



EXECUTIVE SUMMARY

Better Justice Association is a politically neutral think-tank. The aim of the association is to improve the rule of law in Turkey by developing universally acknowledged solutions to local and international problems of the judiciary.

The efficiency, accountability and independence of the judiciary is flawed and in need of improvement in every country, to varying degrees according to the cultural, historical and social dynamics of individual countries. In general, the focus of criticisms of the judiciary can be sum-

marized as the inadequacy of the judiciary in the production of services, not being transparent and accountable and having become a privileged group that unfairly benefits from the privileges granted in exchange for its service. These flaws hinder the rule of law and make democracies flawed.

Many of these common problems apply to the Turkish judicial system just as they do elsewhere.

The main reason that society does not defend the judiciary and, on the contrary, makes it a target for politicians is that the judiciary has lost the trust of society by not producing sufficient and high-quality services. In particular, in countries in transition to liberal democracy, the restriction of the normal functioning of the judiciary by popular leaders at the request of the people creates a vicious circle that leads to the further deterioration of the services of the judiciary. This vicious circle that drags democracies into the swamp of autocracy can be reversed by making the judiciary efficient and fully independent but highly transparent and accountable at the same time.

Society empowers politicians, whom it can call to account and change in elections, over the judiciary power, which it cannot get services from, hold accountable or change. Politicians use their control of the judiciary to strengthen their power, and limiting the executive power by law becomes harder and harder over time. With the politicized judiciary rapidly losing its neutrality, the rule of law is weakening in every field.

Under conditions in which the judiciary's function of restricting the executive through the rule of law is hampered, popular leaders who have seized massive state powers could become a public safety hazard, for both their own countries and the international community.

Therefore, the resolution of today's problems of democracy and the rule of law depends on the elimination of these root causes that emerge in the form of service production and accountability failures in the judiciary.

Turkey's experience of the judiciary is a perfect example of the global problems of the judiciary and improving democracy, and at the same time, it is like the perfect laboratory for finding solutions.

We, the Better Justice Association project team, have developed a series of innovative solution proposals to solve Turkey's rule-of-law and judicial problems. We have designed an innovative judicial organization that is fully capable of realizing the rule of law, but is itself fully compliant with the law, accountable, independent and able to defend its independence. We have developed innovative solutions that increase the service production capacity of the judiciary and improve its quality; thus, we have created a completely new and advanced judiciary model.

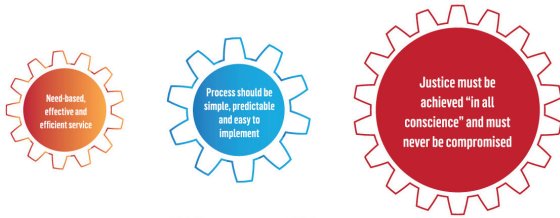
In this book, in which we present our solutions as a whole, we summarize the common problems of the judiciary in the international arena and determine that their root causes are related to legitimacy. We believe that the inability of the judiciary to fulfill its duty, despite benefiting from the important privileges it is granted in exchange for serving society, is the main excuse for intervening in the judiciary and its functioning.

We believe that our innovative proposals, which ensure the full separation of the judiciary from the executive and legislative powers, are capable of improving all judicial powers and democracies around the world.

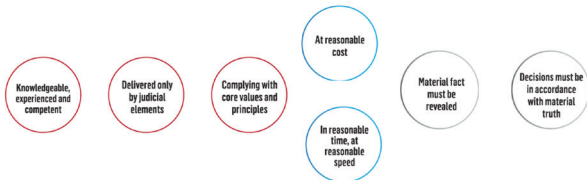
We invite the public and all stakeholders to discuss, improve and agree on the innovative solutions we have set out below.

Aspects of Quality in Judicial Services

- The main objective of the judicial organization has been determined as producing sufficient and high-quality service that meets the needs.



- A simple description of the factors that determine the quality of judicial services is provided. A service-oriented basis has been created for the establishment of indicators and criteria to ensure the accountability of judges, prosecutors and attorneys assuming different roles; to ensure the accountability of the organs and elements of the judiciary, and to evaluate their activities.



- Thus, politically motivated criticism of the judiciary will be replaced with feedback on the improvement of judicial services. This will pave the way for the permanent improvement of judicial services and help to eliminate the problem of the politicization of the judiciary.

The Institution Regulating the Production of Judicial Services: The Supreme Authority of Justice

- The structure, organization and functioning of the judicial organs are improved by focusing on high-quality judicial service production. For this purpose, the Supreme Authority of Justice (the "SAoJ") is proposed as an independent regulatory body at the center of the judicial system. The SAoJ will regulate the production of judicial services.



- The SAoJ will represent stakeholders from all segments of society. It will consist of 90 members in sufficient numbers and with the necessary qualities to effectively discharge its functions. The processes of nominating and selecting members for membership are arranged in such a way as to ensure that no individual, institution or coalition can gain influence and that the authority is transparent, subject to judicial review and demonstrates merit.

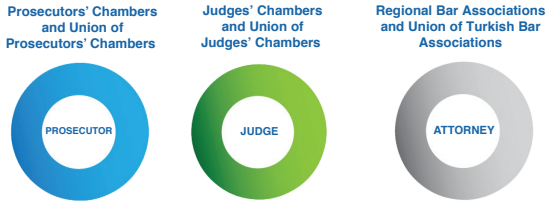
- The most important duty and power of the SAoJ will be to defend the independence of the judiciary and the rule of law.
- The SAoJ will determine the legal and justice policies, principles and preferences and thus will determine its target in the production of high-quality services for all legal professions. Issues such as determining the budgetary requirements of the judiciary, establishing and distributing courts within the country, admission to the judicial professions that will provide the service, performance evaluation, discipline, career advancement and dismissal are among the duties and powers of the SAoJ. The SAoJ will supervise the decisions of the judicial professional associations upon objection and ensure their uniformity throughout the country; at the same time, it will improve the competence of and cooperation between the professions.
- Currently, judicial proceedings and decisions are in the hands of a small group outside of judicial control and are uncontrolled.
- The most important innovation is that the SAoJ will be able to conduct judicial review of all kinds of judicial proceedings and decisions and to operate this judicial review without anyone who wishes to initiate it having to prove their concern or interest.

The Permanent Justice Council

- A Permanent Justice Council is being established in accordance with the “Şûra” (Shura, Council) tradition of the Turks. The council will be a well-attended and qualified platform where judicial institutions providing judicial services, professional associations and non-governmental stakeholders will meet regularly and discuss the improvements, problems and ideas. It is envisaged that the Council’s recommendations will guide all judicial institutions, especially the SAoJ.

Fully Independent Judicial Professional Associations

- For the judicial professions, fully independent judicial professional bodies will be established, and these associations will be given real judicial protection by regulating them within the judicial section in the Constitution.
- Judicial professional associations will be established in such a way that their governance consists only of members of the profession, and that nobody outside the profession can participate in or influence their governance. Each member, body and association of professional associations shall be tasked with defending the rule of law and the independence of the judiciary and empowered to do so, individually and jointly.

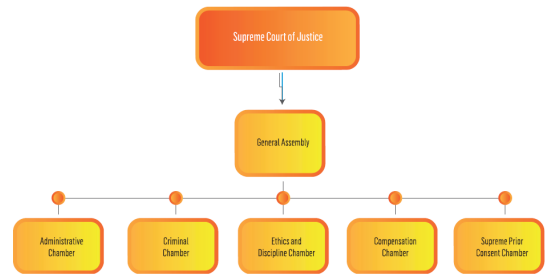


- Professional activities and disciplinary functions of judicial professional associations will be concentrated in the regions by means of regional associations, carried to optimum efficiency and productivity. Association centers of professional associations in Ankara will be made highly representative-oriented.
- The role and powers of the Ministry of Justice in relation to judicial professional associations will be transferred to the SAoJ. With the decisions and proceedings of the professional associations of the SAoJ as the object of objection, uniformity in practice will be ensured and judicial review will be left to the Supreme Court of Justice, which is a special court of expertise in judicial matters, instead of to the administrative courts and the Council of State.

Full Judicial Review: The Supreme Court of Justice

- Every action and every decision taken regarding the judicial organization, its functioning and its members will be subject to effective judicial review. Anyone will be able to initiate judicial review.

Organization Chart of the Supreme Court of Justice

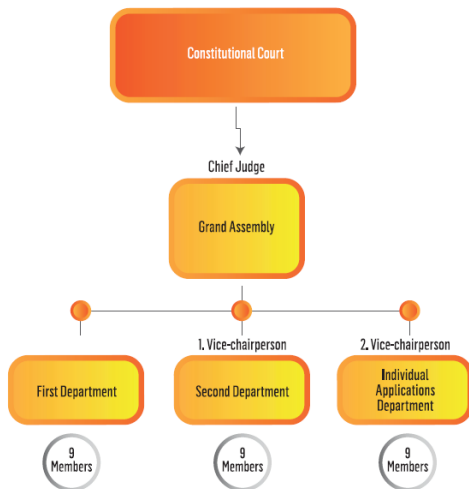


- In order to ensure effective and rapid judicial review, the Supreme Court of Justice, with responsibility for expert and special judicial procedures, will be established. The appeal authority will be the Constitutional Court. Thus, the function of the Constitutional Court of protecting the Constitution will be improved.

- It will also be authorized in matters related to the Supreme Court of Justice, legislative immunities and the responsibilities of senior public administrators. Thus, duty and legislative immunities will be enabled and at the same time the rule of law will be strengthened by abolishing investigation permissions.

A Constitutional Court with Strengthened Member Capacity, Independence and Impartiality

- The number of members of the Constitutional Court will be increased from 15 to 30. It is foreseen that the court will work in three departments, and the third department will hear only individual applications.



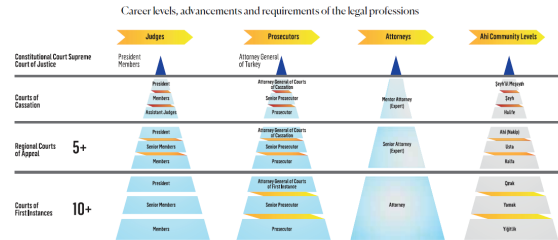
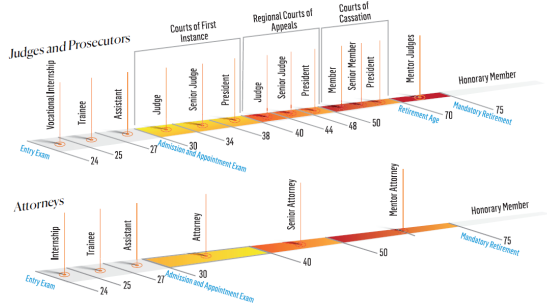
- New members to be appointed to the Constitutional Court will primarily serve in the third department; as senior membership positions become vacant, they will advance to the first department, and thus the political motive in appointing members will be weakened.

- The process of determining candidates for nomination for membership of the Constitutional Court will be made transparent: a preliminary examination of SAoJ will be made to ensure that elections are based on merit, and it is foreseen that decisions on the nomination, selection and appointment of members will be clear and justified. The whole process will be subject to judicial review. These principles will also apply in elections of the members of the Council of State and the Court of Cassation, which are the highest courts of appeal.

Strengthening the Protection of the Constitution: Republic's Chief Public Prosecutor Office

- In order to improve the function of protecting the Constitution and constitutional order, the institution and functions of the Republic's Chief Public Prosecutor Office will be separated from the Court of Cassation Chief Public Prosecutor's Office.
- The Republic's Chief Public Prosecutor and the Deputy Republic's Chief Public Prosecutor will be elected directly by the General Assembly of the SAoJ from among competent candidates nominated by the applicant or judicial professional associations, in full transparency and open to public participation. The nomination and selection process will be subject to judicial review.

every stage, and must be successful in the written exam and interview. At all of these stages, wages befitting the dignity of the profession will be paid to individuals and working conditions will be determined.



- In this way, it will be facilitated that the professions of judge, prosecutor and attorney develop in parallel and are equal, that when necessary, individuals can switch between these professions, and that the country's human resources will be used in a dynamic and effective manner. The objective is to develop human resources in accordance with the needs of the courts.
- With the full independence of the newly established Supreme Authority of Justice and the Supreme Court of Justice, judicial independence will be maximized, making it impossible to restrict judicial independence by extending independence to all judicial bodies and institutions, service units and individuals.
- Designed in accordance with the principles of service production, focused on transparency, accountability, rule of law and independence of the judiciary, the Supreme Authority of Justice will democratize the judicial power and give judicial control to society, in accordance with its legitimacy. The composition of the members of the SAoJ will be organized in such a way as to ensure that no internal or external person, institution or group can control and influence it.
- The Permanent Justice Council is a platform through which all stakeholders will have the opportunity to express themselves regularly, and it will enable the SAoJ to take healthy and dynamic decisions in the production of judicial services.

Decision-making, supervision and appeal processes concerning the judicial organization, its organs and its elements will be distributed among three to four independent institutions, and additional measures will be taken against the possibility of these processes affecting the independence of the judiciary. Judicial bodies and elements will be made fully accountable by submitting every act and decision related to the judiciary to judicial review; the protection of the constitutional order is activated by giving the Supreme Court of Justice's appeal control to the Constitutional Court.

The establishment of the Supreme Court of Justice and the Chief Public Prosecutor's Office will also improve the accountability of senior public officials. On the one hand, public officials will be provided with more effective legal protection, on the other hand, the current pre-authorization conditions for prosecution, which violate the principle of equality before the law, will be abolished and the rule of law will be improved. In other respects, there will be strong protection against the weakening of legislative immunity due to political motives.

The judiciary will gain more public trust and support as a result of this reliable and fully independent system. Modernity, transparency and accountability will ensure that the people protect the independence of the judiciary against the influence of other powers. With the realization of these aims, the full separation and independence of the judicial power will be ensured and the principle of separation of powers of democracy will be strengthened significantly.

The proposed model will make Turkey one of the most advanced ten to twenty countries in the world in rule of law and democracy indexes. These advances will strengthen Turkey's international image and investor confidence, attract direct investment and improve Turkey's value creation environment.

In this way, Turkey will become one of the most advanced democracies and economies in the world, its economy will develop and the per capita income will rise from today's \$8,000 to \$25,000 and above in a short time.

Better Justice Association Project Team