

Out of the total 1,529-day period, 819 days were spent to collect evidence; 580 days were spent to find and appoint an expert and to obtain an expert opinion in order to be able to reveal the truth. It is self-evident that precious resources allocated for the trial were wasted.

Considering another trial of a simple case, which took 1,529 days in total, 1,399 days that correspond to 91% of the total trial period were expended on bringing the truth to light and collecting evidence. This reveals that the main reason underlying the judiciary problems is the failure to fully and frankly disclose the facts and evidences, disadvantageous facts are hidden, and this confirms our Association's earlier findings.

Attempting to win a case by suppressing the facts and evidences at hand that must be disclosed for swift resolution of a dispute does not lend any benefit to the parties. Trials that are conducted in an inefficient manner and redundantly delayed not only damage the parties in dispute, but also result in a decrease in society's trust in justice and transform the process into a struggle that abuses the judiciary, rendering the entire process deplorable for the counter party.

This shows that the underlying reasons for the judiciary problems and complaints are the crippled judicial culture and dispute resolution mentality that view the judiciary not as an authority solving disputes and reconciling parties, but as a body passing decisions in favour or against parties, and which deem that hiding the facts is allowable in order to obtain favourable decisions, and even as an exercise of the right to defense.

Not only the judiciary and its constitutions but the entire society who "asks for justice" on the one hand, and "seeks decisions in favour of them" on the other hand is responsible for the current situation. Accordingly, the first condition to eliminate the complaints about the justice system and judiciary is to eradicate this mentality that is not acceptable to any party, whatsoever.

Suppressing Facts Results in Mistrust and Inefficiency...

The dilemma concerning the administrative, penal and civil proceedings in Turkey is that "making a false statement in court, and hiding the facts" is deemed to be an exercise of the right to defense, while "making a false statement to police" constitutes a crime. Honesty depends on the relevant party's goodwill, yet remains unfulfilled.

A society who regards lying to the Court as an exercise of a natural right hides the facts instead of frankly telling the truth, fictionalizes facts according to the conclusive force of presented evidences at hand and, while society brings

almost every dispute to the Court for resolution on the one hand, it deliberately hinders the trial process and delays the manifestation of justice, on the other hand.

As a result; the profession of advocacy has morphed into the service and the art of fictionalizing the facts in accordance with and limited to only what is evincible.

The profession of judgeship, who cannot trust neither party, who have concerns as to being an instrument of injustice and who make efforts to assist both parties with their pleas have become mutated and judges now render decisions based on their personal bias and perceptions.

Consequently, judiciary elements and decisions have become detached from facts, and the judiciary, which is expected to re-establish reconciliation and cooperation, has now become an institution generating new and more complicated disputes.

This situation creates a serious and devastating environment of mistrust between the judiciary and its primary constituents and citizens. While the parties do not trust one another, whatsoever, the citizens do not trust the advocates, the advocates do not trust the citizens, the judges do not trust the advocates, advocates do not trust the judges, a party's attorneys do not trust the attorneys of the counter-party. In short, the citizens have almost no faith in what is revealed in the course of the proceedings, in the soundness of the Court's decision, and that the Court's decision shall secure justice.

The Solution is to Build a Mentality of Trust and Honesty...

The underlying reason for the far-reaching judiciary problems and resulting complaints is, namely, the mentality of thinking to seek justice while suppressing the truth, and the attempt to make the judiciary an instrument of injustice while seeking resolution of disputes.

Turkish society must change the generally accepted mentality of suppressing facts from the judiciary bodies; it must make its judiciary system function effectively and efficiently, and must put into practice the system of full and frank disclosure in dispute resolution in order to build trust in the judicial system.

Suppression of the truth and dishonest behaviours before the judiciary, as well as the Courts, which is the last resort for the resolution of disputes, cannot be tolerated in any civilized society wishing to advance.

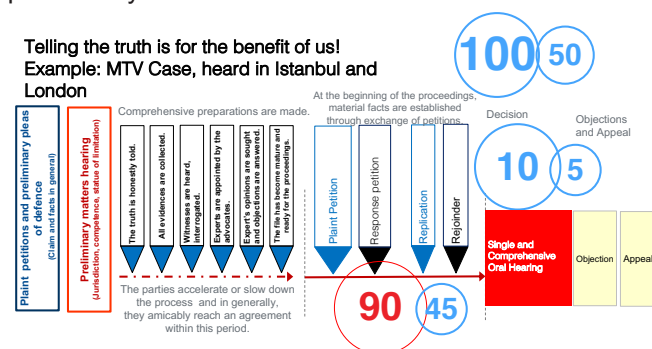
What Should Be Changed, and How?

The most important step to be taken in order to break the vicious circle in this judicial system and to obtain the countless benefits associated therewith is to increase the quality of the dispute resolution material presented to the judiciary through full and frank disclosure of facts and evidences.

The pre-condition for this is to ensure that the parties fully and frankly disclose the facts and evidences, not just to the extent this is to their benefit and advantage, or that they can be proved. In other words, it must be the first condition for a person who resorts to judicial recourse, expecting to obtain a just decision, to fully and frankly disclose all pertinent facts to his/her advocate as well as to the judiciary bodies.

As a constituent element of the judiciary, advocates should be given the duty, authority and responsibility to ensure that facts are fully and frankly disclosed and evidences are fully presented; in this way, honesty shall be spread from the Courts to the advocates and then onward to the entire society. The advocates should be responsible, commissioned and authorized to collect all relevant evidences; should be able to hear witnesses, to find experts and appoint them by way of fully and frankly informing them of the facts and they should be able to obtain opinions that are answering also the counter-party's questions.

The Courts should supervise the process of revealing the facts and evidences and should intervene solely in order to prevent any abuse.

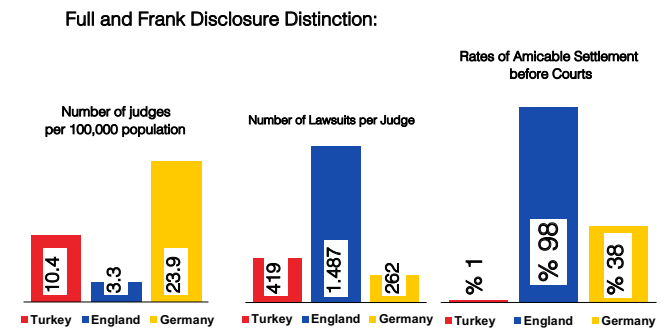


Introducing the obligation to fully and frankly disclose the facts and evidences concerning the dispute at hand for the parties and even for the formation of simple mechanisms would allow this goal to be achieved.

Comparison with Respect to International Judiciary Performance...

According to the CEPEJ statistics for 2014; while a German judge can hear 262 cases and a Turkish judge can hear 419 cases, a British judge can hear 1,487 cases. In spite of this, 98% out of the cases that are brought to the English Courts were amicably settled while this rate is 38% in Germany and 1% in Turkey. What could be the secret underlying these statistics?

The England having a budget half that of Germany's, and having a rate of 3.3 judges per 100,000 inhabitants in comparison to the rate of 23.9 judges per 100,000 inhabitants in Germany (1/8 as compared to Germany) achieves an efficiency that is 6 times higher than Germany's. To what the England owes this high efficiency?



What could be missing in Germany, which is trying to bridge the obvious gap in terms of performance by allocating a budget two times higher than the budget allocated by the England and by appointing 8 times more judges than the number of judges employed in the England? The main reason for such a disparity is that full and frank disclosure of facts and evidences is a rule widely accepted in England and this rule is applied to all disputes while disclosure of the facts to the extent that they could be proved suffices in Germany.

Indeed, the reason underlying the fact that the English judiciary can resolve more disputes with less money and fewer judges, is the principle of full and frank disclosure.

This is because; while the institution of full and frank disclosure lightens the burden of judges by 90% and disclosure of the facts at the very beginning of case forces parties to amicably reach an agreement, this makes the culture of negotiation sovereign in society and results in a decrease in the Courts' workloads, thereby creating an ever-improving cycle.

Benefit, Interest and Opportunities...

Assigning the duty and authority to reveal the truth and to collect all evidences in civil, criminal, and administrative proceedings shall ensure that cases are fully consummated, thereby enabling the Courts to render a decision in a single hearing after exchange of the parties' petitions.

In this way, advocates, the constituent elements of the judiciary, can properly function as required by their role, they will earn respect and trust; their competences will rapidly improve; and consequently, they will prosper.

If this system is put into practice, it is estimated that improvement at the rate of 70% to 93% will be achieved in favour of the judges. In the first place, the trial period will be decreased from 1,529 days (as it was in the 105 commercial cases given for the sake of example) to a maximum 100 days; 15 redundant small hearings shall be replaced with 1 comprehensive hearing for which sufficient time is allocated (4.5 hours). Judges will therefore, be able to have a good knowledge of the files and will be able to assess the case and have the time to reach just decisions within a shorter period of time. The time and responsibility that should be allocated by judges to cases may decrease by 90%, and the workload of the judiciary members and judges may decrease to approximately 10%.

Increase in reconciliation and settlement

Decrease in the number of **cases** and **unit work**:

Rate of Amicable Settlement	Number of Cases	Unit Work
	100 Hearing cases	30 As much as cases
% 40	60 Hearing cases	18 As much as cases
% 60	40 Hearing cases	12 As much as cases

The saving on effort and time to be achieved through this system will produce a favourable effect such as appointment of additional 986 judges to Istanbul Çağlayan Courthouse, where 400 judges and prosecutors are currently employed, and reduplication of the total number of judges appointed across Turkey.

Conclusion

Ensuring full and frank disclosure of facts and evidence will yield great benefits and opportunities to all stakeholders, it will decrease the judiciary workload and the judiciary will be able to offer services at higher quality utilizing less resources.

In such a system, the society's dispute resolution mentality will change, the culture of conciliation and cooperation will prosper, and the judiciary will no longer be a burden and instead, will add greater value to the society.

More efficient use of resources will turn challenges into opportunities, and speed up the process of Turkey's transformation into a dispute resolution center, improving the Turkish legal system and the growth of Turkey into a service exporter.

The Better Justice Association

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