



# From the President of the Better Justice Association

Structural reform recommendations  
for the judiciary

focused on

production of quality legal  
services, creation of added value  
for a strong economy

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"I want to repay my debt of gratitude to my country, to which I owe everything"

**"TURKEY'S MIDDLE DEMOCRACY ISSUES AND HOW TO SOLVE THEM - Judiciary, Accountability, Fair Representation"** written by Attorney Mehmet Gün, President of The Better Justice Association and Founding Partner of Gün + Partners, has been published in the United Kingdom and is now available for international distribution. Av. Gün explains why he wrote the book and the basic message he wants to give:

"My beautiful country has given me all I have today. In another life, I could have been a shepherd in a village in the Taurus Mountains or a textile worker on the outskirts of a big city, but Turkey has made me the owner of a law firm with a global reputation. I owe everything to this country. I want to repay my debt of gratitude to Turkey. My hope is that Turkey progressively becomes more and more able to uphold the rule of law, and that through this development joins the ranks of countries with the highest levels of prosperity, and contributes to international culture in law, justice, social cohesion, democracy and prosperity with its rich cultural background. I wrote the book with this goal in mind and I dearly hope that it will be useful.

The main message of this book is that the key to being a strong and prosperous state is to uphold the rule of law in all areas of public life. This will ensure that the state organs are made stronger and work in greater harmony through institutionalization, enabling institutions and individuals to fulfill their duties efficiently and effectively through accountability. It will also allow for greater meritocracy and transparency in public institutions, which will create added value for society while continuously improving living standards for the long term.

"This book identifies the main areas where the rule of law fails, analyzes the root causes of such failure and offers proposals to solve existing problems relating to accountability and justice in representation."

## Improving the judiciary will multiply the value of manufactured goods and services

The international reputation of a country doubles when its society has confidence in their judiciary. A well-functioning judiciary brings with it confidence and reputation to economic relations, automatically boosting the value of assets. There is no need for investors, producers or owners to make any effort to ensure this increase in value.

The rule of law is vital for the business world, because economic relations are all based upon legal relationships. All relations between the supplier and the manufacturer, the manufacturer and its employees and managers, the manufacturer and the consumers, are legal relations. If the economy can be regarded as production and trade, then the law constitutes the relations, i.e. the lifeblood of production and trade. The two are inseparable. The better the judiciary functions, the better the economy is. Conversely where the judiciary performs poorly, the economy suffers.

The rule of law allows the business world and investors to better anticipate changes that will affect their businesses and the environment they operate in. This includes being able to count on the fact that the government's decisions will be taken according to the rules; to make long term plans; to trust in guarantees received from third parties as a result of legal relations; to receive payment for the goods they sell; to collect the credit they provide; and to protect the brand, know-how and innovations they create.

In countries where the rule of law is advanced, confidence in the business world grows; the value of the judiciary, investments and assets increases spontaneously. The value of two exactly identical investments is many times higher in a country where the law prevails. Because, at the very least, the commercial reputation of businesses increases; improvement in reputation revives economic activities by creating confidence in economic relations and it also boosts loans and relatively reduces interest rates and other costs.

## Judicial reform, on the other hand, is not something that can simply happen without intensive work

To uphold the rule of law properly the judiciary must be fit for purpose. In the first instance, the judiciary needs to be converted into a structure that works efficiently, provides quality services to society, and is also transparent and accountable. When this has been achieved, a suitable level of independence, as yet unprecedented in our country and many others, must be given to the judiciary.

These changes would allow Turkey to put in place the world's most advanced judicial system, however this in itself would be insufficient to guarantee the rule of law in perpetuity. Other important steps would also be needed. For example the obsolete "supervisory permit" requirement for the judiciary to investigate alleged crimes by public officials would need to be removed. This requirement has stood in the way of numerous important investigations into negligence and violation of public officials which should have taken place automatically and could have potentially prevented disasters such as the Soma and Ermenek disasters, the Pamukova, Çorlu and Sincan accidents of the TCDD, or the floods and landslides that we often see in the Black Sea region.

It is also my opinion that the worst thing that can happen to a society is the disruption of fundamental human rights, especially freedom of thought and expression. I am encouraged that growing attention is being given to this topic on the international stage. Restrictions imposed on the demonstrations of the bar associations; the protracted detention of activists such as Altan, Kavala, Demirtaş and others without prosecution; the arrest of journalists for their news; having not tolerated but decided in favor of detention in an event where tens of thousands of citizens have criticized the president are all a blight on our country. It is perfectly natural for any contemporary individual who follows the latest developments on these issues to feel threatened and want to go to another country. I would like to underline that innovation is vital here in social science as well to tackle these issues.

Another problem in this regard is that the criminal courts of peace, which in theory are meant to guarantee freedom, but in reality are perceived as 'arresting machines' by the public. Furthermore, because the decisions can only be reheard by the same court rather than a more competent one, people are reluctant to appeal decisions because they risk receiving a worse sentence upon retrial. This causes a an intense climate of fear.

In all these matters, it is imperative that comprehensive structural reform is made in order for the judicial power to uphold the rule of law and to provide a sound legal

basis for society to progress. It is not possible for the Council of Judges and Prosecutors, led by The Minister of Justice and whose members are determined partly by the executive and partly by legislation, to ensure such legal security.

Society, international markets, and the business world have long been saying, albeit in a somewhat timid way, that fundamental changes must be made. Drastic solutions are imperative. For this purpose, first of all, it is necessary to seriously reform the judiciary, to make it completely independent from the executive and legislative power and politics, and guaranteeing that an impartial choice of judges and prosecutors will be made. In order for these guarantees to make sense, all decisions regarding nomination, assignment, appointment and promotion taken in relation to the judiciary must be opened to legal audit effectively. Turkey has to reestablish the option of judicial review against all HSK decisions, which was abolished by the law and constitution of the coup of generals in 1981 and, once re-established, must operate such a control very effectively.

### **The organization, structure and functioning of judicial power should be designed to provide quality judicial services to the society.**

It is easily possible to configure the judicial power in a simple way, to give full independence to legal professions and professional organizations, and to make all kinds of judicial transactions and decisions transparent and accountable.

The main actors in a trial are judges, prosecutors and lawyers. It is imperative that these professional groups be independent of each other but also able to work together without compromising their independence. Therefore, the judicial organization should respect the independence of these professions, but should also direct them to produce quality services and make them accountable.

In order to ensure the full transparency of the judicial system and its full accountability to the law, judicial review should be imposed on all judicial proceedings and decisions. Turkey should effectively reopen the legal control path it closed in 1981 by bringing in a much more advanced system. In order to do this, it is necessary to establish a special and expert court that will control judicial processes and decisions.

Our proposal for the Supreme Authority of Justice provides all of these functions.

## What will the Supreme Authority of Justice do?

- The proposal would make the judicial professions - namely judges, prosecutors, lawyers, notaries and mediation professionals - completely independent; members of each of these professions will establish and manage their own autonomous professional organizations and focus on providing quality services. These professional organizations related to the judiciary will be differentiated from other professional organizations in that they will also be public institutions by nature.

- We propose transforming the Council of Judges and Prosecutors into a regulatory body, the Supreme Authority of Justice. The primary purpose of this institution is to ensure that the entire judicial organization provides quality judicial services to the community.

- The SAoJ has two main functions: (1) To determine the policies, preferences and priorities of justice and law; (2) To ensure the actions that will put these policies into practice are taken and to have organs that will operate the entire judicial system in order to produce quality services in a transparent and accountable manner. In the activities and executive organs of the institution, political will and political influence will be completely eliminated.

- The composition of the members will consist of representatives of all stakeholders and will be of a quality and number appropriate to the needs of the SAoJ. Its design will prevent any group or institution from creating disproportionate influence.

- All judicial processes and decisions will be subject to judicial supervision and an expert Supreme Court of Justice will be established for this. The Constitutional Court will be in control of this court's appeal.

- The roles and powers undertaken and fulfilled by the Ministry of Justice in this system will be transferred to the Supreme Authority of Justice. The Ministry will provide supplementary services.

## **The Supreme Authority of Justice also offers an innovative solution for advancing democracies in the world**

Democracy and the rule of law are concepts which go hand in glove. The separation of powers of the state is required in order to be able to establish and uphold the rule of law. It is the most important element of democracy. As such it is vital that the judiciary, which is tasked by the public with upholding the rule of law – especially holding the executive power to account – is separate and independent from the executive. Nowhere in the world does the executive and politicians want to see judicial power as the sole form of power. They do not want the judiciary, who have many privileges by default, to create a state or cast of judges. For this reason, the judicial power struggles to become fully independent in all democracies in the world. Executives and politicians intervene in the judiciary to varying degrees, one way or another, or the effects of judicial power are shared between the judiciary and the executive. To sum up very simply, in other countries judicial committees decide judicial appointments and appointments are made on the basis of the selection of the executive power. This alone brings a balance to those countries.

In Turkey, the judiciary is the weakest one amongst the three main powers of state. Far from being fully independent, the judiciary is the weakest power, completely dependent on the executive; basically an extension of it. There are, of course, many logical reasons that it has evolved in this way; which I just state as an assessment of the current situation. For Turkey to become an advanced democracy, however, there is a need to strengthen the separation of powers and enhance judicial control over the other powers, including within the judiciary itself. In this event, the judicial power could force the executive to comply with the law, and the executive power could force the judiciary to fulfill its duty effectively and efficiently.

Our recommendation of Supreme Authority of Justice would ensure the separation of powers in terms of the judiciary and would turn the judiciary, which is a separate power, into a fully independent body. It would also restructure the judiciary with a renewed focus on providing quality services; ensuring full transparency and accountability by opening all kinds of judicial proceedings and decisions to judicial review.

In this regard, the proposal developed by our Association to solve the problems experienced in Turkey and to address the relevant requirements also offers an innovative solution for advancing the democracies in the world. It proposes a complete, comprehensive and service-oriented solution to the problem of separating the powers of state and enshrining judicial independence.