

To the Public of the Republic of Turkey:

13 March 2020

Regarding the Developments Related to the Freedom of Thought and Expression

Two important developments closely related with the freedom of thought and expression that constitute the key for the progress of our country and the increasing of our welfare, as well as the fundamentals with regard to ensuring the rule of law made their mark in the previous week.

(1) We learned that three journalists who are known for their critical approaches were arrested for the reason that they reported news regarding a funeral attended by state officials, as well as the martyrdom of an official of the National Intelligence Organization, which was announced, in detail, by a member of the parliament. One of those reporters, Murat Ağırel, was released, at first, by a judge of the criminal court of peace; however, he was subsequently subjected to a police operation at his home, and at the house of his previous mother-in-law, at dawn - even though he did not attempt to escape, and he was not a terror suspect-, he was arrested by another judge of the criminal court of peace.

(2) We, regretfully, watched the riot police intervening in a demonstration of women who had gathered in the streets of Beyoğlu to get to the Taksim square to celebrate the March 8 International Women's Day. Because the women did not disperse from the

gathering as they attempted to enter the square, the women were attacked by the police, and were subjected to a disproportionate use of force.

These two events, along with other similar previous events, once again have exhibited the importance to limit and regulate the exercise of state power, judicial and executive power via the law and essence of the law; and the protection and development of fundamental rights and freedoms, in particular, the freedom of thought and expression, that are prone to serious harms in the face of even a minor negativity.

1) The public officials who were unable to ensure the confidentiality of the identity of the official of the National Intelligence Organization who was martyred should be subjected to investigation, and the journalists who reported the news regarding the information disclosed by the public officials and the breach of confidentiality should be released:

Maintaining the confidentiality of the official of the National Intelligence Organization is obligatory in order to eliminate the dangers that may be faced by his family due to the critical duties he had performed. However, it is the responsibility and obligation of the state officials to fulfill this confidentiality. All public officials who could not protect confidentiality and caused the revelation of the information due to their negligence and breaches should be subjected to investigation, and the necessary sanctions should be imposed on them, and the announcement of similar events should definitely not be repeated.

It constitutes the duty of journalists to report the news regarding information that was disclosed due to carelessness of the state officials, and their failure with regard to performing their duties. The duty of the journalist is also important in terms of the ascertainment of the faults and responsibilities of the public officials who did not fulfill their duties. Thus, the public may ensure that the public officials would be held accountable by means of law upon being aware of the fault of these public officials.

Informing the public constitutes the duty of the journalists. The journalists who reported news regarding the information which had already been disclosed to the public by the state officials, and brought this information to the attention of the public, thereby bringing to light the fault of the public officials, and who conducted this action in compliance with the law, not by means of illegal methods, should not be accused nor questioned due to the fact that they reported the news.

A journalist cannot be found guilty, even if he/she unlawfully obtained the subject matter of the news, for the reason that the intention element of the crime is inexistent, unless the relevant journalist exercise an illegal method with the intention of committing a crime,.

The persons who should be investigated and arrested, if the relevant conditions exist, should be the persons who did not, or could not, keep the identity of our martyred official confidential, because these persons may attempt to hide their crimes and their responsibilities with regard to the relevant crime and to destroy evidence that has not yet been considered for this purpose. Nevertheless, there is no evidence other than the reported and published news in the accusation directed to the journalists who reported the news that was already public information.

On the other hand, except for the cases where it is obligatory for the police to act quickly as to crimes of terror, the implementations with regard to apprehending citizens, restriction of the freedoms of citizens, taking citizen's statements, the police forcefully bringing them before prosecutors upon the order of the prosecution offices without the presence of a court decision, and conducting police operations at the homes of the persons who respect the law, and who make no attempt to escape, should end.

2) The procedures with respect to the criminal courts of peace and the relevant objection procedures should be amended and it should be ensured that the final decisions regarding the events will be made by the most competent and special courts:

The judges of the criminal courts of peace are to protect freedoms; they should attach importance and weight to the freedoms of the journalists, as well as the freedom of information of the public, while assessing the arrest requests of the prosecution offices, and they should meticulously refrain from making arrest decisions that could be perceived as arbitrary, or that might be construed in this manner.

The judges of the criminal courts of peace are not superior to, or different from, each other; all of them are at the same legal and experience level. It is the necessity of designing of these courts so that the information, experience and competence levels of the courts, which are specialized on such matters that are brought before the judges of the criminal courts of peace, would be much higher than the judges of the courts of peace.

It is an extremely inaccurate opinion that the decision made by one of the judges of the criminal courts of peace could be revoked and amended by another judge of the courts of peace, and this opinion causes the creation of the impression that the judges of the criminal courts of peace make arbitrary decisions and that they are influenced. The objections with regard to the arrest or release decisions of the criminal courts of peace should not be made to another judge of the criminal court of peace; these objections should be made to the court that is competent to ultimately execute the trial of the imputed crime. The final supervision of serious measures, such as arrests, should be conducted by the authorized and competent courts.

The regulations with respect to the criminal courts of peace were made in the active period of FETO, and these regulations were also abused. The regulations that were abused even on that date should be abolished as soon as possible, and it should be ensured that the arrest and

measure requests with regard to all crimes will be made to the courts that are related with these issues, instead of making these requests directly to the judges.

The interrogation and evidence courts that were abolished in the 1980s should be reconstituted and the criminal courts of peace should be transformed into these courts.

3) The March 8 International Women's Day Demonstration Marches at Taksim Square Should Conduce Realization of Reconciliation and Social Peace Instead of Polarization:

We would like to state, firstly, that it is sad for all of us that police force was exercised against the women involved in the March 8 International Women's Day march, and that their request to make demonstrations in the Taksim Square on the basis of the rights that are assured by the Constitution was hindered, although it is, indeed, necessary that respect and tolerance was to have been shown.

The freedom of assembly and freedom with respect to making demonstrations are constitutional freedoms and enacting restrictive laws and making administrative decisions based on the excuse of regulation of this freedom, are not compliant with fundamental law.

The places of assembly and demonstration are matters required to be considered by the persons who wish to organize demonstrations, not by the administration. It is not accurate for the administration to stipulate conditions regarding whether the relevant demonstration is to be made at certain places and, thus, to restrict the essence and objective of the right of demonstration. Assemblies and demonstrations are very different from self-expression of the persons who engage in demonstrations, and much more constitute self-expression of society.

Taksim square constitutes a place in which, especially, opponents have sought for many years to demonstrate, and demonstrations have been held there for a long time. Taksim square constitutes an ideal place for demonstrations as it is a location that may easily be accessed by demonstrators as it is an inner city location; demonstrators make themselves heard, thereby communicating their messages.

There are no elements in this square that exhibit specified borders, which may become uncontrollable or cause outbursts and harm the rights of persons who do not participate in the relevant demonstrations. It is also extremely easy for security officials to protect persons who demonstrate in this square. Ensuring security of the tall buildings, which are very few in the surrounding area, would be sufficient for this purpose.

The matter with regard to demonstrations taking place in Taksim Square or not, and the execution of the demonstrations in compliance with the law, and without causing outbursts,

has stretched the limits of Turkey for many years, and detracts the segments of society from each other and polarizes them.

Non-hindrance of the organization of demonstrations in Taksim Square and, on the other hand, ensuring the legal compliance of the demonstrators and provision of social peace in this sense, would constitute an important step in terms of the exhibition of the rule of law towards society. These objectives also constitute the rightful expectation of the citizens from the state, and the responsibility of the state to its citizens.

The rightful reasoning of the prohibition of assemblies and demonstrations by the administration should only be related to, and be in proportion with, the establishment of the balance between the security of the demonstration to be made and the public order.

Moreover, the presence of any person in a place is not subject to the permission of the administration nor of the police according to the Constitution which is the fundamental contract of the society. Unless the actions that grant the right to make interventions are made, the police shall not be entitled to intervene in the actions of the citizens for reasons that “they do not clear away,” or that “they do not leave the places where they are presently.”

On the other hand, the police force does not constitute the power machine that may be used arbitrarily by state officials; the duty of the police force is to assure the freedom of assembly and freedom of organizing demonstrations by the people, to prevent violence and to ensure lawful behaviour. The police should only intervene when the rights of other persons are being violated, and in actions that are unlawful in assemblies and demonstrations; the intervention should be in a manner which would eliminate any violence and unlawful actions, and which would be aimed at taking the measures that would be sufficient to bring the responsible persons before the judiciary, and the relevant intervention should be proportional.

4) The freedom of thought and freedom of expression should be improved and the use of public force should be balanced and restricted by the rule of law:

The existence of a free and pluralist media is a condition to ensure the freedom of thought and expression.

The mainstream media has been without its pluralist feature for a long time. It is not possible for the alternative and social media to balance the mainstream media and ensure pluralism.

Three prominent journalists are among the persons who tried to engage in journalism under these difficult conditions and were disputatiously arrested. Along with other similar

developments, this situation brings harms to freedom of thought and expression, and it creates fear -whether just or unjust- in the minds that develop ideas and ensure the society is to make sound decisions and progress.

This fear prevents the public, except for those who are knowledgeable about the law, from expressing their views, which leads to a lack of confidence between the society and the state.

In order to avoid this situation that creates adverse outcomes for our society, it should especially be ensured that the judges - in similar cases, the criminal courts of peace - explain and announce to the public the comprehensible reasoning that would exhibit the accuracy of their decisions.

It has been mentioned in the legal environment that the events which constitute the subject matter of the accusations against the three journalists who were arrested are insufficient to justify their arrests within the framework of the information and documents that were revealed to the public regarding the three reporting journalists, and with sharp discourse. While it was doubtful whether the news reported by the journalist who reported the information that was previously disclosed to the public by displaying sensitivity in the manner of concealing the surnames of the martyred persons would constitute a crime or not, the fact that they were arrested causes speculation regarding the background of the arrest decisions and harms the trust of the people.

A higher duty of care should be exercised regarding the persons who have expressed critical opinions, and especially the journalists and persons from similar segments, who realize and satisfy the freedom of information of the public with respect to each event that requires the restriction of their personal freedoms by means of the measures taken, such as travel bans and judicial control. The reasoning of the relevant decisions must indisputably manifest the rightfulness of these decisions. Thus, the decisions to be made in such situations should be considered as an opportunity to intensify the trust of the judiciary and faith in the justice system.

Comprehensible reasoning means the statement of the relationship between the reasoning and cause and effect in a manner so as to ensure that the relevant decision will be considered to be indispensable, when the decision made by the judge is assessed by other jurists.

The matters that are considered by the judge in his/her mind, but which are not stated in his/her decision, cannot be deemed to constitute reasoning. On the other hand, a mere statement of the provisions of the law in the decision cannot reach beyond being the arbitrary where the events and evidence, which require the implementation of the relevant provision in this manner, are not reasonably explained.



In conclusion:

Justice constitutes the fundamental sense and belief that holds society together and strengthens it.

Materialization of justice constitutes the duty of the judiciary in official terms. The presence of a better judiciary is required for a better justice; and the better structuring, functioning, working processes, as well as better and specialized judges, should exist for the betterment of the judiciary.

The Better Judiciary begins in the initial place where state power contacts the citizen.

Meanwhile, in the court houses, the better judiciary can be achievable by the improvement of the duty of fulfillment and trial procedures, ensuring the rendering of more accurate, thorough decisions with comprehensible reasoning, and through the establishment of better and developed processes that will prevent the rendering of inaccurate decisions.

Within the framework as so stated above, regulations with regard to the (i) Current criminal courts of justice; (ii) State interventions with respect to assemblies and demonstrations; (iii) Provision of discretionary powers and authority to the administrative authorities with regard to the use of police force should be made in a manner that will protect and improve the fundamental rights and freedoms.

Respectfully announced to the public.

Better Judiciary Association