daha iyi yargı

CALL FOR

Judicial Self-Criticism and Artificial Intelligence Vision for

BETTER JUSTICE

28 August 2020

Better Justice Association History

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 aim to reach social consensus on the proposed solutions which is necessary for their sustainable implementation.

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

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

Members of the Better Justice Association believe that a developed and advanced legal order and judiciary ahead of its contemporaries are the most important foundation stones for the dominance of a culture of reconciliation and a peaceful, productive, internationally competitive and prosperous society in Turkey. The Association carries out studies to contribute to the achievement of these goals and to the rule of law in all areas including economic, social, administrative areas by further advancing and improving the Judiciary.

In this context, the Association brings together all persons, institutions and organizations related to the judiciary and also the society on a common ground by developing ideas and suggestions and reaching agreement and reconciliation on them, and aiming to make the necessary efforts to implement the agreed proposals in order to continuously develop the Turkish Judiciary, to compete with its contemporaries and to take the lead in this competition,

This is the Beginning Not of a Legal Year but of the Era of Viruses and Artificial Intelligence

On Tuesday 1 September the judicial recess that started on 20 July will end, marking the beginning of a new legal year. The judicial community is about to start handling tasks that have been delayed for months and have eventually formed a giant pile, while tens of thousands of people who have lost faith in justice wait for the courts to deliver their rights.

The era of viruses and Artificial Intelligence

On the other hand, while we talk about climate change and global warming, the viruses that emanate one after another declare their dominance over humans. The era of viruses has already marked the century with COVID-19, the novel coronavirus which started to ravage the world in the first months of 2020, has wreaked havoc on health and economy with the precautions imposed, and will surely not leave humanity for a very long time. A microscopic virus has made us close down schools, courthouses and mosques, and is forcing humankind to share production, wealth, knowledge, technology and sovereignty as well as to rethink and restructure the law. It is beyond imagination how these changes imposed by COVID-19 will impact the world and create a new one. What has been shown in this short span of time is that the physical interactions that humans have been used to will mostly be replaced by audio-visual instant communication technologies and Artificial Intelligence.

While our country is still struggling to accomplish digitalization and switch to Industry 4.0, the age of Artificial Intelligence has already started globally and every area of life is now being entrusted to self-learning, communicative computers and their algorithms. Production processes for almost all products and services have been perfected and automated; now, robots are doing what humans used to do and making the decisions that were previously made by us.

Self-driving cars have already hit the road. These cars carry people and goods in the safest way possible, and they can decide who to hit, injure or kill in case of an inevitable accident. Self-flying and light-powered kamikaze mini-robots are more than ready to replace armies, as they can act independently and detect and destroy the enemy. Rumor has it that the legal Artificial Intelligence developed by IBM can guess

what decision will be made in a lawsuit with 85% accuracy, and the diagnosis system based on Big Data developed by Google has a much higher rate of accuracy in diagnosing diseases compared with physicians.

Equipped with algorithms that ensure that robots can make much quicker, better and more error-free decisions than humans, Artificial Intelligence algorithms process the data of billions of people to accurately predict their behaviors and decisions, while also making them take certain decisions and behave in a certain way. Those who can develop Artificial Intelligence continue to dominate humankind through robots.

Artificial intelligence, a natural stage of the evolution of digitalization, connects the stages of production, accumulation, distribution and consumption that take place in distant locations and forms, transforming them into a perfectly functioning value-generation and -sharing chain and increasing cooperation, solidarity, production capacity and efficiency to the highest levels among segments of society that continue these activities separately and far apart. Machines and algorithms have increased the wellbeing of humanity to a higher level than ever seen in history, and they are still improving.

The social effects of Artificial Intelligence have advanced and are increasingly dominating every aspect of our lives – so much so that societies are planning to tax robots but not people and are thinking about the ethical and moral principles of robots but not people. Artificial intelligence is turning the world into a small village while enriching and liberating people; but a virus originating in one small part of the world has become a threat for all humankind. As we have seen in this most recent example with COVID-19, not only global warming and climate change but also the viruses which it is predicted will become an increasing presence threaten to prevent humanity's interaction and development irrepressibly. The restrictions that viruses impose on people's transportation, communication and interaction are eliminated by Artificial Intelligence applications. People can communicate with each other instantly with audio and video without coming together physically, collaborating and interacting with each other through the instant communication opportunities that technology brings about.

Artificial intelligence against viruses: Great challenges and great opportunities

The greatest threat to humanity will be viruses, and Artificial Intelligence will be the most effective savior. Countries using Artificial Intelligence will be ahead of and beyond others in the international race to improve public welfare in the fight against viruses and other health problems. The age of viruses and Artificial Intelligence offers opportunities for Turkey, which has made significant progress towards development, to take its place among developed countries through rapid progress. In this respect, Turkey holds an important and different position among developing countries and can convert such challenges into opportunities and prosperity.

The greatest responsibility falls to the Judiciary

However, in this race, where we are currently quite behind, in order for Turkey to successfully convert challenges that the new era possess into opportunities in order to move ahead and beyond in the international race, unprecedented heavy tasks and responsibilities fall on all organs and elements of the judiciary together with its institutions, judges, prosecutors, lawyers and other elements.

All organs and elements of the judiciary have to comply with the principles of efficiency, transparency and accountability, with universal values and be innovative. They should use the privileges that their positions give them only to serve this supreme idea, to serve the citizens and to further develop their service.

In order to fulfil this task, the first condition is to show that they understand the dual new age, its conditions, its requirements, the difficulties it brings, and the opportunities that accompany them, that is, they have caught the age, at least on the basis of thought. Second, it is the necessity of realistically identifying and revealing the possibilities, constraints and problems available under these conditions, and accurately determining what is required to solve the problems. Thirdly, it is imperative to create the vision and to set strategic goals that will get our country forward in the international race and to draw the road map in order to achieve them.

The Judiciary exists to improve reconciliation and cooperation in society to increase prosperity

It is the best known duty of the judiciary to ensure the compliance of laws with the Constitution, and regulations of the executive with the Constitution and laws. The main function of the judiciary within society is to ensure that the officials using public power act in accordance with the law and to ensure the rule of law in the country, to create a legal security environment within the sovereignty of the state, to contribute to the increase of welfare by strengthening consensus and cooperation in the society.

The rise of prosperity in our country depends, among others, on the ability of the judiciary to establish and strengthen the legal security environment, in what way how and how effectively it can resolve the disputes. It is not surprising that the judiciary of Germany, a country whose national income per capita is eight times higher than that of Turkey, is twice as effective as that of Turkey in solving disputes.

Differences can be transformed into opportunities to create wealth by eliminating institutional and individual conflicts in the society, ensuring reconciliation, establishing and strengthening solidarity and cooperation. It is possible to turn disputes into mercy with effective resolution of disputes. Therefore, the biggest responsibility in transforming conflicting interests into prosperity in society; falls to the judiciary that is responsible for resolving disputes.

The judiciary can contribute to increasing the national income not by killing time or wasting resources on disputes that quite naturally arise but by improving cooperation between people, effectively and efficiently resolving disputes, and rapidly re-establishing reconciliation and cooperation between the parties that are in dispute.

The function of the judiciary in an advanced economy is to ensure cooperation and harmony among thousands of institutions and tens of thousands of people who work independently and separately, and to allow for the creation of high added value. To create the legal security environment that will allow the engine, bodywork and other parts required for an automotive factory that manufactures tens of thousands of vehicles per day, to be produced by different suppliers not located in that factory as if they had been produced by the same person at the same machine, and to allow hundreds of manufacturing facilities with instant coordination, is the first duty of the

judiciary. This duty is essential not only for industry but also for agriculture. To be able to allow the farmer in Edirne and the stockbreeder in Kars to reach an agreement under full legal security, without any concern about the fact that their rights will be protected, to create an environment where this relationship and cooperation will function smoothly, to protect and allow the continuation of the relationship by compensating for any disruptions as quickly as possible, are among the duties of the judiciary. Fulfilling such duties as a result of lengthy trials is not a skill to be proud of. A long-lasting dispute resolution does not bring any benefit to the parties, does not create any surplus value, but also creates new disputes, disrupts cooperation and wastes the country's resources. Judicial systems of developed societies have already settled such issues. And rare disruptions are handled by these countries' judicial systems effectively with the tip of the finger.

Judgments are the act of revealing the material facts by determining data, applying rules and drawing conclusions as a result. Judiciary has to develop Artificial Intelligence in order to make decisions according to science and logic and to fulfil its duty. Legal Artificial Intelligence is possible

Judges may not put themselves in the place of one of the parties in the events that come before them and make addition, subtraction or amendment to contracts and similar documents, cannot arbitrarily ignore cases and evidences, cannot come to a conclusion without fully revealing the material truth, and cannot opt for offsetting in their own way in the relationship between the parties by seeing themselves as the king's representative, as was the case in the time of kingdoms.

Judges cannot apply the rules by changing them according to their own personal beliefs and preferences. They make deductions by applying the rules of law to events in accordance with the rules of logic. In the process of making a legal decision, the only variables are the events that cause the dispute and the evidence that proves the claim and the defense. They reach conclusions by acting in accordance with general rules of logic and scientific methodology when evaluating evidence. This conclusion cannot be changed due to the personal opinion of the judge. In other words, the function of the judiciary is to process and turn into data the cases and evidence that

technically come before them by acting in accordance with the rules of logic and scientific methodology and applying the rules of law to such data.

Artificial intelligence can only find an opportunity to develop and flourish in an environment where the rules are applied scientifically, in accordance with the rules of logic and impartiality. Those with advanced law can develop Artificial Intelligence; and those who can develop legal Artificial Intelligence can improve the law.

Countries must develop their own legal Artificial Intelligence; otherwise, they have to quote and accept the laws of other countries that have developed Artificial Intelligence and fall under their indirect sovereignty.

On the other hand, the Judiciary needs to develop Artificial Intelligence both in order to perform its duty better and to reduce the workload that has accumulated in the judiciary for years. Legal Artificial Intelligence, besides being an opportunity to solve accumulated problems of the judiciary, is also a contemporary requirement of the basic conflict resolution function of the judiciary.

Turkey, by taking advantage of the opportunities offered by Artificial Intelligence, can turn the extraordinary scientific, sociological and economic challenges arising from viruses into extraordinary opportunities. Developing Artificial Intelligence will make it possible for Turkey to deal with its already accumulated problems as well as to catch up with the era on all the issues where the country has so far remained behind, to come to the fore with new and different solutions and to become one of the cultures that advances humanity.

The claim and defense are not about whether a rule will be applied one way or another, but rather about suggested inferences on what conclusions should be reached when the rules are applied to events. In order to resolve a dispute by enforcing the rules, it is first required to construct the dispute event, i.e. the material truth in relation to which statements and evidence regarding the event should be considered. Evidence is the data that allows the operation of the rule in the trial. The examination and evaluation of evidence/data are quite possible through algorithms. Algorithms, therefore, are the rules that will be applied, and the result that will be achieved using the algorithm is determined by the variable evidence/data. Robots can in seconds find the rules that the judge needs to know, learn, research, and update himself about,

search for comments, laws, statutes, regulations, literature and case law related to such rules, and sort the results by preference. When this is so easily accomplished by these means, the task that will fall to the legists will be to create the data and enter it into the Artificial Intelligence system. Therefore, the use of Artificial Intelligence in law can provide incredible speed and efficiency in dispute resolution by allocating 20% of the work to robots at the first stage and gradually increasing this to almost 80%. The use of Artificial Intelligence can increase the capacity of legists and the judiciary tens of times over. Doing 80% of jobs using Artificial Intelligence means quickly dealing with 80% of the workload in the judiciary.

Considering that the legal professions have the function of convincing what is true and what is right through claims, defenses and decisions, and that the software developed in this regard is about to surpass human beings by processing and analyzing billions of data in a very short time, developing persuasive arguments and convincing them by explaining them in natural language; it has now become a necessity to create a national platform for legal Artificial Intelligence software that processes, understands and communicates in Turkish in our country. In this regard, all legal professions should come together in a rational and efficient cooperation.

It is necessary to catch the age of Artificial Intelligence, to give up old habits

Being one of the oldest professions in the world, its processes taking time and requiring arguments, counter arguments and decision elements at every stage; does not give the Judiciary the right and excuse to stay out of contemporary developments and to follow the age of Artificial Intelligence from behind.

Under these conditions, where Artificial Intelligence and Artificial Intelligence producers are increasingly dominating humanity, it is necessary to produce creative solutions with new and different perspectives in order to move forward and get ahead. It has become a necessity to abandon old habits, reconsider deep-seated traditional problems, look through new and different angles and come up with creative solutions. To accomplish this quickly requires Artificial Intelligence in law.

The only benefit of the illegitimate judicial holiday is that it provides an opportunity to voice the problems of the Judiciary, but the ceremonies and discourses at the beginning of the judicial year are hollow

However, the application of the judicial holiday that was begun a couple of centuries ago due to the fact that European judges had to help with the harvest still continues today. It is continued in this way partly out of habit and partly to simplify the management of annual leave and the assignment and transfer of judges and prosecutors. However, it is also perceived by the public as judicial elements being privileged, unaccountable and acting arbitrarily.

While a significant part of society cannot find a job and those who can find a job work day and night, on what legitimate grounds can the judiciary postpone the work that has accumulated in front of them and recess? By what legitimate reason can the judicial elements explain taking a holiday and interrupting work, when that work has already been lying idle for three months and tasks have been postponed for six to eight months as part of the measures against COVID-19?

The most important function of the judicial holiday is the opening ceremonies held due to the new judicial year that start after the holiday and the opportunity that the speeches made by the authorities in these ceremonies bring to present the problems of the judiciary at first hand, to convey it to the most competent and responsible authorities, and at the same time to allow a self-criticism. However, these ceremonies are nothing more than a formality, the real problems of the judiciary are not presented impartially and comprehensively; neither there is any mention of a vision and solution suggestions that will enable progress. Under the best of circumstances, some facts are squeezed between the lines. Therefore, the legitimacy of the opening of the judicial year is not accepted by the public. Indeed, what is said from the pulpit after the judicial holiday, whose legitimacy and benefits are questionable, falls into this legitimacy threshold; It does not make a public repercussion. How can those who will be stuck with the first obstacle before them, as long as they do not criticize themselves in the first place, get before the public and what can they talk about? More importantly, can they really talk about what needs to be talked about; can they say what needs to be said?

Opening ceremonies will be held on September 1, 2020, as they have every year to date, the authorities will give speeches and say the same kind of things that are said every year. What needs to be said will not be said, and what needs to be talked about will not be discussed. Another precious working day of the judicial community will be wasted due to the beginning of the legal year.

At the opening of the legal year, the first issues that the authorities should consider are to indicate what needs to be done by the judiciary to convert the virus and Artificial Intelligence era into an opportunity, what has been done until today, what could not have been done, what means are required to cover the shortcomings by providing sincere self-criticism.

The Judiciary must make it clear that it does not have the means to perform its duty, that its hands are tied against execution and that it cannot function, and then it should show the pathway to a solution

The judiciary, which is virtually bound hand and foot by administrative supervisors' permissions and archaic judicial procedures, should sincerely reveal that it is prevented from independently performing its judicial function; that while it should be the key to increasing the welfare of society by making high-value-added production, it has become a cost in itself, and that although these are not the result of its own fault, it also has serious misdeeds as well.

It is the debt of the judiciary to the public to accept and to present the problem in all dimensions that; to definitely resolve a dispute in a medium-level commercial case filed in Istanbul – which produces the highest share of the country's GDP (more than 45%) – it takes the judiciary, whose only function is to determine the existence and quantity of a right and decide the use of state power to fulfil this right, 3-4 years in the first instance, 1-2 years at the appellate courts, and 1-2 years at the appeals stage, during which the judicial authorities become a part of the dispute.

Having the fact that the judiciary – which cannot function independently, cannot work effectively and efficiently, and cannot resolve disputes that it should resolve quickly, reasonably and fairly – is impartial and independent written in the Constitution, and when required on every stone of the country, is not enough to ensure the independence and impartiality of the judiciary. This is because the judiciary itself,

which cannot fulfil its duty on time, becomes a party against the citizen, and everything done by the judiciary is not impartial but aimed at defending the judiciary and finding excuses.

Judiciary should openly admit what it could not succeed at, it should analyze the root causes of the problems, make a self-criticism by analyzing the reasons arising from itself and outside, make suggestions for solutions and be an active follower of those suggestions; it should show these openly to the public. The public can show understanding to the fact that the judiciary has problems; however, it cannot be expected to show understanding that such efforts are not made to solve those problems.

It is the most fundamental duty of the judiciary to ensure that the rule of law dominates in all areas

Issues related to the main functions of the judiciary such as effective resolution of disputes, ensuring the rule of law, and the protection and development of freedom of thought and expression are possibly those in which Turkey has probably fallen most behind. Failure of the rule of law in certain issues, – in particular, the right to legal remedies, the promotion of compliance with the Constitution, basic rights and the protection and promotion of freedom of thought and expression, and the accountability and compliance with the law of the executive and public officials –caused society start to lose faith in justice.

Judicial authorities have important duties in many issues, such as the decisions of the administration to ban meetings and demonstrations, concession agreements, disputes on environmental issues, the investigation of negligent public officials in the events that cause public indignation, and the restriction of the active participation of the society in law-making. Judicial authorities, which have critical responsibilities in increasing social solidarity and cooperation by preventing conflict, are obliged to take the conflicts under control by immediately seizing them; to solve them effectively with satisfactory convictions, by providing satisfactory and instructive reasons which are accepted by the parties and society in general.

In which cases did our judicial institutions, especially the Constitutional Court, the Supreme Court of Appeals and the Council of State, have made a qualified contribution to the society in matters that fall under their jurisdiction? Which inevitable issue of society was resolved with the decisions of the judiciary, which were respected and appreciated in all sections? Which decisions have been respected and appreciated by all segments? When asked these questions, is there a decision or jurisprudence that places the guarantee of "There are judges in Ankara!"? If there are no such decisions, it must be admitted that the desired contribution has not been made.

The law should be superior to the judicial organs and elements in the first place: The Judiciary itself must accept in the first place that it is not accountable, and in order to gain the trust of the public, first it must be accountable against the law itself

Freedom of expression, which is the mother of all freedoms and the basic precondition for ensuring the rule of law, and which is protected by Article 19 of the UN Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights and comprehensive provisions of the Constitution, is being hanged on prosecutors' lips. The judiciary does not seem to be aware of how much the methods such as prosecutors, who themselves are not accountable to the law, using their authority to order the police for a simple proceeding that should be handled by writing a letter to the relevant person, restrict freedoms. The freedom of the citizen, who will never abscond, who is unlikely to be captured or detained, is restricted by being taken from their home or hotel at dawn, being taken to the police station and being questioned by the police replacing the prosecutor, and capturing, taking into custody and forwarding to court, which is quite heavy for the ordinary citizen. These and similar practices, which are regarded as normal practices by the judiciary and law enforcement authorities, are severe traumas even for people in legal professions, let alone ordinary citizens.

Although criticism against the state, government, public institutions, politicians and responsible bureaucrats is granted freedom of expression in the broadest sense according to the ECHR's case law, hurtful statements against public officials are investigated as insults in Turkey. Even simple actions such as liking such statements on social media are investigated.

As a result, the public is particularly concerned and fearful of criticizing public officers and has become self-censoring, fearing that they will be subjected to ill treatment by the judicial authorities. The self-censorship of society means that freedom of thought and expression is restricted in the broadest and most common sense.

This atmosphere of fear and the reality of self-censorship show that there are serious failures in fulfilling the most important function of the judiciary, which is to protect and improve freedom of thought and expression. Judicial authorities should make a sincere self-criticism by revealing to what extent they are able to fulfil this important duty, what is hinder, and share their suggestions about what should be done to eliminate this situation with the public.

The negativities caused by the judges of criminal courts of peace, their rulings, and the methods of appeal in the Judiciary and society should be expressed openly and a resolution insisted upon

It is thought by the large part of the society that the magistrate of criminal courts of peace and their rulings, which were created for the purpose of protecting fundamental rights and freedoms and the way to object to their decisions through appealing to another magistrate of criminal courts of peace, functions in contrast to the purpose of the establishment of these judges and restricts the freedoms of innocent people, journalists and political opponents who have the courage to criticize the government and certain politicians.

The main reason behind this thought is the fact that another magistrate of criminal courts of peace is assigned instead of the expert and commissioned courts of first instance and high criminal courts, which are more experienced in topics they rule against than the magistrates of criminal courts of peace whose rulings are found to be suitable only as precautionary rulings in emergencies only. It is the legitimate right of society to wait for this to be made clear and corrected in the opening speeches of the judiciary.

The Judiciary must be aware of the negative public perception, and develop proposals and make efforts to regain trust

The judiciary should research and compile what the public thinks of it, what the broad opinions and beliefs in various sources are; and it should assess whether it is accurate and make the results to the public. Even if all of these views are unfair, they should try to improve their image and increase their reputation by informing the public in a healthy way.

There are many domestic and international public surveys and publications that reveal the trust in the judiciary and belief in justice is falling in the society. Our country's place in international indices related to the judiciary has fallen far behind, to the level of underdeveloped countries, in a way that the proud Turkish nation cannot accept. It would not be right to declare these internationally accepted indices null and void. In the political, economic and social relations established with the developed countries whose level of civilization and prosperity we want to reach and exceed or with the countries that are less developed than us, Turkey's reputation is determined according to these indices.

Do judicial authorities have information and opinion on what is causing us to be at low levels in such indices? What do they suggest in terms of measures to be taken about this, what to do to improve our ranking in the indices, or in other words what to do to improve Turkey's international reputation in the field of justice?

The Judiciary must provide solutions to the problems that arise in the changing world and show a way to turn challenges into opportunities

As in the example of Covid-19, which creative proposal has the judiciary developed in order to get out of the difficult conditions our country is in or to share these conditions fairly if exit is not possible? Why the judicial community, which has deep knowledge about cooperatives and capital companies and struggle with their problems every day, should not come up with a flexible company organization proposal against crises which prevents the interruption of employment and production?

Why would the judicial community – which knows that the production plants of the capital companies, which are doomed to financialization and therefore are fragile and should go bankrupt during crisis, but are kept alive with changes and exceptions in the banking laws and bankruptcy and enforcement laws, become incapable of continuing production, while cooperatives or collective organizations are flexible during crisis and can continue production activities without financial support – not suggest a solution that is suited to the conditions of Turkey, and that would enable the country to remain flexible during crisis and thus continue and maintain production and employment?

I put aside the development of innovative proposals, but why would the judicial authorities, who solve dozens of disputes about the problems of cooperative enterprises, who are aware of the problems there and even have quite a good idea of how to solve them, not turn their knowledge into the benefit of society and submit it as a solution proposal?

The Judiciary should produce innovative solutions to long-standing problems; invite academics and other elements to provide solutions

In the first place, the judiciary implements judicial procedures comparable to inquisition inquiries, which interfere with the claims and defense of the parties and restrict the right-seekers from pursuing their rights. The habits and mentality of judicial officials which can be summarized as “I collect the evidence; I will find the experts who will interpret the evidence and I will assign them, I decide what will happen at the hearing” de facto and without a legal basis delegated the judgments which they cannot handle as a result, to the experts and the investigating judges, whose duty consists of summarizing the file.

The main source of the problems experienced today is the natural result of the unlawful practices of the judiciary, in the form of short-cut and practical solutions, and putting them into practice, even if in good faith. The whole judicial organization must admit that these practices created by the judiciary itself and constitute a violation of the right to a fair and reasonable trial; resulted in simple cases that should be resolved in 4-5 months under ordinary conditions cannot be resolved before 4-5 years in courts where the most competent and specialized judges work.

Unless the judiciary withdraws from the procedural rights of those seeking rights before it, it cannot resolve the disputes effectively and efficiently. On the contrary, it will produce unnecessary new and additional conflicts for both itself and society.

Being aware of this, the judicial bodies and their elements should develop and demand solutions with a completely new perspective. Reform strategies should be created with this understanding, and palliative solutions to existing problems should not be presented as reform or reform strategies.

There is a close connection between legal and de facto immunity and impunity and the corruption and degeneration of public servants. Corruption disrupts the order of justice, reduces the international competitiveness of countries, and causes resources to be wasted and wealth to flee to safer countries.

Immunities – either those legal immunities granted to members of parliament through laws or those immunities that arise de facto due to permissions and other preconditions required for the judiciary to function – prevent the judiciary from accessing those involved in corruption.

Turkey should ensure that corrupt persons can be accessed, investigated and prosecuted, regardless of their position. Immunity should be the justification only for conducting investigations and proceedings in accordance with the sensitivity of the task. Turkey should provide an example that goes far beyond the example of Israel, which can be called the best example on this issue. The judiciary should consider the proposal of the Better Justice Association on this issue, accept it, or provide a better proposal and offer guidance on increasing the effectiveness of the judiciary.

It has become almost indisputable in the literature that the requirement for permission to investigate corrupt public officials results in de facto immunities and is against the Constitution, the independence of the judiciary (in its function) and the principle of equality before the law.

While the courts would open the way to abolish this contradiction by appealing against it before the Constitutional Court, why has the judiciary not opted for appeal? Why have the courts not resorted to the unconstitutionality of these provisions that prevented the responsible persons from appearing before court in the Pamukova,

Çorlu, and Ankara train accidents and the Soma disaster? Why did the Constitutional Court, which made a decision in the Soma disaster, not decide on the unconstitutionality of the condition of prior authorization for investigation? Answers should be provided to the public.

On the other hand, judicial authorities should express in legal year opening speeches that the condition of prior authorization restricts the independent functioning of the judiciary, violates the principle of equality before the law and results in the impunity of certain administrative officers.

More importantly, judicial authorities should reveal that structuring the judicial system, which includes tens of thousands of service providers that could produce judiciary services with comprehensive and vital features, on basis of the personal rights of judges and prosecutors is inappropriate and inaccurate, and is incompatible with the requirements of the science of governance. They should state in the legal year opening speeches that, although almost everyone knows and says that it is wrong, the judicial structure having been dominated by the executive since 1981, the minister and undersecretary of justice being appointed the head and deputy of the CoJP (Council of Judges and Prosecutors), and other powers granted are contrary to judicial independence and cast a shadow over judicial impartiality, and should bring forward solutions to remedy this negativity.

Likewise, they should object to the fact that the assignment of judges who are supposed to serve independently and impartially is realized by the bureaucrats of the Ministry of Justice, and tell first the public and the Ministry of Justice and the President clearly that judges and prosecutors do not have any of the assignment warranties accepted in the international arena but only their salaries, and that due to unaccountability and lack of control, the independence and impartiality of judges can be and is being disturbed.

Those speaking about the legal year, including the bars, should talk about the fact that there is no right and legitimate reason for the Ministry of Justice to have a say and authority in professions in the field of law and particularly in attorneyship, apart from judges and prosecutors, and that this is against the independence of the judiciary.

All the legal professionals should express clearly and strongly that binding the formation and functioning of the CoJP to the politicians is against the basic principles of United Nations resolutions also signed by Turkey, and this violates the independence of the judiciary.

The Constitutional Court should self-criticize, accept its mistakes and compensate for the damages it has caused

The Constitutional Court, with its decisions in the cases of Ergenekon, Balyoz, etc., has ensured the acquittal of those who were unjustly arrested and imprisoned in cases that were apparently unfair from the outset, after a long period of imprisonment.

Nothing will be able to compensate for the freedom of which the person has been deprived. Nothing will bring back the time that has passed and the missed opportunities. The Constitutional Court should be aware of these facts and should accept that the decisions it has made to compensate for violations of rights are not realistic at all, and that the damage suffered will not be compensated for in equal measure by them, and it should provide realistic self-criticism in public.

While an element of the executive, an element of an administrative authority, can restrict people's right to access to information and news with a quick decision; abolishing this decision as a result of the investigation made on the complaint and after a long time is not enough to protect this fundamental right. The cost of not being able to access information during the period that passes until the human right violation is removed is quite high for society. The Constitutional Court should make a deep self-criticism and use this as an opportunity to improve itself on how conscious it is of these shortcomings and how effective its violation decisions are.

The Constitutional Court, which can be effective in finding a practical solution by explaining to the state authorities and conducing to enactment of a law, that the tasks that reach it, especially the individual applications, are excessive and unbearable, should also effectively use the method of annulling the unconstitutional regulations that cause the violations it has encountered in individual applications. It must also eliminate the situations that cause a contradiction when eliminating the contradiction.

The Constitutional Court has refrained from even examining whether executive decrees are indeed within the scope of the OHAL (State of Emergency) or not and has paved the way for the issuance of an OHAL decree for winter tires, allowing the executive to become a force that is not subject to the constitution. So, it has to admit that a ridiculous situation arises as a result, where divorce can also be decided by an OHAL decree. This situation has been causing great damage to the constitutional and legal guarantee.

While the chief judge should stand upright and proud in accordance with the importance and position of the court before the President representing the executive, the chief judge giving a bent appearance in a photograph albeit out of courtesy or the photo angle, was interpreted as the disappearance of the guarantee provided by the Constitutional Court and undermined the trust of millions in the Constitution and the Constitutional Court.

The chief judge and members of the Constitutional Court should give a sincere account by sharing with the public which expectations of citizens are rightful and which are unjust, how they met such rightful expectations, what they did and did not do, and where they were wrong and right, in such a way as to at least include such issues, acknowledge their mistakes and inadequacies, and explain to the public how to eliminate them. If there are structural problems, the court should offer concrete solutions to overcome these situations.

The Constitutional Court declared that 52.9% of human rights violation decisions in individual applications were violations of the right to a fair trial, 27.5% of them were violations of property rights and 5.9% were violations of freedom of expression. The Constitutional Court should go beyond the detection of these violations and publishing statistics on such violations; and should classify the situations and conditions under which the violations have occurred and inform the public accordingly, and it should also clearly share its suggestions of structural remedies for how to eliminate the situations it detects.

It should also share with the public its sincere self-criticism as to why the Constitutional Court did not eliminate the situation arising as a result of the implementation of provisions of the law which it found unconstitutional and annulled

and why it has stood by when the majority of the Turkish Grand National Assembly made a law that was against the Constitution.

The Constitutional Court must cancel all proceedings created by implementing the provisions it has revoked, given that it found them unconstitutional within the scope of the same decision, and oblige the organs and elements of administration to undo these proceedings.

After such a sincere and extended self-criticism, the Chief Judge should bow and give way proudly to the end in front of the great Turkish nation, not before the executive, in accordance with the beautiful tradition of the East Asian countries.

Council of Judges and Prosecutors - CoJP

The Council of Judges and Prosecutors (CoJP) should make a self-criticism by revealing that its structuring is wrong at the beginning. The Council of Judges and Prosecutors should demonstrate that the Board consisting of 13 people and its simple structuring does not comply with the criteria of effective and efficient working, accountability and independence, to which the judiciary is also subject; and it should share its structural reform proposals with the public.

It is necessary to regulate the services provided by judges, prosecutors, lawyers, notaries and other judicial servants as a whole and a regulatory board must be established for this purpose. In order for the judicial services to be effective and efficient, satisfying the addressee of the service and consequently strengthening the belief in justice, all legal professions should be independent from each other, but in effective and harmonious cooperation. However, it is clear that planning and providing legal and judicial services in the country through only the professional organizations of judges and prosecutors is a major administrative mistake. The Council of Judges and Prosecutors should only deal with personal and professional issues related to these professions, and should be at the same level and power with other legal professions. However, with its formation and functions regulating the service of legal professions, it is the key to creating added value for the country by strengthening the belief in justice in the society that CoJP has a structure where it is truly independent structure, its functions protected from political influence while the political preferences of the country are respected, all judicial decisions and transactions are open to judicial control, the

rule of law is ensured by working effectively and efficiently. Realizing difficult or even impossible issues is easily possible by creating advanced organizations and structures suitable for difficulties and sensitivities.

In this regard, CoJP should appraise the proposal of the Supreme Authority of Justice, presented to the public by the Better Justice Association; either accept this proposal or suggest a better and more advanced structure and as real legal professionals, they should share with the public that their decisions must be opened to judicial review.

Decisions of the Council of Judges and Prosecutors (CoJP), which promotes about one-quarter of the judges and prosecutors each year and assigns them to a different location from their current place of duty, receives numerous reports and complaints not known publicly about judges and prosecutors, and while appointing some judges that control courts and judges directly to a particular court, and appointing some of them to the courthouses, the CoJP has been closed to judiciary control since 1981.

It is understood that there were errors in the decisions concerning thousands of people, and those decisions are corrected on objections being raised, because CoJP makes correction decisions following assignment decisions and also makes assignment decisions outside the usual periods. This does not mean that the decisions in the case of those who can take the risk of objecting are correct and accurate; on the contrary, it should be construed to mean that all other decisions are wrong and inaccurate.

The CoJP should transparently share data and documents with the public regarding all decisions it has taken and should be willingly accountable. It should share with the public the complaints it has received about judges, the subject and number of these complaints, and the actions it has taken in response to them; it must demonstrate the wrongness of having its own decisions taken out of judicial scrutiny.

On the other hand, in order to break the public impression that its members are or will be open to political influence because they are appointed by politicians, and to demonstrate that they are acting truly independently and impartially, the duties of the CoJP and all conversations, relationships and other information in their private lives

should be shared transparently with the public. In addition, the reasons for all decisions taken by the CoJP should be shared with the public, as in decisions concerning FETÖ members.

Bars and the Union of Turkish Bar Associations

Lawyers are respected not because the defense they represent is the founding element of the judiciary, but because they defend the fundamental rights and freedoms of society and the rule of law and as result of the success they demonstrate in doing so.

The good functioning of the judiciary and its capacity to cover and protect rights depend on lawyers performing their duties well.

Lawyers have the right to develop their own economic assets fairly and in proportion to their contribution to improving the wellbeing of society. Lawyers, who receive their income not from the state but from citizens, must provide society with the proper variety of services required from them, in the most economical way they can, and must ensure that citizens can access services and improve themselves constantly.

Lawyers use the minimum fee tariff to determine the lowest standard of their wages. Basically, the tariff, which determines the fee of the lawyer according to the value of the subject of the dispute, makes the lawyer something like a party in the dispute. However, the lawyer is not a party to or source of the dispute. Even if the lawyer's service is considered a contribution to production, it is not at the rate stipulated in the tariff. This is contrary to the idea of the sincere jurist in love with justice.

The tariff is also quite unfair and unbalanced in itself: In some cases, fees are set to be far lower than deserved, and in some cases fees are higher than what is legitimate to be earned, leading to automatic accrual of astronomic fees. It is the duty of bars and lawyers to eliminate contradictory injustices within the tariff and to ensure that a realistic, fair and reasonable fee is accrued according to the nature of the relationship between the citizen and the lawyer.

More importantly, it is imperative that lawyers who connect their fees to the minimum fee tariff set the minimum standards of their services as well. It is clear that the rules of the attorneyship profession and principles of fundamental conflict of interest are not sufficient to provide this: for example, issues such as how the lawyer will report developments, or what the lawyer's responsibility and rights should be if they are involved in only part of the work, should be regulated within these minimum standards.

The profession of attorneyship, which by its nature is largely fuelled by disputes that it helps to resolve, must produce solutions to prevent disputes and when they cannot be prevented, should provide solutions to resolve them more effectively, efficiently and quickly.

Lawyers should stop being passive, complaining and objecting and start being the leader and determinant in the creation and implementation of the reforms the country needs to turn disputes into compromise and cooperation. While our country produces economic value, it produces relatively higher levels of disputes per GDP, and resolves those disputes considerably more slowly and ineffectively, compared with countries of similar size, and it produces new disputes instead of cooperation in the dispute resolution process. Lawyers, who are in an exceptional position because they know the problems and needs of society first-hand, should investigate and find solutions that will change this negative picture and create a real package of legal and judicial reform that will allow us to turn disputes into conciliation in our country.

It cannot be denied that bar associations and lawyers exercise their duty of defending the rule of law and fundamental rights and freedoms by using every means they can. However, it is necessary to accept and admit that they have failed to develop the lawyer profession. Each year, nearly 20,000 new lawyer candidates struggle with internships, and those who have done their internships are struggling with opening offices. In these difficult conditions, it is not right and just to make investments such as thermal hotels, night clubs and picnic gardens instead of making investments that will provide convenience to young colleagues.

Bar associations and the Union of Turkish Bar Associations should explain to the public and should make self-criticism regarding the amount of funds collected via bar association stamps and used to financially support legal interns who are not allowed to work, and where such funds are spent. More importantly, they should also

explain why legal interns who are employed while doing the training are not paid, and even think about the negative impacts of being able to employ legal interns without paying on the development of the profession.

A mini-study by the Better Justice Association found that an average commercial case that could reasonably be solved in three to four months lasts for an average of four years and two months in Istanbul commercial courts. The prolongation of the process resulted from much unnecessary work that should be scrapped, which wasted the labor, time and financial resources of the courts, judges, lawyers and clients. With about 20,000 new law school graduates each year, the majority of lawyers, whose number increases by around 20% each year, face difficulties in finding jobs and getting by. On the other hand, our managers have difficulty in finding resources to eliminate the workload accumulated in the judiciary; more importantly, society and the developing business world have difficulty in finding services suitable for their requirements. Thus, on the one hand there is a lot of work to be done in the country in the field of law, and on the other hand there is a human resource that is looking for work and growing rapidly; the existence of such a picture is incomprehensible and unacceptable, since the basic requirement for the job to be done consists of human resources.

The irregularity of the structure of bars, which are the professional organizations for lawyers, and the Union of Turkish Bar Associations, lies at the root of this situation. The rate of representation of the bars of Ankara, İstanbul and İzmir – of which almost 60% of the country's lawyers are members – in the General Assembly of the Union of Turkish Bar Associations is disrupted in favor of the bars of cities where the number of members is low. This disruption in representation justice, and the potential influence of politicians in the selection of the board and the chair through delegates, have led to political groupings in the bar associations and this has considerably limited the effectiveness of the bars in solving the problems of the profession and the country.

Unfortunately, the fact that politics, which should not enter the barracks, mosques and courthouses, has entered the judiciary and the bars – the founding elements of the judiciary – has hindered the dynamics required for the solution of the country's judicial problems. Those who have ideas about how to solve the problems and who want to make them happen cannot find their place in the management of the

bars; and even if they are elected as a delegate to the General Assembly of the bar associations, the acumen of the president precludes what lawyers want, since all authority belongs to the president. Presidents who have political ambitions and are elected thanks to the influence on delegates of politicians act from the point of view of a political position rather than analyzing the problems of the profession and their root causes, developing solutions, and making efforts to implement them, and this structure and functioning destroys the ability of lawyers to provide solutions to the country's problems of judiciary, law and justice through professional organizations.

Bars and attorneyship have become dominated by politics at a higher level since the change in the Legal Profession Act in 2020, which brought in multiple bars and reduced the number of delegates of major bars to almost non-existent levels. Time will tell if this has caused the bars to lose their ability to find solutions to the problems.

In addition, although being a founding element of the judiciary, the professional organization of lawyers – bars are almost excluded from the judiciary due to the fact that they are not arranged as an element of the judicial power in the Constitution but are grouped together with the chambers of commerce, stock exchanges and other professional organizations in Article 135. As such, they were left out in the preparation of two of the three reform strategy documents prepared by the Ministry of Justice in 2009, 2015 and 2019, and were included in the preparation of the third, published in 2019, not as a founding element but as a formality at the last stage. The amendment of multiple bar associations in the Legal Profession Act was made despite the opposition of the overwhelming majority of lawyers and bar associations.

The Union of Turkish Bar Associations should be removed from the sphere of influence of politics by abolishing the delegation system and ensuring that the boards of directors and their chairs are elected by all lawyers, the boards of directors of the bars and association of bars should change in such a way as to allow for people with different interests, competencies, knowledge and opinions to meet, and thus the dynamics of change should be created.

Bars and the Union of Turkish Bar Associations should develop proposals for solutions that will ensure the distribution of the workload of the judiciary among judges and lawyers in accordance with their number and capacity and as required by the modern science of governance in order to resolve existing disputes in a short time and

effectively, and they should work to apply such solutions. For example, there is no justification for the bars to not implement the proposal of the Better Justice Association, which would allow legal disputes to be resolved effectively and quickly, increasing the work, dignity, importance and income of lawyers ten-fold, strengthening the belief in justice, and leading the parties in dispute to reconciliation and cooperation by way of full and accurate disclosure of cases and evidence. If there is such justification, then they should come up with a better solution and meet their own needs.

Lawyers who rightfully complain about prosecutors sharing the same stand as judges should also show how prosecutors are brought down to the same level as lawyers. Since it is clear that the ossified and inured distorted structure of the judiciary places prosecutors on the same stand as judges, it is not difficult to see that the way to bring them down is through correcting this distorted structure. However, it is the right of society to hear a proposal from the bars and the association of bars about what this distorted structure is and how it should be corrected, even in the form of an idea. Yet they have no proposals on this issue. I hereby invite the bars and association of bars to examine, accept and implement the proposal to create the Supreme Authority of Justice that was developed and presented to the public and sent to all bars and the association of bars by the Better Justice Association. I expect them to develop, share with the public and work on a better one if this proposal is not to be accepted.

The Union of Turkish Bar Associations, bars and lawyers should argue that lawyers, judges and prosecutors are equal, that their professional organizations should be equalized, that it is wrong that the Minister of Justice has a say on these professions, and that an independent regulatory board should have the say to realize the policies and choices of the nation on law and justice. In this regard, they should defend and develop the proposal of the Supreme Authority of Justice established by our association.

The Council of State and the administrative judiciary should sincerely evaluate the effectiveness of the executive in ensuring legal compliance and in addressing its own non-compliance, by comparing such effectiveness with the service that citizens need from it

It is the duty and responsibility of the Council of State, and the administrative judiciary at the top of which the Council of State exists, to help the executive power make arrangements and decisions in accordance with the law and to ensure that it considers its executive functions, duties and powers in accordance with the law.

By nature, the executive force must perform its duties at any time of the day, every day of the week. Therefore, decisions and proceedings of the executive that do not comply with the law can occur any time of the day and any day of the week. The decisions and proceedings of the executive may be a small matter, such as the police asking for identification, or a large-scale proceeding, such as declaring curfew for the entire population. These may be instant, simple decisions and actions that can be decided within a few hours, or complex issues that will take a very long time to judge.

The Council of State and the administrative judiciary should also function in accordance with these works and be capable of fulfilling their duties every day of the week and every hour of the day. The Council of State and the administrative judiciary must ensure the full-time compliance with the law of the executive by offering instant solutions, at any hour of the day and every day of the week, and it must resolve cases within a couple of months at most.

Council of State and administrative justice should make a self-criticism by examining why administrative judicial control does not work against minor, simple but widespread violations of rights, which are not brought before them except in exceptional cases and which are not actually audited.

As it is seen in the case where the police, who did not explain the basis of the administrative decision or a proper reason in accordance with the law, forcibly took the president of the Bar of Hatay to the police station, the administrative judiciary does not have the structure to respond to such immediate needs!

How much can the administrative judiciary control the public order law enforcement activities such as the police teams interfering with the private life of people on the grounds of asking for identity by diving into private places such as restaurants at certain hours of the evening, and harassing and detaining in handcuffs the people who are unlikely to escape or physically incapable of escaping?

Who monitors the accustomed lawless, disproportionate practices during forensic law enforcement activities such as the dean of the law school who will respond to the prosecutor's office if invented with a phone call, an artist who is loved by millions and people in similar situations being taken from their homes or hotels at dawn by the police? How legal is it for the police to take suspects to the police station first and take statements by substituting the prosecutor in prosecution investigations? Is it lawful for the police to use this power even if the prosecutors have given this authority?

The Council of State and the administrative judiciary must explain to the public why administrative judicial control does not work in such relatively small and simple situations that create a great traumatic effect on people's lives and damage their perception of justice.

In the Council of State and administrative judiciary courts, petition pre-examination, suspension of execution and similar matters must be decided ideally within a few hours, but within a few days at the latest; the fulfilment of simple formalities should not take months. Cases must be settled within a few months and should take no more than six months, and the dispute should be settled with a reasonable justification and a satisfactory decision for the parties.

The administration should share with the public how much time it takes in the administrative courts and Council of State to legally annul and eliminate an unlawful decision taken by a civil servant within a few hours, and should provide sincere self-criticism as to whether such time is convenient in terms of the daily requirements of the business life of citizens. The Council of State and administrative judiciary should fulfil their duty by being aware of the fact that the compliance with the law of the executive power is closely related to the state of law feature of the country. Having an executive whose compliance with the law is ensured and which is restricted by law would improve the business life and economy; the lack of such an executive causes the collapse of countries and their economies.

The Council of State and the administrative courts should function on weekends, public holidays and off-hours, and for this purpose, in the first place, courts on duty and judgeships should be created and assigned. The Council of State and the administrative judiciary should be instantly accessible for citizens through e-government and similar systems that could be easily provided using today's technology, and it must be possible to make an administrative preliminary decision about an action and a decision of the administration instantly in cases such as asking for identity and stopping and detaining citizens illegally.

The Council of State and the administrative judiciary, which are proud of having been established in the Ottoman period to control the administration's compliance with the law, should explain why the rulings on environmental issues, crimes committed by public servants, and administrative decisions restricting the right to meetings and demonstrations within the scope of their duties are being made only with delay, and why there is no compromise between citizens and government officials on the basis of the rule of law. They should accept their flaws by means of self-criticism and show the way to solve such issues.

The Council of State should first share and account for full information about the cases that have come before them and accumulated, how long it would take to effectively resolve them on the basis of their classifications and how long it is currently taking to resolve them. For example, they should share with the public what issues can be resolved instantly or within an hour or two, but how long it currently takes to resolve them. Thus, they must produce solutions themselves to solve the problems, and they must inform the public about their work in such a way as to allow the public to produce their own solutions.

How long and how effectively can the Council of State and the administrative court resolve disputes regarding the refusal of requests for information and documents regarding the transparency of the executive and the right to information? The Council of State and the administrative judiciary should explain to the public; inform the public about its performance and make a reasonable self-criticism about complaints and thereby be accountable in matters such as how many lawsuits have been filed, and against which institutions, regarding the cases where the right to obtain information and documents from the administration given to the lawyers under the Legal Profession Act a.2 / at the end in order for its clients to seek their rights effectively and to advance the

files brought before the courts, is not respected and obstacles are imposed, whether a stay of execution is decided in these cases and how long it took to resolve them.

In the event that the public is given such information and account, the Council of State and the administrative judiciary should make it clear to the public that the current operating (judicial) procedures are not sufficient to effectively ensure the compliance with the law of the administration, that the compliance with the law of the administration should be raised at the first stages of decisions and that the General Administrative Procedure Law should be passed for this purpose. In order to eliminate congestion and reservations in the presidential system of government, the Council of State should reveal that passing this law has become an urgent need. In addition to raising compliance with law in administrative decisions and actions, the Council of State should make it clear without hesitation that it is an overdue obligation to pass the General Administrative Procedure Law to clarify how all public officials, from the president at the top to the neighbourhood mayor at the bottom, will exercise administrative powers.

On the other hand, the Council of State, by considering and not forgetting that it is an advisory council for the state in addition to being a consultation council, should demonstrate that there is a need for an effective and fast-functioning pre-approval system that will control the compliance with the law – and indeed will increase the level of compliance – of draft decisions and actions to be taken in light of administrative decisions and actions that are capable of directly affecting not only the relevant party but the entire public and its freedom of information, thought and expression. It should also be taken into account that having the administration take its decisions and perform its actions through pre-control is one of the important ways to reduce the number of disputes and lawsuits that are slow to be resolved and take too much time.

The Supreme Court of Appeals and Ordinary Judiciary

The Supreme Court of Appeals should go beyond giving statistical information about the cases that come before them every year, whether decided in that year or transferred to the following years. The Supreme Court of Appeals should explain in detail how many members, rapporteur judges and judiciary personnel are employed by it and what kind of activities each of its members are engaged in for what amount of their working days. It should demonstrate its capacity to handle the jobs received with

its current staff and facilities and show the public whether it is performing below or above its capacity by comparing its capacity with the jobs received. The public should thus be equipped with information that would allow them to evaluate and call to account the Supreme Court of Appeals as a whole and its departments, delegations and members individually.

The Supreme Court of Appeals should reveal all kinds of information and truth relevant to the public about its duties without hiding anything. For example, it should share with the public how many of its decisions are made with formula sentences and paragraphs such as ***"rejected because it is not found to be appropriate"*** or ***"approved because it is in accordance with procedure and basis,"*** in how many cases reasons are provided beyond such formulas, how many decisions are made with a single page, and how many decisions are made with how many pages each. It should share information with the public in a neutral manner both about situations in which it needs to be criticized and situations in which it should be applauded and leave it to the discretion of the public whether it is doing its job well or badly.

Has the Supreme Court of Appeals, which is the last resort for citizens and which should be the last point for the delivery of justice, ever measured or asked the public how it is perceived by those in the legal professions, professional organizations and by citizens, whether it is perceived as an institution serving the citizen or one that acts as if it is superior to society? How content, satisfied or filled with destructive feelings is the citizen who has had to deal with the Supreme Court of Appeals, with the Supreme Court of Appeals as an institution, with its departments or members or with its services? Is the Supreme Court of Appeals aware of the true situation?

When even relatively small service organizations focus widely on customer satisfaction and improve their services by receiving feedback on each action and time period through public opinion surveys and other studies, has the Supreme Court of Appeals (or other judicial authorities), which serves 82 million people and makes tens of thousands of decisions every year, ever wondered about the level of satisfaction with their services and carried out similar satisfaction studies for this purpose?

The Supreme Court of Appeals should have independent public opinion surveys undertaken where issues such as how efficiently it works; how much added value it produces; and to what extent the decisions made by it are accepted, or

questioned, by the parties, their lawyers and the public in general. The results of such surveys should be evaluated to determine the areas where development is needed and what methods of solution are required, ensuring the participation of all relevant parties.

The Supreme Court of Appeals should explain in detail the number of rapporteur judges serving in the Supreme Court of Appeals, on what criteria they are chosen, how and under what procedures they are elected, and the presence and degree of influence of the Court's members in this process. It should reinforce the public and the legal community's confidence in both the members of the Supreme Court of Appeals and the rapporteur judges, learn from the public about issues that could cause or have caused criticism, resolve them and be demanding in issues that it cannot resolve by itself, and thereby raise confidence in the Supreme Court of Appeals, its members and rapporteur judges.

The Supreme Court of Appeals should publicly explain why the reports of rapporteur judges, which indisputably determine the result in appeals, are kept secret, not disclosed to the parties, in contrast to the procedure in the Council of State. It should acknowledge that keeping the reports of rapporteur judges confidential based on a provision added to the bylaw in the 1950s, despite the fact that there cannot be confidentiality in public trials, is against the right to fair trial and the principle of publicity, and it should annul this bylaw provision immediately.

The Supreme Court of Appeals should explain the justification for restricting the right to a fair trial and the right to a remedy through the provision of its internal regulation on keeping the reports of the investigation judges confidential. It should engage in self-criticism regarding the rejection of the request for this provision to be annulled on the grounds that **"only the institutions mentioned in the regulation can do it"** and consider the extent to which it complies with the right to petition and the general principles of the law. It should inform the public about the requests made, the lawsuits filed and their results in this regard.

It should also give an account to the public of where and how tens of thousands of reports that rapporteur judges should have prepared about tens of thousands of appeal files are kept. The appeals rejected on the basis of copied-and-pasted formulas create the requirement that the Supreme Court of Appeals convince the public, by sharing these reports, that the decisions made in the approval are not

determined by the rapporteur judges. If this is not done, the public assumption that the rapporteur judges, and also the members of the Supreme Court of Appeals who have chosen them have neglected their duties, that rightful appeals have been rejected without review, and that the appeal task for some issues has been fulfilled in some cases and not in others must be accepted as true.

The Supreme Court of Appeals should share with the public whether there are incidents and situations that have been sent to it or considered ex officio regarding the personal crimes of its members not related to their duties, and its decision in such cases as to whether an investigation needs to be opened or not. The Supreme Court of Appeals should accept and demonstrate that it violates the principle of equality before the law by being the explicit and final decision-maker in investigating the crimes of its members. While observing the sensitivity of the duties of its members, it should also show the way to a solution that does not compromise the principle of equality before the law.

For instance, the board of presidents of the Supreme Court of Appeals, which has the authority to decide whether a member of the Supreme Court of Appeals should be investigated – in other words, be brought before the judiciary – even if it has been confirmed by the definitive evidence that a bribe has been taken, should share with the public the methods used to determine whether members have violated their duties, and when and what decisions have been made regarding members about whom complaints have been received and already disclosed to the public, together with the relevant reasons for such decisions. In particular, the Supreme Court of Appeals should openly criticize itself, its systems, rules and members about the findings contained in the Constitutional Court's decision on the case, which is the subject of the Supreme Court's Decision No. 2011/1, and should demonstrate to the public what its internal processes are, whether they are sufficient to prevent similar situations, and if not, what needs to be done in order to make them sufficient.

Either the idea of the Supreme Court of Justice, which is included in the Supreme Authority of Justice proposal of the Better Justice Association, should be supported or a better and more advanced solution proposal should be developed on this issue.

Thus, the Supreme Court of Appeals should strengthen faith in justice by gaining public confidence through making itself fully transparent and accountable to the public.

The Supreme Electoral Council -SEC

Have the Council of State and the Supreme Court of Appeals made an assessment about the SEC, composed partly of members of the Supreme Court of Appeals and partly of members of the Council of State, and about the actions of SEC members that determine the people's will, or about behaviours and decisions of SEC members that are clearly against the law (for example, no permanent and substitute members have been identified; substitute members have participated in decisions), and opened a disciplinary or criminal investigation? Have they given any information to the public about this? Shouldn't they take action or make decisions? Shouldn't they engage in some self-criticism about their members before the public on these matters?

The Council of State and the Supreme Court of Appeals should share with the public whether any investigation and evaluation have been conducted and what they have eventually decided, on what grounds, about the allegations that members of the SEC have violated their duties and about the authorities they were granted. If SEC members are immune from liability, even if they have neglected or violated their duties, because they are also the members of the Supreme Court of Appeals or the Council of State, they should explain this to the public.

On the other hand, the SEC, as a board, should compile the criticisms about itself and its members that have been loudly expressed by the public during election periods and should provide self-criticism accordingly. It should provide self-criticism about the criticisms directed to it, particularly the fact that, despite the clear provision of the law, no permanent and substitute members have been determined from among the members and that the quorum for meetings and decisions has been unlawfully changed by the participation of substitute members in making the decisions of the SEC.

Chief Public Prosecutor's Office

The Chief Public Prosecutor's Office should share details with the public, engage in self-criticism, and give information and account to the public about situations that are already within or are likely to be included within the scope of its duty, and what preparations, examinations and actions have been undertaken or are left out of the scope.

Deputies are obliged to use their privileges and powers, which are recognized in accordance with their titles and duties assigned by the Constitution, for the benefit of the nation and with care. However, the drafts submitted to the Turkish Grand National Assembly are enacted with jet speed without being discussed sufficiently and without considering the objections and preferences of the public. The underlying errors and deficiencies in the legal regulations and the issues that need to be resolved are not known by the public.

Recently, two leading names in our country in the field of economy, Prof. Dr. Refet Gürkaynak and Uğur Gürses made criticisms that the economic administration had deliberately made decisions that endanger the economic future of the country - which could be regarded as a criminal report under ordinary circumstances. However, it does not seem possible to take legal action on this matter.

In the matters partially exemplified above, MPs, the President, ministers and senior public bureaucrats should consider the complaints and objections expressed by the public about their attitudes and actions in conflict with their duties arising Constitution and their oaths, and share with the public whether these are covered within the scope of their duties, what its powers, limits and constraints are with regard to those covered within the scope of its duties, and what actions have been taken or cannot be taken. While the public is informed about the problems, it should also be informed about the solution methods.

Thus, it should contribute to strengthening the institutions of the state, increasing the public's trust in institutions, and strengthening the trust in its own institution.

Taking lessons particularly from the coup attempt of July 2015, the Chief Public Prosecutor's Office should be open about the worth, in terms of social solidarity among their members, of faith-based groups that could attempt to take over the country through a coup d'état, and in what circumstances they became or may become a threat to the Constitution and the constitutional order in the past and present. It should share with the public its suggestions for making sure that groups can be kept within legitimate boundaries and within a framework that ensures that they do not pose a threat to the state.

Taking lessons from this attempt we fend off, the Chief Public Prosecutor's Office of the Supreme Court of Appeals should be alert to the infiltration of faith-based entities, especially into the judicial power and mechanisms; it should take legal actions to prevent them from gaining influence in the judiciary in any way, and warn other state institutions on matters that it cannot interfere with.

In the same context, in relation to certain faith-based groups, it should share information transparently, provide self-criticism and give account before the public on issues such as the studies carried out to detect, monitor and prevent such groups from becoming a threat to the state, and what actions have been taken or decided against in what cases.

The Execution, the Presidency and the Minister of Justice

As in many areas in Turkey, the biggest changes in the field of the judiciary have been made in the last 20 years. During the same period, three judicial reform strategy documents were published, in 2009, 2015 and 2019; the Turkish Grand National Assembly has quite rapidly approved and legislated bills drafted. However, Turkey has gone backwards in international indexes in areas such as judicial independence and level of democracy; in the 2019 index of *The Economist*, it had regressed from the level of moderate democracy in the early 2000s to the level of hybrid democracy. Likewise, there has been significant erosion in our country's public opinion in the titles of trust in the judiciary and belief in justice.

Unfortunately, Turkey is not seem to be fulfilling the standards set out in the United Nations Resolutions, which it has signed along with hundreds of other countries, on democracy and judicial independence, especially in the field of judicial independence, pluralist free press and freedom of expression.

The judicial power is not at a level that produces added value by serving effectively and efficiently. Its decisions on institutional and personnel rights are not subject to judicial review. Judicial elements are also not strictly accountable to the law. In addition, the judiciary is tied before the executive, its procedures are archaic, and its resources are insufficient. It cannot be said that a regulation has been made to ensure that the judiciary, which is unable to fulfil its duty under these conditions, will have a solid structure that will relieve it from these difficulties, secure its independence and develop it by protecting it. Under these circumstances, it is necessary for all concerned and officials to accept that there is no provision, or cannot be, as such just to write the phrase "independent and impartial" in the Constitution.

The fact that some social groups approve and applaud what has been done is of no value when evaluated according to the requirements of management sciences on a very sensitive issue such as the judiciary. These do not bring any benefit to our country but harm. In order to be ahead in the international arena, an advanced judiciary structure that will enable our country to rise in international indices and correct and constructive criticism to provide this structure is needed.

Even having the head of the executive, His Honorable President, make a speech or evaluation at the opening of the legal year does not fully comply with the principle of judicial independence, because the power of execution and judicial power, in democratic state administration, must be separate and independent. His Honorable President's speech on matters relating to the judiciary is perceived in the international arena as there is no independent judiciary in Turkey, and this perception harms the President of our country as well as the judiciary.

If the President of the Republic chooses to give a speech and make evaluations, it will be a much more impressive approach that will meet the expectations if he says something new, and scientific words different from all speakers, honoring the judiciary and reassuring the society. For example, it would be a very important step to promise to bring an independent, impartial, new and more advanced judicial structure

and to convey the necessary instructions to the relevant units. In this respect, we wholeheartedly wish that the President of the Republic of Turkey evaluates the proposal for a Supreme Authority of Justice that has been prepared by the Better justice Association (www.dahaiyiyargi.org) as a result of lengthy discussions, and promises to bring the system proposed in this study or a better one.

The Minister of Justice and CoJP President

The Minister of Justice is the most important judicial officer who should make an assessment at the opening of the legal year, as he is also the head of the CoJP. But when the honorable minister speaks, he should make a clear distinction to the public between what he has to say wearing the hat of the president of the CoJP and what he has to say wearing the hat of Minister of Justice.

At the very beginning, he should state whether it is an occasion for pride or shame to have the same person wear the “Minister of Justice” hat and the “CoJP President” hat. Although it seems quite nice to him that the Minister of Justice has a say in acceptance to all legal professions, and especially that the decisions on the admission of judges and prosecutors are taken by the bureaucrats of the Ministry of Justice, he should reveal how this is objected to by rest of the public and make a scientific assessment from an impartial point of view.

The fact that should be accepted as a priority is that there is a constant state of deadlock in ensuring the rule of law. The Minister of Justice should put forward a plan for the formation of a will for a solution that will be able to solve this problem, which is the primary issue of our country, that will be agreed not only by the ruling party circles but the whole country, and should initiate the formation of this plan, which cannot be created alone, with the active participation of all stakeholders.

The Minister of Justice should give an account of why Turkey falls behind in the rule of law, judicial independence, freedom of thought and expression, and democracy indices in the international arena; why the citizens’ trust in the judiciary is declining but not rising in the country; and why the belief in justice, which should always be improved, is being damaged and reduced although enormous resources of the public were used for the preparation of judiciary reform strategy documents in

2009, 2015 and 2019, where big commitments were made and high expectations were formed.

Although he strongly emphasized the protection and development of freedoms when presenting the 2019 reform strategy document, declared one day after the EU's 2019 observation report was released and Turkey was fiercely criticized in the fields of the judiciary, rule of law, and freedom of thought and expression, he should explain to the public why there are setbacks in freedom of thought and expression; why long detention times against Constitutional Court and ECHR rulings still exist and are maintained; why prisoners of conscience were kept inside while ordinary criminals were released from prisons within the scope of COVID-19 measures; why the detention measure which should be applied exceptionally only in case of danger of escaping or obfuscating evidence has still not been removed from being a general practice; why it is applied especially in crimes of insulting the President and crimes committed by journalists; why even the names known to the public, such as the artists, the dean of the law school and the journalists who would have responded when invited with a letter, were taken from their homes at dawn; what kind of fear of restriction of freedom the actions and decisions of judges in criminal courts of peace spread in the public opinion; and why the decisions of these judges can be challenged not in the more experienced higher courts but only with the next judge in line – if there is a justified and scientifically correct explanation behind this regulation he should explain it to the public as well. He should not only tell the truth he knows but also evaluate any well-grounded criticisms made of at least the two organizations he is leading, the executive power and the political party he is a member of; provide a reasonable justification if he is going to insist on defending them; and accept those criticisms he should accept on reasonable grounds, explain them and provide self-criticism in a way that the entire society will understand and find reasonable.

In Conclusion

It is the age of fighting with viruses; and age of prosperity with technology and Artificial Intelligence. In this new age, viruses and Artificial Intelligence developers will dominate the world.

A malfunctioning jurisdiction is like a dangerous virus; by poisoning the legal order, it can corrupt and collapse countries suddenly.

Respected, transparent and well-functioning judiciary and the advanced legal order it will provide is the basis of democracy and the source of social, political and economic power for countries in global competition.

In order for our country to make a breakthrough in the field of judiciary and the rule of law, it is imperative to leave old habits and to catch the age of Artificial Intelligence in law. For this, it is necessary to start with self-criticism by everyone and the people concerned.

With this in mind, we invite the judiciary of our country, people and institutions related to the judiciary, especially the officials on behalf of the Constitutional Court, the Supreme Court of Appeals and Ordinary Judiciary, Council of State and Administrative Justice, the Supreme Electoral Council, The Union of Turkish Bar Associations and bars, the Presidency, Ministry of Justice and Council of Judges and Prosecutors, who are to speak on the occasion of the new judicial year; to identify the problems and complaints of tomorrow accurately and to make a sincere self-criticism about their areas of responsibility and;

We hope that the 2020-2021 Judicial Year will be a period in which strong steps are taken to solve the problems.

With Regards,

Att. Mehmet Gün

Better Justice Association President