

## The Supreme Authority of Justice\*

The Supreme Authority of Justice should be entrusted with the task of determining and formulating the justice and judiciary policies of the state in line with the needs of the country and the preferences of society, entirely independent from political powers and governments but, on the contrary, by ensuring the representation and participation of all political viewpoints and even all constitutional organisations and parts of the state. Accordingly, all duties and powers vested in the Ministry of Justice in relation therewith should be delegated to the Supreme Authority of Justice. The duties and powers of the Ministry of Justice should be limited to developing policy proposals and presenting the same to the Supreme Authority of Justice, providing the resources that may be required throughout the course of policy formation, and providing certain ancillary services of the judiciary.

The Supreme Authority of Justice should be managed and represented by a board, the members of which may be contemplated to be elected as a result of a process that allows for public debate and for the expression of all opinions in relation therewith from amongst candidates who meet certain minimum qualifications, as nominated by the organisations regulated by the Constitution, in particular, the Turkish Grand National Assembly, the Presidency and the bar associations, by the professional organisations with public institution status, and by judges and prosecutors, in such a manner as to reflect the preferences of all segments of society. Such an election procedure will ensure that all segments of society have a say and are represented in the formation of the Supreme Authority of Justice, thereby electing only capable and

\* Att. Mehmet Gün, "The Supreme Authority of Justice," in *Turkey's Middle-Democracy Issues and How to Solve Them: Judiciary, Accountability and Fair Representation*, (North Yorkshire: 2QT Limited, 2020), 209-18.

efficient candidates thereto. So as to further strengthen the impartiality of the Supreme Authority of Justice, the election of candidates to be nominated by certain non-governmental organisations classified according to certain criteria to be determined – such as working in the public interest, having a certain organisational structure and a certain number of members, or being equipped with certain powers – may also be considered.

The Supreme Authority of Justice may further be insulated from political influences by keeping the term of office of its members longer than the term of office of the president and the deputies and, likewise, by electing its members not collectively but separately, at different times. Furthermore, it may also be contemplated that some activities of the board be held under the supervision of the National Assembly, or that the board be held responsible by the National Assembly in some instances.

The Supreme Authority of Justice must include a “Policies, Preferences and Principles Department” to hold negotiations on justice and judiciary-related issues, and to formulate policies to be pursued thereon and determining principles and priorities in connection therewith, as well as a “Decisions and Enforcement Department” to make and implement decisions for the enforcement of the policies formulated by the former, and to follow up the implementation thereof. The first department should be manned by representatives of political parties, while the latter should be manned by experts on the judiciary and its services; thus, reflections and influences of politics on the judiciary should be terminated in the first department, and the politics should somehow be detained at that phase.

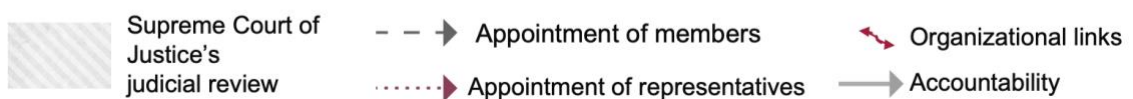
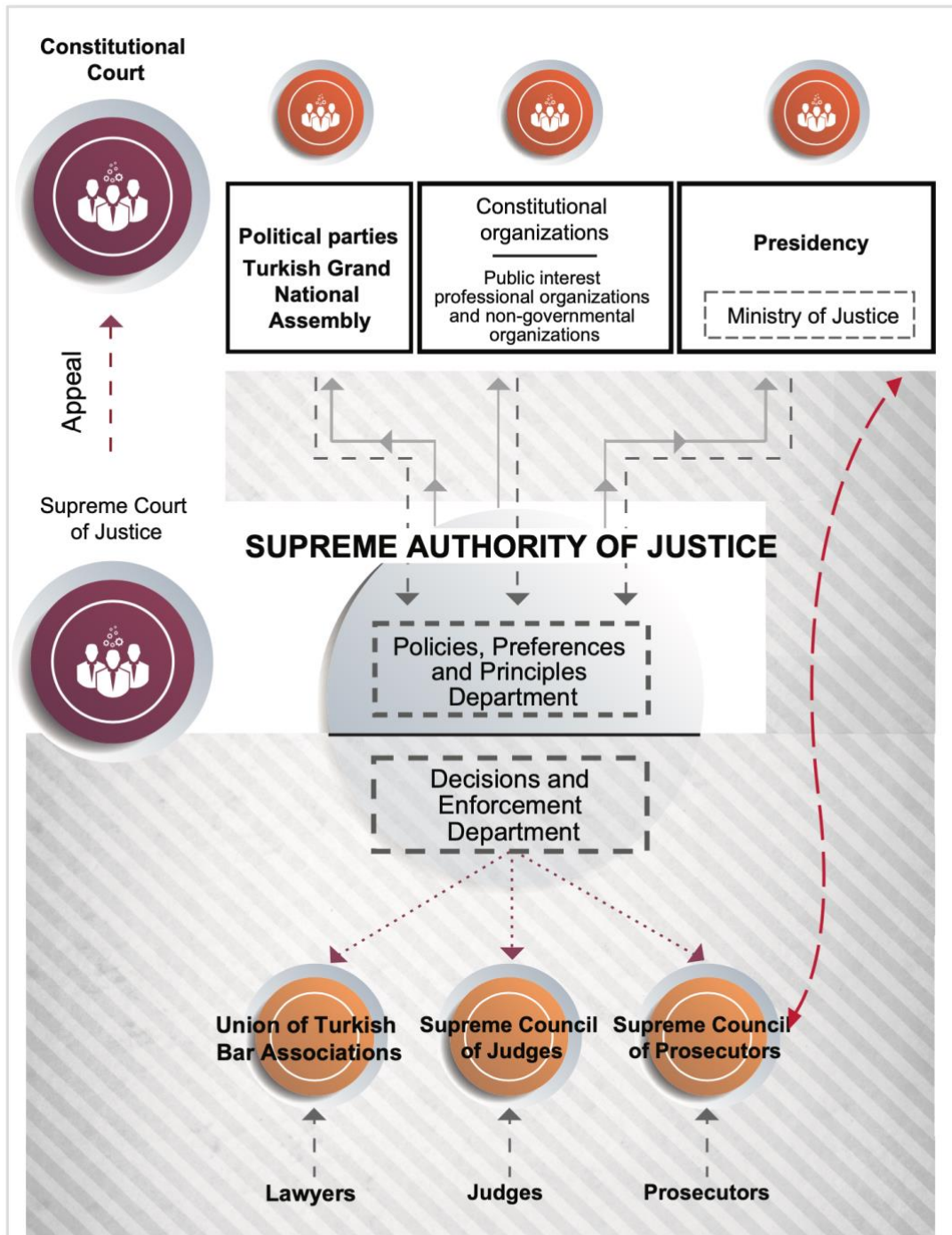
The basic objectives of the Supreme Authority of Justice should at least be as follows:

1. (i) Judges, prosecutors, lawyers and counsel, and other paralegal personnel should be required to comply to the maximum extent with universal judicial principles, in particular including, but not limited to, independence, impartiality, transparency and accountability, integrity, honesty, foreseeability, precision and

certainty, accessibility, equalitarianism and non-discrimination, capacity, professional capability, prudence, effective and efficient working, and professional attitude.

2. (ii) The Supreme Authority of Justice must determine the policies and priorities of Turkey regarding justice services and resources, as well as the budget therefor required, and must give priority to allowing the judiciary budget to be drawn from the state budget.
3. (iii) The Supreme Authority of Justice must ensure both short -and long-term planning for lawyers and other human resources and must announce these plans to the public in a transparent manner, and especially to judges and prosecutors. The planning must show – even if roughly – how they may progress in their careers, providing that they maintain their qualifications and competence throughout their full professional life, and must, at the beginning of their career path, indicate at what dates they will be subject to appointments, compulsory eastern service and similar other obligatory assignments.
4. The Supreme Authority of Justice must ensure that all judiciary professionals (judges, prosecutors, lawyers and counsel, and other paralegal personnel) are subject to the same ethical and disciplinary rules, and to the same prior consent, investigation and prosecution rules in connection with any task-related and personal crimes and misdemeanours committed, and that these rules are uniformly implemented over all of them.
5. The Supreme Authority of Justice must observe the activities of the judiciary elements in pursuit of predetermined goals and the results obtained therefrom, and must ensure accountability for this work in all aspects.
6. All types of actions and decisions of the Supreme Authority of Justice, other than its policy-related decisions, should be subject to judicial review.

Figure: The Proposed Supreme Authority of Justice and the Composition, Elections and Accountability of the Judiciary



7. The Supreme Authority of Justice must be accountable directly to the public through the issuing of comprehensive yearly reports indicating to what extent its predetermined objectives for securing justice have been accomplished, and through providing all forms of information to the press, other media and citizens upon demand. It may also be contemplated that it should also be accountable towards the Turkish Grand National Assembly. The Turkish Grand National Assembly should observe and supervise the effective functioning of the accountability of the Supreme Authority of Justice through a special commission designated solely for this purpose.
  
8. Cases requiring cancellation of membership or dismissal of members of the Supreme Authority of Justice should be regulated as exceptions, and the Constitutional Court should be authorised in connection therewith. The power to initiate this process may be vested in a limited number of constitutional organisations and the National Assembly, and, in addition, it may be considered to give special authorisation to entities such as the Constitutional Protection Authority and the Chief Public Prosecutor's Office which are contemplated to be established.

#### ***a) Policies, Preferences and Principles Department***

This department that is preferably to comprise members appointed or determined by political sources should be entrusted with the task of determining the policies and preferences of the country, as to justice and the judiciary, and should make decisions and recommendations as the basis for the decisions of other departments. As politicians will not be allowed to intervene beyond this point, this department will, on the one hand, identify the political choices and policies of society and, on the other hand, limit and attenuate political influences on the judiciary to this department and its functions – precluding politicians from being involved on the enforcement side. This department may have executive powers only in exceptional cases – for instance, such cases as the exceptional dismissal of members of the Decisions and Enforcement Department – or alternatively may have no executive power in any circumstances.

### ***b) Decisions and Enforcement Department***

This department may make decisions enforceable by other judicial organs and may present these decisions to them in line with the policies and preferences that are determined by the Policies, Preferences and Principles Department. For instance, it may make and advise on decisions for the Board of Judges on such issues as in which legal fields the number of judges needs to be increased, and what types of solutions should be prioritised in connection therewith. The effects of this department on other judicial organs may also be terminated at the point of presentation of these decisions. This department may also be given certain executive powers, such as the appointment of certain members of the operational judicial organs, e.g. the Council of Judges and Prosecutors, as well as their dismissal in exceptional cases. If judicial organisations such as the Council of Judges and Prosecutors are operationally and functionally autonomous from the Supreme Authority of Justice and its Decisions and Enforcement Department, but are accountable in terms of policies and preferences, then this enforcement department may also be precluded from exerting any influence on judicial service providers.

### ***c) Supreme Court of Justice***

Through an Objection and Trial Chamber (court) that is a part of the judicial organisation but, nevertheless, autonomous from the Supreme Authority of Justice, a full judicial review mechanism can be provided against decisions of both the Supreme Authority of Justice and the Supreme Council of Judges, Supreme Council of Prosecutors and Supreme Council of Lawyers. This court may be granted jurisdiction over objections and appeals against decisions of the Supreme Authority of Justice and its departments, and over all of the professional organisations of judges, prosecutors and lawyers. Thus, all judicial professionals will have legal recourse and remedies of the same standards, and their conflicts with the system can be resolved by judicial organs in accordance with general trial procedures. Of course, decisions of this court should also be subject to appeal.

This judicial authority (court) required to be formed in order to try objections and legal cases brought against decisions of the Supreme Authority of Justice, Council of Judges and Prosecutors and Union of Turkish Bar Associations should be a part of this system, but should function independently from the Supreme Authority of Justice, and if it is included in the organisation of the Supreme Authority of Justice, then it should be independent from and impartial in relation to other departments and members of the Supreme Authority of Justice.

To achieve all these objectives requires the establishment of a Supreme Court of Justice with jurisdiction over objections and legal cases against decisions of the aforementioned judicial organs, as detailed in the preceding paragraphs. Though this function may also be contemplated to be assigned to the Constitutional Court, as the decisions of the Supreme Court of Justice are also required to be subject to appeal, it would be more appropriate to consider the Constitutional Court as the authority of appeal against the decisions of the Supreme Court of Justice. Of course, another judicial authority may also be considered to be established for appeals against the decisions of the Supreme Court of Justice, but as the issues covered by the duties of this court will be closely related to constitutional rights and assurances, it would be more rational to use the Constitutional Court as an authority of appeal.

The Supreme Court of Justice may also be contemplated to be a special and temporary court formed and functioning according to certain procedures with the participation of representatives of other supreme courts; but, in practice, the assignment of such duties to individuals in addition to their normal duties and tasks indeed limits their contributions to both their own institution and their temporary place of assignment, also narrowing their accountability and their efficiency, and this approach must, therefore, not be preferred.

Such an organisation may be preferred as it creates a judicial remedy, authority and methodology, fit and appropriate to the judicial elements and their professions. However, and more importantly, almost all of the decisions and actions in connection therewith, and all of the probable conflicts arising therefrom, are of particular concern to the judicial elements secured and guaranteed by the Constitution. For this reason,

each subject of all cases referred to this Supreme Court of Justice will basically contain an element of constitutionality review. Therefore, each subject of any case to be referred to this chamber (court) will directly concern the functions of the Constitutional Court. It would thus be logical to involve the Constitutional Court in the process, at least at the stage of appeal against the decisions of this Supreme Court of Justice. Such a function would, at the same time, serve to reinforce the function of the Constitutional Court regarding the protection and supervision of the Constitution.

***d) Professional Organisations of Judicial Elements: Council of Judges, Council of Prosecutors, Union of Turkish Bar Associations***

The Council of Judges and Prosecutors should be divided into two councils, as the Council of Judges and the Council of Prosecutors, and further, into professional organisations with three judicial elements, i.e. judges, prosecutors and lawyers or counsel. These should be segregated and rearranged as the Council of Judges, Council of Prosecutors and Council of Lawyers at the same level, and all of them should be held accountable to render their services in harmony, according to choices to be determined by the Supreme Court of Justice. However, these three professional groups should be autonomous from the Supreme Court of Justice and independent per se and must have a say in their own professional organisations through fair representation. If it is contemplated that the Supreme Court of Justice is to be represented in these councils, such representation should be limited to such an extent as to render it impossible for the Supreme Court of Justice to control and dominate the will of these professionals.

In such an organisation, the Union of Turkish Bar Associations, Supreme Council of Judges and Supreme Council of Prosecutors can all be independent and can also perform their functions without compromising their independence, only if they are made to be independent (autonomous) from the Supreme Court of Justice in terms of function. The Supreme Court of Justice, in the interest of the public may, therefore, guarantee their effective accountability and efficient functioning through the monitoring of their activities.



Therefore, the professional organisations of judges, prosecutors and lawyers (Supreme Council of Judges, Supreme Council of Prosecutors and Union of Turkish Bar Associations) must be independent and autonomous in their functions but must also be accountable to the Supreme Court of Justice. The Supreme Court of Prosecutors must be independent and autonomous in its functions, and accountable to the Supreme Court of Justice in its activities but must also be affiliated with the Ministry of Justice in terms of resources.

In conclusion, the structuring of the supreme organs of the judiciary as proposed above will, on the one hand, attenuate and dampen the influence of the executive organ and politicians over the judiciary at the level of the Supreme Authority of Justice while, on the other hand, making it possible to formulate judicial policies in line with the preferences of society and to guarantee the accountability of the judiciary without compromising its independence and impartiality, in addition to creating positive platform for co-operation and solidarity amongst the professionals. This, in turn, will rapidly increase and enhance the quality of judicial services.

On the other hand, autonomous professional organisations will further develop vocational efforts and competition and, through the professional management support provided, professionals will be able to use their own power more effectively.

In addition, the Supreme Court of Justice will provide opportunities to institutions representing a broad segment of society to see their preferences and wishes with regard to the judiciary and justice reflected in judiciary and judicial policies, without precluding the judiciary from functioning independently and impartially, through members to be appointed by them thereto.