

ICI CHAIRMAN ERDAL BAHÇIVAN ASSEMBLY MEETING SPEECH

The world is undergoing a period marked by an ever-accelerating pace of profound change and competition in all realms, notably in economy, technology, and politics. During this period, the Istanbul Chamber of Industry stresses, as always, the need for further solidarity, communication and cooperation with all stakeholders.

I would like to greet you on behalf of our Board of Directors and myself before commencing our monthly assembly meeting, during which we will discuss the legal problems facing our economy and industry and seek solutions together.

I would like to welcome Mr. Bekir Bozdağ, the Minister of Justice, to our assembly meeting of this month, titled "The Importance of a Swift and Effective Legal System and Improved Judicature for our Economy and Industry". Mr. Minister, you have honored us with your presence.

It is a great pleasure to see you retain your post as the Minister of Justice in the Sixty-Fourth Government formed after the elections of November 1. As Istanbul Chamber of Industry, we would like to extend our heartfelt congratulations and our hope that your guidance will herald an auspicious future for our country, our people, and our business.

I would like to take this opportunity to emphasize that we consider it especially meaningful and valuable to have the Minister of Justice joining us today, at a period in which legal reforms have become of key importance for our country's economic development. Gathering the judicial circles and industrialists from Istanbul under this roof is a critical step towards an efficient and effective cooperation we are yearning for.

I would also like to express our contentment over the Ministry of Justice's recent attention towards judicial issues faced by business circles, as well as the initiatives and activities undertaken in this regard..

Accordingly, I would like to mention an important event organized by your Ministry: The "Judiciary and Business Community Symposium" held in Istanbul on November 21-22, 2015, an event followed closely by Assembly and Chamber members, is a pioneering initiative in this field.

In addition to this pioneering initiative, the "Symposium on Alternative Dispute Resolution Methods" held in Antalya, and the "Experts Symposium" which took place in Istanbul last week demonstrate the solution-oriented approach adopted by the Ministry of Justice towards our judicial issues.

The Istanbul Chamber of Industry is ready to play its part in maintaining the cooperation between the judiciary and business community. It is our common wish to improve solidarity and dialogue by keeping the cooperation lines open.

Before passing to the main agenda items, I would like to mention a recent and deeply saddening event that shook the business community to the core:

Our pain and sorrow is still raw for the sudden passing of Mr. Mustafa Koç, Chairman of Koç Holding, one of Turkey's pioneering and leading industry companies.

Mustafa Koç, who had, for a period, served with us as an ICI Assembly member, left this world at his prime. The untimely nature of his passing further increases our pain.

We offer our prayers for Mustafa Koç, who will always be remembered with his broad vision, and his invaluable services for our country, our economy, and our society and education, and extend our deepest condolences and sympathy to his family and to the Koç Holding community.

I would like to talk about another sorrowful event. A former assembly member of the Chamber, Sabri Yaman, has recently passed away as well. I would like to offer my prayers for our esteemed industrialist, who had provided invaluable services to our industry, and extend my sincere condolences to his family.

Another development is about a recent change in the Chamber's office of Secretary-General. Ms. Melek Us has resigned from her office as the Secretary-General. We would like to thank her for her services. Mr. Haktan Akın has been appointed as the interim Secretary-General.

There is an important event we will be holding next month. A conference, titled “The Next Generation of Economic Diplomacy: The Growth of Regional Free Trade Agreements and TTIP Negotiations Worldwide” will take place on February 13, 2016 with participation of Mr. Volkan Bozkır, Minister for EU Affairs. I would like to use this opportunity to invite you to our conference.

2015 was a busy year full of activities. Our 2015 Annual Report, detailing these activities, has been published today.

Before I begin sharing my opinions on our main agenda item, I would like to mention two recent developments of particular interest for us industrialists.

The World Economic Forum was held last week in Davos. It is a pleasing development to see that "production", under the term "Industry 4.0", was among the outstanding agenda items of an event that captured the attention of the world.

The Davos meeting described tomorrow's world with regard to industry and production as follows: Introduction of new technologies will lead to new methods to meet today's needs, and will deliver a profound impact on the current industrial value chain.

The shift from the Third Industrial Revolution's simple digitization based model to the innovative Fourth Industrial Revolution featuring a combination of technologies will force companies to reexamine the way they do business. Physical, digital and biological will converge more than ever before.

The second point is the “Global Risks Report 2016” published by the World Economic Forum. The report draws particular attention to risks associated with climate change and involuntary migration. The risk chain, comprising the risk of “failure of climate-change mitigation and adaptation” and the consequent “water and food crises” is considered the risks with the highest impact.

On another front, geopolitical risks have been listed among the “the most likely risks” in 2016, as was the case in 2015. In this context, the risk chain consisting of “interstate conflicts”, “government collapses” and resulting “large-scale involuntary migrations” is alarming.

With Turkey initiating a period of comprehensive reforms, as reflected in the main agenda item, we need the establishment of a swift and effective legal system through improvements to the judicature.

Judicial reform is a necessity brought about by social changes. Legal rules emerged as a result of human beings' efforts to regulate social life, given the fact that humans are social beings. As the Code of Hammurabi indicates, societies have been in need of a legal code since antiquity. Nevertheless, these rules are always subject to change in line with the *zeitgeist*.

For instance, the law adopted by an agricultural society was different from the one of an industrial society. As they shift towards the post-industrial society, the modern, developed economies reshape the industrial society's legal understanding and rules according to this new society.

Law means everything to a society. The saying of Confucius, “In governing, cleave to good; as the north star holds his place, and the multitude of stars revolve upon him,” clearly defines law as the building block of a strong and healthy society. It matters so much that we see developed countries grow on two main pillars: law and economy.

Fundamentally, both law and economy are about human relations. As such, the harmony of these pillars is also of key importance. In fact, economy shapes people's behavior vis-a-vis their needs, while law regulates individual rights and responsibilities.

As I said before, legal regulations follow social changes. Today, technology represents the primary factor that drives social transformation. Recent developments in information and communication technologies have inevitably necessitated many legal regulations.

Unlike previous centuries, today's technological transformation profoundly alters people's daily lives, jobs, and living and consumption habits. When we consider our immediate environment, we can observe that our business conduct, channels of communication, means and speed of transport, and way of communicating with our friends are changing. It is only natural that the relations between the state and the individual are also being transformed by this change.

In fact, all these are driven by the phenomenon of globalization. As the expression “The world has become a global village” implies, a significant number of communities around the world have been drawing nearer in many aspects. Globalization brings about a convergence of national and international laws. In fact, many countries around the world have been adapting their domestic law to international norms at a continuously increasing pace.

Alongside the aforementioned developments, the great social and economic changes recently experienced in Turkey have necessitated legal reforms as a priority.

Turkey has a well-established tradition of modern law dating back to the early 19th century. This tradition underwent a drastic change at the beginning of the 20th century with the Civil Code, Code of Obligations, Penal Code, and Commercial Code imported from the West.

While these changes persisted in the following years, some of them remained palliative, unable to deliver a lasting effect.

Now, we are back on the verge of a revolutionary reform in the law. In this context, the “Judicial Reform Strategy” announced by the government in April 2015 has raised our hopes.

On this occasion, I would like to express our appreciation of Minister of Justice Mr. Bekir Bozdağ's statement: “The judicial reform strategy paper is our guidebook. We have scheduled all our future works. We will accomplish significant judicial reforms in Turkey within the coming period”.

The five primary objectives of the strategy are highly relevant. Accordingly:

- Judicial independence and impartiality will be reinforced.
- Accountability and transparency will be improved.
- Efficiency and speed of judiciary functions will be ensured.
- A human oriented system will be developed.
- Liberties will be protected and enhanced.

After these evaluations on our main agenda item, I would like to address some of our common judicial problems raised by Assembly Members and Sectoral Committees.

I will start with a common problem that continues to gain prominence every day: employee-employer relations and working life.

On that note, the first point I want to mention is the fact that most labor lawsuits are concluded against employers. With a view to “protect the weak against the strong”, judges tend to take the side of employees. However, at this point, 99 percent of labor cases find employers guilty and held liable for damages while the legislation is only stretched in favor of the worker, disturbing public conscience.

It is essential for employees and employers work under equal conditions and rights and pursue shared goals for the benefit our economy and for ensuring our industry's global competitiveness. Lawsuits should seek to ensure justice, rather than simply defending one side with a populist viewpoint.

The second key issue is the extensive statute of limitations mandated by law regarding to employees' claims for unpaid wages as well as severance and notice payments. When a former employee who worked in a workplace ten years ago lays a claim, it is a daunting task for the company to even find a record on that person. The statute of limitations in such cases should be limited to two years.

Within this context, I would like to bring the third problem to the table: the need for faster and more effective methods before taking a dispute between employees and employers to the court. Labor cases have been recently seeing a massive increase in number. This increase not only harms calm and peace in the workplace, but also adversely affects the efficiency of companies.

The new draft labor law, which requires the parties in labor disputes to apply to an “arbitrator” before taking legal action, is an extremely positive development in this regard. This obligation must be adapted in a way to cover all the employee-employer disputes,

including reinstatement lawsuits. We hope to see this regulation, which will help companies save time and money, pass into law as soon as possible.

The fourth issue I want to talk about is related to subcontracting. Our country lacks flexible working models as seen in developed countries, a significant problem on its own. The courts see subcontracting as “employer's collusive transaction”. Certain fixed-term labor contracts based on mutual consent are deemed void, hindering development of new recruitment methods. Lawmakers should take into account the requirements of modern working to contribute to the dynamism of employment markets.

We have other problems concerning working life. I would like to mention them briefly:

- Problems arising from the use of annual leaves as well as proof and payment of overtimes should be addressed,
- Precedent wages should be set on an equitable basis,
- In labor lawsuits, the burden of proof should fall equally on both parties, and problems arising from testimonies should be addressed,
- Practices regarding worker errors and resulting sanctions should be improved.

After summarizing legal issues concerning employee-employer relations and working life, I would like to share my opinions on alternative dispute resolution methods such as arbitration, conciliation, and expert witnessing.

We believe that such approaches, which may be described as “judicial innovation”, should be made more readily available.

The concept of "expert witnessing", an important aspect of our legal system, must become more effective, transparent, and fair. Chambers of Industry and Commerce establish their own list of expert witnesses pursuant to the “Regulations on the List of Arbitrators and Experts”. Therefore, Chambers of Industry and Commerce must be included to the anticipated Expert Witness Committees.

This way, Chambers would choose experienced and competent professionals through sectoral committees, who would then be recommended to the Ministry of Justice to serve as expert witnesses. We believe that the current legislation should be amended to allow the creation of the expert witness lists in accordance with the “Draft Law on Expert Witnessing”.

As for the arbitration, it must be made obligatory for settlement of commercial disputes concerning amounts below a certain threshold. This will allow for both reduced workload in courts as well as faster resolution of disputes.

We are following the establishment of the Istanbul Arbitration Center with great excitement and interest. We are looking forward to see it finalized.

Another critical problem is the excessively long trial periods. The saying, “Late justice is no justice” perfectly illustrates this situation.

A promising development in this regard is the upcoming courts of appeal, which will begin working by July 2016 based on the legal framework established back in 2004. It is our

common hope to see these courts provide an effective and efficient mechanism that will hasten the judicial process.

Another important aspect of dispute resolution is specialized courts, which proved themselves in certain areas by delivering effective, swift and fair resolution. Specialized courts allow expert judges to resolve cases more quickly, more accurately and without having to consult to experts, and as such, the concept of specialized courts should be developed and expanded.

Another current obstacle that gets in the way of industrialists is the problems concerning suspension of bankruptcy. Unlike the common practice in other countries, there is a time limit for suspension of bankruptcy in Turkey. Although this practice was originally introduced with the aim of protecting creditors, it actually works against the companies that could escape bankruptcy otherwise.

Abolishment of this time limit in accordance with regulations introduced as part of the EU harmonization process will serve as a significant step towards eliminating unjust treatment of companies. This calls for appointment of specialized trustees while requiring authorization of expert witnesses to be determined by relevant Chambers in order to prevent malicious acts, and it may even go as far to require expert witnessing by independent auditing firms. Moreover, necessary amendments should be made to allow for the appointment of “Honorary Judges”, also to be selected by the Chambers.

Another issue is the serious obstacles to collection of public payables. The non-confiscateable nature of state-owned property is one of the most important issues in this regard.

The state makes transactions and incurs debts just as a private enterprise does. Significant problems, even bankruptcy await companies unable to collect their receivables due to legal restrictions.

We believe that there is a need for amendments to the legislation on procurement allowing public institutions that are involved in procurement of any kind to be held accountable, and face sanctions similar to those applicable in the private sector.

Administrative jurisdiction losing its function due to the public procurement act is also another important problem. Delayed decisions by administrative courts, delayed motions for a stay of execution, or a lack thereof, cause irrecoverable damages. In order to prevent this damage, requests for a stay of execution should require the parties act as if the motion has been granted by the court, until the court comes up with a final verdict on the request.

As regards to enforcement problems, in the current situation debtors may object a debt follow-up by the creditor without presenting any document or justification, forcing creditor to wait for the conclusion of the lawsuit, which can take up to years. Meanwhile, the debtor would be free to hide their assets and thus cause damages to the creditor as well as disturbance in the market. Provisions concerning objection to enforcement proceedings must be revised in a way to void any objection without justification or supporting documentation.

As it is well known, bailiff's offices proceed at snail's pace, and extreme number of procedures coupled with short-handed staff delay proceedings, which, at the end, aggrieve creditors. The bailiff system must be privatized or other solutions must be developed to ensure rapid handling of cases.

Finally, I would like to outline the other agenda items:

- Articles of laws should be made clear, concise and explanatory; and the Notification Law should be amended,
- Turkish Commercial Code should address company shareholders' right to information and audit, as well as minority rights.
- The requirement for companies to employ lawyers must be abolished. Companies already work with a variety of law firms depending on their line of business. We believe that the obligation to employ a single attorney obligation is not feasible in today's conditions.

Having communicated the issues we are facing, I would like to stress that Istanbul Chamber of Industry is always working with the aim to be a part of the solution through an inclusive and participative approach. Based on this approach, we are committed to continue working with the Ministry of Justice to drive even more efficient initiatives on this topic. Having you here with us today, we believe wholeheartedly in our ability to achieve this efficiency in the upcoming period.

As I conclude my words, I would like to once again welcome our Minister of Justice, Mr. Bekir Bozdağ, and extend my warmest greetings to all of you.