

## **“SPEECH ON THE 150<sup>TH</sup> ANNIVERSARY OF THE COURT OF CASSATION”**

**Distinguished guests,  
Esteemed participants,  
Dear journalists,**

I would first like to express the joy and honour of being in your presence on the occasion of the 150<sup>th</sup> Anniversary of the Court of Cassation. I pay my deepest respects to the presidents of our high courts, distinguished colleagues from other countries, exceptional scientists raised by our country, esteemed representatives of international organisations, dear colleagues of law, and respectable members of the press for accepting our invitation and honouring our Symposium.

Today, we all feel the utmost joy of hosting 92 distinguished guests from 17 countries. It gives us a special meaning in that the participation by representatives of high courts from three continents namely Africa, Asia and Europe signifies that “friendships are not limited by time and space.” As we celebrate, with great joy and pride, the 150<sup>th</sup> anniversary of the founding of the Court of Cassation, I express my gratitude to all distinguished friends who are with us today. Welcome all.

### **Founding of the Court of Cassation**

The Court of Cassation dates to 6 March 1868 when the Ottoman Sultan Abdul-Aziz decreed the founding of the Tribunal of Judicial Verdicts as the final and highest body to review judicial decisions. The Statute of the Tribunal of

Judicial Verdicts of 01 April 1868 states the purpose of founding of the Tribunal of Judicial Verdicts as follows: “As a consequence of the Sultan’s ever and incessant efforts to secure the rights of the people, and since the Sultan has deemed right and appropriate that the justice affairs be separated from the executive, and the judiciary be accorded security and independence; the Tribunal of Judicial Verdicts has been established as the highest court for cases of law by the supreme permission of the Sultan.”

Before the founding of the Court of Cassation, the administrative and judicial powers were concentrated in a council named the “Higher Assembly of Judicial Verdicts”. The assembly reviewed and concluded both judicial and administrative affairs. The lack of separation of judiciary and executive powers resulted in non-confidence in the courts in and outside the country. The government of the time deemed essential that the trust and repute be built for the judicial tribunals by immediately remedying the situation, which jeopardised the independence, and even the existence, of the state, renewing the laws and re-organising the courts. Considering the beginning of the Tanzimat (“Imperial Edict of Reorganisation”), there was already a delay of more than thirty years in this field. The government’s “Sublime Motion” was approved by the Sultan on 6 March 1868. Thereby, the judicial affairs were separated from the state and executive affairs as the most necessary reforms for the state and country in terms of rights and securities of the people. The appeal review of the cases, which by then was one of the functions of the “Higher Assembly of Judicial Verdicts”, was taken away the said assembly and entrusted to the new council named “Tribunal of Judicial Verdicts”. The rest of the affairs remained within the remit of the Higher Assembly which was later named the Council of State. It is possible to conclude that the basic principle in founding the Court of Cassation was the principle of “separation of powers”.

Mithat Pasha, Governor of Danube, was appointed as the President of the Council of State; whereas Ahmet Cevdet Pasha, Governor of Aleppo, was appointed as the President of the Tribunal of Judicial Verdicts for his merit, superior intelligence and deep knowledge. The Tribunal of Judicial Verdicts started to function on 1 April 1868 when its statute was approved by the Sultan.

The High Court was named the “Court of Appeals” by the Law of 18 June 1879 on Establishment of Regular Courts, and continued to function at Istanbul by

1922. However, an Appeals Commission was established in Sivas on 8 June 1920 following the start of National Salvation War in Anatolia and the establishment of the National Government. Thus, there were two courts of appeal during the years when significant parts of Turkey were under occupation. Upon victory in the Salvation War and clearing all enemies off our motherland, the jurisdiction of the Court of Appeals in Sivas was indisputably recognised across the country. The Court of Appeals was relocated to Eskişehir on the Declaration of Republic, then moved in 1935 to Ankara where it has been since functioning.

Today is a day of utmost significance for our High Court which performs its judicial functions in 6 buildings at central Kızılay and Bakanlıklar quarters of Ankara. To respond to the society's rightful expectations of justice, it is doubtless necessary to work in appropriate physical circumstances. Today, we will break ground for the new building of the Court of Cassation so that its services can be discharged in a more effective, efficient, economic and holistic way. Through the facilities in the new spaces, we will further strengthen the notions of rule of law and justice for the future generations in line with the re-defined modern roles of high courts.

Since its founding, the Court of Cassation has always had judges, including particularly our founder Ahmet Cevdet Pasha, who were virtuous, knowledgeable, understanding, conscientious, wise, of high ethics, devoting their lives to law. I commemorate with gratitude and reverence those who had passed away; and wish good health and well-being to those who are alive.

## **Law: Common Human Heritage**

We! All of us! We are the equal members of human family with equal worth. We must create a “universal culture of law” which secures justice and human rights equally to all. If there is injustice, lawlessness; then it may occur at any place else. Therefore, we must meet more often and collaboratively seek the ways of safe progress to the ideal of “universal culture of law” we aspire.

Many civilisations from many geographies have contributed throughout the history to the concepts that make up the universal culture of law and the values that lie in the heart of such concepts. In clearer words, “democracy, rule of law and human rights” are concepts and values born out of the cultural pot of the human history. They are not exclusive to any state, geography or ideology. One

finds the ideational foundations of such values in Mawlana's Masnawi and Yunus Emre's expression "Love the created because of the Creator".

I cannot think of a civilisation which does not know the notion of "justice" as the foundation of a state or where the significance of justice is not emphasised. Throughout the history, it is not coincidental that states that were just and built a strong system of justice survived for centuries<sup>1</sup>.

Omar Khayyam holds that "Justice is the spirit of the universe."

According to Ali Samarqandi: "Heavens and earth stand on account of justice."

Mawlana stated that "Justice is to place everything in its due place. Watering the rose is justice, watering the thorns is oppression."

Referring to the survival of justice, the expression "Justice is the very foundation of the state" is inscribed in all courtrooms in Turkey immediately above the judge's seat.

Mehmed II the Conqueror said: "On the day a judge takes bribe, the state dies."

Kutadgu Bilig ("Wisdom of Royal Glory") proposes that "Justice is the pillar of heaven; if it [justice] collapses, the heaven cannot continue to stand."

Ataturk said: "Independence, future, freedom, all things can only exist under justice."

## **Historical Function of High Courts**

As known, high courts have historically and institutionally two core functions: Ensure that law is enforced uniformly across the land and perform legality review. However, the real element that characterises high courts is to "ensure that law is enforced uniformly across the land" rather than the legality review. A decision by a high court is not limited to a "subjective function" for the litigants in the specific case. Since the decisions of high courts are for all, they have an "objective function" as well. This function is a consequence of the

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<sup>1</sup> Roman and Ottoman Empires lasted a long time because they were able to establish a good justice system. The Huns and Mongols on the other hand did not last long because they failed to establish a good justice system.

“equality before the law” as enshrined in Article 10 of the Constitution. If a legal rule is enforced in a certain manner in one part of the land, and in another manner in another part of the land, the principle of equality is violated. In similar vein, if a legal rule is construed variously in similar incidents, that also violates the principle of equality and undermines the people’s confidence in the legal system. The history stands witness many times to how societies collapsed in times when the sense of justice was undermined and became no longer relevant. For this very reason, the most important duty and the greatest responsibility to the society of the Court of Cassation are to ensure unity of opinion in order to secure legal security, equality before the law and legal predictability. On the 150<sup>th</sup> anniversary of our founding, we are well aware of this critical responsibility as imposed by our Constitution and general principles of law.

### **New Roles Assumed by High Courts through History**

While one of the founding purposes of the Court of Cassation was to ensure unity of opinion through legality review, legal systems in the world and in our country have since 1868 evolved significantly and high courts have assumed additional roles as well. International instruments highlight the importance of high courts being “transparent and responsive” to the justice-related expectations of the modern society. High courts in democratic societies should apply the most progressive, universally accepted standards of justice; and contribute to and guide the justice policies as necessary. The educative mission of high courts evolving in history compels the Court of Cassation to continuously renew itself, and develop new, universal strategies to solve the problems of justice.

#### **a) Increasing public trust in the judiciary**

Public sphere is the milieu where people set aside their individual or group interests, opinions and social viewpoints, and devote their time and efforts to the better functioning of public services. For the members of the judiciary, “public space” means to devote oneself to the profession, identify with the profession, and make best effort to keep public trust in the judiciary at the highest level. Judicial independence and impartiality is not a favour from the Constitution to the members of the judiciary; it is an outcome that can be achieved by rightfully deserving public trust. Such trust is the most important security for judicial

independence and impartiality. In clearer words, it is impossible to achieve judicial independence and impartiality in a legal system where the society does not have confidence in the judiciary.

Public trust in the judiciary is neither a coincidental perception nor an expression of a subjective and cyclical situation. Public trust in the justice system is an outcome that can be achieved by the judiciary working selflessly and systematically. It is utter blindness to expect the public to trust in the judiciary or the existing trust to increase without doing anything on this matter.

Highly aware of its responsibility, the Court of Cassation has prioritised the themes of “judicial ethics, transparency and trust in judiciary” as the core elements of justice, and continues its work in the national and international arena. In this context, three sets of codes of conduct were formulated last year namely for the bench members and rapporteur judges, public prosecutors and staff of the Court of Cassation. It is doubtless that the Court of Cassation Codes of Conduct, formulated in a collective sense of ethics, will achieve its rightful place in the public conscience with due practice.

#### **b) Judiciary informing students on judicial processes**

Increasing and reinforcing respect to rule of law and duty of the judiciary depends on the future generations understanding the principles of law and rights of the individual. Therefore, Principle 9 of the Istanbul Declaration calls on the judiciary to promote and participate in school and university programmes aimed at developing an understanding, and thereby contributing to the transparency, of the judicial process. Such programmes will serve to avoid or correct ignorance and misapprehension about the judicial system and its operation. In this context, the Court of Cassation reaches out to students through legal clinics; plays an effective role by providing support particularly on judicial ethics and administration justice to the programmes of educating future lawyers.

#### **c) Judiciary promoting public outreach programmes**

As stated clearly in the Istanbul Declaration, transparency involves more than simply providing access to court proceedings and information. Further, merely providing access to court decisions or proceedings will not be adequate

to ensure transparency. In addition to these key requirements, publicising information about court operations and judicial programmes to increase the quality and efficiency of justice also has beneficial effects on public confidence in the judiciary. Therefore, the society is one of the target groups in our legal clinics work undertaken jointly with faculties of law.

#### **d) Publishing decisions of high courts regularly**

In legal systems where the decisions of high courts are in the nature of precedents, if the society has no access to such decisions, judges, lawyers, persons and institutions are left without clear guidance on how the law should operate in any particular case or situation. The publication of judgments allows the public, the press, civil society organizations, lawyers, judges and legal scholars to scrutinize the decisions of high courts. Submitting judgments to public scrutiny through publication also regularizes the application of the law, and makes judicial decisions more predictable and consistent, thus improving the quality of justice. It is an essential component of the fair administration of justice to consistently interpret the laws and legal principles. In compliance with the clear call in Principle 8 of the Istanbul Declaration, all decisions of the Court of Cassation were made available to the public two years ago.

#### **e) Formulating institutional communication strategies by high courts**

As stated in Principle 11 of the Istanbul Declaration, courts are not well served by inaccurate and sensationalist coverage of court proceedings. In fact, poor or biased media coverage can undermine public confidence in the judiciary and raise concerns with regard to judicial independence, impartiality and integrity. It is the responsibility of the media to gather and convey information to the public, and to report and comment, on the administration of justice. The training of journalists organized by, or in cooperation with, the courts can help reduce ineffective reporting. Such training should be designed to provide them with basic knowledge about court procedures and legal issues, and thus contribute to improving journalistic skills and ethics, and building trust between judges and journalists. Consequently, informing the media in a fair and balanced manner and thereby securing the right of the society to impartial and accurate news is extremely effective in reinforcing the public trust in the judiciary. Therefore, high courts need well-structured institutional communication strategies.

#### **f) Judiciary assessing public satisfaction and thereby seeking to promote the quality of justice**

As clearly stated in Principle 12 of the Istanbul Declaration, the judiciary should assess public satisfaction with the delivery of justice, and thereby seek always to promote the quality of justice. There are a variety of tools for measuring the level of public satisfaction with the delivery of justice. Apart from being sensitive to contributions from academia, the judiciary should encourage court user feedback. The publication of an annual report of its activities, including any difficulties encountered and action taken to improve the functioning of the justice system, is one measure to foster public confidence in the judiciary. Our work is at final stages on assessing the satisfaction levels of users of the Court of Cassation, by deploying special software to be developed.

#### **g) Active contribution to making justice policies**

High courts are not only the venues where appeals are decided. On the contrary, they are the ultimate point where the errors arising from the operation of the judicial system constitute the knot. Therefore, high courts are best placed to have the most accurate and richest information on the general operation of justice, and make the most accurate observations. They should contribute to making justice policies by sharing the knowledge derived and solution proposals for the general operation of the judiciary with all justice actors and the society. In this context, the Court of Cassation actively works on and assumes responsibilities on many important issues such as promoting the mediation, transition to “scoring system”, increasing the quality of justice, establishing regional courts of justice, promoting judicial ethics.

The Court of Cassation is continuing its restructuring efforts in line with the roles of high courts evolving in the historical process as I have summarised. On this occasion, I extend our gratitude to the justice actors in our country, United Nations Development Programme (UNDP) and Council of Europe which have made extremely significant contributions to our work. I am very happy that we are now observing the solid achievements of the ongoing reform process. I owe gratitude to all members of the Court of Cassation who have support the efforts.



## **Judicial Independence and Separation of Powers**

The principle of “separation of powers” is one of the most important safeguards of human rights, democracy and rule of law.

The principle of separation of powers in essence protects the independence of the judiciary against any interference by the legislative and executive. “Judicial independence” is a fundamental principle in all modern constitutions as well as the top of the list in all codes of conduct, national and international. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the laws of the country. It is the duty of all governments and other institutions to respect and observe the independence of the judiciary.

The adoption of constitutional proclamations of judicial independence do not automatically create or maintain an independent judiciary. Judicial independence must be recognized and respected by all three branches of government.

Article 1 of the Court of Cassation Code of Judicial Conduct states that “Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.” A code of conduct, as a rule, lays down the standards of conduct for judges and require judges to comply with such standards. However, the potential of judges to fulfil some of their ethical obligations may depend on the legislative’s and executive’s taking the necessary care on code of conduct. Therefore, Bangalore Principles of Judicial Conduct and Court of Cassation Code of Judicial Conduct, considering the said fact, state in their preambles that the code of conduct has, among others, a function to “enable the members of the legislature and executive and lawyers and the public to better understand the judiciary and provide support to the judiciary.”

Democracy, rule of law and human rights can only have their real meaning in the government systems where the separation of powers is actually exercised. In clearer words, the principle of separation of powers is the most important safeguard for democracy, rule of law and human rights.

While the views on the principle of separation of powers can be traced back to the antiquity, it is generally accepted that Montesquieu was the first philosopher who elaborated this principle. While the principle of separation of powers may appear in various forms depending on the culture, traditions and constitution of

a state, the unalterable core is particularly the existence of judicial independence and effective mechanisms to protect such independence. The protection of fundamental rights and freedoms depends on the judiciary being separate and independent from the executive and the government.

Article 9 of the Constitution provides that “Judicial power shall be exercised by independent courts ...” Paragraph 4 of the preamble to the Constitution reads “The separation of powers, which does not imply an order of precedence among the organs of the State, but refers solely to the exercising of certain state powers and discharging of duties, and is limited to a civilized cooperation and division of functions; and the fact that only the Constitution and the laws have the supremacy.” The rationale for the judicial power in Article 9 of the Constitution of 1982 was that “the judicial power shall be exercised by independent bodies, independent courts as recognised since the time when the issue of individual rights and freedoms emerged.”

### **Security of Tenure of Judges**

A most fundamental requisite for the separation of powers is that the selection, appointment and retention of judges be guaranteed against the interference by the executive. Decisions relating to the selection and career of judges must be made by law or by the relevant authorities according to pre-defined objective criteria. These decisions must be based on merit and, in this context, take into account the qualifications, competences and skills needed to make a decision on the cases by applying the laws within the framework of respecting human dignity.

ECtHR treats the matter in the context of right to fair trial in Article 6 of ECHR. In order to establish whether the judiciary can be considered “independent” of the other branches of government, regard is usually had, among other things, to the manner of appointment of its members, to their term of office, to their conditions of service, to the existence of guarantees against outside pressures, and to the question whether the court presents an appearance of independence

ECtHR emphasises four elements in the independence of the judiciary, namely the method by which judges are appointed, tenure, safeguards against external pressures including budgetary matters, and whether the judiciary appears to be independent and impartial.

Article 13 of the Istanbul Declaration Implementation Measures states that “Competent, independent and impartial judges are essential to establish and maintain the public’s trust and confidence in the administration of justice.”

Principle 13 of the Istanbul Declaration provides that “There should be transparency in the appointment process of judges”. The elaboration of the principle is as follows: “It is generally agreed that transparency is required in the conditions for the selection of candidates for judicial office. In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office.”

Where top or critical posts are in question such as the position of a judge or a justice, the society is entitled to know who, why and for what qualifications has been appointed to or selected for that post. Transparent processes, where built, ensure that authorities in charge of appointment or selection are accountable to the society.

## **Changing World and Legal System**

As we all know, the present age is called the “information age” or “digital age”. We are now undergoing the 4<sup>th</sup> industrial revolution. Many novelties, including but not limited to artificial intelligence, robotics, autonomous vehicles, 3D printers, nanotechnology require us to devote serious time and effort to make sense of the age we are in. Today, the need for expertise is higher than ever, while specialties are diversifying at high speed.

Advance technology on the other hand may cause many legal problems. Rights to privacy, family life, communication and residential immunity are now under serious risk due to developing technological tools. Even the smallest bit of information can be communicated to all parts of the world within minutes. We lawyers must be aware of such developments and develop effective, universal strategies to protect fundamental rights. Through the activities of the Human Rights Commission we established in the Court of Cassation, we take great care to keep abreast of the developments in law.

## **Conclusion and Acknowledgement**

The most prominent wish of the members of the Court of Cassation, with a history of 150 years and a strong culture of law, is to provide justice and freedom to the great Turkish Nation for generations to come, eternally as long as the Earth exists.

It is necessary to plan for the future if the institutions are to be successful. Institutions not contemplating the future shall have no future. We, as the entire family of the Court of Cassation, are aware of this simple fact. We will continue to build our future relying on our strength derived from our past and self-confidence. Today, while on one hand we start the construction of a new building for the Court of Cassation, we experience on the other hand the rightful pride of realising the other novelties as required by the modern age including ethics, transparency and administration of justice to comply with the highest standards of justice.

In conclusion, I bow with respect before all our distinguished guests. No word can fully express my gratitude to the elite, competent scientists who share their vast knowledge with our distinguished guests. I further thank the family of the Court of Cassation, of which I take great honour and joy to be a member, and our beloved friends who stand by us today.

Happy 150<sup>th</sup> Anniversary to us all!