To the Public of

The Republic of Turkey

20 May 2020

Concerning the Discussions on the Amendments Intended To Be Made to the Attorneyship Act

Firstly, we would like to note that we deem it a pointless effort and a source of loss of energy for our country that this matter has been brought into focus in these critical days. We should instead have focused on the fight against the problems created by the strict measures and limitations, both in Turkey and around the world, in relation to our economy and social life, in addition to the health problems caused by COVID-19. We should have focused on assuring the continuation of businesses, restraining the extraordinary increase in unemployment, maintaining the lives of those who are left unemployed and without any source of income, and keeping the wheels of the economy turning.

It has recently appeared in the media that the Ankara Bar Association condemned Religious Affairs president Ali Erbaş' remarks targeted at the LGBTQ community and that the Justice and Development Party (AK Parti) held a group meeting to discuss the amendments made to the Attorneyship Act in line with President Erdoğan's statements which read as follows: "We made certain preparations in the previous years to re-determine the election procedures of professional organizations, particularly of Bar Associations and Chambers of Medical Doctors, and we have brought these preparations to a certain stage. We must address these preparations immediately and present them to the National Assembly's consideration after bringing them to completion."

The president of the Union of Turkish Bar Associations (TBB), Metin Feyzioğlu, has confirmed that preparations are being made to amend the Attorneyship Act based on meetings held with some members of the Parliament, despite having previously

declared that no such preparations were being made to that effect. The statements made by Mr Feyzioğlu are as follows: “Now, the Parliament is unofficially working on several legal regulations. […] It has been stated by every esteemed member of the Parliament, ministry official and state officials of every grade with whom I have met so far that current preparations are not an attempt to weaken bar associations. […] Well then, what is the underlying aim? It is actually aimed to underline the existence of the Anatolian bars, which are ignored in the current system, […] the number of whose representatives would not be equal to the number of representatives held by metropolitans when added together and even doubled, and […] to manifest their presence. This statement is not restricted solely to bar associations. I have been told by esteemed members of the Parliament and competent authorities that these preparations are being made to prevent negligence of large masses, which are not granted even a single right to vote in delegations of the Turkish Bar Associations, despite winning many votes in elections, including in metropolitans, because of the current election system.”

Bar associations have recently found themselves in a struggle for public opinion, out of the fear that the intended amendment is actually aimed at restricting the bar associations’ independence and repealing the duty, originating from Articles 76 and 95 of the Attorneyship Act, to defend and safeguard the supremacy of law and human rights.

In these days, when Mr Feyzioğlu – who previously took the risk of personally being in conflict with President Erdoğan and who ran a campaign across the country against the presidential system, which he did not approve – has abandoned his critical and opposing position and has adopted an attitude of accord with the executive powers, and resists the call for a meeting made by the bar associations predominating in the TBB General Assembly, the proposal of certain amendments creates justified concerns among attorneys and countrywide.

- **There are concerns that, as a result of the proposed amendments, the current representation injustice in the delegation system against metropolitans will grow larger in favour of provinces with few members, and metropolitans with a great number of members will be in the minority:**

While 39 provincial bar associations with a total number of members below 201 as of 2018 are represented at the TBB General Assembly by three delegates in total, at Tunceli Bar Association, which has 40 members, 13 attorneys are represented by one delegate and at Istanbul Bar Association, with 43,199 members, 315 attorneys are entitled to elect just one delegate to represent them all. Similarly, in the bar associations of metropolitans which have thousands of members, attorneys are under-represented.

This being the case, “giving voice to small bar associations” would mean further increasing the number of delegates designated for the bar associations of small provinces, which already have a high number of delegates, in proportion to the number of attorneys, to represent them in the TBB General Assembly. On the other hand, reducing the representation of the bar associations of large provinces, which freely criticize the executive authorities and which are in conflict with Mr Feyzioğlu as he stays on the side of the executive authorities, would mean an arrangement where the bar associations of small provinces have more delegates.

- **There are concerns that the executive powers will have a say and play a decisive role in the elections of bar associations and the TBB, their presidency and their management, and moreover that bar associations may become dependent on the executive power:**

Attorneyship is the key constituent element of judiciary power, and its independence from the legislative and executive powers is a universal requirement. This is because attorneys serve as counsel for the prosecution and also counsel for the defence as occasion requires. Attorneys are judicial officers who employ the triadic idea of “thesis, antithesis and synthesis” – namely “claim, defence and decision” – and who ensure the effective and independent functioning of this mechanism and audit it at every stage. In the end, it is the attorneys who safeguard the public’s fundamental rights and freedoms against the state and the executive power exercising the state’s power, and who ensure supremacy of law by restricting the executive power with the legal power by acting independently. Supremacy of law and justice are matters of survival for states, and attorneys ensure the state’s perpetuity by ensuring the realization of these ideals.

No compromise can be made on the independence of attorneys, since the slightest compromise could mean huge problems and damage to the conformity of the executive power to the law and in the field of fundamental rights and freedoms.

- **The desire to dominate huge funds and intangible resources:**

The president of the TBB and the administration manage a substantial amount of monetary funds and also benefit from certain immaterial opportunities by holding an important position in the state protocol.

Small sums that come out of the pockets of citizens unnoticed in the form of the “Bar Association Stamps” that it is obligatory to affix to power of attorney and authorization certificates, which attorneys must present to courts in every case to prove their authorization as attorneys while serving citizens, add up to form huge monetary funds. The amounts raised from bar association stamp fees provide loans to legal interns who are not allowed to work as per Article 27 of the Attorneyship Act, and grant the administration of the TBB a power of sanction over bar associations, especially small

associations. These amounts are used to build huge bar association buildings in provinces, and the share of the provincial bar associations depends on the transactions made by the TBB's administration.

There is no need to explain the moral importance of the position held by the president of the TBB and its administration in the state protocol. However, it should not be ignored that this position also enables the union to open doors at every level of the state and to have a say in the formation of the country's legal and economic policies.

Provincial bar associations and the Union of Turkish Bar Associations are subject to democratic governance

Article 135(1) of the Constitution defines professional organizations with the characteristics of public institutions as follows: "**Professional organizations with the characteristics of public institutions and their higher bodies are public corporate bodies established by law**, with the objectives of meeting the common needs of the members of a given profession, to facilitate their professional activities, to ensure the development of the profession in keeping with common interests, to safeguard professional discipline and ethics in order to ensure integrity and trust in relations among members and with the public; **their organs shall be elected by secret ballot by their members in accordance with the procedure set forth in the law, and under judicial supervision**."

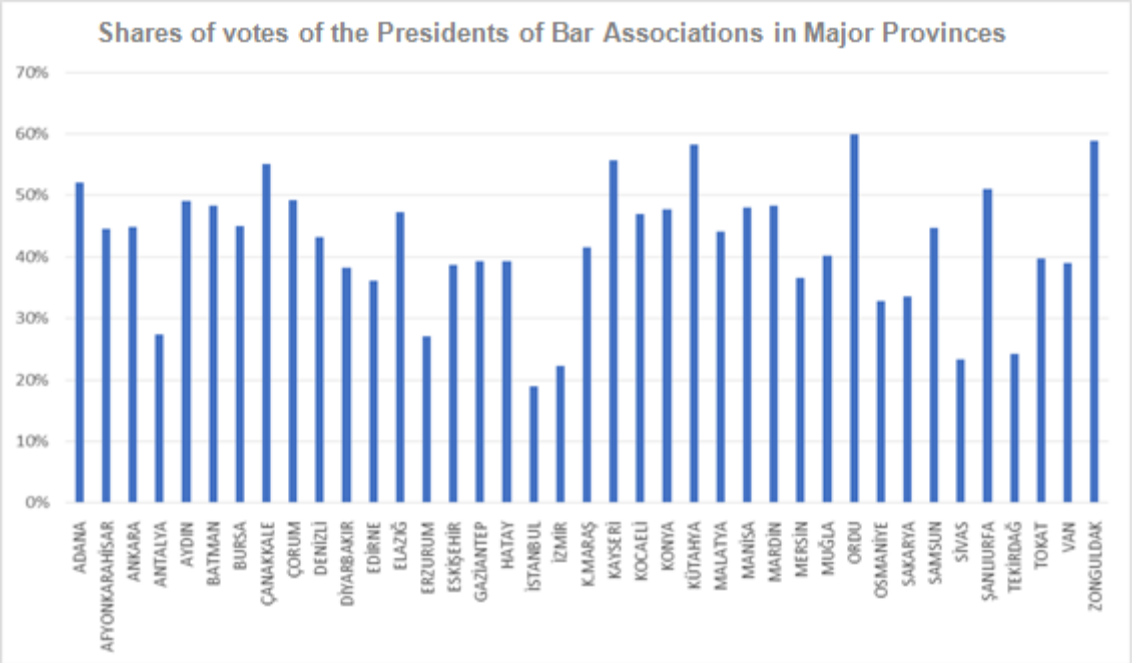
In Turkey, there are many professional organizations with the characteristics of public institutions which are established by law, based on Article 135 of the Constitution. Bar associations and the TBB are the professional organizations for lawyers, while other professional organizations so established included the Turkish Pharmacists' Association, the Turkish Medical Association and the Union of Chambers of Turkish Engineers and Architects.

It is obligatory to obtain a licence from these organizations in order to practise certain professions, such as attorneyship. Professionals who have obtained a licence must become members of the relevant professional organization, pay membership fees and obey the rules of the organization. Businesspeople and entities established to be engaged in commercial activities which require no such licence must register at the relevant chamber of commerce or market, and must pay a membership fee.

Bar associations of large provinces are the most democratic institutions of Turkey

Bar associations of large provinces, having thousands or even tens of thousands of members, are the most democratic institutions of Turkey. As is the case for other professional organizations with the characteristics of public institutions, the administrations of provincial bar associations are elected by a large majority of votes following a free competition among various candidate groups. In most provinces, groups aspiring to management become organized and choose their candidates by election, and they have traditionalized the democratic candidate nomination methods. The candidates nominated by traditional methods are elected to the management through the support of a great majority of attorneys practising in their provinces. While this is required by democracy, the fact that democratic methods for the nomination of candidates have become traditionalized strengthens and enroots democracy within the professional community of attorneys.

It can be said without any hesitation that the managements of the bar associations in the provinces given in the figure below, which were elected in the latest elections held in bar associations with more than 300 members having received the votes of more than 35% of all members, constitute the most democratic managements to have taken office by election, with the country's highest rate of participation.



As of 2018, 108,230 of 116,779 attorneys in total (92.6% of all attorneys in Turkey) are members of the bar associations of 40 big cities. These 40 bar associations are represented by 430 delegates (76.6% of the total number of delegates) in the TBB General Assembly, made up of 561 delegates in total. As can be seen, while the

managements of provincial bar associations are elected by highly democratic means, their representation rate in the TBB of 76.6% is lower by one-fifth than the deserved representation rate of 92.6%.

On the other hand, closed lists, which are preferred for practical reasons and which have become traditionalized, deter some interested parties and candidates from putting themselves forward, and prevent them from being elected even if they do step forth – even if they have the capacity to receive more votes than the candidates who are entered on the closed list. This includes those who do not participate in primary elections or who are from different factions. Additionally, candidates whose position in the ordering of the list might be changed by the voting patterns in an election find that they cannot attain the deserved position because of the closed nature of the list. For example, a person nominated by a certain faction as a candidate to become a permanent member should be able to change their rank by receiving more votes or by receiving votes also from other groups; but since members cast votes for a closed list, such a candidate cannot find the opportunity to change the pre-designated order.

The General Assembly and central management of the TBB are anti-democratic

When reviewed in the light of the referred decisions dated 1991 and 2002, the provisions of the Attorneyship Act on the number of delegates representing provincial bars at the General Assembly are seen to be against the Constitution's principles of democratic state of law. In other words, the TBB General Assembly is established in an anti-democratic manner and members' right to be fairly represented in management is clouded by the delegation system.

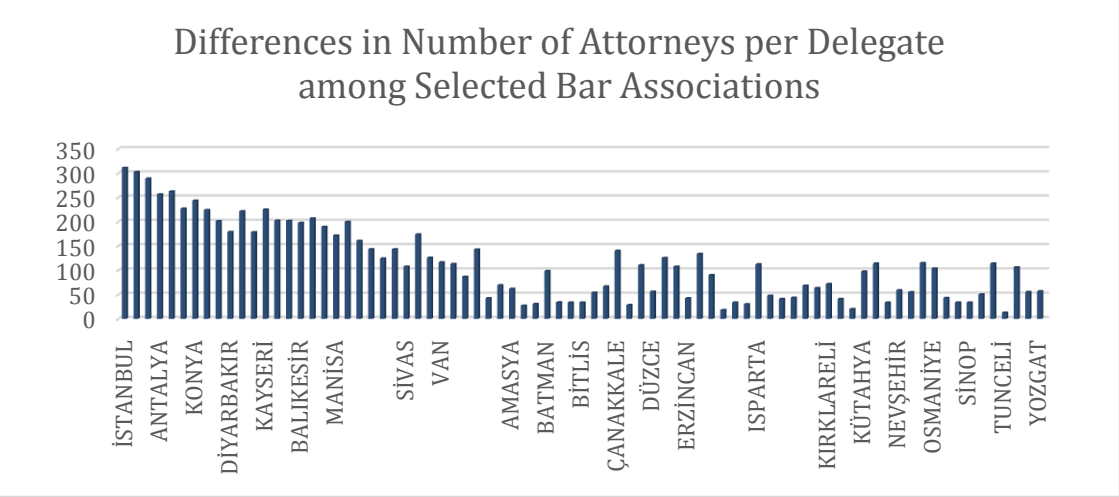
Pursuant to Article 114 of the Attorneyship Act, the General Assembly, being the highest entity of the Union of Turkish Bar Associations, is composed of two delegates from each bar association. Incumbent presidents of bar associations and attorneys who have served or are currently serving as the president of the TBB are natural members of the General Assembly of the Union with the right to participate in voting, to elect and to be elected. Bar associations with more than 100 members will elect an additional delegate for each additional 300 members after the first 100. Accordingly, the bar association of a small province with 50 members will be represented by three delegates while the bar association of another province with 399 members will be represented by four delegates in the General Assembly.

This situation causes those bar associations with a large number of registered attorneys to send a lower number of delegates in proportion to their total number of members, and small bar associations with a low number of registered attorneys to send higher number of delegates in proportion to their number of members. In other

words, the power of representation granted to the members of small bar associations is greater than that held by the members of large bar associations.

In 2017, the TBB General Assembly was composed of 504 participants, 421 being elected delegates, 79 being bar association chairpersons and four being present or former union chairpersons. Thus, 500 participants were elected delegates representing provincial bar associations or chairpersons of the same provincial bar associations. For this General Assembly, in the autumn of 2016 approximately 100,461 attorneys elected delegates and chairpersons. According to a comparison between the total number of attorneys and the number of delegates representing them in the General Assembly, for the sake of the full and fair representation of attorneys, in the General Assembly each delegate should represent a total of 201 attorneys, or in other words every 201 attorneys should have elected one delegate.

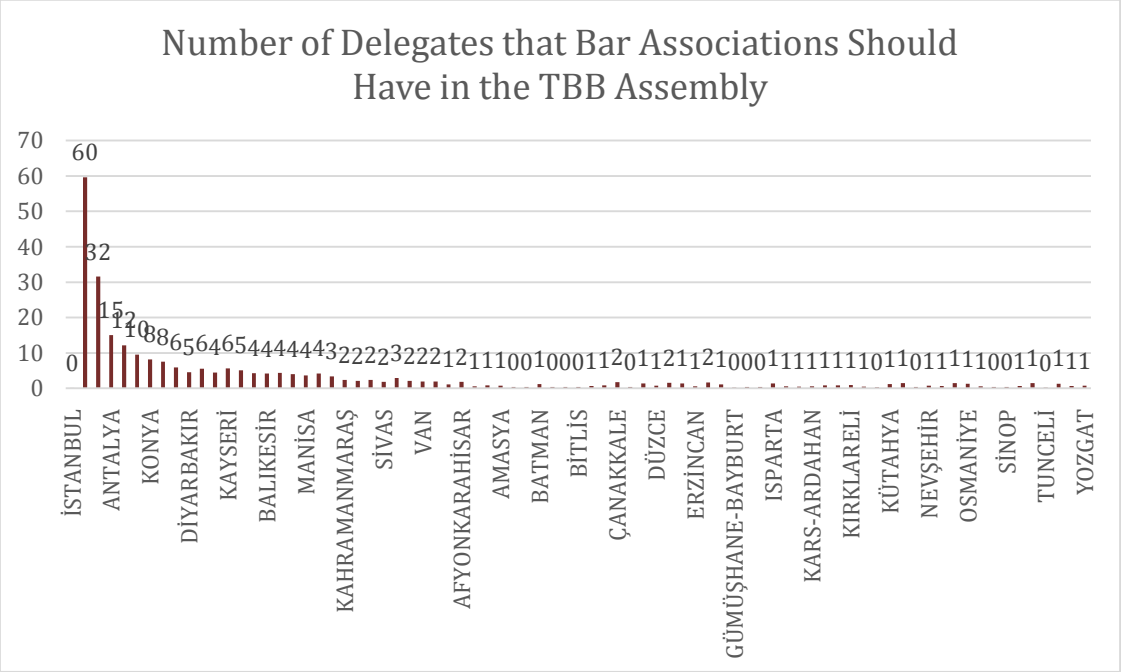
In the graph below, it is seen that major injustice in representation exists against the attorneys practising in large cities. There is a huge gap even between the representation of provincial bar associations having fewest members. In the 18 bar associations with the highest number of members, 265 members are represented by one delegate on average; in Istanbul Bar Association, which has the highest number of members of any bar association, 314 attorneys are represented by one delegate.



Thirty-nine provincial bar associations with fewer than 201 members are represented in the General Assembly by at least three delegates, one of them being the bar association chairperson. The Tunceli Bar Association, with only 40 members, is represented by three delegates; thus, in Tunceli one delegate represents approximately 13 attorneys.

If the numbers of delegates in the General Assembly were determined according to numbers of members, 201 attorneys should be able to elect one delegate. If the number of delegates corresponding to bar associations with a total number of

members below 201 were 0.5 or more, rounded up to one, each of the Batman, Kütahya, Giresun, Adıyaman, Kırklareli, Aksaray, Kastamonu, Burdur, Kırıkkale, Amasya, Nevşehir, Yozgat, Düzce, Yalova, Niğde, Bolu, Şırnak, Karabük, Kars-Ardahan, Rize, Ağrı, Erzincan, Karaman, Kırşehir, Bilecik, Bingöl, Bitlis, Siirt, Sinop, Hakkâri and Muş bar associations would be represented by one delegate, and the Istanbul Bar Association, with 37,985 members, would be represented by 189 delegates in the General Assembly.



A draft attorneyship act which was sent to the relevant institutions and some non-governmental organizations in order for them to be able to give their opinion, but of which the evaluation stage is not finished, is available on the official website of the TBB. In Article 167 of the draft act, five alternatives are offered for formation of the TBB General Assembly. The main alternative is very similar to the current rule: it suggests that the bar association of each province should elect two permanent and substitute delegates and, additionally, one further delegate for each additional 300 members; as it is, it does not offer any solution to the existing injustice in representation.

The second and third alternatives presented in the draft further increase the existing injustice in representation up to at least three times against attorneys practising in large cities, by suggesting that three delegates should be elected by bar associations with up to 100 attorneys, four delegates should be elected by bar associations with up to 1,000 attorneys and one additional delegate should be elected for each additional 1,000 attorneys.

The fourth alternative presented in the draft suggests that the TBB General Assembly should be made up of only presidents of bar associations, and the fifth alternative suggests that the General Assembly should be made up of presidents and members of the governing boards of bar associations. It is clear that such practices would multiply the existing difference of representation power by 20, to a level thousands and tens of thousands of times higher, and would not accord with the principle of democratic governance.

Mr Feyzioğlu's statement that "voices of the bar associations of small provinces, which cannot be heard in the presence of the bar associations of large provinces, shall be louder" strongly implies that the draft which has not been announced to the public yet has been extensively discussed behind closed doors is the draft summarized above, or that it contains similar restrictions on representation.

Under these circumstances, attorneys, and particularly the bar associations of large provinces, have every right to be concerned about a draft that is clearly against the Constitutional principles of democratic governance and state of law will be proposed and will even be enacted.

Central managements of other professional organizations are anti-democratic

Because of their public institution status, such professional organizations are required to be governed according to democratic management principles. Their organs are constituted through elections among their own members. Their central organization and the election of their organs are similar to those of political parties and to the elections of the Turkish Grand National Assembly and municipalities. Like political parties, they have central and field organization units, and their central organs are elected by a General Assembly or congress composed of delegates elected by field organizations.

Field organization delegates are elected similarly to delegates in political parties, and a delegate determination, nomination and election system is applied that allows control of delegates but does not assure fair representation of members.

The number of members represented by delegates elected from different provinces to represent their provinces in the central organization varies according to the number of members of the provincial organization they are elected from. Thus, provinces with a low number of members are represented by a relatively high number of delegates, while provinces with a high number of members are represented by a fairly low number of delegates. To put it in other words, the representation power of members in small provinces is light-years ahead of that of members in large provinces.

Arguments suggesting that the determination of the central management of professional organizations with public institution status by provinces with a high number of members is not the correct approach are not acceptable or legitimate in democratic terms, because such an argument seeks to restrict the representation rights of members from provinces with a high number of members and to augment the representation power of smaller numbers of members from small provinces, thereby leading to tyranny of the minority over the majority. On the other hand, complaints arguing that large provinces with a high number of members are represented unfairly by a disproportionately low number of delegates are right and legitimate in terms of democracy.

The laws governing professional organizations currently restrict the representation power of large provinces and increase the representation power of a lesser number of members from small provinces, thus leading to tyranny of the minority over the majority. The Constitutional Court has also found such complaints of injustice in representation right and justifiable and has, therefore, nullified the subject regulation for any single professional organization, due to its unconstitutionality.

Both in political parties and in professional organizations with public institution status, the delegacy system extensively used in the determination of central decision-making and managerial organs, and the collective list procedures and practices whereby the central management and various other focal points determine who will be elected as delegates, are, firstly, contrary to the constitutional principles of pluralism and justice in representation. Central congresses composed of delegates determined by methods contrary to the Constitution, as well as the list-based election processes applied in these congresses, are not compliant with said principles either. To put it plainly, the delegacy system employed in political parties and in professional organizations with public institution status is not democratic, and is in contradiction to the basic principles of the Constitution.

Just as in the case of political parties, the will of the members of professional organizations with public institution status is restricted through lists and delegates, as they are forced to choose one of the lists dictated to them rather than making a choice of their own free will and at their sole discretion. As a result, a significant segment of members who cannot be added to the lists, who are prevented from being placed on the lists, or who take a higher number of votes but who, nevertheless, lose the elections due to being included in the losing list are excluded and marginalized from the management of their own professional organizations. This not only limits the representation of members in management, but also paves the way for the creation of an authoritarian leadership and central management structure, similar to that in political parties, and for use of the resources and funds of members not for their intended purposes but based on other motives or according to political

choices and discretion.

Having assessed and discussed – three times, in 1991, 1995 and 2002 – the delegacy rules contained in the laws and regulations on the foundation of professional organizations with public institution status, the Constitutional Court, in its judicial rulings and opinions of 1991 and 2002, found the differences between the numbers of members represented by delegates elected from different provinces to be in conflict with the Constitution. However, the same provisions conflicting with the Constitution are also contained in the laws governing other professional organizations, and have remained in force and implemented for many years, solely because an action for nullity has not yet been brought against other such laws on the grounds of unconstitutionality.

On 3 December 1991, the Constitutional Court, in its Judgment No. 1991/45, nullified the second paragraph of Article 51 of the Law on the Turkish Pharmacists' Association No. 6643, which set out a criterion on delegates elected by the chambers to the Great Congress, quoted as "**Chambers having a number of members up to 200 elect five original delegates and substitutes of the same number, and chambers having a number of members greater than 200 elect seven delegates and substitutes of the same number**", due to unconstitutionality.

In summary, the Constitutional Court judged that the subject provision is in conflict with the Introduction and Articles 2, 5 and 135 of the Constitution and, therefore, nullified it on the grounds that in professional organizations with public institution status, the management and operational processes cannot be in conflict with democratic rules; that democratic election rules cover fair participation and free, equal and general ballot principles; and that participation in the Great Congress by chambers of pharmacists, regardless of their total number of members, by seven representatives indeed prevents the fair participation of chambers in the most important organ of the Association and is, therefore, in contradiction with democracy.

Dissenting members who base their arguments on the grounds that injustice in representation will be created between chambers, being separate entities with different number of members and delegates, ignore the fact that the parties who are represented therein are not artificially formed legal entitles – chambers – but individual members, and that they have adopted an archaic authoritative management undertaking which cannot be accepted today and which does not comply with the requirements of democracy. The claims that representation of chambers at the General Assembly in proportion to the number of their members would result in the domination of large chambers with many members throughout the assembly, and that this would not comply with the principles of democratic governance, demonstrate that opposing members have failed to internalize the law

and democratic governance. Indeed, how is it that the domination of a few members over many others could be regarded as a democratic solution? It would be a waste of time to address other unreasonable grounds presented by the opposing members.

On 15 February 1995, the Constitutional Court, in its Judgment No. 1995/9, dismissed an action based on a claim of nullification of the last paragraph of Article 7 of the Law on the Turkish Dentists' Association No. 3224, quoted as "**Chambers with a number of members up to 200 elect five original delegates and substitutes of the same number, chambers with a number of members up to 500 elect seven delegates and substitutes of the same number, and chambers with a number of members more than 500 elect ten delegates and substitutes of the same number**". The Court's reasoning was that two chambers, one with 2,000 numbers and the other with only 501 members, had equal representation power at the union congress with 10 delegates each – a reflection of the dissenting opinions in the 1991 judgment that we criticise above.

The Court, which based its decision on the opposition's grounds presented in the annulment decision dated 1991, ruled that "Representation of chambers in the congress by different numbers of members will create injustice between chambers acting as separate entities. […] Such representation would be against the founding purpose of the Turkish Dentists' Association, which is based on representation of chambers, not of dentists individually, and of professional associations in general, and it would not comply […] with the principles of democratic governance." As we have explained in detail above, these grounds are totally wrong in that they ignore the fact that it is the dentists – individuals – who are meant to be represented and instead see the chambers – legal entities – as right holders at the representation level. In the justification part of the decision, the Court referred to "incompliance with the founding purpose of chambers". This reveals that the Court fell into an intolerable error of logic and came to a decision based not on the Constitution but on the which act was requested to be annulled, and to ensure the survival of that law. The Court's effort to justify its contradiction with its 1991 decision using a clichéd and common excuse – "every decision is unique with respect to the case and file" – implies that the Court made an arbitrary decision. This saying, which may apply to different cases before civil courts, cannot be provided as a grounds for overruling the precedents of the Constitutional Court, which is liable to implement constitutional principles in every single case. The rules which were requested to be annulled in the 1995 case are not different in nature from the rules which were annulled in the case dated 1991.

As a matter of fact, the dissenting members of the Constitutional Court, by not approving this erroneous judgment of 1995, defended the view "[t]hat the most equitable and least complained-of delegate election method is based on the number

of delegates closest to the representation principles, in conformity with the number of delegates, even if a full mathematical number cannot be found and, thus, members registered in the chambers may be represented fairly and realistically; that although the subject represented in the Association's General Assembly is the 'chamber' formalistically and theoretically, the chamber, in turn, also represents its members; that a fair election is one that assures and reflects the participation in it in the most realistic manner; that representation of all chambers with more than 500 members by the same number of delegates, regardless of the difference between the numbers of members thereof, is indeed in conflict with democracy; that the right of discretion of the legislator is also limited by the constitutional and universal law rules; that determination of an appropriate number of delegates cannot be considered a matter of 'expediency'; that their comments are also verified by Judgment No. 1991/45 of 3 December 1991 of the Constitutional Court; that 'democratic principles' are required to be complied with also by professional organizations with public institution status in their own internal regulations by nature; that it is impossible to separate the management and operational principles from elections and to exclude democratic principles from the determination of the number of delegates; and also that an 'election', as the sine qua non requirement and condition of democracy, will be valid and fair only with fair participation".

On 19 February 2002, the Constitutional Court, in its Judgment No. 2002/31, nullified the second sentence of the first paragraph of Article 60 (as amended by Law No. 3224) of the Law on the Turkish Medical Association No. 6023, quoted as "**Chambers with a number of members of up to 200 elect three original delegates and the same number of substitutes, chambers with a number of members of up to 500 elect five delegates and the same number of substitutes, and chambers with a number of members of more than 500 elect seven delegates and the same number of substitutes**", by accepting and honouring by a majority of votes the claim of nullification based on the grounds that in the Great Congress of the Turkish Medical Association, the Istanbul Chamber of Medical Doctors, with around 14,000 members, is represented by the same number of delegates (seven) as a chamber with only 500 members and that this, in turn, causes inequality.

In its reasoning, the Constitutional Court declared that the Republic of Turkey is a democratic, secular and social state of law; that the most evident characteristic feature of democracy is elections aimed at ensuring fair participation, based on free, equal and general ballot principles and relying upon justice in representation; that, by the contested rule, participation in the Great Congress by chambers of medical doctors with more than 500 members, regardless of the exact number thereof, is limited to seven delegates; and that this rule is in conflict with Article 135 of the Constitution, which seeks compliance with democratic principles in the formation of

professional organizations with public institution status.

Dissenting members claimed that what matters is the proper representation of every chamber at the congress and that domination over the congress of a few provinces with many members would give rise to anti-democratic consequences for chambers with few members. This view, which ignores the fact that it is real people who are represented, which tolerates the minority's dominance over the majority and which lacks logical or legal grounds, cannot be associated with the idea of democracy.

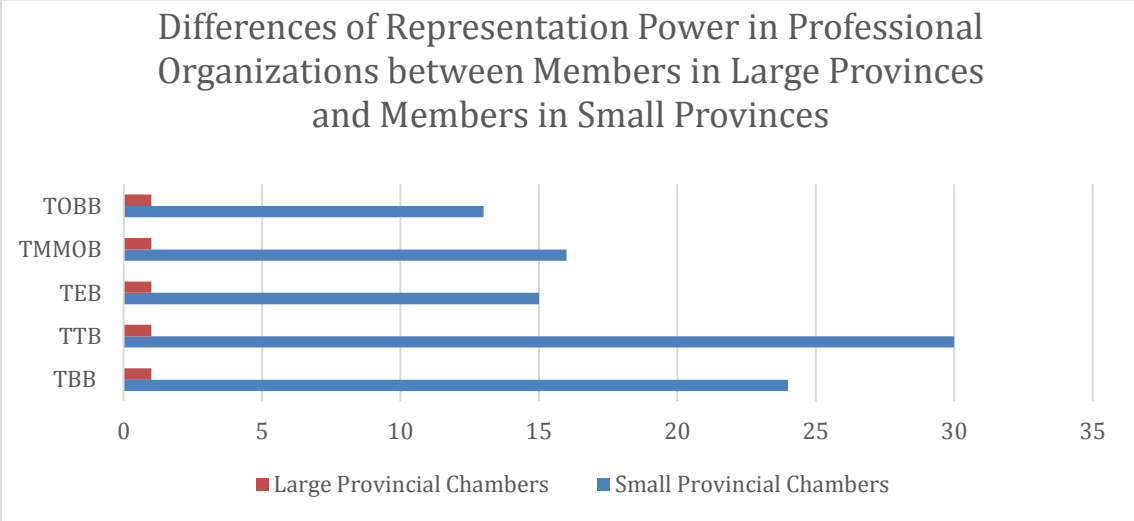
Indeed, use of the delegation system – which was introduced at a time when the transportation and communication facilities were very limited and far behind the current level and it was not possible to gather thousands of members at the same time and place – with the intention of seizing or controlling the management of professional organizations in a manner against the members' will is nothing but an outrageous abuse of the laws in bad faith. The methods used as a means for such abuse, in which some members are granted higher representation power while a larger proportion of members are deprived of fair representation, are equally outrageous, illegal and anti-democratic. Such an attempt cannot be associated with the principles of state of law, fair representation and democratic governance.

Although the aforesaid regulations escalated to the Constitutional Court have already been nullified, other regulations containing similar or even weightier conflicts with the Constitution are still in force, and continue to be enforced, solely because they have not been specifically referred to the Constitutional Court. This is a bizarre discrepancy and contradiction created by the inadequate and problematic constitutional protection system.

Representation unfairness in professional organizations with the characteristics of public institutions, which concern a large part of the society, causes society to grow cold and feel compelled to endure rather than safeguard professional organizations. Generally, the representation and voting power of members in provinces where they are few in number and easily controllable has been differentiated from the power of members in the major provinces in such a way as to constitute a large gap.

The greatest gap in representation power is seen in the Union of Chambers and Commodity Exchanges (TOBB), wherein in the Babadağ Chamber of Commerce, the chamber with the fewest members, one member's voting influence is 335 times that of members of other chambers, assuming that each member has at least one vote. Thus, according to an assessment based on the fairness of representation, groups of members that are fewer in number are given a very high rate of representation power and hence, in this professional organization, the minority generally has tyranny over the majority. This problem exists also in other

professional organizations, as can be seen in the graph below.



Notes: TOBB: Union of Chambers and Commodity Exchanges of Turkey; TMMOB: Union of Chambers of Turkish Architects and Engineers; TEB: Turkish Pharmacists' Association; TTB: Turkish Medical Association; TBB: Union of Turkish Bar Associations.

In 2009, the State Supervisory Council (SSC) compiled a comprehensive report on democratic governance at professional organizations with the characteristics of public institutions. The findings and suggestions given on pp. 488ff. of this report can be summarized as follows:

- The rate of participation of members in elections of professional organizations should be raised, and different opinions should be given the opportunity to be represented in the organs of these organizations. Elections should be organized impartially and under conditions of equality. To resolve the existing problems of representation, rather than elections based on lists taking the majority of votes as a whole, a proportional representation system similar to that of parliamentary elections, together with choice and preference systems, should be employed, allowing groups to be represented in organs in proportion to their vote shares. The election of the same persons for many years and the formation of hierarchical, autocratic and monopolistic structures should be prevented, and the regulations and charters of professional organizations that are similar to each other by nature should be made uniform on the basis of certain minimum standards.

- To achieve these objectives, the laws pertaining to professional organizations with public institution status and, especially, the rules regarding elections therein should be reissued, the fair representation of chambers with low numbers of members should be secured and

terms of office should be limited. Elections should be organized under judicial review, all candidates should be placed on a single list and choices/preferences should be allowed in elections. The election system should be rearranged to ensure that the candidates winning the most votes are elected, as in the proportional representation system employed in parliamentary elections. Methods aimed at increasing participation in elections, e.g. voting by mail or via internet, should be employed, and actions should be taken to keep ballot boxes open for a longer period of time.

The proposals of the SSC as to the imposition of a “ceiling” so as to prevent the absolute control and domination of several large chambers in central General Assemblies of professional organizations, and as to the redetermination of the numbers of members and delegates eligible to attend General Assembly meetings in such a manner as to keep the existing insecure system, cannot be accepted. This is because justice in representation can be achieved in a better and more comprehensive manner only by making sure that even the chamber with the fewest members is also represented in management, and also by respecting the right to proportional representation in management of those chambers with high numbers of members – not by excluding some members from the right to representation.

Our opinion:

In Turkey, for the sake of permanently establishing democracy not only in political parties and the state itself, but also in all kinds of official and private social organizations where people come together optionally, mandatorily or necessarily and where the self-government of individuals is required, democratic methods should dominate and should be established as the basis of the management culture therein. It is a sociological reality that in the absence of such a management culture, democracy cannot be successfully employed in political parties or legislative and executive organs, and that in such circumstances, even the most democratic political and governmental bodies and institutions will quickly descend to the democratic level of the wider society, whatsoever that may be.

This sociological reality directly affects not only politics and state governance but also day-to-day relations among individuals and economic activities even in the smallest unit of society. In an undemocratic and authoritarian family, the head of the family, holding the power in his hands, acts arbitrarily in his decision-making. Such an arbitrary and authoritarian leader deprives himself of the valuable knowledge and different points of view of others, since he does not grant others the right to speak and participate in decisions. Such a head of a family feels suffocated due to his

attempting to resolve problems alone, and after some time starts to resort to the use of violence or force against his loved ones.

This process is what underlies events such as certain successful family-owned businesses, composed of owners tightly connected to each other, falling into dispute and conflict over time and going bankrupt, thus causing the loss of significant assets in the broader economy. For instance, a Turkish company that was an important exporter and held a significant share in the global tractor market some time ago went bankrupt solely as a result of family disputes and disagreements. This event stands as a recent example from which important lessons can be learned.

Whatever their size, businesses that are not managed in a democratic way, that do not treat their employees equally in spite of differences in wages paid and in the positions they hold, and that do not take into consideration the employees' knowledge, wishes and suggestions, fail to resolve even very simple problems and cannot ever reach their potential production capacity. Such examples as employees sabotaging production or deliberately contaminating the products of the business in response to unfair treatment or being disregarded are the result of these problems.

Furthermore, given that even in small businesses run by a only few individuals, the participation and contribution of those in charge of different aspects of the business activities are considered to be essential for success, it is unequivocally clear that democratic management is very important to the success of hundreds of thousands of business enterprises.

To put it in other words, although economists and management scientists have not yet demonstrated by experimental data the extent to which democracy is effective in business enterprises, given that the economy and welfare is most advanced in countries with an advanced democratic culture, there is no doubt that a culture of democracy is an important factor in the economic success of societies.

In order to establish and promote democracy in state governance, the principle of democratic management must be applied in all social platforms, and must be turned into a fundamental part of society's culture.

Also in professional organizations which people are legally obliged to be enrolled in and pay subscriptions to, as dictated by the Constitution, democratic management should be established as soon as possible. The government, which has thus far intervened in democratic management through restrictions, and in conflict with the Constitution, should, as soon as possible, enforce its obligation thereto, and should quickly amend or repeal restrictive provisions in the law in connection therewith.

Our suggestions for professional organizations in general:

In Turkey, the formation of the central management of professional organizations on the basis of provinces, as determined pursuant to the priorities of administrative organization, results in inefficiency and waste of resources. Consequently, resources remain restricted in large provinces where the majority of members are found and professional organizations cannot properly serve their function. In the light of these considerations:

(a) In provinces with too many members (for example, more than 5% or 10% of the total number of members), local managements of professional organizations can be divided into multiple professional organizations – local management regions – in a balanced manner considering elements such as characteristics of professions, economic and geographical conditions, and logistics.

(b) Within this framework, instead of establishing separate managements in every province with a few members (for example, less than 400, 500 or 1,000 members), a single central management can be established for the relevant professional organization, covering the provinces with few members found in 26 development regions as designated according to the NUTS (Nomenclature of Territorial Units for Statistics) system.

In professional organizations with the characteristics of public institutions, members of the central board of management and other bodies and their presidents should be elected directly by their members. Regulations such as the delegation system, delegate congresses, and provisions for sub-committees to elect the board of management and president must be annulled. The General Assembly or Central Congress, made up of delegates, should not be electing the presidents of professional organizations and members of management boards or other bodies.

Presidents of professional organizations and central managements should preferably be elected in a single election and by all members, where members of the relevant professional organization make a selection from among candidates. The member who receives the majority of the votes should be appointed as the president and the member ranked second should be the deputy president. If the highest-ranked member does not want to serve as the president, the members ranked second and third should be appointed as the president and deputy president.

If the foregoing suggestion is not accepted and it is preferred to elect presidents of professional organizations separately from the board of management, as is the case with presidential elections, the president and deputy president should be elected using a two-round system. In the first round, the member with an absolute majority of votes should be appointed as the president and the member ranked second should

be appointed as the deputy president. If an absolute majority of votes cannot be achieved in the first round then a second round of voting should be held with the top two candidates and the candidate with the majority of second-round votes should be appointed as the president while the other candidate should serve as the deputy president.

In elections held for presidencies, boards of management and other bodies of professional organizations and central organizations, practices such as closed lists and key lists which are used for practical reasons but which restrict the enactment of voters' will must be prohibited. Instead, systems where the voters do not cast a vote based on pre-designated lists but cast a vote for the desired candidate should be developed and put into practice. For example, voters can be easily enabled to make a selection by affixing a seal under the desired candidate in a list where the names and photos of candidates of competing groups are found or by affixing a seal under name of an independent candidate who is not member of any group. With the use of computer technologies, such elections can be held in a much quicker and more efficient manner.

The efficient participation of all members can be ensured in the elections of professional organizations through the introduction of practices such as the use of E-State, E-Signature and voting by mail. In this way, the representation power of professional organizations will be increased and managements will be able to ensure quick progress by offering quick solutions for all professions, since more dynamic decisions can be made and members with different ideas can negotiate, come to an agreement, and become convinced by or convince others.

It is widely known that managements where different ideas are excluded and a single opinion dominates do not ensure sufficient progress and that the groups which are cast aside in such circumstances do not willingly adopt the decisions which they have not contributed to and which are made by the group at the wheel. On the other side, the science of anthropology has found out that all cultures which refuse to interact with others regress.

Our opinions and suggestions on bar associations:

Articles 76 and 95 of the Attorneyship Act No. 1136 of 1969, which provide that bar associations are professional organizations in the nature of public agencies with legal personality operating on the basis of democratic principles in accordance with Article 135 of the Constitution, impose the duties of "defending and safeguarding the supremacy of law and human rights", among others. As a matter of fact, in cases such as Ergenekon, Balyoz, etc. where hundreds of innocent military officers, including the Chief of the General Staff, were illegally sentenced to prison; in the Soma mine

disaster, where 301 miners were killed; in the dormitory fire where tens of innocent students were burned to death; and in cases related to sexual assault against children, murder of women, environmental disasters or train accidents where tens of people were killed, bar associations have defended the supremacy of law to the end. This independent stance maintained by the bar associations, rather than obeying power, is the most important assurance for the supremacy of law and judiciary independence.

The duty and authority granted in Articles 76 and 95 of the Attorneyship Act, which are successfully fulfilled by bar associations despite the existing limitations, must be immune, and use of this authority must not depend on the approval and permission of the executive power.

Attorneyship is independent by reason of its nature and is the most independent constituent element of independent judiciary system. Therefore, the independence of attorneys is secured under the Constitution. Intervening with the bar association members' election, in an independent and democratic manner, of their presidents and damaging their independence goes against the Constitution and judiciary independence.

Without a doubt, the Constitution is binding on the judiciary and executive organs, political parties, which are also Constitutional institutions, leaders of political parties and other members, and members of Parliament members regardless of their political party. Any proposed amendment to the number of delegates designated in the Attorneyship Act in a manner which favours attorneys who are members of provincial bar associations with few members, and which thus further deepens the existing gap rather than eliminating the injustice against attorneys practising in large cities, would be an amendment against the Constitution. The drafting and enacting of such an amendment, despite this having been found by the Constitutional Court's decisions dated 1991 and 2002 to be against the Constitution, must be annulled, and such an amendment should be regarded as a violation of the Constitution as well.

It would be to our country's benefit to use the authority granted by the Constitution to political parties and the executive power to propose and enact laws within the framework of the considerations explained above and within the Constitutional boundaries, in conformity with the principle of democratic state of law and in a manner aimed at eliminating the existing issues and empowering the process of democratization.

Respectfully announced to the public,

Better Justice Association