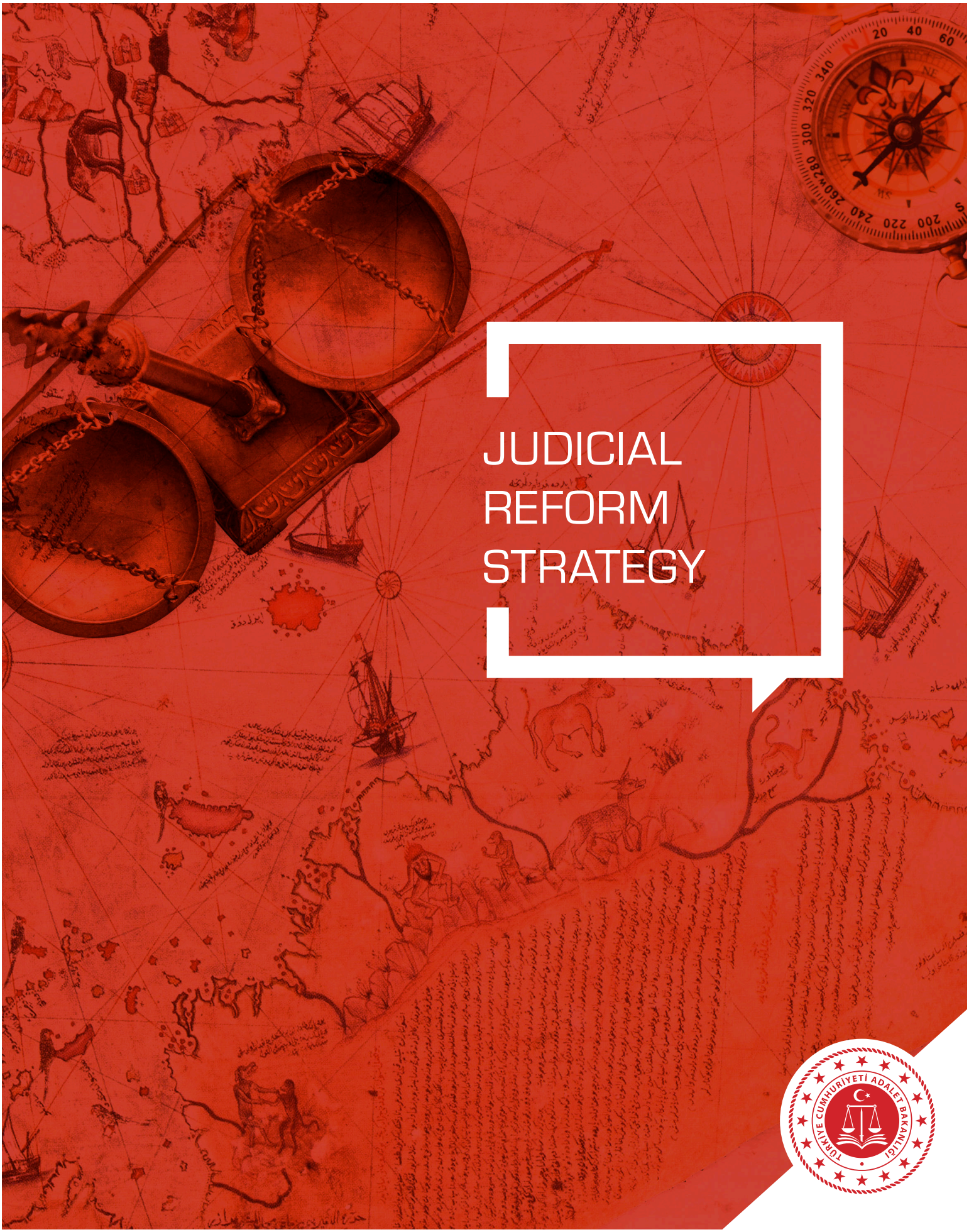

JUDICIAL REFORM STRATEGY

TÜRKİYE CUMHURİYETİ ADALET BAKANLIĞI

JUDICIAL REFORM STRATEGY

May 2019

ABBREVIATIONS

EU	European Union
ECHR	European Court of Human Rights
CEPEJ	The European Commission for the Efficiency of Justice
EJN	European Judicial Network
EUROJUST	The European Union's Judicial Cooperation Unit
e-GOVERNMENT	Providing public services to citizens in an electronic environment
CJP	Council of Judges and Prosecutors
IPA	Instrument for Pre-Accession Assistance
ÖSYM	Student Selection and Placement Centre
SEGBİS	Audio-Visual Information System
UNICEF	United Nations Children's Fund

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Introduction

1. Reform-seeking is not a novelty in our justice system. Partial or comprehensive reforms have been introduced over time. Plan-based reforms started as of 2009 when the Judicial Reform Strategy was first prepared. The second reform document was prepared in 2015.

2. Although important developments have been realized, there is still a need for reform aimed to ensure the rational functioning of the system. The new Strategy Document was updated and prepared based on this need. The document should be considered as a step, which is supplemental to past efforts and a trigger for the efforts expected.

3. The efforts performed so far have aimed to strengthen the rule of law, protect and promote rights and freedoms and form an effective and efficient criminal system. This document is also prepared to observe the new needs that emerge within the framework of the same aim.

4. The need for reforms in the justice system depends basically on social demand. The reform for meeting these demands and for the ideal functioning of the system requires a gradual and dynamic approach extending over time. Efforts so far and in the future are addressed within this scope.

5. Reform documents can only be prepared by analysing different factors that affect the related area directly or indirectly. For this Judicial Reform Strategy, needs have been determined based on a broad case analysis with a systematic and holistic perspective.

6. The main headings in the document can be listed as follows; strengthening the rule of law, protecting and promoting rights and freedoms more effectively, strengthening the independence of the judiciary and improving impartiality, increasing the transparency of the system, simplifying judicial processes, facilitating access to justice, strengthening the right of defence and efficiently protecting the right to trial in a reasonable time.

Basic Perspective On Rights And Freedoms

> Freedom of expression, which is an indispensable part of human rights, is the most important condition and element in democracy. In the last sixteen years, important steps have been taken towards promoting freedom of expression and media in Turkey, and fundamental amendments have been introduced in the legislation, especially in the Constitution.

7. With this Strategy Document, Turkey emphasises further strengthening of its democracy, promoting and expanding rights and freedoms.

8. Turkey's policies in this direction were laid down as priorities in 2002. Legislative amendments and organizational reforms made in order to expand freedoms should be considered as manifestations of these priorities[1].

9. The practice is the main factor determining the success of reforms, regardless of the importance of legislative amendments in the field of rights and freedoms. Turkey has undergone a substantial change in mentality in the past sixteen years, and this document emphasises that this change must continue. The document should also be read as a guide for practitioners.

10. Freedom of expression, which is an indispensable part of human rights, is the most important condition and element in democracy. In the last sixteen years, important steps have been taken towards promoting freedom of expression and media in Turkey, and fundamental amendments have been introduced in the legislation, especially in the Constitution. The document introduces approaches to strengthen freedom of expression and new policies to actualise this will.

11. Turkey adopted "zero tolerance for torture and ill-treatment". According to this concept, significant legislative amendments[2] were made and their implementation was closely monitored. There are no claims of past systematic torture or ill-treatment. This will is highlighted to protect the gains obtained in this area.

12. Arrest is not a means of punishment, but a protection measure designed to ensure the effectiveness of criminal investigation and prosecution. According to our legis-

1 Some important areas are included in the explanations of the 1st Objective.

2 In 2002; due to allegations of torture, inhuman or degrading treatment, in cases where Turkey is sentenced to pay compensation before ECtHR, the possibility of recourse for those responsible government officials was brought. In 2003; the possibility that penalties imposed for the offences of torture and ill treatment could be converted into fines or other measures and be postponed, as well as the requirement of obtaining permission from the chief administrator of the central government in order to conduct investigations regarding public officials who committed the offences of torture and ill treatment was abolished. In 2003; it was ensured that the investigation and prosecution of the offences of torture and ill-treatment were treated as urgent work and dealt with as top priority and immediately. It is regulated that during the trial of these offences, the hearings shall not be adjourned for more than 30 days and the cases shall also resume during judicial holidays. In 2005; the penalties stipulated for torture and ill-treatment were increased, and in the event of the death of the person undergoing torture the perpetrator shall be punished with aggravated life imprisonment. In 2011; Turkey became party to the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In 2013; the Law on Foreigners and International Protection includes articles on the prohibition of torture. This Law regulates the obligation to ensure that individuals cannot be sent to a place where they will be under threat, deported and that adequate treatment is provided to victims of torture. In 2013; the statute of limitation on torture was abolished. In 2016; it has been arranged that investigations concerning the offence of torture shall be carried out by public prosecutors themselves and firstly, cases to be filed against law enforcement officers for the offence of torture shall be treated as urgent work and legal examination of such cases shall be conducted primarily.

lation, an arrest is an exceptional measure, and the priority is to determine whether the measure of judicial control[3] is sufficient or not. It is a basic principle foreseen in Article 5 of the European Convention on Human Rights that the period spent under arrest is reasonable. The Judicial Reform Strategy emphasises the following;

a. Arrest is an exceptional measure,
b. Whether the arrest is applied force majeure and as a moderate measure,
c. Whether the period of arrest is reasonable.

In this context, it is stated that the legislation shall be evaluated with implementation, and necessary changes shall be made.

13. The State of Emergency announced after the coup attempt against democracy by the FETO Armed Terrorist Organization on July 15th, was exercised for a reasonable period of time and then lifted[4]. In the same period, derogation notices were made regarding Turkey's obligations arising from the European Convention on Human Rights and United Nations Covenant on Civil and Political Rights, and following the end of the state of emergency, derogation notices were withdrawn[5]. In all of the measures taken during the state of emergency, the Constitution, in particular, and the criteria of "necessity" and "proportionality" arising from international obligations were strictly observed. In this process, the Council of Europe was regularly informed on the measures taken regarding rights and freedoms. The document includes steps to redress the security-liberty balance with the transition to ordinary period and measures on offering quality judicial services.

14. Turkey fights against terrorist organisations such as FETO, PKK/PYD/YPG, and DEAS simultaneously. The fight against terrorism, whose effects exceed the political limits of Turkey, is also important for the protection of regional and global security and stability.

15. Terrorism is the main enemy of common values such as democratic society, freedoms and the rule of law. Therefore, fight against terrorism should be considered as the fight to protect these values. Turkey notes that, in the New Judicial Reform Strategy period, it shall be determined to fight against terrorism and will not act in weakness. The document has been prepared taking into consideration the policies that shall contribute to Turkey's effective and determined efforts to fight against terrorism.

16. The effective fight against terrorism requires a strong legislative infrastructure. Turkey will continue to observe its sensitivity to ensure compliance in its national legislation, which is developed on the basis of experience and needs, with modern examples and universal principles.

17. International cooperation in the fight against terrorism has become increasingly important for the entire world, particularly for Europe. Judicial cooperation constitutes an important part of this process. Non-constructive approaches in the extradition of persons accused or convicted lead to weakness in the international arena against terrorism. Turkey emphasises that it shall continue to comply with obligations arising from international law on judicial cooperation as it has so far done and that it expects the same from other countries.

18. The European Convention on Human Rights, the case law of the European Court of Human Rights and European Union acquis on human rights constitute "European human rights law". Turkey is a part of this common legal context.

3 The judicial control institution was incorporated into the system in 2004. In the legislation, some procedural safeguards such as the maximum period of arrest and the requirement for decisions of arrest to be reasoned were arranged

4 The State of Emergency was declared on 21/07/2016 in accordance with Article 120 of the Constitution. The State of Emergency was terminated on 19/07/2018.

5 In accordance with Article 15 of the European Convention on Human Rights and Article 4 of the International Covenant on Civil and Political Rights, derogation notifications were made on 21/07/2016. Letters indicating that derogation notices were withdrawn were sent to the Secretary General of the Council of Europe and the United Nations on 08/08/2018.

The Perspective Of The European Union

> Turkey views membership to the Union as a strategic objective and remains committed to the accession process. The first Judicial Reform Strategy was prepared in 2009 in order to meet one of the unofficial opening criteria within the scope of the negotiations of Chapter 23. The document presented in 2009 was later updated in 2015. This present document is the third Strategy Document.

19. With this Reform Document, Turkey underlines the importance it attaches to the European Union membership process. Turkey views membership to the Union as a strategic objective and remains committed to the accession process.

20. Keeping ongoing negotiations alive since 2005 and their completion as soon as possible is important not only for Turkey but also for the EU with which Turkey has economic, political, social and cultural ties. Turkey's membership will allow the EU to transform itself from being a regional power to a global one.

21 Turkey's EU integration shall be proof of the universality of the values enshrined in the foundation of the EU, as well as a historical milestone in ensuring international peace and stability. This integration will also provide global richness and will allow the unity of different understandings and to develop the common law of Europe together.

22. Turkey, in line with the Copenhagen Criteria, has proven its determination to achieve a more liberal and participatory democracy with the reform and harmonisation efforts made to date. The dynamic reform process that will take place in the coming period will be a sign of the strong continuation of this determination.

23. The negotiation process continues in 35 chapters in order to ensure harmonisation of the EU acquis. Chapter 23 entitled "Judiciary and Fundamental Rights" carries special importance in this process. In this context, the first Judicial Reform Strategy was prepared in 2009 in order to meet one of the unofficial opening criteria within the scope of the negotiations of Chapter 23[6]. The document presented in 2009 was later updated in 2015. This present document is the third Strategy Document.

24. Turkey's will for reform, which has become concrete with the strategy documents, emerges from the needs of the system and social demands going beyond the political objectives regarding the EU accession process.

6 For Judicial Reform Strategies, see http://www.sgb.adalet.gov.tr/yargi-reformu.html

Basic Perspective On The Functioning Of The Justice System

25. The Constitution refers to the principle of the separation of the powers in its preamble, and it is stated that the separation of powers means division of functions and cooperation between the powers. It is foreseen that activities of the legislative, executive and judiciary powers stated in the Constitution should be implemented in balance and under control. The principle of the separation of powers requires each power to act in cooperation, and the judiciary has an important role in ensuring the balance among the powers. Judicial independence is the main factor in realising this role. A constitutional amendment[7] approved in the referendum, which took place on 16/04/2017, has been the most important amendment made in the Constitution dated 1982. With this amendment, a presidential government system was introduced to replace the parliamentary government syste, and the separation of powers has been strengthened. Judicial Reform Strategy indicates the importance of the separation of powers, which was strengthened within the framework of the aforementioned constitutional amendment, and that constitutional function of the judiciary is vital for a strong and complete democracy.

26. Right to a fair trial, which plays an important role in a democratic society, includes the following rights and principles:

a. Right to access the court
b. Right to be tried by an independent and impartial court
c. Principle of natural judge
d. Presumption of innocence
e. Right to be tried in a reasonable time
f. Right to defence
g. Principle of equality of arms
h. Right to contradictory jurisdiction
i. Right to a reasoned decision
j. Right to the execution of decisions
k. Right to open trial and decision
l. Right to be informed about imputed crime
m. Right to call and question a witness
n. Right to translation and interpretation

Due to its importance, the right to a fair trial is referred to in various sections of the document. While realizing all the activities stated in the document, the framework to be formed with a comprehensive interpretation of this right will be the basis.

27. "The right to be heard legally" is an important element of the right to legal remedies. Article 36 of the Constitution guarantees this right. Basic rules on the implementation of this right are regulated in the laws of procedure. This right includes knowledge of the proceedings, the right to explanation and evidence, the assessment of the court taking into account the explanations and concrete and explicit justification of the decisions[8]. Many activities in this Document were determined to serve adequately the protection of this right and its implementation. The heavy workload faced by courts and prosecutor's offices impedes listening to parties sufficiently. During the document's preparatory process, it has been observed that there is a considerable understanding in the same direction in public opinion. For this reason, the Judicial Reform Strategy emphasises the importance of this right and the need for the improvement of its implementation.

28. One of the most important concepts for judicial systems worldwide has been "facilitating access to justice". This idea involves facilitating processes for beneficiaries in courthouses and developing practices that prevent them from being enervated in judicial processes. Practices such as help desks, front offices increase service satisfaction. In addition, it is stated that service providers and beneficiaries have communication problems at organisational and individual levels. Eliminating these communication problems will only be possible by adopting "people-oriented" approaches and developing appropriate instruments. Facilitating access to justice also requires simplifying the legislation, strengthening the legal aid system, adopting a sensitive approach towards the needs of the vulnerable groups and strengthening the right to defence. The objectives regarding these points are laid down in the relevant chapters.

29. The assurance of the right to be tried within a reasonable time requires all aspects of judicial procedures to be addressed. In this context, strengthening the judicial system in its entirety and creating simplified processes for the system to function rationally emerges as an important requirement.

30. Objectives to strengthen instruments of screening prior to prosecution and resolving disputes through alternative methods are among the trends that will contribute to the quality of the judiciary. The conclusion of judicial processes in a way that will ensure justice depends on the completion of each stage in accordance with the purpose. The quality of the proceedings depends on a well-executed prosecutorial work, and the quality of the investigation depends on well-executed law enforcement. Similarly, it is important that pre-trial preparatory activities are carried out precisely and correctly in civil proceedings and administrative cases.

31. Today, "preventive law" or "protective law" is an umbrella term that covers many practices. Areas under this concept mainly focus on preventing the formation of disputes or ensuring easy resolution. In the document, objectives on the subject are presented in sections related to the strengthening of the right of defence, the attorneyship profession, the legal aid system and notary public services.

32. The judicial system should be appropriately enhanced in order to resolve disputes without deepening and multiplying them. Long-term investigations and trials, the perception of impunity resulting from executions, are the main factors that deepen disputes. One of the main approaches of the document is to prevent these. The development of alternative dispute resolution methods is one of the useful means in this regard. Other outstanding policies include expansion of the scope of offences prosecuted on complaint, strengthening of elimination tools in the pre-prosecution phase, development of simplified and expedited procedures in criminal or civil proceedings, and readdressing the sanction system.

33. The functioning of the judicial system has significant importance in maintaining a reliable economic life. Law and economics are two main supplementary working areas in ensuring economic welfare and spreading it to the social base. A judicial system whose results are predictable, and which is transparent, quality and works effectively also comprises the most important guarantee of the economic activities. One of the main perspectives of the document is the relationship between the judiciary and economy. There is a growing global trend to view the judiciary from this perspective. The judicial system as a whole affects the economic life. In addition, civil proceedings are the main determinants. Both the suggestions and measures in civil proceedings and policies stated in other sections as a whole have focused on developing economic life in a positive manner.

34. Concrete steps were taken in the previous document to improve the investment environment. Activities will continue to improve the investment environment with the reforms to be realised in this document period and facilitating opportunities of law. A speedy and effective functioning judicial system has a significant contribution to the protection of investment. In the new document period, activities will continue in this area with the objectives such as dissemination of specialised courts and specialisation of the judges by observing this guarantee, functioning of the judicial system.

35. The Turkish legal system is part of the Continental European legal system. Interaction between the Turkish legal system and the Anglo-Saxon legal system is gradually increasing. Therefore, traces of global trends will be seen in the document, which was prepared by taking into consideration best practices from different legal systems, particularly the principles of the Council of Europe, EU acquis and related practices[9].

7 Act No. 6771 dated 11 February 2017 to amend the Constitution of the Republic of Turkey was published in Official Gazette dated 11/02/2017 for referendum, was approved with referendum took place on 16/04/2017 and entered into force following publication of the final results in Official Gazette dated 27/04/2017 and numbered 30050 (Repeated) by Supreme Electoral Council.

8 This principle stipulated in Article 27 of Civil Procedure Code shall apply to other proceedings.

9 Some examples: Objective 7.1.a (discretion of public prosecutors), Objective 7.1.d (plea bargaining), Objective 7.2.a (increasing the sanctions as an option to short term imprisonment), Objective 7.2.b (transforming misdemeanour), Objective 8.1.b (simple proceedings), Objective 8.1.g (cases for collective interests), Objective 8.2.a (liability to behave honestly), Objective 4.8.b (conflicts to be resolved without a trial), Objective 4.8.c (trial registry system), Objective 9.1.- 9.2 (alternative resolution methods in criminal and civil matters).

Developments In The Second Judicial Reform Strategy Period

36. The constitutional amendment made through the referendum that took place after 2015 when the second Judicial Reform Strategy was kicked-off for implementation has brought significant innovations to our judicial system. Within this scope, the Constitutional condition requiring that judicial power be exercised by "independent" courts on behalf of the Turkish Nation was modified as "independent and impartial" courts. Also, through the same amendment, the structure of the Council of Judges and Prosecutors(CJP) was changed, and the number of members declinedto 13, and the number of departments declined to 2.[10]

37. Through the constitutional amendment, the Military Court of Cassation, Military High Administrative Court and Military Courts were abolished. It was provided that no Military Court shall be established apart from Disciplinary Courts except in the time of war. Thus, Civil Courts are required to conduct all trials.

38. Action Plan[11] on the Prevention of Violations of the European Convention on Human Rights was prepared in 2014. Implementation of the Action Plan was meticulously followed, and monitoring reports were prepared. The efforts for updating the plan were initiated in the same period as the Judicial Reform Strategy. As in the Judicial Reform Strategy, the Action Plan is also prepared with a broad reform perspective.

39. In 2013, Human Rights Compensation Commission was established by the Law on the Settlement of Some Applications before the European Court of Human Rights by means of Paying Compensation. First, the task of examining the trials, which could not be concluded within a reasonable time as well as the applications for execution of court decisions waiting before the ECHR was assigned to the Commission. In 2014, the expropriation files and the applications related to the certain violations alleged to have occurred in prisons were also given to the Commission and thus; the scope of its duty was expanded. In 2016, certain claims regarding the violation of property rights as well as some violation claims which are not included in the first extension and alleged to have occurred in the prisons were included in the jurisdiction of the Commission. In 2018, a legislative amendment was made regarding the extension of the competence of the Human Rights Compensation Commission. Through this amendment, individual applications pending in the Constitutional Court, concerning the trials that could not be finalized within a reasonable time, and the execution of court decisions were included in the jurisdiction of the Commission.

> In 2013, Human Rights Compensation Commission was established by the Law on the Settlement of Some Applications before the European Court of Human Rights by means of Paying Compensation

40. In 2016, Human Rights and Equality Institution of Turkey was established in order to fulfil the task of national preventive mechanism such as; protection and promotion of human rights, guaranteeing the right of individuals to equal treatment, prevention of discrimination, active fight against torture and ill-treatment.

41. In 2016, through the Law on the Protection of Personal Data, the privacy of private life and the protection of data privacy in the processing of personal data were enabled. In addition, the Agency for Law on the Protection of Personal Data was established under this law.

42. Furthermore, a regulation was introduced within this period in order to ensure that the citizens will not be subject to investigation due to ill-founded reports and complaints and thus if the report and complaint have an abstract, general nature, an investigation shall not be carried out in order to protect the right not to be labelled as criminal.

43. Another important development, in which progress was made in the previous document period, is the initiation of "Target Time in Judiciary". An internal time management was kicked-off in judiciary and maximum periods were determined in accordance with each type of action in order to follow up the reasons of delays and bottlenecks in the system to increase the efficiency of the court and the prosecution offices and to ensure that the parties can anticipate the time when their actions will be finalized.

44. Pursuant to the "Civil and Administrative Judicial Activity Reports Circular" published in 2016, all courthouses across the country released their activity reports that were prepared to cover the previous year to the public in 2017 and 2018. This practice has been a significant step in displaying judiciary's performance to the public and improving the accountability and transparency in judicial services.

45. Efforts for strengthening the High Courts conducted during the application period of the previous Document are important. The numbers of files received by the Court of Cassation and Council of State has decreased considerably following the Court of Appeal's introduction. However, the backlog of files waiting for review required a capacity increase in the High Courts. Therefore, the number of High Court members was increased, and it was foreseen that one member shall be elected for both vacant memberships in an ongoing process.

46. One of the significant developments during the application period of the Judicial Reform Strategy has been the migration influx to Turkey due to the war in Syria. Turkey's humanity oriented policy on migration ensured the protection of the right to life of Syrian migrants, and it also prevented a crisis that would deeply affect Europe. This policy on migration has had effects also on the judicial system. Various projects on refugee's access to justice were conducted, and many training courses were delivered.

10 According to the paragraph 1, 2 and 3 of Article 159 of the Constitution prior to the amendment adopted through the referendum dated 16/04/2017: Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges. Council of Judges and Prosecutors shall be composed of twenty two regular and twelve substitute members; shall comprise two chambers. The President of the Council is the Minister of Justice. The Undersecretary to the Ministry of Justice shall be an ex-officio member of the Council. For a term of four years, four regular members of the Council, the qualities of whom are defined by law, shall be appointed by the President of the Republic from among members of the teaching staff in the field of law, and lawyers; three regular and three substitute members shall be appointed by the General Assembly of the High Court of Appeals from among members of the High Court of Appeals; two regular and two substitute members shall be appointed by the General Assembly of the Council of State from among members of the Council of State; one regular and one substitute member shall be appointed by the General Assembly of the Justice Academy of Turkey from among its members; seven regular and four substitute members shall be elected by civil judges and public prosecutors from among those who are first category judges and who have not lost the qualifications required for being a first category judge; three regular and two substitute members shall be elected by administrative judges and public prosecutors from among those who are first category judges and who have not lost the qualifications required for being a first category judge. They may be re-elected at the end of their term of office.

Paragraph 1, 2 and 3 of Article 159 after amendment: The Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges.

The Council of Judges and Prosecutors shall be composed of thirteen members; shall comprise two chambers. The President of the Council is the Minister of Justice. The Undersecretary to the Ministry of Justice shall be an ex-officio member of the Council. By the President of the Republic, three members of the Council shall be selected among judges and public prosecutors, who are first category judges and who have not lost the qualifications required for being a first category judge, in ordinary justice and one member among administrative judges and public prosecutors who are first category judges and who have not lost the qualifications required for being a first category judge; by the Grand National Assembly of Turkey, three members shall be selected from among members of the Court of Cassation, one member shall be selected from among members of the Council of State and three members, the qualifications of whom are defined by law, from among academic members in the field of law of high education institution and lawyers. Among the members elected from academic members and lawyers, at least one shall be an academic member and one shall be a lawyer. The applications for the memberships to be elected by the Grand National Assembly of Turkey shall be made to the Office of the Speaker of the Assembly. The Office of the Speaker conveys the applications to the Joint Committee composed of members of the Committee on Justice and the Committee on Constitution. The [Joint] Committee shall elect three candidates for each vacancy with a two-thirds majority of total number of members. If the procedure of electing candidates cannot be concluded in the first round, a three-fifth majority of total number of members shall be required in the second round. If the candidates cannot be elected in this round as well, the procedure of electing candidates shall be completed by choosing a candidate by lot, for each membership among the two candidates who have received the highest number of votes. The Grand National Assembly of Turkey shall hold a secret ballot election for the candidates the Committee has identified. In the first round a two-thirds majority of total number of members shall be required; in case the election cannot be concluded in this round, in the second round a three-fifth majority of total number of members shall be required. Where the member cannot be elected in the second round as well, the election shall be completed by choosing a candidate by lot among the two candidates who have received the highest number of votes.

11 See for Action plan http://www.inhak.adalet.gov.tr/eylemplan.pdf

47. One of the most important efforts carried out in the legislative field has been the Law on Court Experts that entered into force in 2016. Through this regulation, the court expert institution was reconstructed; and certification of experts, ensuring expert accreditation, creation of specialization branches and determination of ethical rules were ensured.

48. During this period, significant developments have occurred in alternative dispute resolution. One of these methods is mediation in civil disputes. In 2017, mediation in labour courts became a requirement for action and put into effect as of 01/01/2018. In 2018, the same regulation was brought to effect in commercial disputes. Within this period, the number of disputes resolved by either mandatory mediation or voluntary mediation has increased significantly.[12]

> Significant developments have occurred in alternative dispute resolution. One of these methods is mediation in civil disputes. Within this period, the number of disputes resolved by either mandatory mediation or voluntary mediation has increased significantly.

49. Similarly, conciliation in criminal proceedings has brought significant progress in the system. Through the amendment mentioned above, there has been a remarkable increase in the number of cases settled through the conciliation since 2017. [13]

50. In this period, significant efforts were carried out in the field of victims' rights. In 2013,the Department of Victim Rights was founded within the Ministry of Justice. In this scope, first the Draft Law on Victim Rights was prepared. Besides, preparation of "A Guide to Approach to Victim" has been another important step taken in this area. "Twinning Project on Strengthening the Victim Rights in Criminal Justice System" was initiated in 2017.

51. In addition, "Judicial Interview Rooms", which were established as a pilot in some courthouses in order to make child victims of crimes and women victims of violence feel more comfortable when giving statements, have become widespread. Various training programs and seminars were organized for the judges, public prosecutors, social workers and judicial interview room coordinators in cooperation with the Department of Victim Rights and UNICEF.

52. Regional Courts of Appeal were put into operation in 7 places on 20/07/2016. The number of Regional Courts of Appeal was increased to 9 in 2017 and then to 11 in 2018. Regional Administrative Court of Appeal in administrative justice were put into operation in 7 places.

53. The number of first instance courts was increased in order to strengthen the right to be tried within a reasonable time. In 2014, the number of Courts in ordinary courts (civil, criminal courts) was 6.084, whereas in 2018 it was 6.301. The number of courts in administrative justice was 191 and increased to 195.

> It is aimed to develop human resources not only in terms of quantity but also in terms of quality. In addition, the subject of the training was approached not only from the point of vocational training but also from a perspective, including foreign language education.

54. In 2014, the number of judges and public prosecutors was 14.500, whereas this number became 19.349 as of February 2019. It is foreseen to reach the average number laid down by the Council in this Document period[14]. On the other hand, it is aimed to develop human resources not only in terms of quantity but also in terms of quality. In addition, the subject of the training was approached not only from the point of vocational training but also from a perspective, including foreign language education. Within this scope, it was enabled that members of the judiciary could learn a foreign language and make an academic career.

55. An increase in the number of auxiliary personnel working in justice services was enabled. In 2014, the total number of personnel working in the Justice Organization was 100,225, whereas as of 2019 it has reached to 123.175.

56. In this period, significant steps regarding the access to justice were taken. In this regard, the budget allocated for legal aid in the previous Document period increased steadily. In 2015, the budget allocated for legal aid was 362.681.936,00 TL, whereas in 2018 it is 494.935.162,30 TL. In addition to this, through "Strengthening the Legal Aid Services in Turkey EU Twinning Project" that was initiated in 2016 and completed as of July 2018, the deficiencies in the legal aid system were determined.

57. Another activity filling an important gap in the area of access to the justice has been the Protective Legal Practices. Through "Protective Legal Practices Project", it was aimed to teach the basic knowledge on law at early ages in schools and to create a social legal culture. To achieve the objective, the scope of "Law and Justice Subject" that had been implemented since the academic year of 2013-2014 was expanded, it is observed that the number of students who chose this course increased. [15]

58. In addition, Law on International Judicial Cooperation in Criminal Matters was adopted by the Turkish Grand National Assembly and came into force in 2016. Through this law, dispersed provisions of legislation and regulations regarding the area of judicial cooperation were gathered in a basic law.

59. In this period, the principle of following active policies in the international arena has been adopted. In 2012, justice counsellors were appointed in the Permanent Delegations to certain embassies and international organizations. In the document period, the legal infrastructure of this application was

12 The number of voluntary mediations resulted in reconciliation was 1.129 in 2015, 3,875 in 2016, 18,263 in 2017 and 58,613 in 2018. Concerning the requirement for action mediation practice in labour disputes, the number of files in which mediators were assigned in 2018 was 354.739. 69% of these resulted in reconciliation.

13 The number of files resulted in reconciliation was 17.319 in 2015, 7.817 in 2016, 223.469 in 2017, 208.014 in 2018.

14 According to the data of 2018 "European Judicial Systems Report" prepared by CEPEJ based on the data of 2016, European average number of judges per one hundred thousand people is 25.1, whereas in Turkey this number is 14.1. European average of prosecutors judges per one hundred thousand people is 11.7, whereas in Turkey this number is 6. https://www.coe.int/en/web/cepej/special-file-publication-2018-edition-of-the-cepej-report-european-judicial-systems-efficiency-and-quality-of-justice- As of 2019 the number of judges per one hundred thousand people in Turkey is 16.67 and number of prosecutors is 7.5.

15 The number of students who chose the course was 26.868 in the academic year of 2013-2014, 70.511 in the academic year of 2014-2015, 98.247 in the academic year of 2015-2016, 97.055 in the academic year of 2016-2017, 89.082 in the academic year of 2017-2018, 126.847 in the academic year of 2018-2019.

established, and appointments were carried out.[16] Since 2015, bilateral agreements regarding judicial cooperation have been signed with 12 countries. The number of multilateral agreements or additional protocols signed in the same period was 7.

60. Since 2015, there have been certain significant developments in the organization of the Ministry of Justice. Within this scope, the Department of Court Experts and Department of Alternative Dispute Resolution were established under the Ministry. In this period, the Ministry's Justice Counsellors Abroad was also established. Department of Human Rights established within the body of the Directorate General for Foreign Relations and European Union Affairs has become an independent unit and has been strengthened. Progress was made in the training of auxiliary judicial staff. Personnel Training Centres in Ankara and Rize were put into operation for this purpose.

61. In addition to the integration of UYAP information system with other institutions, many applications have been developed to strengthen the access to justice for beneficiaries. In particular, the integration with law enforcement units has been one of the most important developments in this area. The application "Mobile Information System for Lawyers" which was prepared to increase the variety of services provided to lawyers and enable them to follow up the trial processes more easily, was also put into service in this period.

62. Efforts concerning capacity increase of judicial statistics in the Document period were carried out. In this regard, "Judicial Data Bank" was established in January 2017 and it was kicked-off to produce more detailed statistics.

63. Another area of progress in this period was the renewal of the justice service buildings. Since 2014, 54 service buildings were completed.[17]

64. During this period, the prisons that did not comply with the standards were closed and the construction of modern prisons was continued. Accordingly, the number of prison staff increased significantly. While the number of personnel was 49,069 in 2014, as of 2019 it became 60,395. The use of electronic monitoring systems in the monitoring and supervision of suspects, detainees and convicts, has been extended. To date, many EU funded projects have been successfully carried out in the penal enforcement area.

65. Efforts to increase the efficiency of the enforcement and bankruptcy system are also of great importance. The most important work carried out within this scope, has been abolishing of the practice of operating more than one debt collection office in the same city area and establishing a single debt collection office, replacing these with the "New Enforcement Office Model", which has been designed with the purpose of conducting enforcement services by specialized sub-offices. In this context, the new enforcement office model has been put into operation in 45 locations. In addition, enforcement offices have been improved with regards to human resources and physical infrastructure.

66. The budget allocated to the judicial services has increased since 2015. While the budget allocated to the judicial services in 2015 was 9.078.129.000 TRY, this figure was increased by 120% in 2019 to 19.947.534.000 TRY.

16 Permanent Delegation of Turkey to the European Union (Brussels), Permanent Delegation of Turkey to the Organization for Security and Cooperation in Europe (Vienna), Permanent Delegation of Turkey to the Council of Europe (Strasbourg) and Permanent Delegation of Turkey to the United Nations (New York and Geneva), and Berlin, Brussels, the Hague, London, Moscow, Paris and Washington Embassies.

17 Total closed area in which the justice services were provided was 2.724.201 square meters as of 2014, whereas today it is 3.902.477 square meters.

Preparation Process

Participation in the preparation process has been achieved through a functional approach. The aims, objectives and activities were prepared with the participation and contributions of the relevant institutions/organisations and non-governmental organisations.

67. Participation in the preparation process has been achieved through a functional approach. The aims, objectives and activities were prepared with the participation and contributions of the relevant institutions/organisations and non-governmental organisations. In this context, the stage reached in the implementation of the previous Judicial Reform Strategies, the developments in the field of justice and the developments in the international field and the opinions of the stakeholders were taken into consideration in the process of preparing the document.

68. In the preparation process, certain analyses and studies based on judicial statistics have been concluded. The evaluations of international organisations have added depth to planning studies. Opinions of judges, prosecutors, lawyers, the staff of the Ministry of Justice, the Supreme Court, university law schools, NGOs, the Bar Association of Turkey and bar associations, journalists and relevant institutions and organisations, academics, writers, citizens were all taken into consideration.

69. Reports and assessments of the EU, Council of Europe, Venice Commission and the other international organisations were examined, and the case law of the European Court of Human Rights were taken into account. In addition, the evaluations made in the negotiations with the EU, Council of Europe and the ECHR representatives regarding the draft document were taken into account.

70. The European Commission offers financial assistance to candidate countries and potential candidate countries, to support alignment with the acquis and to promote institutional capacity building. This financial support is used through the Instrument for Pre-accession Assistance (IPA) projects. Legislative amendments have been made in many areas by using the outputs of EU projects implemented in recent years. These achievements of the projects were used in the preparation of the new Judicial Reform Strategy Document, as in the previous period.

Scope

71. In the Judicial Reform Strategy, there are 9 aims, 63 objectives and 256 activities.

72. The objectives, aims and activities of the Judicial Reform Strategy were written as concrete statements. This method aims to prevent doubts that may arise during the implementation of the instrument and to provide more effective control of the public.

73. A clear and measurable Action Plan will also be prepared following the publication of the document. The Action Plan will cover the budget allocated for the identified objectives and targets, the competent/relevant institutions and the calendar to be adhered to within the framework of the relevant objectives.

Monitoring And Evaluation System

74. In order to monitor the implementation of the document, the Ministry of Justice will issue annual Monitoring Reports. These reports are planned to be in English as well as Turkish and shared with the public.

75. In order to solve the problems that may arise in the implementation of the document and to conduct the monitoring transparently, an organisational structure in which relevant institutions and organizations apart from the ministry will participate is foreseen. Within this scope, the Judicial Reform Strategy Monitoring and Evaluation Board will be established within a maximum three months as of the publication of the document. The Board in which all the stakeholders will participate will organize meetings periodically and prepare monitoring and evaluation reports open to the public.

The objectives, aims and activities of the Judicial Reform Strategy were written as concrete statements. This method aims to prevent doubts that may arise during the implementation of the instrument and to provide more effective control of the public.

Judicial Vision 2023

A Trustworthy and Accessible Justice System

PRINCIPLES AND VALUES

- Improving the people-oriented service approach
- More effective protection and improvement of human rights and freedoms
- Improving judicial independence and judicial impartiality
- Strengthening legal security
- Facilitation of access to justice
- Observing the right to trial within a reasonable time
- Building confidence in the judiciary

Aims And Objectives

	Aim 1	Aim 2	Aim 3	Aim 4	Aim 5	Aim 6	Aim 7	Aim 8	Aim 9
	PROTECTION and IMPROVEMENT OF RIGHTS and FREEDOMS	IMPROVING INDEPENDENCE, IMPARTIALITY AND TRANSPARENCY OF THE JUDICIARY	INCREASING THE QUALITY AND QUANTITY OF HUMAN RESOURCES	ENHANCEMENT OF PERFORMANCE AND PRODUCTIVITY	ENSURING EFFICIENT USE OF THE RIGHT TO SELF-DEFENCE	ENSURING ACCESS TO JUSTICE and ENHANCING SATISFACTION from SERVICE	ENHANCING THE EFFICIENCY OF the CRIMINAL JUSTICE SYSTEM	SIMPLIFICATION and ENHANCEMENT OF THE EFFICIENCY OF CIVIL and ADMINISTRATIVE TRIALS	SPREADING OF ALTERNATIVE DISPUTE RESOLUTION METHODS
NUMBER OF AIMS	3	5	7	15	3	11	8	7	4

AIM 1

PROTECTION AND IMPROVEMENT OF RIGHTS AND FREEDOMS

A series of trainings and studies on promoting awareness have been planned to raise the sensitivity and awareness of the judiciary on human rights.

Promotion and protection of human rights is the basis of democratic systems. Sensitivity to this issue is a measure of the depth of democracy.

The concept of human rights has constantly been developing since the adoption of the United Nations Universal Declaration of Human Rights. The meanings of the concept of fundamental rights and freedoms have been changing over seventy years and new rights have been added to the human rights catalogue.

International mechanisms have been established in this process to protect rights and freedoms effectively. These mechanisms had and still have an important function. In this context, the European Convention on Human Rights is of particular importance. The Convention established a protection mechanism for the member states of the Council. The Convention was signed in 1950 and entered into force in 1953. Turkey ratified and acceded to the Convention in 1954.

Turkey, a founding member of the Council of Europe, has been actively monitoring the developments of the international community in this area, particularly in the last sixteen years. Turkey underwent a significant transformation in the area of human rights in terms of legislative infrastructure and practice.

An analysis made without considering the progress made by Turkey during this period of sixteen years and comparing this progress with the previous situation will be incomplete. Some of the efforts carried out in this process are:

a) Agreements on fundamental rights and freedoms duly put into force. In case such an agreement provides otherwise on an issue, the provisions of the international convention are taken into consideration,

b) Making the right to the protection of personal data a constitutional right for the first time,

c) Providing constitutional guarantees for the right to be informed,

d) Taking rights of the child under constitutional protection for the first time,

e) Terminating the hearings of civilians at military courts,

f) Granting the opportunity of individual application to the Constitutional Court,

g) Establishment of the Ombudsman Institution and the Human Rights and Equality Institution of Turkey,

h) Introducing provisions to ensure detention is applied as a last resort,

i) Ensuring that any kind of propaganda can be made in different languages and dialects as well as Turkish both in local and general elections,

j) Strengthening the freedom of expression by inserting in the criminal legislation the provision that “disclosing a thought for the purpose of criticism, does not constitute a crime”.

In this Strategy Instrument, new policies with a broad perspective have been set out for the protection and promotion of rights and freedoms. These new policies will serve to strengthen our democracy further. Problems were not ignored during the preparatory phase.

Detailed provisions on rights and freedoms will be included in the Human Rights Action Plan, which is underway.

While determining the objectives and activities under this aim, documents and reflections of international institutions and organizations in the field of judiciary, particularly those prepared by the European Union, Council of Europe and Venice Commission were taken into consideration. It is sure that the details of these reflections will define the framework for expected legislative amendments.

The issues covered in the document have two basic aspects. One covers the legislative infrastructure, while the other covers its application. It is planned to increase human rights sensitivity in practice. These efforts will focus particularly on the freedom of expression and press, right to assembly and demonstration and reasonable application of the arrest measures.

Likewise, a comprehensive screening study has been carried out on the legal infrastructure and steps to strengthen the legal framework so as to protect and expand individual rights. The legislation affecting the freedom of expression and media, particularly the anti-terror legislation, will be discussed in this process. Provisions on the arrest measures, the methods of blocking access over the internet and assembly and demonstrations are in this scope.

Legislative amendments with an impact on the freedom of expression will serve for the effective implementation of regulations regarding the expression of thought in the form of criticism and the expression of thoughts that do not go beyond news reporting, which shall not constitute an offence through holistic evaluation of the criminal legislation.[18]

It is foreseen to redetermine the certain limit of the decisions taken by the regional courts of appeal after appellate reviews in terms of the articles concerning the freedom of expression. Thereby, it is aimed to bring an additional guarantee for the individuals by ensuring that the Court of Cassation also reviews the decisions.[19]

Combatting cybercrimes effectively is of great importance. The efficiency of the practices in this regard is also important for the protection of the individual rights. Besides, it was evaluated that it would be useful to redetermine access denial procedures without hindering the freedom of expression and by further strengthening the legal guarantee and to develop practices ensuring proportional denial of the access and necessary and compulsory conditions.[20]

A series of trainings and studies on promoting awareness have been planned to raise the sensitivity and awareness of the judiciary on human rights.

The observance of compliance with the decisions of the Constitutional Court and the ECHR, in the inspection and promotion of judges and prosecutors, will be an important innovation. It is also important to evaluate the noncompliance with the decisions of the Constitutional Court and the ECHR in a way that reasonable interpretation differences can be tolerated. The objective is to measure professional sensitiveness and competences regarding human rights with an understanding in compliance with the independence of the judges.

In addition, it is also planned to introduce explicitly in the procedural law the decisions of the Constitutional Court on the existence of a violation as a reason for retrial, to review of the Law on the Protection of Personal Data within the framework of the EU acquis, to form a new domestic legal mechanism for examining applications for violations of the right to trial within a reasonable time and to award compensation if necessary.

18 It is regulated in Article 218 of titled “Common provision” Turkish Criminal Code that “the expression of thought in the form of criticism and the expression of thoughts which do not go beyond news reporting do not constitute an offence”, and in Article 301 titled “Degrading being a Turk, the Republic, the Organs and Institutions of the State” that “The expression of an opinion for the purpose of criticism does not constitute an offence”.

19 It is regulated in Article 286 titled “Appeal” of Criminal Procedure Code that decisions of Regional Court of Appeal on Facts and Law that are related to the rejecting the merits of the application of appeal on facts and law against the imprisonment penalties up to five years or less and decisions denying the merits of appeals on facts and law against any kind of judicial fines, rendered by the courts of first instance and Decisions of Regional Court of Appeal on Facts and Law that do not increase the imprisonment penalties up to five years or less rendered by the courts of first instance are exempted from appeal. In accordance with this regulation, some decisions in similar nature are finalized by the regional court of justice while some of them are subjected to appellate review.

20 Law No. 5651 On Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication

AIM 1 PROTECTION AND IMPROVEMENT OF RIGHTS AND FREEDOMS

OBJECTIVE 1.1

To review the legislation and to make the necessary amendments to raise the standards on rights and freedoms.

ACTIVITIES

a) To analyse the legislation on and practice of freedom of expression, and to introduce provisions that further expand the rights and freedoms of individuals.

b) To raise the assurances for legal remedies against judicial decisions, concerning freedom of expression.

c) To review the legislation and the application regarding the custody, detention and other protection measures, affecting the right to freedom and security and to adopt measures for their measured implementation.

d) To regulate provisions regarding the maximum duration of imprisonment for investigation and prosecution phases separately.

e) To review and make necessary changes within the frame of freedom of expression, the methods of blocking access on the internet, taking place in the Law on Regulation of Publications on the Internet and in other laws.

f) To ensure that violation decisions of the Constitutional Court, rendered on an individual application take place in the procedural law as grounds for retrial.

g) To review the Law on the Protection of Personal Data within the framework of the EU acquis and to complete the works on harmonization.

h) To form a new domestic legal mechanism for examining applications for violations of the right to trial within a reasonable time and to award compensation if necessary.

OBJECTIVE 1.2

To prepare and implement a new Human Rights Action Plan effectively.

ACTIVITIES

a) To develop efficient solutions for areas of violations, mentioned in the decisions of the Constitutional Court and the ECHR.

b) To consider the monitoring reports of the international protection mechanisms, functioning in the field of human rights.

c) To improve cooperation with national and international NGOs working on the field of human rights.

OBJECTIVE 1.3

Raise awareness and sensitivity for human rights in the judiciary.

ACTIVITIES

a) To monitor and inspect the compliance of the decisions and promotion of judges and prosecutors with the decisions of the Constitutional Court and the ECHR.

b) To organize training courses on human rights, mainly freedom of expression and the press.

c) To organize training courses particularly on reasoning judgements for arrest.

AIM 2

IMPROVING INDEPENDENCE, IMPARTIALITY AND TRANSPARENCY OF THE JUDICIARY

There are various basic instruments for ensuring judicial independence. All of them actually serve for the strengthening of judges and public prosecutors. Thus, the targets were set for strengthening judges and public prosecutors within the scope of this objective.

There is a structural link between the rule of law and the independence and impartiality of the judiciary. Ensuring the independence and impartiality of the judiciary in democracies is a prerequisite for rule of law. This is also a guarantee for the individual rights and freedoms.

The independence of the judiciary is regulated in Article 138 of the Constitution, entitled “independence of courts”[21] and the subsequent articles provide assurances for its implementation. Similarly, Article 9 titled “jurisdiction”[22] provides that jurisdiction shall be exercised by independent and impartial courts on behalf of the Turkish nation. Through the amendment of the Constitution in 2017, the term “independence” was introduced to the text, whereby it was emphasized that independence should include also impartiality.

Article 6 of the European Convention on Human Rights - Right to a Fair Trial provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The independence of the judiciary has specific universal criteria that have been introduced by international organizations. Some of these criteria are related to the councils existing in different countries. Nevertheless, the councils established vary across countries. The historical experience and traditions of the countries are the determining factors at this point.

Through the constitutional amendment in 2017, the structure of the Council of Judges and Prosecutors was based on the principles of independence and impartiality. The Parliament was granted the power to elect members to the Council, whereby the democratic legitimacy of the Council was strengthened. Prior to this amendment, judges and prosecutors were elected to the Council twice. Judges, prosecutors and general public all raised objections to these elections, claiming that they would adversely affect the labour peace in the judiciary and cause political polarization.

There are various basic instruments for ensuring judicial independence. All of them actually serve for the strengthening of judges and public prosecutors. Thus, the targets were set for strengthening judges and public prosecutors within the scope of this objective.

One of them is to ensure the "geographical guarantee" (guarantee for the location), which is mentioned by the public agenda of the judiciary as an important necessity for years. In this regard, it is stipulated in the document that judges and public prosecutors at higher ranks would not be displaced without their will in consideration of their professional achievements[23]. Geographical guarantee is important not only for judges and public prosecutors to continue their judicial activities without any concern but also for improving judicial efficiency[24] as displacement of judges and public prosecutors lead to significant problems on efficiency. During drafting of the document, it was understood that there was considerable public opinion on this issue.

The other issues penned within the scope of the first objective are also for the strengthening of the guarantees for judges and public prosecutors and for providing a more predictable professional life in essence. Currently, judicial remedies are available only for "dismissal", as one of the disciplinary penalties given by the Council of Judges and Public Prosecutors (CJP). Regarding other penalties, it is possible to file an application before the CJP for re-examination and file objection. In this period, it is required to propose a constitutional amendment for extending the judicial review to disciplinary decisions of the CJP.

It is important to extend the rights of judges and public prosecutors who are subjected to disciplinary procedures. Within this scope, the purpose of increasing the guarantees in the disciplinary procedure and strengthening the transparency in this field is to increase professional guarantee. Besides, disclosure of the decisions of the CJP on disciplinary procedures to public by protecting the personal data will both strengthen professional predictability for judges and public prosecutors and ensure transparency concerning the disciplinary procedures.

Entrance exam for judges and public prosecutors will be held by a participatory committee[25]; the appointment, transfer and permanent authorization[26] will be subject to a schedule that is determined and announced in advance while the criteria will be one of the critical points to be developed in this period. In particular, drafting of decrees on transfer and permanent jurisdiction according to a specific schedule will improve professional predictability.

It is also aimed to restructure the regional system[27], which is drafted in the legislation for the appointment and transfer of judges and public prosecutors. This regulation shall aim to rationalize the system in line with the following targets:

a) Increasing the judicial performance,
b) Increasing the professional efficiency,
c) Improving reliability and predictability in the career of judges and public prosecutors.

21 Constitution, Art. 138- “Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power; send them circulars, or make recommendations or suggestions. No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial. Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.”

22 Constitution, Art. 9- “Judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation.”

23 Positions and places of duty of judges and public prosecutors of civil jurisdiction who are accepted to the profession, are determined by drawing lots which is conducted by the Council of Judges and Public Prosecutors (CJP). Appointment of judges and public prosecutors by the exchange of offices is made by the Council of Judges and Public Prosecutors in accordance with the "Legislation on the Appointment and Transfer of the Judges and Public Prosecutors of Civil and Administrative Jurisdiction" which was prepared based on the authority vested in the article 35 of the Law No.2802, to the positions at equal or higher seniority along with their acquired rights, salaries and professional degree.

24 The Law on the Organization of the Courts which was adopted in 1925 regulates that judges can be appointed to other courts with their consent. Article 79 of the Law on Judges No.2556 prescribes that "the seniority and commission of judges cannot be changed without their consent, even if the procedure is conducted by promotion. Since 1972, the year when this rule was amended, geographical guarantee has not been considered in our system, regional system has been applied instead in the displacement of judges and public prosecutors.

25 Interview test is still made by the Interview Committee which is formed pursuant to the article 9/A of the Law on Judges and Public Prosecutors

26 “Permanent authorization" means that a judge is authorized at the same court where s/he is appointed, incessantly between certain dates. The duty of determining the permanent authorization of the judges who shall serve in the civil and administrative jurisdiction and vesting them temporary authorization belongs to the 1st Chamber of the CJP pursuant to the articles 9/1-a/2-4 of the Law No.6087.

27 Council of Judges and Prosecutors appoints judges and prosecutors by transfer as per the by-laws on the appointment and transfer of civil, criminal and administrative judges and prosecutors. Appointment by transfer takes place according to the system based on regions. Each region is determined considering the geographical and economic conditions, social, health and cultural facilities, level of deprivation, proximity to large centers and other conditions of places where there is a judicial organization.

Restructuring the professional promotion processes[28] of judges and public prosecutors is also important. Processes shall be restructured within the framework of the following issues:

a) Adopting an approach based on quality rather than quantity,
b) Paying attention to the quality of the actualized procedures,
c) Paying direct attention to the compliance with legal standards on rights and freedoms.

Professional experience is important to be assigned to some offices in the judiciary. Therefore, it is required to redefine the terms of certain offices[29]. With this practice, services will be of higher quality and professional predictability will be ensured for judges and public prosecutors.

According to the article[30] 47 of the Law on Judges and Public Prosecutors, in case of urgency, the Minister of Justice may assign, on a temporary basis, a judge or prosecutor in a jurisdiction with available cadre status to another jurisdiction in need of judges and prosecutors. It is stipulated that this authority shall be revoked in terms of judges.

Bangalore and Budapest Principles were adopted by the CJP in 2006[31]. The Istanbul Declaration on Transparency in the Judicial Process was prepared and adopted under the guidance of the Court of Cassation[32]. In 2017, the Principles on Judicial Conduct for the Court of Cassation were adopted by the Grand General Assembly of the Court of Cassation[33]. In addition to these, efforts have been initiated in the previous Document period regarding the principles of ethics to be observed by members of the judiciary. This study shall be completed in accordance with the United Nations and Council of Europe standards and a structure shall be formed within the CJP to offer counselling on principles of ethics.

Participation and negotiation during the legislative drafting process are important in terms of increasing the quality of the legal texts and to ensure that they serve the purpose. As the preliminary studies are products of shared wisdom, they lead to the adoption of legal texts by the public opinion.

When the legislative proposals are prepared, representatives of the relevant beneficiaries shall be included in the process, and participation and negotiation culture in the judiciary shall be improved. While determining the need for legislative amendment, regulatory impact analysis reports shall be prepared, and these reports shall be made public on the website of the Ministry of Justice. Involvement of relevant institutions, bodies, civil society, academia and various social circles will be ensured. On the other hand, there is a need for improving the culture of participation and negotiation in all judicial processes.

Developing performance-based supervision in judicial services is another innovation prescribed by this Document. Activity reports of the civil and administrative judiciary will be significant in this regard. Thus, it is planned to formulate a system in which the scope of activity reports will be extended and assessment will be carried out[34].

28 The Council of Judges and Prosecutors has the power to lay down principles of progression in duty as per article 118 of the Law no 2802.

29 Members of Court of Cassation and Council of State, president and members of appeal court, Chief Public Prosecutors, presidents of justice commissions, investigating judges and inspectors of Ministry of Justice and CPJ, public prosecutors and investigating judges of high courts.

30 "In non-delayable situations, the Minister of Justice may assign by temporary authorization a judge or prosecutor in a jurisdiction with available cadre status to another jurisdiction in need of judges and prosecutors. Moreover, the Minister of Justice may revoke its temporary authorizations during the judicial recess without consulting the High Council of Judges and Prosecutors. In such cases, the decisions shall be submitted to the approval of the High Council at its first meeting. If the High Council replaces a judge or prosecutor on temporary authorization, the proceedings carried out by the predecessor shall be valid until the successor assumes duty."

31 Bangalore Principles of Judicial Conduct was adopted at the session dated 23 April 2003 of the United Nations Human Rights Commission. Budapest Principles on the Ethics and Conduct for Public Prosecutors which was prepared by the Council of Europe, however, was adopted at the Conference of Prosecutors General of Europe on 31 May 2005. "Bangalore Principles" were adopted pursuant to the decision dated 27/06/2006 and numbered 315 of the CJP while the "Budapest Principles" were adopted pursuant to the decision dated 10/10/2006 and numbered 424 of the CJP. For the Bangalore Principles of Judicial Conduct, see: http://hsk.gov.tr/Eklentiler/Dosyalar/4a92e0cc-e94b-4912-aaf9-5dfc5b885e98.pdf

32 https://www.yargitay.gov.tr/documents/IstanbulBildirgesiKitapcigi.pdf

33 https://www.yargitay.gov.tr/documents/yargitayEtiklIkelerTurkce.pdf

34 The system on this matter is handled within the scope of the Objective 4.1 (b).

AIM 2 IMPROVING INDEPENDENCE, IMPARTIALITY AND TRANSPARENCY OF THE JUDICIARY

OBJECTIVE 2.1

The system for the appointment, transfer and promotion of judges and public prosecutors shall be developed with objective criteria based on merits.

ACTIVITIES

a) Geographical guarantee shall be brought for the judges and public prosecutors with a certain professional seniority.
b) The interview exam during the admission of judges and public prosecutors shall be conducted by a committee with a large participation.
c) The regional system mentioned in the appointment and transfer legislation shall be rearranged on the basis of geographical guarantee.
d) Promotion system of the judges and public prosecutors shall be restructured taking account of qualifications and performance.
e) Minimum professional seniority requirements shall be redefined to be assigned to certain offices.
f) Appointment, transfer and permanent authorization system shall be planned in an appropriate schedule that ensures predictability.
g) The power of the Minister of Justice to assign judges to another jurisdiction in case of urgency shall be revoked.

OBJECTIVE 2.2

Disciplinary procedures regarding the judges and public prosecutors shall be restructured.

ACTIVITIES

a) Disciplinary penalties set forth in the Law on Judges and Public Prosecutors shall be redefined with more objective criteria.

b) The rights of judges and public prosecutors during the disciplinary processes shall be extended.

c) Judicial control mechanism of the CJP regarding disciplinary decisions shall be extended.

d) It shall be ensured that disciplinary decisions of CJP shall be disclosed to the public on condition that personal data is protected.

OBJECTIVE 2.3

Judicial conduct shall be extended.

ACTIVITIES

a) Principles of ethics shall be determined, which will be closely monitored and supervised.

b) Professional conduct shall be ensured during pre-service and in-service training.

OBJECTIVE 2.4

When legislative proposals are prepared, representatives of relevant beneficiaries shall be involved, while the culture of participation and negotiation shall be improved in the judiciary.

ACTIVITIES

a) While identifying the need for legislative amendment, regulatory impact analysis reports shall be prepared and these reports will be shared with the public.

b) Involvement of the relevant institutions, bodies, civil society, academia and various social circles will be ensured.

OBJECTIVE 2.5

The scope of the activity reports in civil and administrative judiciary shall be extended and the public awareness shall be raised.

ACTIVITIES

a) Central and local press bulletins regarding the activity reports shall be prepared.

b) A system for the assessment of the activity reports shall be formed.

c) Measures shall be taken to improve judicial performance through the analysis of the activity reports.

AIM 3

INCREASING THE
QUALITY AND QUANTITY
OF HUMAN RESOURCES

Today, continuous education is a success factor recognized globally. For this reason, it is important to improve the quality of not only legal education but also pre-service and in-service training in the judiciary.

In order to ensure quality of judicial services, it is essential to have well-trained practitioners with solid legal background, who follow current developments with good interpretation skills leading them to correct conclusions. This is the only way to ensure that judicial decisions and their justifications are credible, strong and reasonable.

It has been frequently expressed during beneficiary negotiations conducted within the scope of the preparations for the document that legal education should be at the centre of focus of judicial reform studies. To this end, a series of activities has been stipulated towards increasing the quality of legal education.

Overcrowded classrooms impede the provision of high quality education. Thus, the number of students admitted by law schools should be re-considered.

To this end, it is also necessary to strengthen the academic cadres and to restructure the curriculum. Inclusion of subjects on judicial argumentation, methodology and the philosophy of law in the curriculum will increase the legal profoundness of the graduates.

Inclusion of a subject on "Turkish for the Law" in the curriculum of law schools is of great importance. Law students shall take this mandatory course every academic year with different contents, whereby law students will learn the skills to use simple, comprehensible, clear and standard Turkish for the law.

Law clinics provide significant opportunities to combine theoretical education in schools with practice. Law clinics have increased in recent years in Turkey. It is planned to cooperate with the Union of Turkish Bar Associations, Bar Associations and Schools of Law to establish the practice of Law Clinics.

Creating cadres for assistant judge and public prosecutor is also adopted as a strategic approach. Formation of this cadre shall ensure more efficient use of the professional preparatory period, while increasing opportunities to support judges and public prosecutors in their judicial activities[35]. Graduates of law schools who pass the entrance exam for legal professions and those who have exercised attorneyship for a certain period will be able to apply for the exam to qualify as an assisting judge and public prosecutor.

Today there is no examination for admission to the professions of attorneyship and notaries. The previous regulation for attorneys was waived.[36] Schools of law and the other judicial actors, particularly Union of Turkish Bar Associations and bar associations, mentioned about the need in this field during the preparation process. There was a consensus on imposing "Entrance Exam for Legal Professions" on law graduates, for those aspiring to be an assistant judge or public prosecutor, attorney and notary. Those who are successful in the examination[37] made by the ÖSYM (Student Selection and Placement Centre) shall be able to start directly as interns for attorneyship and they shall be able to take a special exam to be a judge, public prosecutor and notary. The threshold for success in entrance examination for legal professions shall be determined as equivalent to thresholds in other professions. Those who fail to achieve the required score shall reserve all the rights as law school graduates. It is foreseen to apply Entrance Exam for Legal Professions for the students who start law schools after the date of the regulation.

Vocational schools of justice carry great importance in training the auxiliary personnel who work in judicial services. During the period of practice, it shall be ensured that those who graduated from these schools be preferably employed in judicial services. It shall be further foreseen that the applied training program be diversified according to the needs of the judicial system[38].

Today, continuous education is a success factor recognized globally. For this reason, it is important to improve the quality of not only legal education but also pre-service and in-service training in the judiciary. Thus, recommendations of the Committee of Ministers of the Council of Europe regarding the independence, impartiality and roles of judges clearly express to the Member States that judges should receive training according to the need before and after being appointed. Within this scope, pre-service and in-service training should be deepened with a strategic approach. To this end, some activities have been included in this document.

35 It is stipulated for the assistant judges to conduct the following duties: to examine the submitted file and document and present it to the judge, to be helpful to the judge during the trial and survey and after the trial, to check the document prepared by the private secretary before its submission to the judge, to prepare the drafts for the grounded decision in accordance with the view of the judge, to make researches on doctrine and case-laws, to implement the duties prescribed in the legislation and to conduct similar duties vested to him/her by the judge. It is stipulated for the assistant public prosecutors to conduct the following duties: to examine the submitted file and document within its period and present it to the public prosecutor; to prepare the decision drafts with regard to the investigation file in accordance with the view of the public prosecutor; to be present during the investigation procedures, to check the document prepared by the private secretary before its submission to the public prosecutor; to assert his/her opinion on legal remedies to the public prosecutor; to make inquiries on doctrine and case-laws.

36 Requirement for examination after the law internship was brought with the Law No.4667 which was adopted on 02/05/2001. The requirement for examination was revoked by the Law No.5558 which was adopted in 2006. Constitutional Court nullified the Law which revoked the requirement for examination in 2009. One part of the grounds for nullification is as follows: "The distinction and high quality of an attorney is a matter which is expected both by the law and the judiciary. To ensure this, admission to the profession is important just as making contribution to the development of the profession. Getting trained only on basic legal subjects is not sufficient enough to conduct a profession. Competence in terms of profession includes getting selected or elimination besides some special trainings like internship while getting admitted to the profession."

37 ÖSYM (Student Selection and Placement Centre) was established in 19 November 1974 under the name of ÜSYM (Interuniversity Student Selection and Placement Centre). Having the administrative and financial autonomous, the institution has become an institution which carries out almost 50 exams for different professions and fields every year as well as selection of students for the universities. Exams are carried out as test across the country. The common opinion of the judicial authorities including Union of Bar Associations and bar associations is that the exam to be carried out as test by this institution will not be against the independency and autonomy of the bar associations and attorneyship.

38 Such as office of the clerk on execution, office of the clerk in the court, office of the clerk in the prosecutor's office, office of the clerk for attorneys, office of the clerk for enforcement.

AIM 3 INCREASING THE QUALITY AND QUANTITY OF HUMAN RESOURCES

OBJECTIVE 3.1

A new model will be developed in order to improve the quality of legal education.

ACTIVITIES

a) The duration of study and quotas in schools of law as well as the success criteria required for admission will be re-specified for improving the quality of legal education.

b) The fundamental principles regarding the quantity and quality of the existing academic staff in schools of law will be redefined.

c) The criteria on the practice of equivalence in schools of law will be re-specified.

d) The curriculum of law schools will be renewed to improve analytical thinking skills.

e) Courses on effective, concise and correct use of Turkish as well as professional ethics will be included in the curriculum.

f) Law clinics will be disseminated, and students will be enabled to do internship in civil and administrative jurisdiction units.

OBJECTIVE 3.2

A new model will be developed for admission to legal professions.

ACTIVITIES

a) “Legal Proficiency Exam” will be put into practice so that law graduates can become judge-prosecutor and notary assistant and start their law internship.

b) Those who are successful in the Legal Proficiency Exam will be allowed to take exams for becoming judge, prosecutor and notary assistant.

OBJECTIVE 3.3

Judge and prosecutor assistantship will be brought into existence and the procedure for admission to the profession will be changed.

ACTIVITIES

a) Judge and prosecutor assistantship will be brought to the Turkish judicial system.

b) After a certain period served in this position, a separate exam will be held for becoming a judge and prosecutor.

c) Judge and prosecutor assistants will be allowed to participate in judicial services so that they can better prepare for the profession.

OBJECTIVE 3.4

The quality of pre-service and in-service training will be improved in the judiciary.

ACTIVITIES

a) Justice Academy of Turkey will be established to develop a new institutional structure for the pre-service and in-service training of judges and prosecutors with an academic approach.

b) It will be ensured that human rights law will be a part of pre-service and in-service training programs.

c) Legal methodology and legal argumentation programs will be included in pre-service and in-service training courses.

d) Continuous and compulsory education model will be adopted in judiciary.

e) In-service training will be one of the criteria taken into consideration in the promotion of judges and prosecutors.

f) Training courses will be provided on new or under-applied practices creating the components of the system in civil and criminal justice as well as on areas requiring expertise.

g) Training courses will be organized in partnership with the judicial police.

h) The number of judges and prosecutors receiving foreign language and postgraduate education abroad will be increased.

OBJECTIVE 3.5

Training activities for judicial personnel will be strengthened.

ACTIVITIES

a) The number of personnel training centres will be increased.

b) The training modules and programs of personnel training centres will be strengthened and the number trainees will be increased.

OBJECTIVE 3.6

Justice-related areas of vocational and technical high schools and the capacity of vocational schools of justice will be improved.

ACTIVITIES

a) The number and quotas of vocational schools of justice and justice-related areas of vocational and technical high schools will be increased.

b) A regulation will be introduced for giving priority to graduates of the aforementioned schools in judicial personnel selection exams.

c) The applied training program will be diversified in accordance with the needs of the judicial system.

d) Programs for the training of law enforcement staff in vocational schools of justice will be disseminated.

OBJECTIVE 3.7

The number of judges, public prosecutors and judicial personnel will be increased in proportion to the workload.

ACTIVITIES

a) The number of judges, prosecutors and judicial personnel will be increased taking into consideration the per capita average and the actual workload of these offices in the Council of Europe Member States.

b) The principle of gender equality will continue to be looked after in the recruitment of judges, prosecutors and staff.

c) The number of professionals such as psychologists, sociologists and experts working in courthouses will be increased.

AIM 4
ENHANCEMENT OF
PERFORMANCE AND
PRODUCTIVITY

Process and performance management offers important opportunities for the protection of the right to be tried within a reasonable time. These concepts and their inherent elements can only have a complementary function for the judicial system.

Concepts such as effectiveness, productivity and performance are increasingly used in public services in Turkey, as in many other countries. Process and performance management offers important opportunities for the protection of the right to be tried within a reasonable time. These concepts and their inherent elements can only have a complementary function for the judicial system. Their function will be meaningful as long as they serve to the rule of law and the right to a fair trial.

This section of the document discusses certain problems preventing the effective functioning of the system and proposes solutions for these problems. One problem stems from court expert practices. Long and repeated court expert reports do not seem rational. Legislation on the court experts system was introduced in the previous term. It is planned to put this new court expert system into practice with all aspects by eliminating the setbacks encountered in practice.

A model regarding the Time Management in the Judiciary, which was developed for the protection of the right to have a fair trial by the Council of Europe European Commission for the Efficiency of Justice (CEPEJ), was put into practice in the previous Strategy Document period. Within this period, target periods have been determined for investigations and trials across the country in order to set a framework. In this Strategy Document period it is aimed to determine target periods at local levels to fully implement this practice.

One of the structural problems with a negative impact on the performance and productivity of judicial services is encountered in registry services. It is essential that registry services work to expedite the process and ensure that judges and prosecutors focus on the investigation and the case. To this end, measures will be taken for eliminating structural problems regarding determination of the framework of jurisdiction and responsibility as well as the field, and practices will be developed accordingly.

The efforts made on performance by central authorities are important. Today there is no structure to work on overall performance at the local level. Justice commissions will be able to serve this function. Justice commissions[39] will be authorized in this matter in the period of practice, and instruments will be developed to fulfil this function.

The use of information systems in the judiciary not only has a positive impact on overall performance, but also increases access to justice. The use of information technologies in the Turkish judicial system is well above the world average. Furthermore, it is planned to carry out multilateral efforts in this field. One of these will be on the use of “artificial intelligence” practices in accordance with the principles and recommendations of the Council of Europe and in compliance with the principle of protecting legal safeguards.

During the preparation of this Strategy Document, reasons for long trials were examined one by one. The problems stemming from service of documents hold an important place among these reasons. The regulation on compulsory electronic service of documents was introduced in 2018. In addition to the practice of electronic service of documents, it has been planned to provide trained document service agents to prevent unlawful service of documents.

One criticism about the Turkish judiciary, expressed by both the members of the judiciary and the people, concerns the lack of specialization among judges. The aforementioned criticism has existed for a long time and has never lost its effect. One of the most important innovations stipulated by this Strategy Document is the division of judges as criminal and civil judges. Thus, the fundamental dimension of specialization will be created, and the foundation will be laid for specialization.

Determining the area of jurisdiction of courts through a performance-based approach has important consequences. The decisions of the CJP have already allowed the specialized courts in some city centres to hear those cases, which require an expert (such as commercial cases, cases stemming from intellectual and industrial property rights). The dissemination of this practice across the country will be evaluated in this Strategy Document period.

The regional courts of appeal conducting appellate review became operational in 11 places in the previous strategy document period. In this period, 4 more courts of appeal will become operational[40]. Efforts will continue for improving the institutional capacity of these courts and ensuring harmonization among the courts of appeal[41] without hindering their independent decisions.

While the average number of files to be processed by a judge was 865 in 2014, it rose to 929 in 2017. The increased number of files is the reason for several problems, one which is holding hearings in multiple sessions.

The failure to conclude trials in one session is continuously mentioned among the most important problems of the judiciary. The practice in this regard has become systematic contrary to the legislation. It is also stated that the right to be heard is not sufficiently provided during the hearings, the trial dialectic is not sufficiently constituted and the large number of procedures keep judges busy. This section lists a series of measures for eliminating the drawbacks expressed with regard to hearings. It is considered that the aforementioned measures will serve to adversarial proceedings.

The current hearing records system consists of the judge who gets things said written down in summary when necessary. This practice leads to the fact that expressions and accentuations are not fully reflected in the files[42]. This procedure is neither practical, nor sustainable. In this respect, the hearing records system will be changed, and the direct recording system will be gradually adopted through the use of information systems.

39 The formation and duties of Justice Commissions are regulated in the Law on Judges and Prosecutors. Article 113– a) Justice commissions of first instance court for jurisdiction: Where there are high criminal courts, they shall consist of judges, the president, a regular member and a substitute member of whom are designated by the High Council of Judges and Prosecutors, as well as the public prosecutor of that area. In the absence of the president, the regular member shall preside the commission. In the presidency or absence of the regular member, the substitute member shall attend the commission; in the absence of the chief public prosecutor, the public prosecutor acting for him shall attend the commission. b) Justice commissions for administrative jurisdiction: Where there are regional administrative courts, they shall consist of judges of administrative jurisdiction, two regular members and a substitute member of whom are designated by the HCJP, under the presidency of the president of the regional administrative court. In the absence of the president, the senior regular member shall preside the commission. In the presidency or absence of one of the members, the substitute member shall attend the commission.

In the absence of the members stated in the second section of sub-paragraphs (a) and (b), the commission shall be formed by starting from the most senior judge, except for those examined for selection to the first category but not selected. In this case, the one with seniority shall preside the commission. Justice commissions shall include a bureau consisting of a chief clerk and a sufficient number of employees.

Article 114–The duties of justice commissions are as follows:

a) For the employees of civil and administrative jurisdiction as well as penal institutions and detention houses, except for those appointed directly by the Ministry;

1) Holding the oral and when necessary, applied examinations to be organized in accordance with the provisions of the related regulation for those being successful in the central examination among the persons to be appointed for the first time to civil service, proposing the appointment of those having achieved success on condition that priority is given to the graduates of schools of law and vocational schools of justice

2) Carrying out their appointments to primary civil service, registration and disciplinary procedures, suspension from duty, monthly and allowance payments as well as other personal procedures in accordance with this Law, Law No. 657 on Civil Servants and the provisions of the related legislation

3) Carrying out their appointment by transfer or appointment for service within the area of jurisdiction, by receiving the opinion of the president of the relevant court, judge or public prosecutor

4) Carrying out their temporary assignment within the area of jurisdiction, for a period of no longer than six months

b) Fulfilling other duties imposed by laws.

The appointment of the personnel whose appointment to civil service has been proposed for the first time shall be finalized with the approval of the Ministry. The procedures and principles regarding the appointment and training of these personnel shall be stated in the related regulation.

The authority to carry out the appointment by transfer or temporary assignment of the personnel mentioned in this Article to the area of jurisdiction of another justice commission as required by the approval and proposal of the related justice commission as well as by service shall rest with the Ministry of Justice.

40 Regional courts of justice that are currently operational: Adana, Ankara, Antalya, Bursa, Erzurum, Gaziantep, İstanbul, İzmir, Samsun, Sakarya and Konya. Regional courts of justice that will become operational: Kayseri, Diyarbakır, Van and Trabzon.

41 In order to eliminate differences between the final decisions of the appeal courts, it is aimed at strengthening the system set out in the legislation within the framework of the independency of the judiciary. In accordance with Article 35 of Law No. 5235 on Establishment, Duties and Jurisdiction of First Instance Courts and Regional Courts of Appeal, the board of presidents has a duty of requesting, by also adding its opinions, the First Presidency of the Court of Cassation to settle the disputes arising from among the final decisions taken by the civil or criminal chambers of the regional court of appeal in similar cases or between the final decisions taken by this court and those of the civil or criminal chambers of another regional court of appeal, upon the reasoned ex-officio requests or the requests of the relevant civil or criminal chamber or of the chief public prosecutor of the regional court of appeal and of those who have the right of appeal under the Code of Civil Procedure or the Code of Criminal Procedure.

42 According to Article 156 of the Civil Procedure Code; as examination, inquiry and trial procedures may only be proven by record, it is incontestable that recording of trial is one of the most important procedures of an action. A similar regulation is also included in Article 222 of the Criminal Procedure Code.

Simplification of procedures is one of the approaches dominant in the whole Strategy Document. When good practices are observed from the perspective of comparative law, the types of crime and disputes that can be resolved without trial[43] can be seen. Thus, studies will be conducted to determine those disputes that can be resolved without trial.

The practice of setting the hearing schedule has become irrational due to the heavy workload. The traditional practice is that everyone waits for his/her turn for the hearing. Parties are frustrated while waiting in the courthouse. Having regard to all these problems, preparing and implementing court-hearing schedules to ensure predictability have become an inevitable necessity.

In the strategy, it is also stipulated to introduce the practice of trial prosecution in criminal courts of first instance due to the increasing number of public prosecutors.

Facilitating the procedures for citizens living abroad is one of the subjects addressed in the document. During negotiations with the stakeholders, important problems were mentioned regarding the recognition of guardianship decisions taken by other countries' authorities, which lead to victimization. Thus, the document requires the recognition of decisions taken by foreign courts, especially guardianship decisions, and addressing the enforcement of these decisions.

It has been considered that an institute to be formed outside the Ministry of Justice, which operates like a non-governmental organization with an academic approach, will contribute to the policy-making process. Establishing an institute that will also carry out studies on comparative law will be one of the priorities of this period.

The document also emphasizes a new approach to courthouse architecture. Courthouse architecture is closely related to both access to justice and productivity. The location and design of the hearing rooms in courthouses as well as the design of working spaces should be addressed with a perspective that will improve functionality and facilitate access. This need is more obvious in especially large courthouses. Large structures with one building block may appear chaotic and disorderly. For this reason, structures consisting of different building blocks (such as prosecution office, civil courts, criminal courts) are needed. Accordingly, it is planned to develop projects with different types and sizes.

43 This practice is developed for especially simple disputes. In case of objection to resolution without trial, it is preferred to hold a hearing, and, in this way, the parties are provided with options. The will of the parties is determinant in the procedure of hearing the case and the continuation of the trial with hearing.

AIM 4 ENHANCEMENT OF PERFORMANCE AND PRODUCTIVITY

OBJECTIVE 4.1

Tools for measuring and improving performance as well as increasing quality in the judicial system will be strengthened.

ACTIVITIES

a) The performance criteria in the judiciary will be redefined and a "Performance-Based Monitoring System" will be developed for long-continued investigations or cases.

b) "The Centre for Performance Measurement and Monitoring in the Judiciary" will be established within the CJP Inspection Board.

c) The authority and responsibility areas of justice commissions will be reorganized for improving the quality of service and concluding trials in a reasonable time.

OBJECTIVE 4.2

Transparency of the system will be strengthened and right to be tried in a reasonable time will be protected more effectively through "Target Time in Judiciary" practice.

ACTIVITIES

a) Target time practice will be monitored, and measures will be taken for the cases in which target time is exceeded.

b) Target times will be defined for regional courts of appeal and regional administrative courts of appeal.

c) It will be ensured that public prosecution offices and courts will define their own times by complying with the general target time.

d) Measures will be developed in order to ensure that institutions and organizations from which information and documents are requested during the legal proceedings fulfil the requests as soon as possible.

OBJECTIVE 4.3

The number of practices regarding specialized courts and specialization will be increased.

ACTIVITIES

a) Judges will be divided as criminal and civil judges and specialize accordingly throughout their career.

b) Special courts will be established in fields requiring expertise such as environment, development and energy.

c) Efforts will be made for enabling specialized courts located in city centres to hear certain cases (such as commercial cases, cases on intellectual and industrial property rights).

d) The judges serving in some specialized courts will be provided with training before, or when necessary, during their service in these courts.

OBJECTIVE 4.4

Courts of Appeal will be strengthened.

ACTIVITIES

a) New regional courts of appeal will start operating.

b) The number of chambers as well as the number of judges, prosecutors and staff will increase.

c) Legislation on legal remedies will be reviewed in order to prevent longer proceedings by observing the principle of protection of legal security of the individuals.

d) The overruling power of criminal chambers under the regional courts of appeal will be re-regulated in the appeal procedure.

e) A system will be established to eliminate the differences in the final decisions of different courts of appeal.

OBJECTIVE 4.5

The efficiency and effectiveness of court experts system will be improved.

ACTIVITIES

a) It will be ensured that specialized professionals are included in the court experts system.

b) The principles and procedures will be laid down for the supervision and performance evaluation system in court expert services and the number of files to be handled by court experts in a certain period will be determined based on their fields of expertise.

c) The guidelines for court experts and standards for expert reports will be laid down and uniformity of practice will be achieved.

d) Qualifications and fundamental and sub-specialization areas for legal entities in private law that will provide court expert services and the persons who will be recruited by these legal entities in private law will be determined.

OBJECTIVE 4.6

Problems related to notification will be overcome.

ACTIVITIES

a) Electronic notification system will be broadly used.

b) Notification officials will be obliged to have training on site in order to prevent problems related to notification.

c) The legislation on notification will be renewed to prevent the acts undermining the notification process.

OBJECTIVE 4.7

Justice services will be citizen-oriented through the use of technology.

ACTIVITIES

a) The information system will be integrated into the foreign missions in order to provide easier judicial procedures for citizens living abroad.

b) Statement taking will be done through SEGBİS in districts without a courthouse.

c) Statement taking will be done through SEGBİS in large airports.

d) Duty system in courts will be improved.

OBJECTIVE 4.8

The hearing times will no longer overlap, or hearings will not be conducted in short intervals. They will be regulated so that judges, prosecutors and lawyers can handle the cases in compliance with the procedures and principles of the proceedings.

ACTIVITIES

a) The hearing prosecution will be re-introduced in criminal courts of general jurisdiction.

b) Procedures will be developed for dispute resolution without hearings.

c) Hearing timelines will be prepared and implemented so that they can be foreseen.

d) The method of recording hearings will be changed and 'direct recording' through information systems will be put into effect gradually.

e) The implementation of SEGBİS in civil courts will be more common.

f) Steps will be taken so that cases are concluded in one session.

g) The lawyers of the parties to the case will be informed whether the court judge is attending the scene visits and hearings or not upon excuse,

h) Regulations will be introduced to make sure that enforcement of interim decisions in line with their purposes is checked during intervals between sessions.

OBJECTIVE 4.9

Registry of the courts will be strengthened.

ACTIVITIES

a) The duties and powers of chief clerks will be extended and re-arranged as "profession of career".

b) Regulation will be made so that before the pre-trial hearing, procedures designated by preliminary proceedings report are completed and followed by the secretary smoothly.

c) Front office will be established in courts of civil and administrative jurisdiction.

d) The court judge's opinion will be asked for replacement of the secretary.

OBJECTIVE 4.10

Information systems will be improved in the judiciary.

ACTIVITIES

a) Cyber security standards of the information system will be improved.

b) Efforts will be undertaken to apply "artificial intelligence and specialized system" in the judiciary.

c) Information systems will be renewed through user-friendly applications in line with the current technological developments.

OBJECTIVE 4.11

The capacity of Council of Forensic Medicine will be reinforced, and forensic services will be offered across the country.

ACTIVITIES

a) Human resources and physical and technological infrastructure of the Council of Forensic Medicine will be strengthened.

b) The scope of international accreditation will be extended.

c) The standards of information and documents, which should be included in the files to be sent to the Council of Forensic Medicine will be prepared.

d) "Target time" will be put into effect concerning the Council of Forensic Medicine.

OBJECTIVE 4.12

An institute will be established to work in cooperation with universities.

ACTIVITIES

a) An institute will be established encompassing departments such as criminal law, enforcement law, private law, administrative law and comparative law.

OBJECTIVE 4.13

International mutual legal assistance and cooperation will be developed.

ACTIVITIES

a) The Ministry of Justice's organization will be strengthened abroad.

b) The procedures and principles of the justice counsellors will be re-determined to meet the legal needs of our citizens abroad.

c) Contact points will be designated in courthouses and trainings will be organized on mutual legal assistance.

d) The procedures concerning the recognition of the decisions rendered by foreign courts will be reviewed and simplified.

e) International cooperation will be formed for cross border organized crimes, terrorism, financing of terrorism, cybercrimes, human trafficking, migrant smuggling, laundering of proceeds of crime and trafficking of narcotic drugs.

OBJECTIVE 4.14

The capacity of judicial authorities to develop and implement projects regarding EU accession process will be strengthened, members of judiciary will increase their awareness on EU Law.

ACTIVITIES

a) National and international trainings on EU funded projects will be organized.

b) The capacity to monitor and measure the efficiency and sustainability of the projects will be improved.

c) Reports regarding the project stages and results will be prepared and announced to the public.

d) The relevant EU legislation on the judiciary and important judgments of the Court of Justice of the European Union will be translated.

e) The European Commission's annual progress reports on Turkey will be studied and action plans will be prepared.

f) Relations with the EU institutions operating in the judicial field (EJN, Eurojust) will be improved.

g) Members of judiciary will be provided with internship opportunities in EU institutions notably the Court of Justice of the European Union.

OBJECTIVE 4.15

New architectural designs will be made for courthouses.

ACTIVITIES

a) Courts and public prosecution offices will be in separate places in the new services buildings.

b) In order to augment productivity, different types and ranges of projects will be developed and implemented.

c) During the designing of new buildings, eco-friendly methods that meet the needs of children, families, victims and witnesses will be used.

d) The service buildings of the same courthouse will not be in different locations so that access to services will be easier.

AIM 5

ENSURING EFFICIENT USE OF THE RIGHT TO SELF-DEFENCE

The provision of the right of defence is a prerequisite for the rule of law to prevail. The right of defence, as one of the fundamental human rights, plays a crucial role in the introduction of other rights and freedoms to the individual.

When a system forms a legal infrastructure accepting that the proceedings are conducted collectively by judges, prosecutors and lawyers, obtaining the material fact becomes possible. A system, which does not ensure a collaboration, is not rational and does not satisfy the parties.

The provision of the right of defence is a prerequisite for the rule of law to prevail. The right of defence, as one of the fundamental human rights, plays a crucial role in the introduction of other rights and freedoms to the individual.

The "equality of arms", one of the instruments of the right to a fair trial, requires full equality between the parties in terms of rights owned and obligations incurred before the court. The right of defence has a deep-rooted history, its exercise through an attorney, representative or advocate led to the emergence of attorneyship as a profession.

Attorneyship is defined as a public service in our country[44]. In order for this public service to be fulfilled, the attorneyship profession needs to be improved. The importance of attorneys has gradually increased globally throughout the years. The judicial systems have extended the role of the attorneys until today. Today attorneys are not only associated with the investigatory or trial stages. This profession has a bigger role in economic and social relations. It provides legal security for the citizens and reinforces the understanding of protective justice.

Under the period of this Strategy Document, radical changes are envisaged concerning the attorneyship profession. Turkey has a great amount of legal knowledge about the right of defence and the attorneyship profession. Numerous scientific works have been published and events have been organized on this matter. While objectives are determined in that area, this great knowledge is utilized to a great extent, on the other hand, international practices are taken into consideration.

Together with the changes and developments in the legal system, the procedures for admission to attorneyship profession, the internship of attorneys and many other topics must be reviewed, and permanent solutions should be found for the future of the profession.

44 Article 1 titled "Nature of attorneyship" of Attorneyship Law dated 19/03/1969 and no. 1136 states that "Attorneyship is a public service and a liberal profession. The attorney freely represents the independent defence which is one of the constituents of the judiciary". With this article, independency of the attorneyship is defined and it is defined that attorneyship is one of the three main elements of the judiciary. The fact that it is emphasized that attorneyship is a public service does not mean that attorneys are dependent on a public authority, but it is for strengthening the profession.

In Turkey, law school graduates are registered in bar associations without being subject to admission exams, and they begin working as attorneys. As a result of that, law graduates rising in number each year are directly admitted as attorneys.[45] In order to prevent this, almost every country holds various screening exams.

The strategy document envisages a general screening examination after the law education (Legal Proficiency Exam). In that case, in order for the law graduates to start the attorney internship, they need to pass a general exam as in the case for judges and prosecutors. This exam will be organized by Central Student Selection and Placement Centre[46].

Preparation for attorneyship profession plays a crucial role like in all professions. The judiciary has reached a consensus on the need to strengthen the attorney internship[47]. Restructuring the internship is significant in terms of professional quality. In that regard, the duration and content of the internship will be arranged more productively. The interns cannot work with assurance during their internship period. This reduces the productivity of the internship and increases the victimization. Therefore, efforts will be made to ensure that the interns are supported financially during the internship period.

In order to offer qualified judicial services, the attorneys should participate actively in judicial services. Due to the fact that legal representation by an attorney is not obligatory in our country, citizens file actions which require legal and technical knowledge without taking legal assistance; as a result, trials take too much time, and final decisions become erroneous. Although mandatory legal representation seems to limit the freedom of exercise of rights, through the legal aid system, individuals who cannot afford lawyers will be offered free legal representation by the state.

The document emphasizes that a qualified trial procedure can only be conducted with the active participation of all subjects. This issue is closely linked to the legislative infrastructure and also to legal habits. Certain habits need to be changed in the Turkish judiciary. To that end, scientific events and programs will be organized for judges, prosecutors and attorneys.

"Tax burden on attorneyship services" which is addressed within this scope has been one of the subjects brought to agenda in stakeholder negotiations. The tax burden has a direct connection with access to justice. Therefore, it was evaluated that the right to access to justice would be strengthened by applying tax reduction for attorneyship services in some proceedings (such as family law, labour disputes and proceedings regarding minors).

While the efforts to strengthen the attorneyship profession continue, attorneys working in the public sector should not be overlooked. The different status, monitoring, financial and personal rights of attorneys in the public sector should be re-regulated.

Today the attorneyship profession has gained an international status. Currently, Turkish lawyers take roles in important legal proceedings all over the world. Besides, the need for vocational trainings, seminars and meetings abroad is increasing every day. Work will be conducted to ensure that; just as in the case of other public officials, after gaining seniority attorneys gain the right to a special stamped passport, since they are required to be able to discharge their legal duties.

Attorneys represent the defence, and it is the founding instrument of the judicial system. The bars, professional organizations of attorneys, can operate properly only if the courthouses are equipped with the necessary physical conditions. The necessary work has been undertaken within our means, and the document underlines the importance of this matter.

45 While the number of lawyers was 46.552, it has increased to 130.873 as of 2019.

46 Detailed information is presented in the explanation regarding Aim-3 and footnote no. 39.

47 Law of Attorney Article 15 - The internship is one year. We said that this is the period of five years' seniority (which is in the service in Article 4 of the Law for this five-year seniority). In the court and justice departments in which the internship is to be done, there are regulations.

AIM 5 ENSURING EFFICIENT USE OF THE RIGHT TO SELF-DEFENCE

OBJECTIVE 5.1

In line with the objective of improving quality, the procedure for admission to the attorneyship profession will be changed.

ACTIVITIES

a) In order to start the attorney internship, individuals will have to be successful in the “Legal Proficiency Exam”.

b) Studies will be undertaken regarding the duration and productivity of the internship,

c) Regulations will be introduced to make sure that attorneys are able to work and be covered by insurance during their internship.

OBJECTIVE 5.2

The defence will participate actively in the proceedings.

ACTIVITIES

a) The attorneys’ legal authorities concerning the provision of information and documents will be extended.

b) Some proceedings and actions will be conducted through attorneys in order to increase legal security.

c) In some cases, the mandatory legal representation will be discussed in the judiciary, and an approach will be developed in that regard.

d) Regulations will be made requiring that documents presented by attorneys should be trustworthy and in the event of an objection by a party on appropriate grounds, the document will be subject to review.

e) The tax burden on attorneyship services will be re-evaluated in order to strengthen the right to access to justice of the citizens.

OBJECTIVE 5.3

Attorneys who represent the defence as the founding instrument of the judiciary will be offered new practices enabling them to fulfil their duties more easily.

ACTIVITIES

a) The legislation will be improved concerning the working procedures and personal rights of attorneys in public service.

b) Attorneys will be provided with necessary facilities in judicial and administrative judicial service buildings while performing their profession.

c) Various rights of attorneys will be improved, for example, receiving a special stamped passport.

AIM 6

ENSURING ACCESS TO JUSTICE AND ENHANCING SATISFACTION FROM SERVICE

One of the requirements in a democratic society is the protection of the rights of persons with disabilities and the improvement of facilitating practices for them. Therefore, the Paper aims to disseminate the practices that facilitate access to justice for persons with disabilities.

Ensuring equal access to justice is one of the main objectives of the societies where the rule of law is accepted.

Access to justice, which has always gained a new dimension, covers the accessibility and effectiveness of services. One common characteristic of judicial reforms in comparative law is to improve the quality of services. As the quality of justice services increases, the satisfaction rate of the beneficiaries increases.

To simplify the system, the arrangements must be made as unified as possible. Non-unified regulations pose a problem both for beneficiaries and practitioners and consequently make access to justice difficult. It is important to address the "deadlines" in the implementation of the objective of facilitating access to justice[48]. In this respect, it is necessary to bring cases and apply to the law on the judicial and administrative judiciary in a certain system and to make them as uniform as possible.

The regulations for determining the authority to resolve the dispute after the decisions of lack of jurisdiction and competence do not provide a rational image in practice. This uncertainty leads to prolongation of processes and removes predictability by the parties and undermines trust in the system. In addition, it is seen that more decisions are quashed due to lack of jurisdiction or competence[49]. For these reasons, it is aimed to establish a model that will prevent the prolongation of the processes due to the decisions of lack of jurisdiction and competence given in civil and administrative jurisdiction.

Legal aid is the exemption of trial fees and expenses of persons with insufficient financial means and the appointment of a lawyer by the bar free of charge. Strengthening the legal aid system is an important indicator to show whether the system is human-oriented. Accordingly, efforts will be made to strengthen the legal aid system under this Strategy Document. Simplification of the application procedure, the establishment of standard forms for the applicants and the possibility of application through e-Government will be among the efforts.

48 In civil proceedings, the duration of the appeal is 2 weeks starting from the date of notification. This period is 10 days at enforcement courts starting from the date of pronouncement or notification. Duration for request of appeal at criminal courts is 7 days starting from the date of pronouncement or notification. This period is 30 days at administrative courts and tax courts starting from the date of notification of the judgment. Duration of application to appeal against the final judgments of the criminal courts is 15 days starting from the date of pronouncement or notification. Duration of application to appeal against the indecisive final judgments of the administrative courts and tax courts is 30 days starting from the date of notification of judgment. However; in cases where summary procedure is carried out, duration of application to appeal is 15 days starting from the date of notification of the judgment; on the other hand, it is 5 days starting from the date of notification of the judgment in cases where procedures regarding general and common exams are applied. Term of litigation in administrative justice is 60 for the Council of State and administrative courts and 30 days for tax courts. In cases where summary procedure is carried out, term of litigation is 30 days and it is 10 days in cases where procedures regarding general and common exams are applied.

49 In 2017, 14.5% of the decisions made by the public prosecutors, 7.3% of the decisions made by the criminal courts, 4% of the decisions made by the civil courts and 6.8% of the decisions made by the administrative and tax courts were in this direction.

Despite all the simplification efforts, the justice system has a complicated nature due to the prescribed procedures. It is, therefore, important that beneficiaries receive professional support. This support is provided by "legal aid offices" in good international practices. In the offices, the applicants are provided with advice on their rights and judicial procedures. It is considered useful to provide this practice through professional organisations of attorneys. This issue is addressed by the Paper.

Arrangements for measures in favour of women in access to justice are of great importance[50]. Another vulnerable group is the elderly. These measures are becoming widespread worldwide. Practices will be developed in our country during this Strategy Document period. Facilitating the legal aid system will be one of these practices.

Strengthening access to justice for foreigners in Turkey will be one of the topics to be addressed. In this context, the practice of appointing defence counsel to foreign suspects and defendants regardless of their request will be considered. In addition, it will be ensured that the suspect and defendant rights form prepared for foreigners will be provided to be in commonly used languages.

One of the requirements in a democratic society is the protection of the rights of persons with disabilities and the improvement of facilitating practices for them. Therefore, the Paper aims to disseminate the practices that facilitate access to justice for persons with disabilities.

Preparing brochures available on the internet for informing the beneficiaries about the judicial system and the processes will increase social awareness and positively influence the trust in justice.

Organizing programs in the courthouses for citizens, especially for students, is a method applied in many countries. Application of this method in our country is essential.

The development of judicial media relations in an institutional structure will help the society to get correct information. As a matter of fact, there is a strong link between the rule of law and the right of public information. It is important to establish effective communication over media with the community directly affected by judicial activities. Recently, media communication bureaus were established and launched in total of 159 units as 141 in high criminal centres and 18 in civil and administrative appellate courts for this aim[51]. In the forthcoming period, personnel who are graduates of communication schools will be employed in media communication offices and the use of communication channels in a fast and intensive manner will be provided.

In addition to members of the judiciary, it is of great importance that the personnel working in the chief clerk offices of the courts and the offices of public prosecution be attentive to public relations and communication. Related training, as well as the establishment of helpdesks in courthouses, for which working, and personnel standards are determined, will provide the establishment of "user-friendly" courthouses.

The testimony directly affects the realization of the material truth and the realization of justice. Failure to develop witness-specific practices causes witnesses to be harmed in judicial processes. For this reason, it is envisaged to carry out the studies to eliminate the practices and approaches that make the testimony difficult.

50 The most important binding document regarding women rights, protection of family, violence against women and family mediation is İstanbul Convention (the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence). This convention and GREVIO (the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence) Report dated 15/10/2018 will be taken into consideration in the implementation period.

51 This activity was carried out within the scope of EU Twinning Project on "Improved Relations between Mass Media and Judiciary".

AIM 6 ENSURING ACCESS TO JUSTICE AND ENHANCING SATISFACTION FROM SERVICE

OBJECTIVE 6.1

In order to facilitate access to justice in civil and administrative courts, the application deadlines will be rearranged, and the uncertainties in the processes will be eliminated.

ACTIVITIES

a) Different deadlines for filing a case and application to legal remedies will be revised and provided to be as uniform as possible.

b) A model shall be established to prevent the prolongation of the proceedings due to decisions of non-jurisdiction and non-competence in the civil and administrative courts.

OBJECTIVE 6.2

The legal aid system will be strengthened for effective access to justice.

ACTIVITIES

a) In the field of private law, a legal aid system consisting of offices where the legal problems of citizens can be consulted will be established.

b) The application procedure for legal aid in the field of private law shall be simplified, a standard application form shall be established, and the possibility of application through e-Government shall be introduced.

c) Fees paid to lawyers for legal aid services shall be increased.

d) A new regulation will be made on the taxes accrued for legal aid service.

e) Legal aid services will be strengthened in the mediation process.

f) The lawyers who provide legal aid services will be provided with regular training on this subject and performance criteria will be developed for the lawyers providing this service.

g) The legal aid system will be sensitive to the needs of vulnerable groups.

OBJECTIVE 6.3

Disabled-friendly practices will be developed in line with the principles of the United Nations Convention on the Rights of Persons with Disabilities and the Law on the Rights of Persons with Disabilities.

ACTIVITIES

a) In courthouses, practices that facilitate the physical access of all persons with disabilities will be extended.

b) Practices related to the employment and training of the personnel who will serve to the persons with disabilities, including sign language interpreters for the hearing impaired, will be developed.

c) Measures to facilitate the lives of persons with disabilities in penal institutions will be increased.

OBJECTIVE 6.4

Practices related to women's rights in the justice system will be improved.

ACTIVITIES

a) Practices will be improved to provide more effective protection of women's rights in the legal aid system.

b) Programs on women's rights will be developed and implemented in in-service and pre-service training.

OBJECTIVE 6.5

Measures will be taken to facilitate the access of the elderly to justice.

ACTIVITIES

a) Applications will be developed to facilitate the access of elderly people to services in the courthouses.

b) Training activities for personnel will be carried out for a justice system sensitive to the needs of the elderly.

OBJECTIVE 6.6

Access of foreigners to justice will be strengthened.

ACTIVITIES

a) It shall be ensured that the suspect, accused and victim rights forms prepared for foreigners will be given to those concerned in commonly used languages (such as English, Arabic, German, French, Russian).

b) Brochures for describing the justice system to foreigners will be prepared and these brochures will be available on the Internet.

OBJECTIVE 6.7

Legal protection insurance will be developed in line with the objective of increasing access to justice.

ACTIVITIES

a) The current general insurance conditions will be updated according to the new requirements.

b) Public awareness activities will be carried out for wide spreading legal protection insurance.

OBJECTIVE 6.8

Efforts will be made to determine the factors affecting the satisfaction for judicial services.

ACTIVITIES

a) Satisfaction surveys will be conducted at regular intervals.

b) Regular meetings will be held with the participation of academicians and non-governmental organisations.

OBJECTIVE 6.9

Media and public relations in the judiciary will be institutionalised, and practices will be developed to facilitate the proceedings of citizens.

ACTIVITIES

a) Media communication offices established in the courthouses will be restructured as “media and public relations offices”.

b) In the media and public relations offices, the employment of experienced personnel who are graduates of communication schools will be provided.

c) Training programs will be organized for judicial journalists on basic legal knowledge and terminology.

d) Helpdesks shall be formed in all the courthouses, which are heavy penalty court centres, and the working and personnel standards of the helpdesks shall be determined.

e) Students will be provided with the opportunity to do their internships at the helpdesks and volunteers will also have the opportunity to work at the helpdesks.

f) In order for the judicial services to be maintained in a way to ensure the satisfaction of the beneficiaries, it will be ensured that the personnel working in the offices of chief clerk in the courts and the offices of prosecution will receive training on public relations and communication skills.

OBJECTIVE 6.10

Mechanisms to inform the public about the justice system will be strengthened.

ACTIVITIES

a) Court decisions shall be published after ensuring the protection of personal data.

b) Brochures will be prepared on the judicial system and the processes contained, and this information will be made available via the Internet.

c) The awareness of the judicial system will be raised through organizing programs in courthouses for citizens, especially for students.

OBJECTIVE 6.11

The practices and approaches hindering court testimony will be eliminated.

ACTIVITIES

a) The witness fee and the standards for approaching witnesses will be determined, and a comprehensive witnessing guide shall be prepared within this framework.

b) Brochures on the importance and value of the witnesses shall be prepared.

c) Witness waiting rooms will be established in the courthouses.

d) Information text for witnesses will be included in the witness invitations.

e) Efforts shall be made to comply as much as possible with the trial schedules stated in the invitations sent to witnesses.

AIM 7
ENHANCING
THE EFFICIENCY OF
THE CRIMINAL
JUSTICE SYSTEM

> Legislation regarding the criminal justice system has been recently updated so that it covers the modern practice. It was aimed at relieving the system by making important amendments in this legislation.

Criminal justice system covers investigation, prosecution and enforcement of sentences. Fair, effective and rational functioning of the criminal justice system is important to ensure that people maintain their lives within peace and safety and social life is maintained in welfare.

Legislation regarding the criminal justice system has been recently updated so that it covers the modern practices[52]. It was aimed at relieving the system by making important amendments in this legislation.

Today both in Continental Europe and Anglo-Saxon justice systems, practices regarding finalization of the conflicts by solving them during the investigation phase without prosecuting are increasing. The global trend in this regard is to reduce the number of cases by eliminating them in the previous phase. Decreasing the number of the ineligible cases will serve that quality trials are carried out and trials are finalized upon first hearing. This approach also complies with the principle of “first things first”. Thus, it is aimed to develop practices, which will allow public prosecutors to carry out an effective investigation and strengthening the pre-prosecution solution means by observing the right to a fair trial[53].

A quality trial is only possible with a sufficient investigation. It is an important productivity problem that courts need to carry out the procedures, which should be completed during the investigation phase or to repeat the procedures, which are already carried out. This productivity problem leads to victimization of parties. Therefore, it is obvious that there is a need for strengthening public prosecution offices and judicial police and functionalizing the institute of the return of an indictment[54]. In this scope, the scope of return of indictment will be redefined.

The principle of the obligation to prosecute and the traditions concerning the way this principle is applied lead to an increase in the number of cases brought before criminal courts. A significant proportion of the cases filed results in acquittal[55]. The legislative infrastructure and the habit of implementation should be established to ensure that the case, which is unlikely to result in a conviction, will not be opened. Today, the strict implementation of the principle of the obligation to prosecute has been abandoned worldwide. In the opening of a public case, arrangements are made for a more stringent evaluation of acquiring a public interest or the possibility of acquittal. The fact that the public case can be withdrawn according to the success assessment is also one of the methods applied. It is foreseen to conduct studies on this issue in the Strategy Paper period. Within this scope, the discretionary powers of the public prosecutors will be expanded, and thus the principle of obligation to prosecute in the criminal proceedings will be made more flexible[56].

One of the most important changes in the field of criminal law is the more effective protection of the “right not to be labelled as a criminal”[57]. By the legislative regulation made, a balance has been reached between the right not to be labelled as a criminal and the right to legal remedies, and by the regulation, the public prosecutors have been given the power to decide on "Non-Investigation" if the complaint is abstract and of a general nature, or it is clearly understood that the matter is not a crime. A number of training and awareness activities are foreseen, in the new period for the more effective use of this scope, which serves to the protection of human rights.

Developing special practices for victims in the criminal justice system is one of the issues dealt with in the Document. The fact that the accused is convicted as a result of the trial does not solely satisfy the victim. In addition, the victims expect the consequences of the acts to be remedied and their damages to be compensated. The new steps taken in the field of victim rights in the modern world are aimed mostly to meet these expectations. Therefore, the rights of the victims are addressed in the criminal justice part.

The main practice regarding alternative dispute resolutions in criminal procedure is conciliation. The situation of the conciliation in the system has been expanded within time with the regulations concerning the scope and procedure. Implementation of conciliation widely will be one of the priorities in this period, too. Increasing the efficiency of the training of conciliators and carrying out activities to disseminate conciliation culture in public will serve the smooth implementation of the system.

It is important that, apart from conciliation, the structures of pre-payment and suspension of initiation of public case, which are among the elimination methods before prosecution, are implemented effectively. It is envisaged in the Document that the scope of the structures of pre-payment[58] and suspension of initiation of the public case[59] are extended.

The provisions of effective remorse and the competence of the Public Prosecutors concerning effective remorse will be extended with regard to different offence types.

The efforts will be made for concluding the investigations concerning certain acts falling in the scope of the jurisdiction of the criminal courts of the first instance by agreement between the offender and the prosecutor in the framework of simple procedure. This practice will not harm the free will of the offender and will not cover the actions requiring serious sanctions, either. It is required to introduce practices, which will ensure that legal guarantees of the offender such as compliance with the agreement of the offender, including the amount of reduction to be applied in the legislation and ensuring that final judgment is taken by the court, will not be harmed.

Expanding the scope of the offences subjected to the complaint and defining the types of the offences that might be converted to administrative sanctions are among the efforts for relieving the system.

The trend for impunity or decriminalization of some acts is observed in many countries. It is considered beneficial to review criminal legislation in this respect.

Another issue mentioned in the Document is the structure of “suspension of the pronouncement of the judgement”. It is provided for that this structure and the legal remedy applied to the decisions rendered in the scope of this structure will be reviewed in the framework of the right to a fair trial.

The workload distribution between the high criminal courts and criminal courts of the first instance entails the reviewing the division of tasks between these courts. Moreover, it is important to ensure that some offences are brought before the court in a simplified and expeditious trial procedure through protecting the fundamental procedure assurances concerning some offences. Different practices of expeditious trial with simplified procedures are available in many countries. The regulations in this regard will contribute to the rational functioning of the system.

It is of significant importance to developing the policies special for the children who drifted to delinquency. Settlement by taking some social measures is foreseen,

52 Turkish Criminal Code No. 5237, Criminal Procedure Code No. 5271 and Law No. 5275 on the Execution of Penalties and Security Measures became law in 2004. Law No. 5402 on Probation and Aid Centres and Boards of Protection entered into force in 2005 and Misdemeanours Law No. 5326 entered into force in 2005 have become an important part of the new system. Child Protection Law No. 5395 entered into force in 2005 and Law No. 6284 on Protection of Family and Prevention of Violence against Women include important regulations regarding criminal justice system.

53 While the number of cases opened at criminal courts in one year was 1.486.296 in 2014, it has increased to 1.590.253 in 2018. The average period for carrying out the cases has increased from 231 days to 281 days.

54 As of 2017, the rate of the indictments returned is 2,6%.

55 In 2018, "Non-Prosecution" decisions were made about 51.1% of the suspects, and the rate of conviction in the cases filed was 43.7%.

56 The number of files per public prosecutor was 1,385 in 2014 and 1,963 in 2017.

57 By Article 145 of the Decree Law No. 694 dated 15/8/2017, the sixth paragraph was added to Article 158 of the Code of Criminal Procedure, and then this provision was exactly adopted and become law by Article 140 of the Law no. 7078 dated 1/2/2018. Non-investigation is decided if it is clearly understood that the act which is the subject of the denunciation or complaint does not constitute crime without any need to conduct a research, or the denunciation or complaint is abstract and of a general nature. In this case, the complainee cannot be considered a suspect. The decision of non-prosecution shall be notified to the denouncer or the complainant, if any, and this decision may be appealed according to the procedure in Article 173. In case the objection is accepted, the Office of Chief Prosecution initiates the investigation process. The proceedings and decisions made in accordance with this paragraph shall be recorded in a system for these purposes. These records can only be seen by the public prosecutor, judge or court."

58 It was evaluated that it would be useful to raise the upper limit set out in Article 75 of Turkish Criminal Code regulating the advance payment and to restructure the provision which excludes the crimes included in the reconciliation.

59 It was evaluated that it would be useful to remove the condition that the decision on postponing of the filing of the public claim upon a claim set out in Article 171 of Criminal Procedure Code, to increase 1-year upper limit and restructure the conditions regarding the implementation of this practice.

except for the judicial procedures for certain acts, which the minors between ages 12 and 15 commit for the first time. This model provided for children under 15 will serve for preventing the labelling of the child as a criminal[60].

The other objectives provided on this issue are the development of a model for conciliation special for children and suspension of initiation of criminal action[61] as well as bringing primarily the cases of children, who drifted to delinquency, before the court. Efforts will be conducted for strengthening the coordination mechanism established in the scope of the Children Protection Law and the efficiency of the measures governed under the Law will be increased.

The efficiency of criminal justice depends on the conclusion of the trials in a reasonable time and implementation of the imposed sentence in a short time. Imposing and collecting fines in a short time may sometimes be deterrent. Some regulations in the enforcement legislation caused the perception that short imprisonment sentences are almost never executed. Therefore, in the term of Strategy Document, the sanctions governed under Turkish Criminal Code and special criminal laws will be evaluated along with the regulations laid down in the Law on the Execution of Criminal and Security Measures and these sanctions will be re-structured for fighting more effectively against the offence and offender.

An element of the good functioning of the criminal justice system is constituted by the judicial records system. The period of eighty years required for deleting the archive records under the Law on Judicial Registry is decreased to 15 years provided that the order to returning the rights which have been prohibited with respect to the convictions causing right deprivation and to 30 years without such condition[62]. This binary system not only causes the victimization of persons but also places extra workload on the courts. Therefore, it will be ensured that the conditions for deleting the judicial registry archive records are re-regulated in proportion with the principle of development of material and moral existence of the person. Besides, it is foreseen to stop writing final[63] conviction decisions in criminal records.

Providing the opportunity to the elder, pregnant and minors who have been convicted of some non-violent offences for serving their sentences at home through electronic monitoring centre and re-structuring of the enforcement process of the seriously ill convicts and detainees in order to prevent the possible victimization will be the most important improvements in this field. In this regard, the development of alternative enforcement methods will be among the priorities of this term.

Besides, it is needed to carry out efforts intended to strengthen the law enforcement coordination for the efficiency of investigations and to re-evaluate the working principles and procedures of the Public Prosecutor's Offices with an institutional understanding.

Strengthening the law enforcement system is of great importance for the functioning of the system. Thus, it is considered that it would be beneficial to employ law school graduates in law enforcement.

For this purpose, even though they are not laid down among the objectives and activities, defining the standards for the prosecutor's office and law enforcement proceedings will also be among the important works. The works for setting guiding principles for each type of offence and making "standard work and checklists" for the proceedings to be conducted by the law enforcement will be carried out in this term.

Besides, it has been notified both by the judges and prosecutors and attorneys at law during the preparatory phase that the problems are encountered because of forensic medical reports. It is stated that reports are drawn upon matters, which actually may not be considered as judicial cases, the reports are not standardized, and there are deficiencies in these reports. In this regard, despite not being laid down among the objectives in this Document, the works will be carried out in cooperation with the related institutions on the forensic medical reports during the implementation period.

60 In 2017, the number of the children led into offence aged 12 to 15 who were brought before children courts and children high criminal courts was 39.957. The total conviction rate before the children courts was 36,2% in 2017.

61 It was evaluated that it would be useful to remove the condition that the decision on postponing of the filing of the public claim upon a claim, to increase 1-year upper limit and restructure the conditions regarding the implementation of this practice.

62 This regulation was carried out after the decision of dated 20/01/2011 and docket numbered 2008/44 and decision numbered 2011/21 of the Constitutional Court.

63 According to Article 272 of Criminal Procedure Code, except for the judicial fines converted from imprisonment, judgments recognizing final judicial fines up to three thousand Turkish liras (three thousand included) and judgments, for which the legal remedy had been closed by law are exempted from appeal.

AIM 7 ENHANCING THE EFFICIENCY OF THE CRIMINAL JUSTICE SYSTEM

OBJECTIVE 7.1

The means for settlement before the prosecution and the investigation phases will be strengthened.

ACTIVITIES

a) The discretionary powers of the Public Prosecutors will be extended.

b) The application of the structures of pre-payment and suspension of initiation of the criminal case will be expanded.

c) The provisions of effective remorse and the competences of the Public Prosecutor's Offices concerning effective remorse will be extended with regard to different offence types.

d) It will be ensured that the investigations concerning certain acts will be concluded by settlement between the offender and the prosecutor.

e) The structure of the return of the indictment will be redefined in terms of its scope.

f) Efforts will be made for increasing the efficiency of the organizational structure of the Public Prosecutor's Offices and developing law enforcement coordination.

g) It will be ensured that a certain number of law school graduates is employed in law enforcement for increasing the quality of the investigations.

OBJECTIVE 7.2

The balance between offence and the sanction will be reviewed and re-regulated by observing the principle of protection of rights and freedoms primarily the right to a fair trial.

ACTIVITIES

a) The scope of the sanctions alternative to short term imprisonment sentences will be extended in terms of duration and type.

b) The acts that are criminalized by the legislation will be screened and those which could be converted to administrative sanctions will be defined and will be decriminalized.

c) The structure of suspension of the pronouncement of the judgement and the legal remedy concerning these judgements will be reviewed in the framework of the right to a fair trial.

d) The scope of the offences, which are subject to complaint, will be expanded.

e) The sanctions under the criminal legislation and the enforcement system will be restructured in order to resolve the perception of community that some offences have impunity and to fight effectively with the offence.

OBJECTIVE 7.3

The jurisdictions of the courts will be redefined, and a new procedure will be introduced for shortening the processes for some ordinary acts.

ACTIVITIES

a) The jurisdictions of the criminal courts will be redefined.

b) It will be ensured that certain acts will be brought before the court with the simplified and expeditious trial procedure.

c) It will be ensured that criminal judgeships of peace are specialized with respect to the objections to the decision of administrative sanctions, and an effective remedy will be introduced with respect to the decisions.

d) It will be ensured that all decisions concerning the execution of the judgement fall in the scope of the jurisdiction of enforcement judgeships.

OBJECTIVE 7.4

Juvenile justice system will be restructured in line with the restorative justice approach, and an approach focused on victims will be adopted.

ACTIVITIES

a) It will be ensured that the offences, except some certain serious offences, which were committed for the first time by minors under 15 years old, are evaluated within the protective mechanisms specific to children without subjecting them to investigation and prosecution.

b) The model for suspension of the initiation of criminal case specific to the children, who drifted to delinquency, will be developed.

c) It will be provided that the first-degree trials of the children, who drifted to delinquency, and the legal remedy reviews concerning the decision on these children are conducted primarily.

d) The physical conditions of the juvenile courts will comply with the aims of the juvenile criminal justice system.

e) The legislation for the rights of the victims will be completed.

f) Central and rural units for judicial support and victim services will be established, and the judicial interview rooms will be extended across the country.

OBJECTIVE 7.5

The practices will be developed to replace inconvenient general enforcement procedures in criminal enforcement field, and it will be ensured that modern technologies are integrated into the system.

ACTIVITIES

a) The opportunity will be provided to the elderly, pregnant and minors who have been convicted of some non-violent offences for serving their sentences at home through an electronic monitoring centre.

b) The enforcement process of the seriously ill convicts and detainees will be monitored closely in order to prevent the possible victimization.

c) Special training will be developed for the personnel who are assigned in the enforcement processes of the minor convicts and detainees.

d) It will be ensured that the sensitivities are better observed in the transfer of the convicts and detainees in view of reasons such as domestic problems.

e) New practices will be developed using the technology such as video-call of the convicts and detainees with their relatives and submission of electronic petitions.

f) New methods will be provided such as increasing the capacity of electronic monitoring in probation services and biometric signature in the monitoring of the probationers.

g) The capacities and technological equipment of medical units in penitentiary institutions will be developed; the cooperation and coordination with the medical institutions out of the penitentiary institutions will be strengthened.

OBJECTIVE 7.6

The management capacities of penitentiary institutions will be developed, the correctional measures for the social reintegration of the persons will be increased and the system of conditional release will be improved.

ACTIVITIES

a) The supervision means of the penitentiary institutions and preventive mechanisms against rights violations will be strengthened, the transparency of the enforcement system will be increased.

b) The cooperation with non-governmental organisations will be developed in the enforcement area.

c) It will be ensured that the conditional release will be implemented based on concrete criteria.

d) Vocational programs will be developed for the convicts and detainees, the measures for reintegration convicts will be increased in order to prevent the recidivism.

OBJECTIVE 7.7

Judicial registry archive record system will be renewed in a way to develop the material and moral existence of the person and to accord with the corrective principle of the sentences.

ACTIVITIES

a) The judicial registry archive records will be deleted without requiring a separate court decision and the duration for deleting will be shortened.

b) Including final conviction judgments in criminal records will be terminated.

c) The judicial statistics will be deepened with a multi-directional understanding for impact analysis of the new legal regulations and instant follow-up of the data on offences and criminality.

OBJECTIVE 7.8

Efforts will be made for the efficiency of the investigations and prosecutions concerning cybercrimes and their conclusion.

ACTIVITIES

a) It will be ensured that the judges and prosecutors specialize in cybercrimes.

b) The provisions of the legislation on cybercrimes will be re-regulated involving technological developments.

AIM 8

SIMPLIFICATION AND ENHANCEMENT OF THE EFFICIENCY OF CIVIL AND ADMINISTRATIVE TRIALS

Many criticisms are posed to the civil trials in Turkey that the practice is not convenient to protect the right to a trial in a reasonable time period and the procedure is complicated. Today, there are procedural provisions on which even the legal professionals do not sometimes agree with in regard to the form of implementation.

Civil trials are important for individuals to maintain their lives in a legally secure environment. On the other hand, the effect of the functioning of the justice system on economic life emerges more clearly, especially in the civil trials.

The results and the atmosphere produced by the legal system affect economic life. For example, many areas such as whether the criminal justice system functions smoothly, how the family law practices are conducted, whether the cadastre problems have been removed affect the economic life in varying scales. In addition, fields such as commercial law, the law of obligations, execution and bankruptcy law, intellectual properties law affect economic life directly.

Many criticisms are posed to the civil trials in Turkey that the practice is not convenient to protect the right to a trial in a reasonable time period and the procedure is complicated. Today, there are procedural provisions on which even the legal professionals do not sometimes agree with in regard to the form of implementation.

Even though the civil trial is carried out in two forms of trial procedure such as simplified and written form, each procedure is constituted of different phases in itself and unless one of the classified phases is completed, one cannot proceed to another phase. Thus, the trials may prolong, and the duration for obtaining a right might be delayed. As it is necessary to eliminate the problem in question, it is aimed to amend the procedural provisions causing the prolonged trials, to simplify the procedural provisions causing legal discussions even among the practitioners and thus, to increase the efficiency.

For this purpose, efforts will be made to achieve the objectives such as conducting compulsory pre-examination and inquiry phase in one hearing, reviewing the regulations concerning duty and competence especially on remedies, ensuring that SEGBİS application is used frequently in the civil trials.

At this stage, an imbalance has emerged to the detriment of the civil courts of the first instance considering the nature and the number of the works before the civil courts of peace and before the civil courts of the first instance. With reference to this, it has become necessary to redefine the division of duty of the civil courts of peace and the civil courts of the first instance. In this regard, it will be ensured that the civil courts of peace are the assigned court for the requests of detection of the evidence during the phase when the action has not yet brought before the court.

The system will function more effectively following the works for bringing the requests and actions with small amounts before the court through a simplified and expeditious trial procedure with necessary procedural guarantees[64].

Right to legal remedies is not without limit in democracies relying on the rule of law. The boundaries of the right to legal remedies are drawn by article 36 of the Constitution that secures the right to legal remedies introducing that it can be used through “legitimate means and procedures”. The people fighting for their rights cannot resort to any means to that end. While presenting the rights, there is an obligation to tell the truth. Today, there are strict implementations in civil proceedings in the world on this matter. The Civil Procedure Code sets out the principles dominating the proceedings regulated together in the former Civil Procedure Code.[65] One of these principles is the “Obligation to Act Honestly and Tell the Truth” which is the procedure law counterpart of “rule of honesty” in article 2 of the Turkish Civil Code no. 4721 and regulated under article 29 of the Civil Procedure Code.[66] Considering this obligation, together with the principles of disposition, bringing before by the parties and connection with the request, it becomes necessary to restrict party dominance in civil proceedings. Unlimited implementation of party dominance in civil proceedings causes exploitations. Therefore, misuse of these right and power must be prevented by stipulating some obligations along with the rights vested in the parties.

Even though some sanctions have been stipulated in articles 327 and 329 in the Civil Procedure Code[67] against the party acting dishonestly, the practice has shown that they are insufficient. There is no specific sanction in the Civil Procedure Code with regard to the violation of this obligation, which is named “procedural fraud” in the doctrine, for the party which is free to choose whether to make a declaration but is obliged to tell the truth if he chooses to make the declaration. To that end, it is aimed to introduce a number of dissuasive legal rules in the procedural law that would prevent the parties from engaging in the acts contradicting the obligations in the manner that would not give rise to the application to the general provisions and by observing the right to legal remedies.[68]

While investigating the characteristics of the burden of proof and form during proceedings, a significant portion of the case materials that are brought before the judicial authorities are formed in a process including the notary public. Notary publics perform a highly important mission in cases where the burden of proof is specifically sought in the historical progress. The institution of notary public fulfils a function within the judicial structure, which is similar to judicial activity. Hence, it is considered that this institution must be made use of in reducing the workload of the judiciary. In this scope, it will be ensured that some ex-parte proceedings and recording of the evidence limited to the period when the case has not been opened will be carried out by the notaries as well. The aim is to provide alternatives for the beneficiaries and facilitate the procedures[69].

Even though our enforcement and bankruptcy system that was established according to Law no. 2004 dated 1932, it has undergone some major changes over time, there is still not separate legislation regulating the organisational structure of the enforcement and bankruptcy system. In order to fulfil this deficiency, it is aimed first to prepare legislation regulating the organisational structure of the enforcement and bankruptcy offices. In addition, it is considered to generalise implementation of a new enforcement model that has been included in the system recently and resulting in fairly positive outcomes.

A part of the efforts carried out in order to simplify and increase the efficiency of trial procedures will be concerning the administrative trial procedures. In this context, it is considered to start using group proceedings, to give time for drafting the reasoned decision and to increase the scope of the proceedings that could be solved by one judge. In addition to this, it is aimed to introduce legal amendments that will enable hearing witness in the full remedy actions filed on the particular grounds of disciplinary files, allegations on the delayed operation or non-operation of service.

64 While the total number of the cases brought before civil courts was 2.024.456 in 2014, this number was 1.962.485 in 2017. The average days of trials increased from 207 days to 285 days. A significant part of the cases consists of requests with small amounts. About 1/3 of the cases are brought before civil courts of peace.

65 While principles dominating proceedings were regulated in the former Civil Procedure dispersedly and without details, these principles are elaborated and listed together in articles between 24 and 33 in the Civil Procedure Code.

66 ARTICLE 29-(1) Parties must oblige with the rule of honesty. (2) Parties are obliged to make their statements regarding the facts forming basis to the case truthfully.

67 ARTICLE 327-(1) The party that unnecessarily causes extension of the proceedings or cost may be sentenced to pay full or part of the litigations costs other than the decision and writ fee even if the action is concluded in his favour.
(2) If a person causes the plaintiff to file an action against him by misleading the plaintiff to believe that he holds the capacity of defendant of an action he is not a party to, payment of the litigation costs in favour of the plaintiff cannot be held where the action is rejected on the ground of absence of a capacity.
ARTICLE 329-(1) A mala fide defendant or a party that brings an action without having any rights shall be sentenced to pay all or a part of the attorney's fee agreed between opposing party and the attorney in addition to the litigation costs. In the case where the attorney's fee amount causes a dispute or the court finds the amount illegal, this amount shall be appraised directly by the court.
(2) The mala fide defendant or the party that brings an action without having any rights may further be sentenced to disciplinary fine from five hundred Turkish Liras up to five thousand Turkish Liras. If the attorney is the cause of this, the disciplinary fine shall be imposed on the attorney.
Furthermore, although mala fide conducts are sanctioned under articles 101, 182 and 213 of the Civil Procedure Code, it is observed that these sanctions are not dissuasive in practice.

68 Civil Procedure Code puts forth a principle in article 29 but does not regulate the violation of this principle under the same article. Compensation of a party that suffers damage due to this lacuna based on the general provisions outside the procedural rules can only be possible through indirect means.

69 For example, certificate of inheritance which can be only granted by the civil courts of peace can be granted by the notaries since 01/10/2011.

AIM 8 SIMPLIFICATION AND ENHANCEMENT OF THE EFFICIENCY OF CIVIL AND ADMINISTRATIVE TRIALS

OBJECTIVE 8.1

Civil proceedings will be simplified, and procedural provisions causing lengthening of proceedings will be amended.

ACTIVITIES

a) Separation of duties between the civil court of the first instance and civil courts of peace will be identified again.

b) The new regulation will be introduced to solve claims and actions for a small amount with a simplified and expeditious trial procedure.

c) New regulations will be introduced concerning the preliminary examination stage in the simplified and written trial procedure.

d) Application of simplified trial procedure will be ensured in all proceedings of which the subject can be measured with money and is below a certain monetary amount.

e) It will be ensured that the court fees are simplified, and the collection procedure is reformed.

f) The scope of duties of consumer courts will be identified again in proportion with the workload.

g) In order to protect better the collective interests, the regulation on group actions will be reconsidered.

OBJECTIVE 8.2

Misuse of right to access to justice will be prevented.

ACTIVITIES

a) More dissuasive regulations, including sanction, will be brought towards conducts contradicting the obligation to act honestly and tell the truth in the trial procedure.

b) The practice where the defendant who does not reply to the action or show the will to participate in the proceeds is sent another invitation in order to ensure his attendance at the court during the oral trial and at the date and time set for the decision will be ceased.

OBJECTIVE 8.3

Applications that deepen the disputes during the judicial resolution of disputes arising from family law will be removed.

ACTIVITIES

a) Efforts will be made to overcome the problems arising from the implementation of the Law on Protection of Family and Prevention of Violence against Women.

b) Delivery of child and establishing personal relationships with the child will be removed from the field duty of enforcement offices and it will be ensured that this procedure will be carried out through experts without any expenditures.

c) New proceedings will be developed to protect the best interest of the child and rights of the all family members, to prevent their victimization during legal proceedings and to allow the conflict to be resolved within teh shortest time.

OBJECTIVE 8.4

Job descriptions of the notary publics will be reformed in such a way to reduce the workload of the judiciary.

ACTIVITIES

a) The institution of an assistant notary public under which graduates of faculty of law will be employed will be established.

b) Notary public examination will be brought for admission as a notary public.

c) Criteria for the opening of notary public offices will be re-determined and the number of notary publics will be increased.

d) It will be provided that notary publics can carry out some non-contentious proceedings and taking of evidence that is limited to the period when the action has not been initiated yet.

e) In order to facilitate the process for beneficiaries, the notary publics will be ensured to provide service outside the official working hours and on holidays.

f) It will be ensured that a copy of notary procedures carried out in the foreign missions by those living abroad will be immediately received in the closest notary in Turkey with the integration of the information system.

g) For the purpose of decreasing bureaucracy, the processes requiring notarization will be reconsidered.

OBJECTIVE 8.5

Management, personnel and organisation structure of enforcement and bankruptcy system will be strengthened.

ACTIVITIES

a) Separate legislation regulating the management, personnel and organisational structure of the enforcement and bankruptcy offices will be prepared.

b) The new enforcement office model will be generalised, and the virtual enforcement office application will be launched.

c) A supervisory board including professionals of enforcement and bankruptcy system will be formed to operate under the supervision and monitoring of justice inspectors in the Inspection Board of the Ministry of Justice.

d) The institution of trusteeship will be reformed through launching the licensed trustee practice and reregulating the liquidation procedure.

OBJECTIVE 8.6

The enforcement sale system will be renewed by observing the sensitive balance between creditor and debtor, and the costs imposed on the citizens in the proceedings will be reduced.

ACTIVITIES

a) Efforts will be put to decrease enforcement fees and costs.

b) Proceedings costs will be reduced by only online sales and removal of a newspaper advertisement.

c) The sale process will be sped up decreasing the preservation fee and other costs.

d) The security rate will be reduced to increase in bidding and sales price.

e) The debtor will be entitled to sell the distress.

OBJECTIVE 8.7

The administrative trial procedure will be ensured to simplify and increase in efficiency.

ACTIVITIES

a) Pilot action practice will be launched in group actions concerning administrative disputes.

b) Time will be given for drafting reasoned decision in administrative justice.

c) The scope of files heard by one judge in the administrative justice will be extended.

d) Hearing witnesses will be provided in some disputes.

e) By simplifying some procedural proceedings in the maturation process, the way for the expeditious decision will be cleared.

AIM 9

SPREADING OF
ALTERNATIVE DISPUTE
RESOLUTION METHODS

Implementing alternative dispute resolution in different disciplines of law will contribute to both the development of resolution culture in the society and the legal order.

The foundation of law is the principle of conciliation Economic and social developments, migration, increased population, technological advances create moredisagreements and disputes. These disagreements and dispute brought the new searches beside the traditional trial methods.

Alternative dispute resolution is an optional or obligatory solution that requires the dispute to be resolved before being brought to a court or conciliation of the parties during proceedings, that ensures mutual acceptance by parties contrary to the traditional proceedings, and that is concluded in a shorter time with less cost. As well as mediation, conciliation, arbitration practices with some differences, there are also practices where the dispute is solved through arbitrator tribunals. It also has an assisting impact that authorises the administration to develop resolution procedures for administrative disputes prior to judiciary, and that offers suggestive resolution as is the case with an ombudsman.

Another institution forming subject matter in the civil proceedings process is peace. It is observed that the regulation in the Civil Procedure Code that the judge should encourage the parties to make peace was not sufficient in practice in terms of realising the institution's objective to create. Therefore, it is planned to make regulations to increase the practice. Another innovation foreseen in this matter is to bring court-based family mediation practice. While regulating this system, the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (İstanbul Convention) will be taken into consideration.

Majority of the disputes in which the administration is a party can be solved through peace. It is understood that the regulation on the method of peace in the legislation cannot be operated effectively. According to the regulation in the legislation, the administration must invite the opposing party to make peace before initiating a judicial action or enforcement procedure.

The administration could further invite the opposing party to make peace in the case they learned that an action or enforcement procedure will be brought against them. Anyone who claims that their right was violated due to administrative actions may apply to the administration and request compensation of the damage incurred through peace within the time limit for bringing an action. Rereguläation of the commissions formed in the administrations for the operation of this regulation and peace procedures will reduce the workload of the courts while ensuring more effective protection of the beneficiaries' rights.

Implementing alternative dispute resolution in different disciplines of law will contribute to both the development of resolution culture in the society and the legal order.

It is of significant importance for these alternative resolution methods developed within the scope of this aim are publicly known. It is planned to carry out activities to create awareness in public accordingly and to generalise these practices.

AIM 9 SPREADING OF ALTERNATIVE DISPUTE RESOLUTION METHODS

OBJECTIVE 9.1

Alternative dispute resolution methods will be disseminated in criminal disputes.

ACTIVITIES

a) Scope of the provisions that stipulate conciliation will be broadened.

b) A conciliation model specific to children leads to an offence will be developed.

c) Capacities of conciliation offices will be enhanced.

d) Social awareness concerning the importance of conciliation will be increased.

OBJECTIVE 9.2

Alternative dispute resolution methods will be spread in civil disputes.

ACTIVITIES

a) Alternative dispute resolution methods in connection with the court will be developed.

b) Court-based family mediation will be brought.

c) Application to mediation process will be made a precondition for action in the fields such as consumer disputes.

d) Expertise in mediation in some disputes will be brought.

e) The parties will be informed through preliminary proceedings report concerning preliminary proceedings on the peace.

f) Instead of proportional decision and writ fees, a fixed fee will be charged if the dispute is resolved in peace.

OBJECTIVE 9.3

The practice regarding the alternative dispute resolution methods will be followed up continuously and its impact analysis will be conducted.

ACTIVITIES

a) The regular impact analysis will be conducted on alternative dispute resolution methods.

b) Through the participation of relevant institutions and organisations, professional organisations, the academic world and non-governmental organisation, the “Alternative Dispute Resolution Methods Advisory Council” will be established.

OBJECTIVE 9.4

Effective implementation of the institution of peace will be ensured in disputes in which public law is a party.

ACTIVITIES

a) In the disputes arising from administrative law and private law between different institutions and disputes between administration and individual, the application to the institution of peace will be made an obligation.

b) Peace commissions will be restructured within the administration.

c) The practice on withdrawal, waiver and not resorting to legal remedy in the actions that may end in favour of the administration by observing implementation and the case-law will be advanced.

ANNEX

Activities Carried Out During the Preparation Process of the New Judicial Reform Strategy Document

Activities Carried Out During the Preparation Process of the New Judicial Reform Strategy Document

1. Preparations for the Judicial Reform Strategy Document were commenced in August 2018 and the first comprehensive organisation providing data for working together was "Council of Justice" which was gathered in Ankara on 10/01/2018 and took place for two days. 28 academicians, press members and practitioners delivered presentations on different subjects in the Council whose main theme was "justice and society" and which consisted of six sessions.

2. Regular meetings to update the Judicial Reform Strategy Document were started on 10/08/2018.

3. In order to receive the opinions of the academic world during the works, many interviews and meetings were realized. In this scope, a lot of schools of law were visited, and focus groups meetings were organized with some academicians[70].

4. A survey study was carried out in the information system. Multiple-choice and open-ended surveys carried out through the system for judges, public prosecutors, lawyers and auxiliary staff were completed by 11.276 people in total.

5. Opinions and recommendations were received in written form from many institutions and organisations[71] external stakeholder surveys were carried out for the institutions and organisations[72].

6. Within the scope of the visit of the Council of Europe and ECtHR to Turkey on 05/10/2018, a meeting was realized concerning the Judicial Reform Strategy[73].

7. Opinions and recommendations of the Heads and public prosecutors of Penal Chambers of the İstanbul Regional Court of Justice during the workshop organised in İstanbul on 21/09/2018.

8. A meeting was organized with the Heads of Regional Court of Justice and Regional Administrative Court, their members, judges working at the courts of the first instance and public prosecutors in İstanbul regarding the Judicial Reform Strategy Document on 27-28/09/2018.

9. A workshop was organised with the participation of 200 judges and public prosecutors working in Ankara and the other provinces in Ankara on 11-12/10/2018.

10. Development Plans, Specialization Commission Reports, Ombudsman Institution Reports, publications of the scientific activities carried out by our ministry and universities on different dates, reports of the non-governmental organisation were reviewed, and data gained was evaluated.

11. EU documents, progress reports, case laws of ECHR and the other international documents were reviewed.

12. Three meetings were organised with the Union of Bar Associations of Turkey at different stages.

13. A meeting was organised with the participation of almost 30 representatives of different law associations in Ankara on 24/10/2018.

14. A meeting was organised with the Constitutional Court on 26/10/2018, and especially individual application and ECHR violations were discussed during the meeting.

15. A meeting was organised with the Inspection Board of the Council of Judges and Prosecutors on 19/10/2018.

16. A meeting was sorganised with the Heads and members of chambers of the Court of Cassation at the Court of Cassation on 31/10/2018.

17. A meeting during which especially judicial security forces were discussed was organised with the representatives of the General Directorate of Security and Gendarmerie General Command on 30/10/2018.

18. A workshop was organised with the representatives of the business world, particularly TOBB (the Union of Chambers and Commodity Exchanges of Turkey), MÜSİAD (Independent Industrialists' and Businessmen's Association), TÜSİAD (Turkish Industry and Business Association), on 01/11/2018.

19. A well-attended workshop was organised with the participation of the representatives of High Judicial Bodies, CPJ, Council of Higher Education and Union of Bar Associations of Turkey, presidents of bar associations, deans of law schools, judges and public prosecutors on 29/11/2018 and various subjects were discussed, especially legal education and right to defence.

20. On 04/12/2018 former Ministers of Justice gathered at Ankara Judge's House with the invitation of the Minister of Justice Abdulhamit Gül and discussed the Judicial Reform Strategy[74].

21. The 4th Reform Action Group meeting was organized on 29/08/2018 and the 5th one was organised on 11/12/2018, and the process regarding the preparations of the Judicial Reform Strategy Document was evaluated during the meetings[75].

22. Reform Action Group meeting was organized under the chairmanship of President of the Republic of Turkey on 09/05/2019 and timetable regarding the Judicial Reform Strategy was defined in this meeting.

23. Members of Justice Commission of the Grand National Assembly of Turkey gathered at Ankara Judge's House with the invitation of the Minister of Justice Abdulhamit Gül on 26/12/2018 and discussed the Judicial Reform Strategy.

24. "Social Demand Research" was conducted for the citizens in Ankara, İstanbul, Antalya, Bursa, Diyarbakır, Samsun and Malatya in January 2019. The research was carried out with the face-to-face interview method.

25. A meeting was organized at the Council of State within the scope of the preparations of the document on 08/01/2019.

26. Draft Judicial Reform Strategy Document was submitted during the Cabinet Meeting organized under the chairmanship of Mr. President of the Republic of Turkey on 15/01/2019.

70 Meetings were organized in various universities such as İstanbul, Ankara, Hacı Bayram, Çankaya, İstanbul Ticaret, İstanbul Medipol and opinions and recommendations were received.

71 All of the ministries, Union of Bar Associations of Turkey, Bar Associations, TÜSİAD (Turkish Industry and Business Association), MÜSİAD (Independent Industrialists' and Businessmen's Association), TOBB (the Union of Chambers and Commodity Exchanges of Turkey), Ombudsman Institution, Union of Turkish Public Notaries, all of the schools of law, YÖK (Council of Higher Education) and law associations.

72 Grand National Assembly of Turkey, Ministries, Turkish Court of Accounts, General Directorate of Security, Gendarmerie General Command, Competition Authority, Information and Communication Technologies Authority and non-governmental organizations (trade unions and associations).

73 A presentation was delivered concerning the activities carried out within the scope of the Judicial Reform Strategy Documents prepared in our country and road map and main aims in the process of the New Judicial Reform Strategy during the meeting with the General Director of the Council of Europe Human Rights and Rule of Law, Head of Justice and Legal Cooperation, Head of Execution of Judgments of the European Court of Human Rights and Head of Turkish Division of ECHR and opinions were exchanged.

74 Bekir Bozdağ, Sadullah Ergin, Mehmet Ali Şahin, Cemil Çiçek, Aysel Çelikel, Hikmet Sami Türk, Hasan Denizkurdu, Oltan Sungurlu, Mehmet Ağar, Fahri Kasırga and Kenan İpek participated in the meeting as former Ministers.

75 Minister of Justice, Minister of Foreign Affairs, Minister of Treasury and Finance and Minister of Interior participated in the 4th and 5th meeting of the Reform Action Group which was formed in order to coordinate the work to be carried out in the accession process to European Union.

27. Judicial Reform Strategy meeting was organized with the officials of the Council of Europe and the European Court of Human Rights in Strasbourg on 15/01/2019. During the meeting, representatives of the Council of Europe and the European Court of Human Rights were informed about the objective and main headings of the New Judicial Reform Strategy Document and their opinions were received. Pursuant to that, Draft Document was submitted to the Council of Europe and the Council submitted its opinion to us in a written form on 12/04/2019.

28. "Symposium on Mediation as the Cause of Action on Its First Year" was organised in Ankara on 31/01/2019.

29. 66 people consisting of journalists, authors, academicians and politics were visited by the delegations formed for this purpose in January 2019 and the problems and solutions regarding the judiciary, and their recommendations for the Draft Document were received.

30. The draft was discussed during a meeting which was organised with the invitation of the Minister of Justice Abdulhamit Gül on 05/02/2019 and in which Heads of High Judicial Bodies participated.

31. A meeting was organised at the Chief Public Prosecutor's Office of the Court of Cassation on 06/02/2019 in which the draft was discussed. Pursuant to that, various meetings were carried out in which detailed work was implemented.

32. On 08/02/2019, during the visit of the Minister of Justice Abdulhamit Gül to the Union of Bar Associations of Turkey, the preparation process of the Judicial Reform Strategy Document was discussed.

33. A well-attended "Expertise Workshop" was organised in Ankara on 13/02/2019.

34. On 21/02/2019, Draft Judicial Reform Strategy Document was submitted to the Ministry of Foreign Affairs to be shared with the EU Commission to receive their opinions. Opinions of the officials of the EU Commission concerning the draft were received in a meeting organized in Ankara on 04/04/2019.

35. "Symposium on Mediation in Commercial Conflicts" was organised with the Union of Chambers and Commodity Exchanges of Turkey in Ankara on 27/02/2019.

36. Plenary Session of the CPJ was informed about the preparation work on various dates during the process. Opinions stated in these negotiations were reflected in the document.

37. Meetings were also organized with the Legal Policies Council of the Presidency during the preparation process. Detailed work was carried out on the aims, objectives and activities foreseen in the draft during the meetings.

38. A meeting was organised with the representatives of the Amnesty International on 06/03/2019 and opinions of the participants were received concerning the Judicial Reform Strategy Document.

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