon as possible.

It is clear that if such arrangement is made, there will be no problem with the coordination of the police and the prosecutors as proposed in Target 7.1(f); neither will there be any need for a regulation.

Target 7.3 says, "Jurisdiction of the courts will be reorganized and a new procedure will be introduced to shorten the processes for various simple acts."

In Target 7.3(a) and (b), reorganization of the jurisdictions of criminal courts, and the trial of certain offenses through a simplified and prompt procedure must be postponed until the single-hearing principle is adapted after handling issues, such as collection of evidence and obtaining expert opinion in criminal proceedings; at that point the situation must be evaluated, because **most of the existing problems arise from the failure of the single-hearing principle, and a quick trial procedure bears the risk of violating the right to a fair trial.**

Objective 8: Simplifying and Increasing the Efficiency of Civil Justice and Administrative Procedure

It must firstly be noted that the process and procedure design foreseen by the Civil Procedure Code for legal proceedings contains significant errors, and is not appropriate for dispute resolution.

The CPC, which does not ensure a sincere explanation of material facts and even evidence at hand, leaves the call and collection of evidence unavailable to the process after the preliminary examination hearing. Parties without evidence and complete information are forced to go on an adventure ride and take unpredictable risks, instead of litigating by accurately determining their rights.

Moreover, although it is possible to collect evidence while waiting in line for the trial's preliminary examination, time is wasted, and resolving the case, effectively and quickly, is clearly prevented.

The preliminary examination institution, which is unclear right from the beginning, and can be likened to a bad copy of the certificate of duty that determines the agreement of parties and arbitrators in arbitrations, must be abolished as soon as possible. The preliminary examination trial name and design should be changed to "preliminary issues hearing," only if and when situations exist that require immediate termination of the proceedings, such as duties, powers and statutes of limitation. Preliminary issue hearings should be held and a final decision must be made in short order.

The archaic approach regarding the order of collecting evidence, which is prescribed under the former Code of Civil Law Procedure (CLPC) and is also maintained under the new Code of Civil Procedure (CPC), should be abandoned, and modern processes should be introduced.

The parties should have access to all relevant evidence before issuing the lawsuit petition at the earliest stage of the case, preferably shortly after they have demonstrated their will to open the case (this may also be in the form of a notice or a short petition to the court), and prepare the case, accordingly.

It can also be envisaged that this will be done at the next stage after the petition has been submitted. In this case, the stage of evidence submission and collection must be brought between the case and reply petition stage, and the rejoinder and the second reply stages. Once all of the evidence has been collected, the stage of submitting the rejoinder and second reply petitions must commence.

The methods of the internationally accepted IBA and similar organizations regarding evidence collection are easily applicable to Turkish law.

“Prohibition on amendment of claim and defense,” which is a dominant approach also in the CPC, and which has become an established principle in the present day due to a simple theoretical mistake made in the 1950s, should undergo a major review and be abolished. A new arrangement should be introduced stipulating that only the nature of the case may not be changed, and extending of the scope of the facts brought to/claimed before the court and, as well, increasing or reducing the material value of the subject matter of the case, should be allowed.

Proof constraints on the evidence to be brought for proof of the material facts must also be abolished. This must not be an extension of the claim or defense. In this way, parties’ access to all of the evidence related to their case must be secured, and it must be ensured that the material truth is revealed fully, completely and honestly. Also, it must be ensured that the courts can rely on the declarations submitted to them, and be able to intervene quickly. More importantly, in this way, it must be ensured that the full material facts are submitted to courts, and that the decisions are rendered in accordance with the material facts and the actual situation. One of the reasons that people do not trust the justice system is that the material facts are not revealed and, as a result, decisions do not comply with the relevant material facts.

The methods described, above, are not first mentioned here. These are successfully applied in arbitration proceedings subject to the rules of the İSTAÇ - Istanbul Arbitration Center - and other reputable arbitration centers. If Turkey develops an advanced legal procedure that reveals the material facts, this will significantly contribute, both to gaining international credibility, and in assisting legal professionals to become capable to compete at the international level.

Simplifying the legal procedure in this manner will facilitate the work to be performed, the parties will be allowed to be more independent, while ensuring that the material facts are revealed with better quality and at an earlier stage, and that disputes are settled with conciliation at an early stage. Also, this will allow proceedings to be resolved in a short time, without delays caused by procedural processes and, at the same time, without violating the principle of “natural judge.”

On the other hand, depending on the fact that the judge may be assigned a case that could end during their term of office, his/her level of interest will be raised to a very high level, as compared to a case that the successor judge will take on after a long period of time, which interest thereof will, inevitably, be very low.

In such order, it will be much easier to improve and manage the performance of judges, and the judiciary will be able to achieve great success within a short period of time.

The subject of "fees" referred to in Target 8.1(e) has led to an increase in the workload of the judiciary, as well as to procedural confusion and the creation of unnecessary new types of cases.

Issues introduced in Article 107 of the CPC, such as “non-quantified debt claims” serve to confuse even those parties who are 100% right in their cases, and issues, such as “partial claims and declaratory judgments,” and “whether or not a declaratory judgment, alone,” divide jurisdics into two groups, causing loss of time for the legal professionals. Almost all of the unnecessary controversies surrounding these issues have emerged as a result of the arrangements introduced regarding legal fees.

Judicial fees, which already cause great injustice and irrationality, should no longer be the means of generating more revenue for the treasury; fees must be simplified and re-arranged to ensure the optimum performance of justice.

In the apothegm, “Justice is the basis of the state,” the meaning of the word “justice” is that the state can become and remain strong by ensuring that the people become richer; thus, being able to pay more taxes fairly, not through the collection of fees.

How much of their rights the citizen litigates is never to be the concern of the state. The state is only obliged to provide necessary assistance to the citizen who are seeking satisfaction. Therefore, anyone who shows that they have an interest, and that they do not abuse their right of access to justice, should be free to sue for any infringed rights. Requesting determination of the existence of a right must be sufficient to file a case, because the parties may dispute the existence of the right, but when the matter is clarified, they might not have any disagreement about the fulfillment thereof.

Trials have two main functions: (i) Resolving disputes about the existence and value of infringed rights; and (ii) deciding on the use of state power to make right the injustice, the existence of which is determined. On behalf of the State, the judiciary must not require the citizen to apply for both of these functions to be fulfilled.

This is what is intended through the regulations on judiciary fees. Fees force the citizens to apply to the judiciary for both of these functions, and even interferes with their right to "demand the fulfillment of their right, partially, at any time," for which they have the right to dispose. Therefore, regulations on judiciary fees must be removed from this obligation.

On the other hand, it is not right, nor just, to take a high percentage from the citizen's right, depending on the amount of the right, as determined. Judiciary fees of the state must be either symbolic and fixed, or related to the content, quality, and duration of the service provided.

For example, amongst cases subject to the same kind of proceeding in the same court – e.g. commercial cases – in a case with high value, a fee of 100,000 TRY is received; whereas, in another case whose value is 100,000 TRY, receiving a fee of 5-6 thousand TRY is evidently unjust. In addition, taking some part of the subject of the case is not a civilized method.

With regard to some kinds of cases, judiciary fees are cruel. For example, there is no rationale for receiving fees and allowances from family law cases and proceedings. To the contrary, it is like the parasitical feeding of the state upon its unhappy citizens. There should be no difference in the procedural rules or the proceeding possibilities of judicial and administrative proceedings unless obligatory, and the proceedings should be subject to the same principles.

“Simplification of civil proceedings” in Target 8.1 can be achieved by providing the full and correct disclosure and presentation of facts and evidence in the disputes through the code of honesty, referred to in Target 8.2(a), extending the powers of lawyers to collect evidence within this framework, authorising the lawyers to obtain expert opinions and hear witnesses where necessary, and opening hearings in matured cases; thusly, the principle of a single hearing can be applied. Once the principle of a single hearing is applied, it will become clear that there is no need for separation of duties between courts, or for a simplified rapid trial; there is probably no need for any change.

The statement of, “A simple procedure shall be applied in all cases where the subject matter can be measured, monetarily, and below a certain monetary amount,” in Target 8.1(d), can have dangerous consequences.

This is because in cases where monetary value is not determined (for example, in the nullity of a patent), there are cases where the material value is much higher, but the necessary care is not taken. This should be taken into account.

The scope of the statement of, “The area of duty of the consumer courts will be redefined in proportion to the workload,” as stated in Target 8.1(f), is not sufficient. Aspects under this heading must be expanded in the action plan, and the opportunities must be expanded to meet all of the needs of society.

On the one hand, there is a rapid flow of lawsuits to the consumer courts, and a large accumulation of business and consequent delays and quality problems have arisen. On the other hand, except for those reflected in the courts, consumer injustices in the tens of hundreds have engulfed society.

The judiciary does not function, whatsoever, in instancers of injustice that do not even cover notification expenses (such as amounts unjustly accrued to subscribers); such injustices are sought to be prevented through administrative measures.

On the one hand, this results in the transfer of the judicial function to the executive authorities. On the other hand, it prevents the formation of a system that complies with the law and effectively protects consumers, and creates added value for the brands of producers, as well as the brand value of our country, through the judiciary and the law.

To increase the export value of our country's products, per kilogram, from the current value of approximately 1 dollar, to 10 to 20 US dollars, which is their real potential, this is an area where the judiciary remains dysfunctional and ineffective, and needs to be very closely regulated.

The approach, “In order to better protect the collective interests envisaged for cases in which state institutions are parties, the regulation on community cases will be reconsidered,” in Target 8.1(g), in which the state has looked after itself, but has neglected the citizen, should now be abandoned. Because the state is not a holy person, it is an institution created by citizens to provide solidarity amongst themselves. Group case applications must be included in the CPC, as well, in cases that cannot be filed individually (for example, subscriptions and product liability) due to being economically insignificant (for example, cases that have no instrinsic value beyond notification costs), a class action procedure must be introduced to simultaneously resolve thousands of cases arising for the same material reasons - the public belief that justice is never meted out in this area must be eliminated.

In developed countries, various community/class action litigation systems were devised with the aim to eliminate the damages suffered by individuals for the same financial and legal reasons, thus creating high added value in order to be meaningful.

It is already a long-standing need for Turkey to establish community trials and *summary judgment*-like institutions, as well as to create methods of online arbitration, as is the case in the EU, for certain types of disputes.

In this manner, thousands of cases that are based on documents, and where the “right to access justice” is commonly abused by debtors, these will be quickly resolved, and the loss of time expended in unnecessary court hearings and abusive cases will be avoided.

Simplification is required in the procedural rules of the judiciary. Unnecessary and complicated procedural rules must be removed and, as our former masters once used to say, “The merits of the right must be superior to the procedure.” However, care must be taken to ensure that no change is made that might compromise fundamental judicial principles, which ensure the quality of judgment and accuracy of decisions.

This could be possible by “Preventing abuse of the right to access justice,” as stated in Target 8.2, and the “obligation to act honestly and to tell the truth,” as stated in Target 8.2(a). It is a positive development when sanctions are imposed on contrary behaviors, and when deterrent arrangements are implemented.

However, it is much more important to introduce mechanisms to ensure that these obligations are fulfilled and complied with, making it difficult, or even impossible, to engage in contrary behavior. Ensuring that the violation of the mechanisms and processes are subject to deterrent sanctions is more appropriate to achieve this goal. The idea of imposing a sanction does not justify compromising the uncovering of material facts and the proper conduct of the trial. Arrangements must be made to ensure that this principle is obligatory to comply with, and that behaviors to the contrary are impossible. For example, arrangements must be made to comply with the obligations arising from international agreements, such as asking questions to the parties and receiving answers, and if the parties do not disclose evidence that is under their control, identifying what such evidence is and forcing them to disclose it (for example TRIPS).

The thought behind the action proposal “Regarding the defendant who does not respond to the case or does not show the will to participate in the proceedings, the current application, where invitations are sent again to ensure that they are present at the court during verbal proceedings and on the day and at time appointed for the judgment, will be terminated,” in Target 8.2(b), is quite deep. It is appropriate to incorporate this ideal into Turkish procedural law.

To achieve this, the claimants’ obligation to tell the truth to the court must be fulfilled firstly, and then it must be ensured that they disclose full and proper evidence under their control. Thereafter, it must be ensured that summary judgment can be established against those who do not appear before the court, reply to the invitation, or defend their cause; if they object, it must be ensured that the trial is held by invalidating the provision.

This method will allow many cases that are opened, unnecessarily, and which can be handled through simple proceedings, to be concluded in a very short time. For example, there is no need to file a lawsuit for the failure to pay an electricity bill; collection through this method must not be subject to a judicial decision, and extension of execution proceedings must be prevented.

Turkey is far behind in terms of activities, such as “In the judicial settlement process of disputes arising from family law, practices that deepen such disputes will be abolished,” in Target 8.3. The action plan should prioritize this issue, and steps must be taken as soon as possible to strengthen the family institution.

Fees and expenses must not be collected from lawsuits or transactions related to family law; a significant portion of the attorneys' fees must be borne by the state.

Decisions of contribution and welfare allowances must not be given according to the percieved standard of living by the judges and as a result of the investigation that will have directed the law enforcement officers to engage in; they must be concluded swiftly and with the highest level of compliance possible according to the financial statements that include sworn statements for accuracy; these must be obligatorily submitted to the court after being completed quickly, and which must be obligatorily confirmed with relevant documents, apart from exceptions.

As in welfare allowance cases, the fact that decisions, which should be periodically reassessed with respect to the financial status of the parties and revised as per changes, and be annulled after a certain period of time, are made for an indefinite period, result in the judiciary causing great injustice. For example, innocent people who lose the ability to pay alimony are imprisoned. In these types of cases, the parties should not have to convince the judge that their situation has changed; the judge who made the initial decision should have to review, regularly, whether there is any change in the situation, and make the necessary changes to the decision, even if there is no demand.

The statement of, “Delivery of the child and establishing a personal relationship with the child, will be removed from the scope of duties of the executive directorates, and this process will be provided by experts without any fees,” as provided for in Target 8.3(b), must be considered to be the worst possibility.

It must be ensured that this process is carried out without the need for the parties or judicial authorities to intervene. In order to affect this change, mechanisms must be created, and deterrent sanctions must be imposed upon those who prevent the relevant mechanisms from properly functioning.

If the person responsible to pay alimony can be imprisoned in the event of failure to pay, practical measures may well resolve this problem, such as the immediate imposition of measures, as well as disciplinary imprisonment of those who violate the rules for the delivery of children.

Objective 9: Expanding Alternative Dispute Resolution Methods

An advanced legal system must have different dispute resolution methods that practitioners understand very well and can easily implement, and it must be possible to choose the most suitable one from amongst these methods. Those alternatives to the state court, to be elected from a wide range of tailored methods, must be encouraged to a certain extent in a balanced effort and, as a result, it must be ensured that conflicts in society are resolved effectively, but without compromising on quality. Alternative dispute resolution methods, although named thusly, must not become an alternative to the judicial power and function of the state. Alternative methods should, therefore, be encouraged in various ways (such as tuition and expense reductions), but must never be compulsory.

Alternative dispute resolution methods should be developed, not only for private law, but also for administrative disputes, and even criminal proceedings. However, characteristics of each jurisdiction should be taken into consideration. Dangers, such as the use of state power in contradiction with basic principles and, ultimately, formation of executive or judicial intent by the administrative bodies, authorities and prosecutors using state power, should be foreseen from the very beginning, and preventive measures should be taken, accordingly, at the commencement phase of these applications; safeguards should be implemented in this regard.

It was observed that the regulation in the Civil Procedure Law stating that the judge should encourage the parties to settle, peaceably, is not effective enough in terms of fulfilling the purpose of the establishment of the institution, in practice. For this reason, it is said that “arrangements are planned to extend the application” but, to the contrary, this obligation, which has become an unnecessary and disturbing formality, must be annulled. Alternative pre-litigation resolution methods for disputes are already being used with enough pressure. It is an unnecessary formality for the judge to invite the parties towards settlement. There is no sanction to be applied if the parties do not comply, in any event.

In conclusion:

It is gratifying that the will of judiciary reform is adopted at the highest level within the executive power and a kind of commitment has been made, but it is contradictory that this commitment is appropriated by the executive power that the judiciary must control and balance.

Although the Judicial Reform Strategy 2019 Document reached a wider and a more diverse circle of stakeholders as compared to the previous documents while it was being drafted, not all of the stakeholders were properly covered. The methodology of the document is not clear, nor is it obvious; the objectives, current situation, tactics and sub-objectives required by a strategy document are not clear. As the action plan is left for a later time, elements such as actions, responsible parties, maturity, monitoring and measurement, are not addressed.

Although conventional complaint topics have been identified, the problems and root causes of such complaints have not been analyzed. Although action proposals were made to resolve the complaints, the lack of a root cause analysis prevents it from being put forward consistently, and as a whole. Suggestions, on their own, are not in the overall plan.

Therefore, we believe that the Judicial Reform 2019 document may make limited progress on some issues, but it will not be enough for the changes that Turkey and its society requires, and that it will be necessary to prepare a new strategy document after a time. As well, we find it regrettable and disappointing that despite the fact that a significant amount of public resources have been spent to issue three strategy documents since 2009, a scientific, healthy and complete judicial reform strategy has not yet been developed in these documents.

By having a fully independent, effective, transparent and accountable judiciary, Turkey can enjoy a liberal and participatory democracy by way of spreading the rule of law across all parts of society, particularly to the public, in preserving and developing freedom of thought and expression, and it can increase its prosperity to the level of developed countries.

Having an advanced legal order and democracy, Turkey holds the key to a better understanding between the East and West, and to the formation of effective interaction and cooperation between them. If this happens, Turkey can open the door to great opportunities, not only for itself but also, and due to its sensitive geography, to its neighbors and the world, by making important contributions to ensuring peace and stability at the international level and preventing conflicts in the world.

Therefore, it is incorrect to bind and condition Turkey's efforts -to democratize and reform its institutions accordingly- for the purpose of only EU membership. At the same time, it should be noted that the perspective of EU membership is a very important anchor for Turkey in the field of democracy, law and the judiciary, and that every step to be taken in this direction will bring Turkey closer to its supreme ideal. Turkey should not forget that it must reform for its own future and purposes.

However, the Judicial Reform Strategy 2019 document is not an adequate plan to resolve the criticisms made in the European Council 2019 Progress Report. In the 2015 Progress Report of the EU concerningTurkey, the strategy document for 2015 was defined as “a very general plan document,” and the following statement was made:

“A revised judicial reform strategy was adopted in April, 2015. The strategy targets the main shortcomings of the judicial system. However, it is a very general planning document, specifying lead institutions and broad timelines, but providing only limited detail on envisaged steps and actions, with no assessment of budgetary implications. It is crucial that the strategy be implemented with the involvement of all relevant stakeholders, including the civil society.”

We are ambivalent as to the limited progress as noted in the JRS 2019 document, which includes similar statements on the same topics, and a better assessment is in order. We wish that the action plan to be announced in the future will propose substantial changes, and we want to contribute, voluntarily, to the preparation of the action plan for this purpose.

Indeed, the document, which has not yet outlined an action plan, and does not contain a status assessment, vision, or a long-term plan regarding the subject matters addressed, is considered as a policy document by our Association, rather than a strategy document in technical terms.

In accordance with the purposes of its establishment, our Association is ready to work to ensure that the JRS becomes a perfect strategy and that the strategy documents to be prepared are scientific, comprehensive, and sufficient so as to obtain results.

For this reason, and throughout this report, we are inviting the public to make seminal, positive and constructive suggestions to create a strategy document that will be adopted by all stakeholders, and where all relevant parties will be addressed, and problems and root causes will be accurately determined.

We are proud to announce to the public that our Association is ready to undertake this duty, as it believes that a new strategy document should be created with a supra-political understanding and equal consideration given to all political views.

Respectfully submitted for the attention of the Turkish public on the occasion of the opening of the New Legal Year.

2 September 2019

daha iyi yargı

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