daha iyi yargı

TURKISH JUDICIAL REFORM A to Z

Atty. Mehmet Gün - Atty. Hande Hançar - Atty. Muhammed Demircan - Atty. Utku Süngü
Atty. Ayşe Dilara Kaçar - Atty. Zübeyde Çapar - Atty. Elif Melis Özsoy - Atty. Havva Yıldız

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TURKISH JUDICIAL REFORM
A to Z

April 2022

GÜN+

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A to Z

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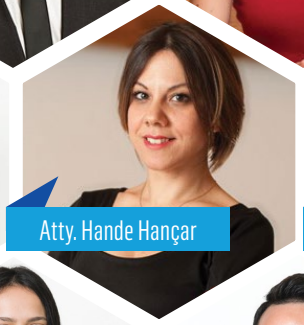
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Atty. Muhammed Demircan

About the Better Justice Association

A politically neutral non-governmental think tank

The Better Justice Association is a politically neutral think tank that aims to improve the rule of law in Turkey by developing solutions to problems that exist in the Turkish judiciary and that also commonly occur in judiciaries across the world.

The Association works to bring together all individuals, institutions and organizations that are related to the judiciary and society on common ground, to reach a social consensus and agreement on ideas and suggestions, and to implement the agreed proposals.

Integrity in Disputes Full and Frank Disclosure

Quality and Aspects of Quality in Judicial Services

Proposals and Recommendations on the Judicial Reform Strategy 2019 Document

Our Opinions on the Amendments Planned to be Made in the Law on Legal Profession

Turkey's Middle Democracy Issues and How to Solve Them

The Proposal Regarding the Supreme Authority of Justice

Turkey's Dilemma: Middle Income & Middle Democracy Traps

80 Proposals in 8 Chapters

Exit From the Middle Income Trap

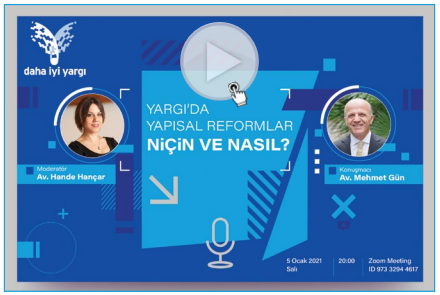
Middle Income and Middle Democracy Traps - Structural Reform Conferences:

- İzmir
- Denizli
- Antalya
- Hatay-İskenderun
- Konya
- Kapadokya
- Çanakkale
- Karabük
- Ankara
- Kars
- Zonguldak
- Adana
- Samsun
- Sivas
- Eskişehir
- to be continued

Webinars on the Role of Lawyers in Structural Reforms

Each of our webinars at which Atty. Mehmet Gün and the Bar Presidents met under the moderation of our members, had more than 3,000 views.

- Sivas Bar Association, July 4, 2020
- Eskişehir Bar Association, May 28, 2020
- Mersin Bar Association, May 25, 2020
- Samsun Bar Association, May 4, 2020
- İzmir Bar Association, April 30, 2020
- Adana Bar Association, April 29, 2020
- Hatay Bar Association, Nisan 24, 2020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YARGI'DA
YAPISAL REFORMLAR
NİÇİN VE NASIL?
Moderatör
Av. Hande Hançar
Konuşmacı
Av. Mehmet Gün
5 Ocak 2021
Salı
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Zoom Meeting
ID 973 3294 4617


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SLOVAKYA
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Av. Hande Hançar
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İNGİLTERE
İSKOÇYA
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Konuşmacı
Av. Havva Yıldız
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FRANSA
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Av. Havva Yıldız
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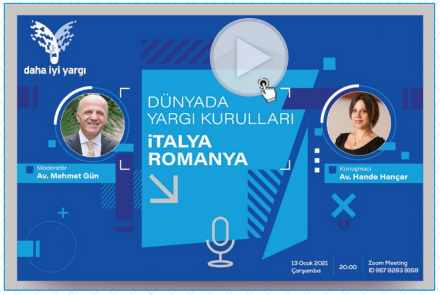
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DÜNYADA
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ROMANYA
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Av. Mehmet Gün
Konuşmacı
Av. Hande Hançar
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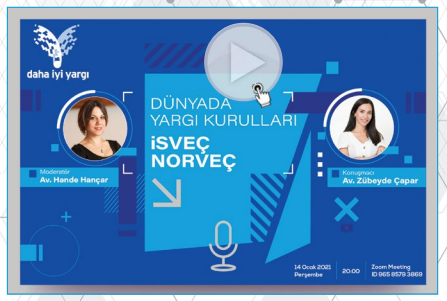
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DÜNYADA
YARGI KURULLARI
İSVEÇ
NORVEÇ
Moderatör
Av. Hande Hançar
Konuşmacı
Av. Zübeyde Çapar
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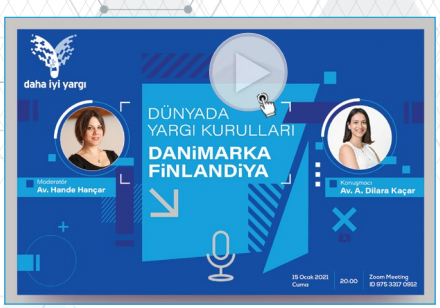
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DÜNYADA
YARGI KURULLARI
DANİMARKA
FİNLANDİYA
Moderatör
Av. Hande Hançar
Konuşmacı
Av. A. Dilara Kaçar
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Cuma
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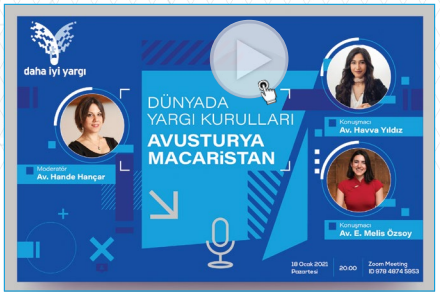
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DÜNYADA
YARGI KURULLARI
AVUSTURYA
MACARİSTAN
Moderatör
Av. Hande Hançar
Konuşmacı
Av. Havva Yıldız
Konuşmacı
Av. E. Melis Özsoy
18 Ocak 2021
Pazartesi
20:00
Zoom Meeting
ID 979 4874 5953

Webinar Series on Judicial Councils in the World

Date	Topic	Moderator, Speakers
6 January 2021	USA	Atty. Hande Hançar, Atty. A. Niyazi Ülkü
8 January 2021	UK & Scotland	Atty. Hande Hançar, Atty. Havva Yıldız, Atty. E. Melis Özsoy
11 January 2021	France & Spain	Atty. Hande Hançar, Atty. Utku Süngü
12 January 2021	Germany	Atty. Hande Hançar, Atty. Havva Yıldız
13 January 2021	Italy & Romania	Atty. Mehmet Gün, Atty. Hande Hançar
14 January 2021	Sweden & Norway	Atty. Hande Hançar, Atty. Zübeyde Çapar
15 January 2021	Denmark & Finland	Atty. Hande Hançar, Atty. A. Dilara Kaçar
18 January 2021	Austria & Hungary	Atty. Hande Hançar, Atty. Havva Yıldız, Atty. E. Melis Özsoy

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INTRODUCTION TO THE ENGLISH EDITION

Turkish judiciary needs a complete reform.

The image of Turkey before the global economy and finance circles is reflected in the following statement, quoted in the Financial Times: *"continuing delays in [the] trial, including by merging different cases and creating new ones after a previous acquittal, cast a shadow over respect for democracy [and] the rule of law."*[1] This comment could be applied to nearly all the ongoing trials in Turkey. The reporter's comment that *"This is a personal persecution"*[2] is true overall for the many political cases that we have witnessed in recent years.

The judiciary is the most crucial unresolved problem of the Republic

Before 1960, judges could not be transferred from their place of duty without their prior consent. In the 1970s, this geographical tenure assurance was abolished. Decisions of the Supreme Council of Judges and Prosecutors (HSYK; now known simply as the Council of Judges and Prosecutors, or HSK) regarding the appointment, promotion and disciplining of judges and prosecutors were excluded from judicial review.

Back then, these amendments abolishing judicial independence and assurances were deemed necessary and proper, because the judiciary had developed internal dependences. A small but influential group of people active within the judiciary had become a privileged group as they were not accountable outside their own institutions and colleagues.

In the 1970s, politicians who were not able to form a permanent government and elect a president despite over a hundred rounds of voting agreed to make the judiciary dependent. The judiciary, vulnerable to the influence of politics and constrained by continually restricted independence, became increasingly politicized. Different political factions and groups tried to penetrate the judiciary. Factions based on political, religious and ideological grounds emerged among the members of the judiciary.

The political order established in the post-1980 period made it easier to make the judiciary even more dependent

1 D. Gardner (2021), 'Erdogan's wrath is damaging Turkey', Financial Times, 26 October, https://on.ft.com/3Gqv6dr.

2 Ibid.

on the executive power. The blinkered mentality that sacrifices fair representation of the people in the legislature for the purpose of stabilizing governments developed a political formula in which a party that received around 35% of the votes in the elections would obtain a 60% majority of the seats in the legislature. Aware of the concerns of such artificial majority executive's duties were shared with the appointed president. After the abolition of military tutelage, the artificial majority in the legislature paved the way for the ruling party to make the judiciary dependent and effectively an extension of itself.

The judiciary, used to be accused of being "at the disposal of the then ruling Republican People's Party (CHP) government" by the opposition the Democrat Party (DP) before 1950. Before 1960 it was accused of being "at the disposal of the then ruling Democrat Party (DP) government" by the then opposition Republican People's Party (CHP). It is currently criticized that it has become an extension of government in 2021, 60 years on.

In 2021, the judiciary lacks the guarantees of independence that it had before 1960 and is more heavily dependent on the executive than it used to be. Judges cannot help warying that they can be transferred if their decisions agitate the politicians' wishes.

Public's trust on the judiciary for the protection of fundamental rights and freedoms has faded

The executive appoints the overwhelming majority of the 13 members of the Council of Judges and Prosecutors HSK, of which the minister of justice is the natural president. The HSK's dependence on the ruling political party fails to provide the members of the judiciary the confidence to adjudicate according to their conscience and convictions, and without fear of reprimand because they are deprived of basic judicial guarantees such as guarantee for tenure.

Around 700 judges of criminal peace (magistrates) appointed by the HSK, that gives the impression of a distinct closed group within the judiciary, create a perceived threat to freedoms. The fact that, until very recently, their decisions could be appealed to the next magistrate (horizontal appeal), rather than before a higher and more competent court (vertical appeal), eliminated the magistrates' from being guards for freedoms. Despite it has been promised as part of the 2019 Judicial Reform Strategy, vertical appeal against their decisions has been made available only in January 2022.

Excessive intervention against, unlawful detentions and arrests of those severely criticize politicians, such as students who demonstrate or protest, have led to a concern in society that the inevitable result of criticizing the government is arrest. Pre-trial arrest decisions have become a form of punishment in advance of trial and conviction, which turned into restraints on freedom of expression. Arrest warrants without an indictment in certain political cases continue to exist despite the ECtHR determinations that they violate the ECHR.

Serious difficulties are experienced in building the public's confidence on the realization of the rule of law state, the principle of equality before the law, and the protection of fundamental rights and freedoms.

Members of the judiciary have become a privileged group despite the fact that they fail to do their duty

Judicial services are insufficient, inadequate and lack quality. Judiciary's management is not good. Incompetence reigns in the system. Comprehensive cases, the likes of which the developed judicial systems resolve accurately in 3 to 4 months, may take years in Turkey but judgements are still inadequate, and the justice is not manifested. Courts are incapable of establishing material facts swiftly and accurately and of adjudicating efficiently in cases with groves of defendants, complex relations, involving sophisticated issues and requiring thousands of evidences to be examined. In complex cases, the judiciary is dependent on the administrative investigations and external resources in order to perform its duties.

The parties' right of defense is interfered by distorted exercise of the "court appointed experts" system and threating them as if they are assistants to judges. The duties of judges are delegated de facto to the experts. Corruption in experts system is becoming institutionalized and spreading over the judiciary. Benefitting disproportionately from legal and de facto judicial guarantees despite failing to perform duties properly members of the judiciary and expert witnesses have become a de-facto privileged group.

Constitution and the Constitutional Court Protection is insufficient

The Constitution is contradictory in its entirety. Constitutional conformity review is insufficient. The right to seek constitutional review is restricted. Politicians have been allowed to agree upon unconstitutional laws and overlooking on violations has been permitted. In the appointment of the court's members their loyalty to the designating or appointing political factions plays an important role. The court's decisions are politically lenient, and some of its jurisprudence on implementation of the principle of democratic administration are contradictory. The Constitutional Court, itself, effectively made a constitutional amendment by removing certain expressions from within sentences in its ruling on the 2010 constitutional amendment. With that the court paved the way for a group to take over the HSK and the judiciary.

The Constitutional Court effectively abolished the most fundamental legal protection provided by the Constitution when it refused to even examine decrees unrelated to the State of Emergency. That stance by the Court eliminated the only available judicial protection of fundamental rights and freedoms. Compliance with the judgments of the court and the ECHR regarding the violation of fundamental rights and freedoms is, occasionally, a matter of

dispute. The role of the Office of the Chief Public Prosecutor requires revision so as to fulfill its duty to protect the constitutional order as deemed appropriate.

Inference from the historical experience of Turkey

The historical experience of Turkey demonstrates that judicial councils can also be used as an effective and easy to use tool to make the judiciary dependent on the executive, and therefore on politicians or on internal or external concentrations. The first structural remedy to prevent such peril is to distribute all judicial functions to different institutional structures by in a rational and operable way, rather than concentrating in a single body. The second structural remedy is to prevent arbitrary decision making by ensuring that all administrative decisions are subject to institutional decision-making mechanisms and truly subject to thorough judicial review. Establishing such a sustainable system is possible if the society own and defend the judiciary. Judiciary can earn the public's confidence and support when it provides the society with high-quality service, by being accountable consistent with its legitimacy. This is the sine qua non for the judiciary to gain and maintain independence. Any structures that do not have support of the society as their backbone will inevitably be seized and destroyed.

The Better Justice Association's proposals

Better Justice Association has developed proposals aiming to improve the Turkish judiciary to providing the society high-quality judicial services, being efficient, a role model in observing the rule of law, truly transparent and accountable and fully independent and able to defend its independence. The association has published the design and drafts of its innovative proposals in this book submitting it to local and international community.

We published our solution proposals first in Turkish and announced to academia, the business world, NGOs and tens of thousands of opinion leaders on 25 August 2021. We then began to discuss these proposals internationally via electronical media in English. We held the first discussion at a webinar jointly organized by BIICL and Better Justice Association on 8 September 2021 and the second on the 1st December 2021.

We continue to organize local and international communication activities to help us improve our solutions. We hope to further develop and refine our resolutions by exchanging ideas with national and international NGOs, academia, the business world and other stakeholders.

We are honored to invite the international community to participate in and contribute to this discussion.

April 2022

Atty. Mehmet Gün

Better Justice Association
On behalf of the Project Team

Saim Dursun,
"Buğday" (Wheat),
45 x 60cm,
oil on canvas,
spatula technique,
2011

PREFACE

The 2016 General Assembly of the Better Justice Association assigned the Board of Directors the task to prepare proposals for the new constitution on issues that concerned the associations' objectives. Among the proposals the members have agreed upon, the most comprehensive one is the proposal to establish a Supreme Authority of Justice authored by the Chairman Mehmet Gün.

The proposal, which was published in the second half of 2017 and presented to TESEV (Turkish Economic and Social Studies Foundation) members on November 15, 2017, and to the Association for Liberal Thinking on November 2, 2019, was perceived positively by the public.

Most of the proposals in this book that we present to the Turkish and international community for discussion and improvement are based on the ideas that were put forward in the associations' previous publication "Turkey's Middle-Democracy Issues and How to Solve Them: Judiciary, Accountability and Fair Representation", also authored by Mehmet Gün, which includes the Supreme Authority of Justice proposal. First published in 2018, a second edition has now been printed and 11,000 copies are in readers' hands.

TÜRKONFED, the Turkish Enterprise and Business Confederation, adopted the executive summary of the book "Turkey's Middle Democracy" as a policy document. Following this, the Better Justice Association and TÜRKONFED shared their solutions with the Anatolian business and legal world in 25 jointly organised Structural Reform conferences and webinars. The book and the ideas and proposals contained therein were greatly appreciated and accepted.

Prior to the pandemic, the Better Justice Association and TÜRKONFED decided to establish a non-governmental organization for the implementation of the Supreme Authority of Justice proposal; however, COVID-19 prevented us from carrying out our plans. As a result, we decided to turn the COVID-19 constraints into opportunities and started working in March 2020 by forming a team of nine people. In a relatively short period of nine months, as a result of a rigorous work schedule, we have developed proposed designs to bring our proposal for the Supreme Authority of Justice to life, and we have taken it through many iterations and created several drafts of our work.

During this time, we came together for three days each

week; starting at 10:30 in the morning and throughout meetings lasting two to three hours, we worked during the most productive hours of the day to discuss, perfect and mature our ideas. Our young team comprises brilliant and talented young lawyers who are determined to move their country forward by conducting thorough research on the issues. They shared their research with the whole team and prepared drafts on which we all agreed, and in a very short time the same team translated this study, which is the product of our devoted work, into English.

During our quest to find solutions, we considered the historical experiences, sociological facts and general complaints of the public, investigated the root cause of the problems, and tried to come up with radical solutions. As a result, we designed solutions and drafted law proposals for the structural problems in Turkey's judiciary as described in this book. In the draft laws, we focused on the substance of the ideas; and we have tried to include simple and concise content, without repeating the standard provisions in the relevant laws, in our book.

It is far beyond the scope of such a study to examine the judicial systems of other countries, which have been developed through centuries of experience, in the finest detail and to solve all problems; we did not have such a goal. Nevertheless, we designed the basic elements of the judiciary. We have stated the matters that need to be elaborated on in the future. For example, comprehensive studies are required to implement our innovative proposals, which combine the court structure, the recording of disputes, the conciliation process, trial preparation and a system envisaging the completion of trials in a single hearing.

It is easy to improve an existing system that does not require a rethinking of all its elements, and where fundamental problems do not exist. In such a case, there is no need to redesign the entire system; suggestions for improving the existing structure and functions are often sufficient. However, in a system that has deep-rooted problems, it is not easy to solve these problems effectively without implementing a completely new design. Unfortunately, the probability of failure, in this context, is high. In such cases, it is necessary to bring new and different proposals to the table. But existing habits are almost always in opposition to innovation. There is often an almost automatic resistance against the new. Therefore, proposing and designing something new is risky, but it is worth the effort.

In situations where rapid progress and transformations are the goal, the first conditions of success are an accurate picture of the ideal future and a long-haul design. The reasons for designing a different future are often based on the problems experienced in the current system, dissatisfaction, or the seeking of improvements. Without designing a future picture, merely eliminating existing problems is not enough to achieve the desired goal. On the contrary, it leads to going back and forth, which results in palliative solutions that inevitably cause new problems while relieving old ones. In short, the problems grow and multiply, causing more despair and decreasing motivation in organizations.

When a picture of the ideal future that constitutes a long-haul goal is drawn with precision, the situation is different. Then, the individuals involved can adopt a picture of the future and focus on what needs to be done to achieve that goal. The strategy to be followed to reach the goal emerges naturally and more accurate decisions can be made regarding what should and should not be done along this path. Palliative solutions that serve no purpose are abandoned; the goal can be achieved quickly by making radical changes when necessary.

In this study, the long-haul goal has been determined as a judiciary producing a high-quality service, and the strategy has been determined in accordance with this goal. We hope that those who examine this study will easily comprehend that once the production of a quality service is put forward as the main goal, it becomes easier to find radical solutions to all the problems of the judiciary.

The suggestions in this study are only drafts. We are putting forward what in many Western countries would be termed a white paper. We present this white paper as the first draft for it to be reviewed and discussed, so that errors and deficiencies in it may be revealed and it can be improved and matured. We will finalize our proposed solutions through consultation with the Turkish and international community and will take on board their criticism, feedback and further suggestions. Once we have allowed for enough input from with Turkish and global public opinion, we will improve our study and publish the final version as a green paper.

As a result of their devoted work, Team Leader Atty. Hande Hançar; Supreme Authority of Justice team members attorneys Elif Melis Özsoy and Havva Yıldız; Judicial Professions and Professional Organizations team members attorneys Muhammed Demircan and Utku Süngü; and Supreme Court of Justice and Republic's Chief Public Prosecutor team members attorneys Ayşe Dilara Kaçar and Zübeyde Çapar successfully completed a huge task in the relatively short period of nine months after dozens of Zoom meetings. Dilara, Muhammed, Utku and Zübeyde were interns when the study commenced, and they have since finished their internships and have been admitted to the bar. We cannot thank them enough for their devoted work.

We would also like to thank Attorneys Bengü Şen Gürakan and Ahmet Niyazi Ülkü for their devoted contributions. Although they were only later included in the team, they gained a comprehensive knowledge of all the work we had undertaken in a short time and contributed greatly to the preparation and translation of the book into English.

We also owe more than a profound thank you to Beyza Berber, who made great efforts to have the book published in Turkish and English, and to realize its communication strategy. We are able to receive this book today as a result of Beyza Berber's patient, self-sacrificing and careful work, which lasted for more than four months. She checked and corrected letters, presentations and written texts in this study, made changes and additions in the drafts that went back and forth repeatedly, forwarded them to designer Metin Özkan, and became an inseparable part of our team by following these

steps with diligence. As regards the translation of the book into English, by ensuring that the proofreading in Turkey and later in England was done with care, she contributed greatly to the publication of our book in both languages in a relatively short time. We also owe a debt of gratitude for their great effort to Luke Finley and Gill Wing for the editing.

Lastly, we would also like to thank Metin Özkan, who designed and typeset the book, patiently fulfilling our requests to ensure its publication.

We provide English translations of all our proposed solution designs and the drafts of most relevant laws we propose, but omitted translating the drafts of laws with no additional value for an international audience vis-à-vis the detailed designs in the English language.

We are proud and pleased to present this study to the public simultaneously in Turkey and worldwide, with the desire to improve our proposal by by prompting discussion discussions. We hope that everyone who is interested in this important issue will share their criticisms, ideas and suggestions regarding all or some of our proposals, and will thus contribute to the solution.

Yours respectfully,

Mehmet Gün
President of the Better Justice Association
Opinion and Project Leader

EXECUTIVE SUMMARY

The 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 the 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 summarized 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 becoming a political instrument the judiciary rapidly lose its neutrality, and the rule of law weakens 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 is a perfect example of the global problems of the judiciary and with 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 a sufficient and high-quality service that meets the needs of the people.

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 their permanent improvement of judicial services and help to eliminate the problem of the political instrumentalization.

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 regula-

tory 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 reviews of all kinds of judicial proceedings and decisions and to operate these judicial reviews without anyone who wishes to initiate them having to prove their concern or interest.

The Permanent Council of Justice

A Permanent Council of Justice 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 to discuss 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, charged with 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 a judicial review.

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 to the election 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's 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's 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.

The Republic's Chief Public Prosecutor's Office will be in charge of the legislative immunities of the Supreme Court of Justice and the Constitutional Court, and the investigation of senior public officials, the president and ministers, and political parties.

The Optimum Structure of Courts and Modern Proceedings

The three-level court structure in Turkey, with first-instance and appeal courts, will be preserved. First-instance courts will be optimally distributed on the basis of 26 development regions. While delegation courts with advanced expertise and experience will be concentrated in central locations, single-judge courts that require rapid intervention and deal with relatively small and easy tasks will be brought to the doorstep of citizens.

Judicial preparatory courts will be established, and it is envisaged that they will serve the public from a single service unit. Attorneys will be given more responsibility and authority in dispute resolution. Preparation courts will help attorneys to perform their duties lawfully and effectively and prevent abuses. The aim is to increase the rate of reconciliation in disputes, to ensure that files that will be transferred to the court are completed at the very beginning and to ensure that the proceedings are completed upon first hearing and in a short period of three to four months.

All proceeding procedures will be modernized. It will be a requirement that information and evidence concerning the resolution of a dispute from the moment it is first presented to the moment it is reflected in the court must be honestly, fully and accurately disclosed. Thus, it is envisaged that disputes will be settled by settlement and reconciliation before the hearing, and on the other hand, the full maturation of the files of those who are referred to the court will be assured. Cases that have been passed to the courts, which currently last four to five years in the courts of first instance, will be resolved in three to four months and the decisions will be extremely satisfactory.

A Uniform Career Plan for the Legal Professions

A uniform career plan, adapted to the court structure, with three main grades and a maximum of three levels within each grade, is envisaged for the legal professions.

Those who are accepted into the legal professions must be competent, knowledgeable and experienced people with personal maturity. It is envisaged that the candidates will pass the stages of official internship, supervision and assistantship, with objectivity ensured at 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 so 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 the 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 or influence it.

The Permanent Council of Justice 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, protection, and on the other, 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 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 10 to 20 countries in the world in rule of law and democracy indices. These advances will strengthen its international image and investor confidence, attract direct investment and improve its 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 its per capita income will rise from today's $8,000 to $25,000 and above in a short time.

the Better Justice Association
Project Team

A JUDICIARY FOR HIGH-QUALITY SERVICE

The rule of law is the key to sustainable development

Increases in social welfare depend on the rule of law, powerful and inclusive institutions, limiting governmental powers when it comes to the rule of law, and protecting and improving fundamental rights and freedoms. The rule of law ensures that the massive power of the state, which is established by millions of people coming together and transferring their own individual powers to a larger body, must be exercised in accordance with the rules, thereby enhancing democratic governance; this, in turn improves cooperation and solidarity, and results in a continuous and sustainable increase in the welfare of the populace. Individuals whose rights and freedoms are well protected and who enjoy legal security can then provide high added value by creating more and deeper collaborations on the one hand and innovating and inventing on the other.[1]

The greatest duty in establishing the rule of law falls to the judiciary. The judiciary plays the most critical role both in distributing the obligation to increase prosperity and in sharing that increased prosperity. In Turkey, as in every country, it is vitally important that the judiciary fulfill the herein-mentioned functions in the best possible way.

Countries' national income increases regularly when they improve their level of democracy. It has been proven by economists that middle-level democracies have middle-level national incomes; and these countries can overcome the "middle-income trap" by raising their level of democracy.[2]

The democracy levels of countries are determined by the rule of law, accountability, and the independence of the judiciary. Two UN General Assembly (UNGA) resolutions,[3] to which Turkey is a signatory, established the elements of democracy by allocating a special place to the judiciary and the rule of law. These resolutions demonstrate that to raise democracy levels, it is necessary to improve the rule of law. To establish the rule of law, it is necessary to improve the judiciary.

As a matter of fact, to "provide access to justice for all and build effective, accountable and inclusive institutions at all levels" has been determined as the main objective of the UN Development Agency's Sustainable Development Goal (SDG) 16. The UN Development Agency (UNDP) has set as sub-targets to "Promote the rule of law at the national and international levels and ensure equal access to justice" in Article 16.3; "Substantially reduce corruption and bribery in all their forms" in Article 16.5; "Develop effective, accountable

1 The level of democracy is the determining factor of the level of welfare of societies. "Why Nations Fail" by Daron Acemoğlu and James A. Robinson (Profile Books, 2012) reveals that the rise of nations depends on having strong, well-functioning and accountable institutions, and the study "The Narrow Corridor" by the same authors (Penguin, 2019) reveals, by giving historical examples worldwide, that increasing the welfare of nations depends in essence on the protection of fundamental rights and freedoms. In this respect, a broad theory has been formed and also many empirical studies have appeared over time. The Narrow Corridor reveals that freedoms must be protected from massive state power, and that limiting the executive branch is the most important challenge in state governance. The rule of law limits this massive state power, liberating and empowering individuals while making them more productive.

2 Mehmet Gün, "Türkiye'nin Orta Demokrasi Sorunları ve Çözüm Yolu", 2nd edition (Gün+, 2020) pp. 83–92.

3 Mehmet Gün, "Türkiye'nin Orta Demokrasi Sorunları ve Çözüm Yolu", pp. 93ff, pp. 144ff.

and transparent institutions at all levels" in Article 16.6; and "Ensure responsive, inclusive, participatory and representative decision-making at all levels" in Article 16.7.

The UNGA, in its Resolution No. 2004–A/RES/59/201, considered the independence of the judiciary and the transparency and accountability of institutions among the basic elements of democratic governance. Basic principles on the independence of the judiciary were specified in Decisions No. 1985–40/32 and 40/146. Turkey has signed both UN resolutions without reservation.

Within the framework of SDG 16, Turkey has set "the development of the legal and institutional superstructure and strengthening the physical and human infrastructure of institutions" as its priority targets.[4] However, despite many constitutional amendments, it could not fully ensure the independence of the judiciary and unfortunately could not fulfill the standards adopted in UN resolutions.[5] As a matter of fact, Turkey's Judicial Reform Strategy Document dated June 2019 has set the objective of "strengthening and protecting the independent, transparent, objective and accountable features of the judiciary".[6]

Turkey is ranked 19th-largest among the world's economies and is a member of the G20. In contrast to the size of its economy, it is ranked 104 among 167 countries on the democracy index and 107th among 128 countries on the rule of law index. Turkey's economic and demographic size and its rankings on the democracy and rule of law indices clearly do not match.[7] In light of this inconsistency, it can be concluded that if adherence to the rule of law and the level of democracy are raised, Turkey's economy will rapidly grow, bringing about a commensurate increase in the level of national income.

Democratic governance, as explained by the aforementioned UN resolutions, is a type of government in which the rule of law is superior, the separation of powers exists to ensure the rule of law, and the judiciary is independent from the legislative and executive branches of the government. To

4 See Global Goals for Sustainable Development, "Turkey's Sustainable Development Goals 2nd VNR 2019", https://sustainabledevelopment.un.org/content/documents/23862Turkey_VNR_110719.pdf, p. 30.

5 At the beginning, the issue of judicial independence was focused on eliminating the executive branch's influence over the judicial organs. With the 1961 Turkish Constitution, the judiciary gained a relatively independent structure with the introduction of the Supreme Council of Judges, of which the minister of justice and the minister's undersecretary was not a part, although the council was affiliated to the Ministry of Justice. However, the judiciary has not attained its full independence and the efforts to control the judiciary continued, in the form of controlling the formation and function of the Supreme Council of Judges. The attempt to control the formation of the highest council of the judiciary on the one hand, and to keep it under the guardianship and influence of and subject it to the participation and approval of the executive branch, on the other rendered this ultimate power unaccountable. The judicial review of the decision to merge the Supreme Council of Judges and Supreme Council of Prosecutors with the introduction of the 1982 Turkish Constitution was excluded pursuant to the coup regulations, even though in 1977 the Turkish Constitutional Court had found these decisions in violation of the principles of the rule of law and equality before the law.

6 For a Turkish version of the document, see https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/23122019162931YRS_TR.pdf; for an English translation, see https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/23122019162949YRS_ENG.pdf.

7 As stated above, world-renowned economists have revealed that there is a parallel relationship between the economic development of countries and their democracy levels. levels. Turkey's economy ranking is taken from World Bank 2020, Its democracy ranking is from the Economist Democracy Index 2020, and its rule of law index is taken from the World Justice Project 2020.

build to true democracy, it is necessary to ensure the rule of law. To affirm the rule of law, it is necessary to ensure the independence of the judiciary, and the functioning of a competent judiciary that can sufficiently and independently fulfill its democratic duties and is capable of removing all obstacles and restrictions.

The reason for the existence, purpose and duty of the judiciary is, on the one hand, to protect and develop fundamental rights and freedoms, especially freedom of thought and expression, and to ensure that the executive branch complies with the law; on the other it must also help to develop democracy by ensuring the participation of the people in the governance process. The judiciary fulfills these functions by resolving conflicts between individuals, and between individuals and state institutions, thus re-establishing and strengthening consensus and cooperation in society. In this regard, the judiciary has a decisive impact on both individuals and the country's collective efficiency and productivity. For Italy, it is said that the inefficiency of the judicial system causes a decrease in investments and slow growth, and creates challenges in the business environment.[8]

Since the degree of judicial functioning determines both a country's level of democracy and its level of prosperity, it has both a direct and an indirect impact on prosperity, i.e. it has a multiplier impact. This multiplier effect manifests as positive if it is effective and efficient in terms of judicial functions, but it manifests as negative when it is not effective or efficient.

The Relationship between Judicial Independence and Democracy

The understanding of democracy has reached its current level as a result of the centuries-long efforts of nations towards better governance. It is indisputable that in order for good state administration to be established, rules should be formed wisely; and rulers should be powerful, but should also be fair and accountable, follow the rules and be limited by them. For this to occur, there must be a judiciary that can hold administrators accountable. This, in turn, means that the judiciary must be independent from the rulers as a supervisory power. Today, the most important issues of democracies are the separation of powers and the supervision of the legislative and executive powers.

In this framework, the separation and independence of the judiciary from the executive and legislative powers is perceived as the most important problem of democracies,

8 Sergi Lanau, Gianluca Esposito and Sebastiaan Pompei, "Judicial System Reform in Italy: A Key to Growth," IMF Working Paper 14/32 (International Monetary Fund, 2014). Relevant parts of this study are as follows: "The inefficiency of the Italian judicial system has contributed to reduced investments, slow growth, and a difficult business environment." "Weak contract enforcement raises the cost of borrowing, and shortens loan maturities (Bae and Goyal, 2009; Laeven and Majnoni, 2003), with a detrimental impact on investment, the depth of mortgage markets, and GDP (Bianco et al., 2002; Laeven et al., 2003; Djankov et al., 2008)." "The literature also finds a positive correlation between the quality of the judicial system and firm size (Kumar et al. 2001, Beck et al. 2006). Giacomelli and Menon (2012) use differences in court efficiency across Italian municipalities to establish a causal link and estimate that halving the length of civil proceedings could increase average firm size by 8–12%." "Ardagna and Lusardi (2008) establish a link between entrepreneurship rates and the efficiency of the judicial system using micro data for a sample of countries including Italy. Berkowitz et al. (2006) find that stronger contract-enforcement institutions are positively correlated with more complex exports and less sophisticated imports. The structure of exports suggests that entrepreneurship and innovation may suffer from judicial-system inefficiencies in Italy."

because, even in the most advanced democracies, the judiciary has not gained the independence to govern itself. In all democracies, the executive is more or less involved in the internal affairs of the judiciary and uses judicial powers, albeit symbolically.

The judicial structure, the judiciary's functions, independence and relations with the executive and other state powers, have been shaped differently in every country, impacted by the individual countries' histories, cultures, and economic, geographical and demographic characteristics. The popular tendency[9] is to limit the influence of the executive power over judges' and prosecutors' duties, admission to the profession, advancement and appointment. Indeed, the idea of judicial councils emerged in the process of making judges independent from the executive.[10] Countries develop institutions and systems according to their social structures, historical experiences and cultures. In short, countries have formed their judicial management styles in line with their needs and priorities. There are, of course, justified reasons as to why it was compulsory for one country to establish a judicial council whereas in another country it was not.

In today's world, even in the most advanced democracies, it cannot be said that the judiciary has reached its highest level and has become completely independent from the executive branch.[11] The judiciary has been recognized as a separate power and has made significant progress towards achieving independence. However, although the form and degree of independence of the judiciary varies from country to country, countries' executive branches often continue to intervene in the judiciary; as a result, most judiciaries are not self-governing without the involvement of the executive.

After World War II, constitutional courts and judicial councils were integrated into democracies as new institu-

9 In countries such as Germany, Austria and the United Kingdom, where judicial councils do not exist in the traditional sense, judicial independence is achieved by following a different method; although the executive power is involved in the appointment of judges, councils comprising civil society representatives, lawyers and judges select the candidates, and the executive plays only a symbolic role.

10 The lifetime service guarantee, which is one of the most fundamental steps regarding the liberation of the judiciary from the monarchy, goes back to the Act of Settlement, which was enacted in 1701 after the Glorious Revolution in Britain in 1688. See Joseph H. Smith, "An Independent Judiciary: The Colonial Background," University of Pennsylvania Law Review, vol. 124, no. 1104 (1976), p. 1140; Thomas I. Vanaskie, "The Independence and Responsibility of the Federal Judiciary," Villanova Law Review, vol. 46, no.4 (2001), p. 748; Sam. J. Ervin, "Separation of Powers: Judicial Independence," Law and Contemporary Problems, vol. 35 (1970), p. 111 (online access: https://core.ac.uk/download/pdf/62555641.pdf).

11 In Scandinavian countries such as Denmark, Finland, Sweden and Norway, which are always at the top of the world democracy index prepared by The Economist Intelligence Unit, the executive often plays a role in the appointment, advancement and disciplinary matters of judicial professionals, and in court regulation. For example, in Finland, which is ranked 5th in the 2019 World Democracy Index, the Ministry of Justice and the president of Finland play a role in the appointment of judges (Act on Judicial Appointments No. 205/2000) and the president of Finland, on the recommendation of the Cabinet, appoints the attorney general, who is later involved in the selection of other prosecutors (Act on the Prosecution Service No. 439/2011). Another example: in Denmark, which is ranked 7th in the 2019 World Democracy Index, prosecution is found under the organizational chart of the Ministry of Justice. Moreover, the Ministry of Justice plays a role in the admission and advancement of prosecutors, and these decisions are not open to judicial review. In this regard, see GRECO (Group of States against Corruption), Fourth Evaluation Report on Denmark, adopted 28 March 2014 regarding the Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors (Council of Europe, 2019); Udenrigsministeriet, "Danish contribution to the Annual Rule of Law Report 2020," (European Commission, 2020), https://ec.europa.eu/info/sites/info/files/2020_rule_of_law_report_-_input_from_member_states_-_denmark.pdf.

tions in order to free the courts and judges from the executive's political influence and prevent the concentration of state powers under one branch.[12] Judicial councils function as "a buffer, an institutional barrier" between the executive branch and judges in some countries.[13] In other countries, such as France and Belgium, institutional powers regarding the judiciary are shared with the executive.[14] In Italy and countries influenced by Italy, such as Greece, Spain and Portugal,[15] the judiciary is regulated quite independently and can defend its independence, but it is still subject to the influence of the executive. Thus, even in the most advanced democracies, the development of the judiciary has not yet been fully completed.[16] Today, even in the most advanced democracies, the executive branch determines the judicial budget. It cannot yet be said that there is a model in which the judiciary is fully independent and which other countries can look to as an example in the international arena.[17]

12 Marína Urbániková and Katarína Šipulová, "Failed Expectations: Does the Establishment of Judicial Councils Enhance Confidence in Courts?" German Law Journal, vol. 19, no. 7: Special issue, "Judicial Self-Government in Europe" (2018), pp. 2105–2136, footnotes 16–18.

13 David Kosař, "Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe," German Law Journal, vol. 19, no. 7 (2019), p. 1600: "In most countries the major rationale behind the introduction of new judicial self-governing bodies was to protect judicial independence and guarantee separation of powers. Only in a few countries, the establishment of major judicial self-governance bodies was motivated by proving other values such as judicial accountability or effectiveness of the judiciary."

14 The requirement that all or the majority of the members of judicial councils be selected from among judges and the necessity that the legislature and the executive have no or limited influence in the election of members should also arise from this circumstance.

15 As explained in Kosař, "Beyond Judicial Councils," the "judicial councils" supported by the Council of Europe and the EU for the self-governance of the judicial organization failed to meet expectations. Romania, Poland and Slovakia are prominent examples of this assertion. Even though the herein-mentioned model succeeded in ensuring the institutional independence of the judiciary from the executive and legislative branches in Slovakia, it has not been able to ensure the individual independence of the judges within the judiciary. On the other hand, in the Netherlands and Ireland, where the independence of the judiciary has a deep-rooted history, the mechanisms of the judicial councils function relatively successfully. In Germany, regulations regarding the promotion of judges are not clear. The responsibility of the Court of Justice of the European Union's judges is covered indirectly, mostly in budgetary decision processes. The accountability of European Court of Human Rights judges has been compromised to strengthen the independence of judges. Consequently, (i) judicial councils, while succeeded in ensuring the institutional independence of the judiciary, failed to ensure the individual independence of judges; (ii) this resulted in abuse in Central and Eastern European countries; and (iii) although they succeeded in ensuring the efficient functioning and transparency of the judiciary, judicial councils failed in terms of ensuring accountability and gaining public confidence. According to Kosař, the reasons for this are the absence of generally accepted and applied definitions for the concepts of judicial independence, accountability and transparency, and the impossibility of completely separating the judicial councils from countries' individual economic, political, historical and cultural factors.

16 On the other hand, various international organizations recommend judicial councils as a remedy to eliminate the legal problems facing countries. In this regard, see: Urbániková and Šipulová, "Failed Expectations," around footnotes 7 and 8. "The establishment of judicial councils as a panacea for deficiencies of judicial systems has been strongly promoted by many international organizations. Both the Council of Europe (CoE) and the European Union (EU) typically conditioned the successful accession of countries with the institutional transformation of judiciaries and the establishment of judicial councils as a model form of judicial self-government."

17 As a matter of fact, although the EU stipulates judicial independence and the rule of law for candidate countries, it does not recommend a model to ensure this. In this regard, see Denis Preshova, Ivan Damjanovski and Zoran Nechev, "The Effectiveness of the 'European Model' of Judicial Independence in the Western Balkans: Judicial Councils as a Solution or a New Cause of Concern for Judicial Reforms," CLEER Papers 2017/1 S (Centre for the Law of EU External Relations, 2017), pp. 16ff. As Bobek and Kosař have stated, the CoE and the EU have not established an EU model of judicial councils; see Michal Bobek and David Kosař, "Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe," SSRN Electronic Journal (2013), DOI: 10.2139/ssrn.2351299: "The eventual creation of the Judicial Council 'Euro-model' presents a puzzle.

Countries where judicial independence is hampered become estranged from democracy, and the judiciary, which should maintain social balance, gradually becomes a political instrument. In the formation of judicial councils in Spain, Turkey, Romania and Poland, the fact that politicians partly or wholly have a say or influence has led to the politicization of the judiciary to a certain degree.[18] In France[19] and Belgium, which are similar jurisdictions, and in the United Kingdom, Germany, Austria and similar countries with different judicial appointment councils, the limited or perfunctory involvement of the executive in the use of judicial powers leads to arguments that there is political influence over the judiciary.

Hence, to carry democracy beyond its current flawed level, it is necessary to ensure the independence of the judiciary in such a way that it can govern itself, protect its independence, fully demonstrate its function, and especially limit the influence of the executive branch.

To achieve this, first, it is necessary to stop seeing judicial services as a service provided by the executive power. The executive's mandate does not cover the duties of the judiciary. The task of the executive with regard to the judiciary should consist of and be limited to the provision of finances, security and other resources necessary in order for the judiciary to function in its ordinary and regular state. The Ministry of Justice should no longer be an executive power at the heart of judicial services.[20] The separation of powers, namely into the legislature, the executive and the judiciary, is important for this reason.

Why is the Independence of the Judiciary Restricted?

Why does the executive interfere with the judiciary? Why is it difficult to make executive forces withdraw their fully from judicial affairs, and why does the public not call more strongly for this to happen? It is because history has shown that having the executive withdraw its hand from the judiciary is not the only step that must be taken.

Neither the EU nor the CoE have ever laid down any normative underpinnings of this model. There has never been any process of review or discussion of the model similar to those that occur in adopting EU legislation or in drafting an international treaty. Both organizations simply internalized the recommendations of various judicial consultative bodies without much addressing or assessing their content."

18 In Poland, following the 2017 amendments to the law, 15 out of 25 members of the National Judicial Council, which advises the president on the appointment of judges, are appointed by the Polish parliament from among judges nominated by 2,000 citizens or 25 judges. Prior to this amendment, these members were elected by a general assembly comprising judges of the Supreme Court, civil, administrative and military courts. Six members are selected by the parliament. Moreover, the president's representative, the minister of justice, the president of the Supreme Court and the president of the Supreme Administrative Court appoint the remaining four members. As a result, as of 2017, 23 of the 25 members are elected by either politicians or political actors.

19 Urbániková and Šipulová, "Failed Expectations," p.129, around footnote 129: "even though the judicial council in France has undoubtedly gained competences and institutional autonomy, it remains firmly embedded in a dense web links and dependences that secure its integration within the body of the State."

20 The professional independence of prosecutors can be strengthened by limiting the Ministry of Justice's authority to give orders to the prosecution. In addition, the powers delegated to the Ministry of Justice and the Ministry of Internal Affairs regarding quasi-judicial and quasi-security services provided by prosecutors and police forces should preferably be combined within the Ministry of Justice. Probably, whether combined or separate, the exercise of these powers should be subject to quasi-judicial principles.

To transform the judiciary towards full independence, first, it is imperative to eliminate the problems of inadequacy, inefficiency and accountability that popular leaders rightfully decry today, to make the judiciary function at the pace of society, the economy and even the executive, with the requisite staffing, processes and competencies, and produce added value for society. Today's advanced economic relations, transportation opportunities, communication possibilities and advanced technology, as well as the speed of technological progress, have made social decision-making quicker and enabled disputes to be solved faster than ever. It is unacceptable that the resolution of a dispute arising out of an electronic contractual relationship made within seconds should take weeks to work its way through the judiciary, let alone months or years. This and similar situations justify the executive's intervention in the judiciary, yet allowing this also requires bestowing on the executive the right to make more regulations and administrative decisions.

The inadequate functioning of the judiciary, even if it is not the judiciary's own fault, results in the compromising of the rule of law. This situation changes the traditional power balance in democracies in favor of the executive and limits the judiciary's functions,[21] causing governments to shift towards autocracy.

With regard to Turkey, it is clear that the main reason behind the inability of the judiciary to function effectively is the shift towards autocracy. If the judiciary functions insufficiently, this leads to the restriction of its independence; then, once its independence is restricted, its functions deteriorate. An executive branch that cannot restrict itself is likely to take the reins and become authoritarian. Then, the executive, which gets hold of the authority of admission and advancement of the judicial professions, appoints and promotes "loyal" individuals rather than the most competent ones.[22] As a result, the judiciary's functions deteriorate, and its independence becomes more restricted. From that point on, the judiciary starts to become an organization that acts in accordance with the power holders' wishes.

In order to break this vicious circle, which can have negative consequences for a country, the first thing that needs to

21 Even in countries where the independence of judicial councils is most advanced, separate and independent budgets are not allocated for the judiciary. Consulting with judicial councils in the process of creating the judiciary's budget and allocating budget for judicial councils' own administrative requirements can be considered progress.
In modern society, judicial security has advanced considerably compared with the past. Indeed, access to justice is spread across the community, and the judiciary is able to achieve better results due to advances in communication, transportation and information technologies. In terms of the separation and balance of powers, the independence of the judiciary is lacking in comparison with that of the executive and the legislative branches. For instance, while the executive has unlimited access to state resources, the judiciary's access is limited to its budget, which is determined by the executive.

22 It is a strange contradiction that politicians, who are representatives of a political opinion or an interest, are responsible for electing or appointing individuals to judicial posts who must be completely neutral. It is unthinkable that heads of state or presidents elected by the public or by politicians, who are by definition pursuing a political career, should be supposed capable of finding and appointing independent and unbiased judges, even if they themselves are impartial. As a matter in almost all countries, appointments to constitutional and equivalent courts and judicial councils are made with a political motive. Because these appointments are made by members of the executive, who have a political career, agenda and motivations, the people who are appointed are those who the appointer expects will serve in accordance with their interests.

be done is to ensure that the judiciary functions effectively and efficiently, with full transparency and accountability.

The Relationship between Efficiency, Accountability and Independence

Judicial independence is directly related to the judiciary's efficiency and accountability. The judiciary loses its independence gradually mainly because of the fact that it enjoys privileges and is not held accountable, and it therefore cannot fulfill its duties. For these very reasons, Turkish society restricts the independence of the judiciary and does not advocate for the judiciary and its independence. It is quite natural that society does not object to the fact that politicians, whom the people can hold accountable from election to election, make the privileged judiciary, which the people can never hold accountable, dependent. Trying to explain these developments in terms of politicians' popularity is not an accurate approach. One of the factors in politicians' popularity is how they respond to complaints that arise when the judiciary does not fulfill its duties. Recent developments in Poland, Hungary and Turkey which threaten the independence of the judiciary and the rule of law should also be analyzed from this point of view. These countries are walking a fine line between democratization and authoritarianism while trying to transform judiciaries that are currently insufficient in fulfilling their functions.[23] The greatest danger that a democracy faces is of leaders taking control of a judiciary that has become stronger during the fight to transform it – a situation that can easily shift to autocracy. [24]

The main justifications for these developments that make the judiciary directly or indirectly dependent on the executive are that the judiciary is inadequate, does not work efficiently, and does not create added value for society. At the same time, the judiciary benefits from privileges, but is not held accountable. The saddest part is that all these justifications are more or less accurate for all countries, including advanced democracies. With a few minor exceptions, in no country does society accept with a high degree of confidence that the judiciary fulfills its duties effectively and efficiently, and that it is transparent and accountable.

The Accountability Problem of a Privileged Judiciary

Another reason behind the Turkish judiciary's being deprived of full independence and financial autonomy is that the added value created by the judiciary is not proportionate

23 Kosař, "Beyond Judicial Councils," p. 1586: "the developments in Hungary (where Viktor Orbán created the brand new National Office for the Judiciary, chaired by his loyal supporter Tünde Handó, and hollowed out the powers of the existing the National Judicial Council) and Poland (where Jaroslav Kaczyński packed the National Council of the Judiciary with his supporters and even threatened to revert to the Ministry of Justice model) show that judicial self-governance can be reduced and even abused to the detriment of individual judges"; and p. 1589: "Polish, Spanish, and Turkish contributions show that when politicians can select the judicial members of judicial councils, that inevitably leads to the politicization of the judiciary, or at least to the perception of 'distance' between judges and the judicial council. However, even if judges can elect their representatives, that does not mean that political ties do not matter. In France and Italy, judicial associations, often associated with a certain political party or at least a certain worldview, actually have a major say on who sits on judicial self-governance bodies and how these bodies decide important issues. Slovakia then serves as a cautionary tale, as it shows that the judicial council can also be captured from inside by one of the factions within the judiciary."

24 The direction of international political and economic developments may determine the orientation of these countries, causing them to swing between democracy and authoritarianism.

to the privileges which it enjoys.[25] In most societies, judges are appointed rather than elected, earn relatively high incomes, cannot be dismissed, have privileges as a requirement of their duties and benefit from immunity. However, judges cannot be held accountable for their mistakes, negligence, violations or even misconduct in office.

Countries with high ethical values and a high level of welfare, with a population of 5 to 10 million people do not experience the problems outlined above, even though their legislation is shallow and simple. Denmark, Sweden, Norway and Finland in Europe, and Singapore[26] in East Asia, can be presented as examples of such countries. By contrast, French,[27] Italian,[28] Romanian (Romania looked to Italy as an example) and Spanish regulations are quite extensive, even though popular dissatisfaction with judicial services is relatively high.

To summarize briefly, in small countries with a high level of prosperity, the judiciary produces high-quality services and added value in accordance with its legitimacy and is also highly transparent and accountable. The high ethical standards of these countries do not require accountability to be formally regulated. Still, it cannot be said that there is a form of legislation or practice to ensure the effective accountability of the judiciary in other countries. With some exceptions, judicial bodies cannot be held actively accountable. The judi-

25 The purpose of granting independence to judicial bodies and elements must be to ensure the best possible judicial functioning – that is, the best judicial services. The "independence" of the service providers is the most important element of judicial services because, if it is not independent, the service provided by the judiciary is not one of providing judgment and dispute resolution and delivering rights, but one of choosing between conflicting interests. Lessons can be drawn, with regard to the great danger of dissociation that the judiciary can face if it is not independent, from the corruption which occurred during the decline of the Ottoman Empire, where Ottoman kadıs were both the rulers and the administrators of the civil unit to which they were appointed as the representative of the ruler. Therefore, the judiciary can be beneficial to society when it is independent, transparent and accountable in terms of its structural, financial, institutional and individual elements. If any of these fail, it is certain that the judiciary will cause irreparable harm to society. Kosař, "Beyond Judicial Councils,", p. 1604: "Marína Urbániková and Katarína Šipulová grapple with the conceptual disagreement regarding public confidence and define its three levels (individual, institutional and cultural), painstakingly identify the factors that may influence public confidence in the judiciary, and acknowledge that the establishment and reforms of judicial councils usually relate public confidence to some other value: most frequently these are independence (Netherlands, Poland, Italy, Hungary, Ireland), accountability (Netherlands), and the perception of the effectiveness of the judicial system (Netherlands, Poland, Hungary, France, Ireland). Only then can they study the effects of judicial councils on public confidence."

26 Surveys in Denmark, Sweden, Norway, Finland and Singapore reveal that public trust in the judiciary is high. It appears that often, judicial appointments are not objected to in Singapore, Norway and Sweden. On the other hand, in Denmark and Finland, the laws regulating the appointment of judges clearly state that judicial review is not available for the appointment decisions of councils. As a matter of fact, this lack of judicial review is not even criticized, which illustrates that the public trusts in the institutions and their members. Although the aforementioned countries' laws do not regulate judges' discipline and responsibility in detail, the culture, education and welfare levels of these countries have contributed to the development of legal systems. The ethical values and public confidence in democracy found in such cases show that sometimes no regulation is required to impose a sanction.

27 According to public opinion research, only 56% of the population consider the level of independence of the courts to be "fairly or very good" in France, while this rate was 44% in Spain. (European Commission, 2020 Rule of Law Report, country chapter on the rule of law situation in France, s. 3; country chapter on the rule of law situation in Spain, s.3.)

28 Urbániková and Šipulová, "Failed Expectations," p. 2129: "Similarly, Bienvenutian and Paris claim that in Italy, even though the High Council of the Judiciary played a crucial role in securing the independence of the judiciary from the executive power, this does not apply to the internal independence, and that 'while securing the independence of the judiciary, the Italian model of JSG has been far less effective making the judiciary accountable, which in turn may have affected professionalism and diminished public confidence.'"

ciary, which is de facto and legally unaccountable to outside forces, uses many methods for calling to account internally.

This, in turn, can create internal dependencies and result in the emergence of various power centers.[29]

In a scenario where a state limits its power, a new judicial class can emerge spontaneously and create an unaccountable and untouchable judiciary. The danger of the judicial class becoming dominant over society becomes even greater and more real when it is equipped with privileges and immunities and uses them to make itself self-governing. Privileges, when combined with unaccountability, lead to arbitrariness and abuse. Turkey is the living example of this scenario,[30] although these problems are not specific to Turkey, as other countries experience similar problems. For example, in France, the fear of the "gouvernement des juges" (government of judges) is not irrational. Indeed, who or what can prevent the formation of a government of judges when the executive branch, which is considered to be more powerful than the judiciary, does not limit the judiciary? Who or what can prevent the whole judiciary, which can maintain its independence against the outside forces, from becoming dependent on a segment of the judiciary itself, as happened in Italy? In another example, between 1971 and 1981[31] Turkish judges became dependent on appellate judges. In other words, who can limit the judiciary when the judiciary does not comply with the law and is unaccountable?[32]

"Judges should abide by the law." This is the answer given by judges to the questions stated above. Judges argue that they do no need to be supervised, will comply with the law and are, in fact, accountable. However, this answer is naïve, and carries all the weaknesses of good will. Why? Firstly, it is an incorrect assumption that all judges know the law well. To know the law well, it is necessary to know the facts and to be able to apply the law to these facts accurately. However, judges are often unaware of the facts and the parties must bring the truth before the court. Secondly, the assumption that judges will comply with the law or will correctly apply the law to themselves is philosophically wrong.[33] Given that a person cannot enforce

29 A much more severe version of the internal dependency created by the high-ranking judges in Italy and Spain was experienced in Turkey during the co-optation period, when the Council of Judges and Prosecutors selected the judges serving before the Courts of Courts, and in turn, the judges of Courts of Cassation selected the Council of Judges and Prosecutors' members, between 1971 and 1981. These types of negative experiences during that period constitute one of the main reasons behind the dependence of the judiciary on the executive in Turkey.

30 The Constitutional Court, in its capacity as the Supreme Criminal Tribunal, delivered a majority non-guilty verdict regarding a case with Merit No. 2011/1, involving an accusation that the defendant offered a bribe during a legal proceeding before a court involving a professional chamber which had the status of a public institution on the grounds of irregularity of the evidence submitted. The minority, including the president of the Constitutional Court, delivered a dissenting opinion on the grounds that some Courts of Cassation judges and the president of the professional chamber should have been convicted.

31 Since there are no institutional and strong responses to these questions, the judiciary is restricted by the intervention of the executive in its functions, and this causes the problems we are experiencing today – that is, the solution itself causes new and more fundamental problems.

32 As stated in a 1977 Constitutional Court decision, the fact that the judiciary consists of judges and jurists does not mean that its actions and decisions are and will be lawful.

33 The Constitutional Court's decision dated January 27, 1977, with Merit No. 1976/43 and Decision No. 1977/4: "Indeed, the Supreme Council of Judges comprises members of the Courts of Cassation who are elected by the Courts of Cassation. Nonetheless, the fact that an administrative body comprises high-

rules over him- or herself, another person is required to enforce them; this is what is called accountability. Thirdly, people are self-indulgent, and they often attempt to eliminate the issues that cause discomfort. When people do not obey the rules that they themselves set, the rules automatically cease to exist. Therefore, the rules that people say they will obey are not actually rules but rather just intentions. Lastly, and most importantly, judges apply the rules not by themselves, but by determining the situation arising from conflicts between opposing parties. It is a fundamental proceeding principle that judges cannot make the right decisions without weighing up the disputing opinions of the parties before the court.

For these reasons, the other problem that must be resolved to guarantee the full independence of the judiciary is that of ensuring that the judiciary is acting according to the law and being held accountable while carrying out judicial services.

Service-Production-Oriented Accountability

In democratic societies, accountability is the fundamental tool for proving that every organ using the state power on behalf of a society is fulfilling the reasons for its existence. Judicial power and organs are not immune from accountability. On the contrary, in order for a judiciary, which enjoys many privileges that are attributable to its duties, to deserve full independence, it must first fulfill the basic condition of its legitimacy – that is, serving in accordance with the scope of its duty. Transparency and accountability are essential to illustrate this to the public. Judicial accountability should take precedence over judicial independence. The judiciary must be fully transparent and accountable in all processes and decisions. Otherwise, whether the judiciary is independent or not is of no significance, because its independence has no benefit to society.[34] We must not create an independent judiciary before ensuring its accountability. On the contrary, we must first ensure the judiciary's accountability, and only once this is assured should we focus on making it independent.

Despite some limitations, judges enjoy a wide range of rights, such as privileges, immunities and independence, all of which ensure that judicial bodies perform their services in the best possible way. Therefore, more than any other public authority, the judiciary should be effectively held accountable in its service and in all matters affecting its service. These privileges are granted to the judiciary to enable it to provide the best possible services. The fact that the judiciary serves the supreme purpose of ensuring the rule of law and justice cannot be an excuse for it to not be held accountable. On the contrary, the vital importance of judicial services to society indicates the significance of judicial accountability to that society. Indeed, the importance of judicial services is para-

ranking members of the Courts of Cassation should not result in its decisions being excluded from judicial review: As a matter of fact, administrative decisions and actions taken by the highest and most senior officers of the State are also subject to judicial review, because judicial review has its own sui generis rules. Judicial review should abide by its own rules."

34 Just as a company's general assembly does not authorize a general manager who cannot be held accountable or from whom information cannot be obtained, unaccountable judicial councils, even though they have all kinds of authority, will start to degenerate in time. Society will soon abolish the independence of these councils and make the judiciary dependent on politicians, whom it can at least hold accountable from election to election.

mount compared with other community services.

Therefore, judicial bodies must provide an accurate account of the extent to which they fulfill the tasks assigned to them and must honestly share with the public details of all the factors that have affected their services. The effective accountability of the judiciary as a whole, through both its organs and its elements, is the first and most fundamental step in improving its functioning and providing high-quality services.

When the judiciary's paramount function before society is considered, it might be expected that discussions will have taken place focusing on the production of high-quality judicial services. However, such discussions have been restricted to judges' independence, even though judges constitute only one of the elements of the provision of judicial services.[35] A look at historical developments reveals that the liberation of the judiciary, which was once the most important priority, has been surpassed by the importance of providing quality judicial services. The neglect of judicial services was the reason for the restriction of judicial independence. Despite the increase in confidence provided by the service-oriented reforms in the Netherlands, the politicization in Spain caused by changes in the judicial councils is an exemplary development from which important deductions can be made.[36] Today, the idea of democracy, separation of powers and the independence of the judiciary has developed so much that the notion that the judiciary is the power which will balance and control other powers is settled; it is now necessary to move the 'independence' debate on and to focus on the quality of the service.[37] Society limits judicial independence when the judiciary fails to produce quality services and is not held accountable. Moreover, in such circumstances, it does not see any problem in transferring all of its power to politicians, whom it can change through elections.

35 Whereas the independence of judges is an indispensable element for service production, it is only one of the elements of service quality. The historical developments of judicial independence were focused first on liberating the judiciary from rulers/monarchs; however, today the focus is all about preventing the executive and legislative branches' influence over the judiciary.

36 Kosař, "Beyond Judicial Councils," p. 1580, footnotes 78 and 79ff: "Aida Torres Pérez shows how the selection of judicial members of the General Council of the Judiciary by politicians and the Council's internal practices led to its politicization, which has in turn contributed to undermining public confidence in the Spanish judiciary.
"Elaine Mak explains how the new public management theories of governance transformed the Dutch judiciary institutionally as well as mentally. The Netherlands abandoned the original flat explains how the new public management theories of governance organizational structure for a centralized and more hierarchical management, with the key role of the Council for the Judiciary and the Management Boards. However, the new more "business like" approach to judicial governance, which praises efficiency, effectiveness, and client-oriented mindset, has sometimes collided with the traditional rule of law of values. This in turn led to occasional skirmishes, revolving around claims of autonomy, between judges and the Council for the Judiciary as well as between the Council for the Judiciary and the Ministry of Justice and Security."

37 It is essential to address the following point: disputes are resolved by the involvement of judges, prosecutors and attorneys, each of which play a different role. Attorneys undertake the duty of raising claims and making defenses; thus, the delivery of judicial services is facilitated with the participation and contribution of the attorney. Nonetheless, while attorneys are decisive in determining the quality of the service produced by the judiciary, they are not accountable for the quality of the service they provide other than through their professional judicial associations and their own professional code of conduct. For instance, without determining the service standards, establishing mandatory minimum wage tariffs is not fair, even for a simple contractual relationship. However, in order to produce high-quality judicial services, the professional contributions of attorneys should such in nature that they improve service quality in all respects.

As can be understood at first glance, when society is left with a choice between politicians who are accountable from election to election and judges who are unaccountable throughout their lives, it will, of course, prefer politicians, notwithstanding the fact that they are the least innocent, and choose to make the judiciary dependent on politicians. In Turkey, the Council of Judges and Prosecutors became dependent in 2017 pursuant to the amendments to the law. A similar situation was brought about in Spain, and the recent problems that Poland and Hungary have experienced with the EU are the result of the preferences mentioned above when examined from the perspective of these societies.

Quality and Aspects of Quality in Judicial Service

The duty and the reason for the existence of the judiciary is to provide judicial services to society. As in the production of all goods and services, in the production of judicial services, the service must be at a level of quality that will satisfy its intended recipient. For this reason, the standards that judicial services should meet – in other words, the quality of the service and the elements that determine this quality – are determined by the society that is the recipient and beneficiary of the service, not by the judicial organs and elements themselves.

On the other hand, society should take all necessary measures and provide the required resources to ensure that the service it receives and benefits from is of is of the desired quality. As in other institutions of a state, in education, security, health and similar issues, society itself determines how and to what standard of quality the judiciary can provide services, in proportion to the opportunities and resources it is provided with. A society's ability to naturally receive judicial services in accordance with its expectations depends on that society allocating all kinds of necessary material and moral opportunities and resources.

Together with the capacity of the judiciary to provide services, the quality of its service is limited by the means provided to it by society. The judiciary can produce services at a limited level proportional to the opportunities and resources made available. When sufficient means and resources are provided, the success of the judiciary in fulfilling its function can be determined by evaluating whether the services it provides are of the quality desired by society. In order to make such an evaluation, a preliminary requirement is to define the level of quality in judicial services that will satisfy society, and to determine the elements, criteria and benchmarks that will enable measurement and evaluation.

There are a wide range of international agreements, international and national documents, publications and debates on the fundamental functions of the judiciary of ensuring the rule of law and belief in justice and protecting fundamental rights and freedoms, and on the deontological characteristics of the judicial elements and organs that fulfill these functions. These sources focus on the independence of the judicial organs, elements and ethical rules. On the other hand, there are no such deep sources for the factors of the measurement and evaluation criteria determining the quality of judicial services.

Public satisfaction surveys can detect some aspects of the quality of judicial services based on perceptions. Performance evaluation criteria frequently used in the career advancement of judicial officials, together with statistical data on the performance of judicial service units, can also give an idea about some aspects of the quality of the service. In fact, the benefit of society lies in the measurement and evaluation of judicial services as a whole. Just as any team consisting of the best players in the world cannot achieve good results without a well-functioning organization behind them, it is clear that the judiciary, which does not have a well-functioning organization behind it, cannot provide good service, even if its organs and elements are the best in the world. Measuring and evaluating the quality of judicial services is therefore more important than measuring and evaluating the providers of judicial services – the judges and prosecutors.

However, the elements that determine the quality and quality desired by society in judicial services have not yet been determined; reform studies have been shaped according to the preferences, demands and assumptions of judicial bodies and elements themselves. Naturally, this did not achieve the desired success: society has not been able to attain judicial services at the level of quality it desires. As a matter of fact, in Turkey, where three judicial reform strategy documents have been prepared in the past 11 years, the need to apply the suggestions of the business world to strengthen the economy arose at the end of 2020.

The report titled Quality Demand and Quality Elements in Judicial Services[38] adopted and published by TÜSİAD (the Turkish Industry and Business Association) in 2014 was an important step in filling the gap in this field. The reason behind this was that TÜSİAD members and the board of directors, representing a large part of Turkey's business world, have adopted the quality elements specified in this document on behalf of society and demanded that they be realized by publishing them as a report. The report, introduced by TÜSİAD, TÜRKONFED and the Better Justice Association at jointly organized events, has also been widely accepted by the Anatolian business world and has become a social useful document.

In this document, which I drafted as a result of two years of research, and which I am pleased to have developed and finalized with the contributions of TÜSİAD and TÜRKONFED members, a brief description of the quality and the determinants of quality in judicial services is provided.

It is necessary to evaluate the quality of judicial services in accordance with the place, importance and ultimate purpose of the judicial power and function in the state. When separate and independent from other state powers, the judiciary strengthens democracy and state administration, improves balance and harmony between state powers, and ensures that the state is governed in accordance with the law. It strengthens the sense of justice by ensuring the rule of law and legal security in the country; and by protecting and developing fundamental rights and freedoms. While

38 http://tusiad.org/tr/yayinlar/raporlar/item/8243-yargi-hizmetlerinde-kalite-yargi-hizmetlerinde-kalite-talebi-ve-kalite-unsurlari

Saim Dursun, “Neden” (Why), 90 x 150cm, oil on canvas, spatula technique, 2013

ensuring the positive development of all of the dynamics of society, on the other hand, it enhances peace and welfare by strengthening the harmony, reconciliation, cooperation and solidarity between state institutions, society and individuals, and ultimately increases the country's international competitiveness.

All countries that have accepted international agreements and the principle of democratic governance regarding fundamental rights and freedoms are obliged to determine the compliance of their judicial organs and elements with generally accepted universal values and principles as a crucial element of the quality of judicial services.

The first condition for this is to ensure the equality of the disputing parties before the judiciary, and thus to ensure equal access to justice in the first place. The main duty of the judicial organization should be to achieve justice in all conscience and without compromise. Vesting this duty in knowledgeable, experienced and competent judicial elements, and judging based on merit who among them is best placed to serve, is the basic quality element of the service providers.

The output, in terms of the service provided, must also be of good quality. For this to be the case, the first necessary elements of quality are that material fact is revealed in legal proceedings and that decisions are in compliance with material fact. Other important quality factors are that the conditions of and processes for access to the service are easy to understand and to negotiate, and that the service can be obtained within a reasonable time, at a reasonable speed and cost.

The main duty of the judiciary is to help the parties in dispute to find the truth, to eliminate their differences and to establish reconciliation and cooperation between them. The judiciary should provide services in line with the needs of society, and its decisions should be instructive and predictable. Finally, establishing effective communication between the judiciary and society also emerges as an important aspect of service quality that directly affects all other factors.

The quality elements outlined here should be taken as a starting point. It is possible to further increase, elaborate on and improve quality elements in judicial services. In doing so, society's needs, preferences and priorities should be determinative.

While organizing the judiciary, establishing service units, and determining the professions, their relations with each other and their functioning, producing quality judicial services should be regarded as the most important goal.

For this purpose, and taking into account the Turkish judiciary and its problems and aims, this work should begin with the definition of quality and elements of quality in judicial services. We have compiled suggestions based on the realities of Turkey, and we propose an integrated judicial structure suitable for producing quality services and a complete judicial model.

A Structure Fit to Provide a High-Quality Service

The reason for the judiciary's existence is to serve society, and the judiciary is obliged to perform this duty in the

best possible way. It is the right of the people to expect the judiciary to serve them well.[39] The fact that the judiciary's duty is official, public, sacred and vital does not relieve the judiciary from meeting its obligation to provide quality service to society. The judiciary cannot provide services at the discretion of its organs and elements, or at their "sweet will." On the contrary, these qualities of the judiciary's duty are what oblige it to provide a high-quality service.

As explained in detail above, the judiciary comprises judges, prosecutors and attorneys, each of which is considered to be a founding element. These professions produce judicial services by working together.[40] On the other hand, in the traditional sense, the main purpose and function of judicial councils is to ensure the independence of judges, and sometimes prosecutors. The assumption is that when judges are independent, the quality of judicial services will improve and the judiciary will serve almost perfectly. However, the assumption that independence will result in quality service is an illusion.[41] It is erroneous to think that improving only one out of three factors will improve the other two as well. In reality, when one element fails, the entire judicial service is disrupted.

A judge cannot serve without a conflict comprising a claim and a defense. According to principles of adversarial proceedings, without a conflict, a judge cannot make the right decision. Dispute resolution before the court is a delicate activity, in which opposing parties struggle to reveal the material truth by each completing the other's deficiencies. The parties inform a judge about the facts and the law, and in the end, a perfect resolution is reached. A judge's decision comprises a summary of the parties' claims and the resolution reached. Unless the parties perform a great job of thoroughly explaining their claims, the judge alone cannot deliver high-quality judgments or make accurate decisions.[42] Although the judge is the one who delivers a ruling – in other words, the one who resolves a dispute – this does not make the judge the sole person providing judicial services. In this regard, it is not possible to ensure high-quality judicial services when only judges and prosecutors are regulated and attorneys are not.

39 In Germany, "service courts" have been established to resolve complaints about judicial services. In Scotland, the quality elements of judicial services are determined, and the satisfaction of the recipients is examined. In the UK and the USA, regular reports are published so that the public can closely follow judicial service levels. In Scotland and the UK, in addition to attorneys taking part in the judicial councils that are involved in judicial appointment procedures, non-jurist members are also represented and comprise the majority. The International Consortium for Court Excellence undertakes valuable studies on the subject of judicial excellence; see International Framework for Court Excellence, 3rd edition ("International Consortium for Court Excellence", 2020), www.courtexcellence.com/__data/assets/pdf_file/0015/53124/The-International-Framework-3E-2020-V2.pdf.

40 In this way, the judiciary will ensure the rule of law, strengthen confidence in justice, improve consensus and cooperation within society, and contribute to an increase in welfare.

41 Kosař, "Beyond Judicial Councils," p.1567; "A few years ago, judicial councils composed primarily of judges were viewed as a panacea for virtually all problems of court administration in Europe. The burgeoning literature on judicial councils has shown that this is not necessarily the case."

42 It is necessary to clarify that attorneys are the founding elements of the judiciary and develop their duties and responsibilities accordingly, rather than considering them "non-jurists" who mobilize the judiciary on behalf of those they defend.

Accordingly, when thinking about the judiciary, it is a prerequisite to include all those involved in judicial services[43] – namely, judges, prosecutors and attorneys – all of whose functions are indispensable and equally important to the production of judicial services.[44] These three groups are the founding elements of the judiciary. And yet, when speaking of judicial councils, the term "judiciary" is translated from English to Turkish as "yargı" which means "judges."[45] Moreover, the term "Judicial Council" is translated from English to Turkish as "Yargı Kurulu." As a result, the debate over the notion of judicial councils is focused on judges' (and prosecutors') councils.[46] Although judges and prosecutors are only two of the three elements of the judiciary, with some exceptions, attorneys are precluded from the scope of judicial councils.

The Council of Judges and Prosecutors, which is a Turkish judicial body, is designed to "include judges and prosecutors." Attorneys, on the other hand, are excluded, although they are considered one of the founding elements of the judiciary. The Turkish Constitution regulates bar associations as any professional organization in the same class as other professional groups, except for the judiciary.[47] It is not proper and tactful to exclude attorneys from judicial councils. Nevertheless, the fact that attorneys have a different basis for their professional independence than judges and prosecutors and that they represent and defend a party rather than being impartial as judges and prosecutors are does not justify their exclusion from the scope of judicial councils.[48] Hence, attorneys should enjoy the same rights and have a professional body as do judges and prosecutors.[49] In essence, the judicial

43 Judicial officers, executors and enforcement officers also have critical roles in the production of judicial services. Mediators, conciliators and experts who are in some senses given the role of deputy judges (although this is a crippled regulation) are also assigned important duties in the resolution of disputes and make important contributions to the provision of judicial services. The reason that we refer only to judges, prosecutors and attorneys in this text is for the purposes of explaining the subject more easily. We hope that the herein-mentioned professional groups will also be understood to be included in our scope.

44 The "judge" is a key concept in Islamic and Ottoman law. The word was originally broad enough to include all public officials who perform the three basic functions of the state: legislative, executive and judiciary. Later, the meaning was narrowed and reduced to the classical sense of a judge. See "Osmanlı Devleti'nde Eğitim, Hukuk ve Modernleşme" [Education, Law and Modernization in the Ottoman Empire] (Ejder Okumuş, Ahmet Cihan, Mustafa Avcı, Ozgu Yayınları, 2006), p. 122.

45 In most countries, prosecutors are treated as judges; therefore, the term also includes prosecutors, but it does not include lawyers.

46 In this regard, underlying all the opinions presented in the international arena, and also the formation of judicial councils in some countries, there is a confusion regarding the terms and notions, which results in a lack of perspective.

47 A strange fact about bar associations is that even though they are professional associations of attorneys, they are perceived as more akin to chambers of commerce and stock exchanges. This has become clearer during discussions concerning the amendments to the Attorneyship Law in 2020.

48 Indeed, this inaccurate regulation has resulted in leaving attorneys under the guardianship of the Ministry of Justice, even though they are independent of the ministry in matters of personal benefits such as admission to the profession, discipline and criminal investigation.

49 Undoubtedly, attorneys, who should be the most independent among the judicial elements, should also be personally and institutionally accountable. However, the institution ensuring their accountability should not be the Ministry of Justice (i.e. the executive) but rather society, and an independent institution should regulate attorneys' services on behalf of society. Furthermore, the scope of accountability should be limited by the law and should not be detrimental to the independence of the profession. The currently envisaged guardianship of the Ministry of Justice is against the ideal of the independence of attorneys. The measures that are taken to prevent them from being accused unjustly and ensure that the preparing of indictments is subject to the approval of the high criminal court are not sufficient to prevent the restriction of the independence of attorneys by harassing them through the permission of investigation.

professions should have their own independent professional associations, and only the members of that profession should be involved in these organizations. Judicial professional associations should be responsible for developing their professions to best fulfill their professional responsibilities,[50] and for this purpose, they must be fully independent. Clearly determining the roles and responsibilities of these professions and ensuring that they become independent in managing and developing themselves are the main conditions for establishing and developing positive cooperation between them.

In conclusion, the confusion caused by the meanings of terms will inevitably have an impact at least on the basis on which people form opinions, such as the idea that judicial councils are composed only of judges. The same confusion applies to the exclusion of attorneys, who are one of the founding elements of the judiciary, from judicial councils, because this exclusion subjects attorneys to the guardianship of the Ministry of Justice. Specifically, we believe that prejudices resulting from the confusion of terms contributes to the narrow and flawed design of judicial councils and to solutions that are shallow and inaccurate.[51]

The fact that the design of the judicial councils is not considered a focus in the production of high-quality services can be expected to have an impact on the current situation. The examples of Ireland and the Netherlands illustrate the importance of a service-production-oriented approach in gaining public confidence.[52] As explained in the previous example from Turkey, the judiciary, rather than adding value to society, has become a burden, yet it has continued to benefit from privileges. This has attracted reactions that, in turn, have resulted in a judiciary and a judicial council that have been brought under control. After overcoming many challenges and difficulties, the judiciary became independent from monarchs, but when good-quality service is not produced, it loses its independence and falls under the control of the politicians who have taken the monarchs' place.

Judicial deterioration can easily be attributed to judicial councils not being able to cover all the elements that produce judicial services, especially attorneys.[53] To halt and re-

50 However, society's expectations of them should be clarified, and service standards should be raised. Regarding this point, there is a need for a regulatory institution that wil undertake the function of clarifying expectations and setting and improving standards, and fulfill this function in line with the needs and preferences of society.

51 Turkey is a good example of this confusion. For example, the provincial bar associations, the Union of Turkish Bar Associations and ultimately the Ministry of Justice decide on the admission of law graduates. Although the Council of Judges and Prosecutors has been placed between the judges and the executive in order for judges to be independent from the executive, the Ministry of Justice conducts the judgeship exams, and ministry officials decide who will be admitted to the judgeship.

52 Urbániková and Šipulová, "Failed Expectations," p. 2106: "Finally, the Netherlands and Ireland provide optimistic insights regarding the impact on the effectiveness of the judiciary. It seems that in both countries, the judicial council (the Netherlands) and the Court Service (Ireland) were established primarily to improve the management of the courts, and they were not expected to become the guarantors of judicial independence, also because in both countries the judiciary has traditionally enjoyed a high level of independence. Both O'Brien and Mak argue that this promise has been fulfilled. Regarding Ireland, O'Brien argues that 'the creation of the Courts Service has allowed the judiciary to improve the public image of the courts through improved facilities.' Mak concludes that 'judicial self-government in the Netherlands can be assessed as functioning adequately' on the basis of a combination of rule of law values and new public management values (effectiveness, efficiency, and a client-oriented system), and that there is a high level of trust in the Dutch judiciary, which steadily ranks at around 70%."

53 The reason for this is that the focus of judicial councils is not on the

verse this deterioration, the most effective and easy-to-operate solution is to establish regulatory bodies tasked with organizing judicial professions that can produce good-quality services, and for these bodies to cover all the founding elements of judicial services.[54]

Issues in Designing Judicial Councils

Judicial councils are developed as a buffer zone between the executive branch, the politicians and the judges and can also be used as a shortcut by the executive to exercise influence over the judiciary, as seen in the examples of Spain, Hungary, Romania, Turkey and Slovakia. This is the weakest link in the judicial councils' chain: leaders who can form a majority in favor of changing the Constitution can take control of the judiciary with a constitutional or a legislative coup in one move, especially when they have justifiable reasons with which to convince society. To prevent this danger, it is necessary to establish a system that is resistant to changes in the political context and in wider society, but also capable of adapting to such change. Italy's High Council of the Judiciary (Consiglio superior della magistrature, or CSM), regulated under the 1948 Constitution, is a good example of this. However, lessons must be learned from the Italian experience of judicial service production, internal dependencies and disruptions in accountability.

Society in Control

The judiciary can restrain the executive, which holds the majority of the state power; can rule in decisions that everyone has to comply with; consists of people who cannot be removed from the profession once appointed; is untouchable and unaccountable; and can be a frightening force, as can be understood from this short description.[55] It is not necessary to weaken or restrict this power; however, it is important to prevent it from becoming too intimidating. Since the judiciary takes its power from society, in order to control it, the source of judicial power should lie in the hands of its origins – that is, with society. Accordingly, the judiciary should be under the control of society, not a segment or part of society or state forces.[56]

Allowing the executive to intervene in judicial services or transferring the reins of the judiciary into the hands of the executive, which it is tasked with restraining, is equivalent to abandoning the power to control the executive. Assigning to the executive a duty to restrain the judiciary is clearly

production of high-quality judicial services for society, but on the independence from the executive and other powers of those who use judicial power.

54 Since the judicial councils are not designed to focus on the production of quality service, the lawyers who mobilize the service production and supervise the quality are excluded, and the representatives of the society, who are the final beneficiaries of the service, are not included in many cases, meaning the judicial council structure is inadequate and flawed in almost every country. The fact that the judiciary fails to create added value for the society it is in and becomes a cost, and also benefits from privileges, draws reactions. It causes the perception that it will be necessary and correct to be taken under control. In a sense, the judicial power that became independent of the king over time, after a great deal of struggle, has now fallen under the control of the executive powers and politicians who have replaced the king.

55 When the state's judicial power is concentrated along with the executive power in one hand, an enormous power that is much more frightening and uncontrollable emerges and holds the people captive. Acemoğlu and Robinson compare this power to the Leviathan in their book "The Narrow Corridor".

56 The method of controlling the judiciary, whatever this method may be, should not weaken the control and accountability of other state powers (i.e. the executive and the legislature), but rather should strengthen them.

against the purpose of the judiciary's existence, considering that the judiciary's purpose is to control and limit the executive. Transferring the duty to limit the judiciary to the legislature is also erroneous, because the legislature comprises politicians. In addition, the majority of members of parliament might represent the executive. Politicians' greatest desire is to be accountable to voters in terms of winning or losing elections, rather than to be accountable to the law or the judiciary. Even in the most developed countries, politicians have the potential to do whatever is necessary to win an election, starting with illegal election financing.

To sum up, the legislative and executive powers comprise representatives elected by society and are assigned duties that are remote from judicial matters. Therefore, the idea that the executive and the legislature should have a say and influence the control of the judiciary is wrong. Accordingly, it is essential to find a different mechanism through which society is able to make the judiciary accountable than that of turning to and utilizing politicians – that is, the legislature and executive who are appointed via elections. The only way to achieve this is to establish new institutions beyond the legislature and the executive, representing the whole of society and preventing a coalition from asserting influence.[57] We cannot imagine any other better method that is independent of the legislature and the executive, is effective in its function and has democratic legitimacy.

Inclusion of Stakeholders

Regulatory bodies should include all stakeholders in the subject that is being regulated, including all those affected by the regulation. Regulatory bodies need to act in a way that on the one hand, creates a positive impact for stakeholders who are indirectly affected in the process and on the other, answers the needs of service providers and establishes service standards. Judicial services concern the whole of society whether or not individuals directly receive the service, by creating an environment where legal security and trust in justice are present. As a result, the institution regulating judicial services should represent not just the service providers but also the whole of society. There may be differences in terms of coverage and representation to the extent that this is justified by the purpose of the relevant regulation; however, no individual or group should exercise dominance over the regulatory institution and its activities.

The stakeholders in judicial services can be classified into three categories: (i) service providers, (ii) service recipients, and (iii) those affected by the service. "Service providers" comprise judges (decision – synthesis), prosecutors (claim – thesis), and attorneys (claim and defense – thesis and antithesis) as first-degree-responsible people, and judicial officers, mediators, conciliators, notaries and the like, and their public professional associations, as second-degree-responsible people. This circle can be expanded by including law enforcement officers, inspectors and the like. "Service re-

57 Limiting the term of office of representatives and other similar measures should be taken, to avoid forming influence within the judiciary. Various methods can be employed in this regard, such as, among others, having different segments of society elect members in certain periods and for a limited time; making the nomination and appointments processes transparent and open to judicial review; and ensuring the compatibility with the requirements of candidates' qualifications.

cipients" potentially include the whole of society. A society's exposure to judicial services may be adopted as a criterion. "Those affected by the service" comprise society, and social institutions and associations. This can include all constitutional institutions, elected representatives, the legislature, the executive, autonomous institutions, universities and the like; public professional associations formed by the members of professions other than judicial professions; institutions reporting on or related to the executive, autonomous institutions, ministries and other regulatory councils; and non-governmental organizations, foundations, associations, federations and confederations.

A Service-Oriented Regulatory Structure

The democratic legitimacy of the judiciary's independence and privileges is necessary and indispensable for judicial services. As we mentioned in detail at the beginning of the text, to benefit from independence and privileges, the judiciary must produce high-quality services that will satisfy its addressees. For this reason, it is imperative that judgeship, prosecutorship and attorneyship, which make up the judiciary, must be structured in such a way as to allow each profession to produce high-quality services. The structure, its organs and its elements should work efficiently, transparently, accountably and independently.

To achieve this, it is essential to establish a regulatory institution that will ensure the production of high-quality services by regulating the judicial bodies and their elements. Is it not strange that a regulatory body has not been established in the judiciary to ensure the high quality of judicial services and regulate vital aspects of the services to be provided, while regulatory councils are established on matters of much lesser importance, scale and sensitivity than judicial services, such as energy, tobacco and the like?[58] On the contrary, bringing society together through high-quality judicial services can only be possible by establishing an institution that regulates the production of high-quality services, not an institution that regulates the benefits of judges[59].

Imagine a regulatory body that ensures the judiciary provides a service that answers the society's needs, determines the needs, priorities, preferences and quality standards of the service, and leads service provider institutions and professions in this direction. This kind of regulatory body must be located at the center and foundation of the judicial structure. Such an institution would improve other deontological aspects, such as efficiency, transparency, accountability and independence, as well as ensuring the production of high-quality services. Additionally, it would successfully realize and protect the independence, transparency and accountability of the judiciary, from the inside out.

58 The only explanation for this is that the judicial sector has not been viewed as a services sector and this main reason for the existence of the judiciary has not been brought up in discussions.

59 To provide an example for this: it is necessary to act in accordance with Energy Market Regulatory Authority ("EMRA") decisions in many contexts, such as obtaining a license from EMRA in order to enter the energy market, obtaining permission for a facility to be established and energy to be produced according to the rules set by EMRA before providing services in this field, and also transferring the electrical energy generated to the transmission line at a certain frequency and according to the legislation regulated by EMRA. The purpose in establishing EMRA is to provide energy security, continuity and quality in Turkey.

Therefore, it is crucial to establish a competent institutional structure that can ensure all parts of the judiciary are producing high-quality services individually and collectively, determine the quality elements, ensure positive cooperation[60] between judicial elements for this purpose, and monitor and improve their performance.

When we consider our primary aim – of ensuring high-quality service production – it becomes clear that a council for judges is not suited to achieving this goal. What is necessary is an institution that regulates the service and all the elements providing the service, rather than a council comprising only one of the service elements. Only with the guidance provided by such a regulatory institution can the judiciary and legal professions maintain their independence and improve themselves while producing high-quality services.

Designing the institution assigned with this duty of regulating high-quality service production such that it operates effectively is a prerequisite. The efficiency of the structures at the center of large organizations is far more important than the efficiency of the elements at these organizations' periphery. This is because the inefficiency of the center causes the inefficiency of the whole organization, while the impact of inefficiency of a unit at the periphery remains small and limited.

The organization's organs, procedures, number of members and members' qualifications should be determined with due consideration of the requirements of judicial functions to ensure that the judiciary can best fulfill its duties. To maximize productivity and cooperation by bringing human resources together and assigning responsibilities appropriate to their competencies, a judicial organization should be designed in accordance with simple organizational principles.

A Transparent and Accountable Structure

Transparency and accountability are the fundamental conditions for building confidence in productive organizations and their products, especially in the production of services. An open and transparent judicial system producing judicial services is a prerequisite for establishing and strengthening society's trust in justice, and this is paramount for the judiciary's legitimacy.[61]

The judiciary is a service organization that is obliged to work efficiently and provide good, high-quality services. There is no reason why the judiciary should compromise the quality of its services. If the judiciary does not provide judicial services or if the quality of its services is not appropriate and satisfactory, then it must account for such shortfalls by explaining the reasons for them to the public. The judiciary

60 When the production of high-quality services is determined as the main objective, it will easily be possible to bring the judicial system to an integrated and lean structure and to organize all players in the system with a focus on producing high-quality services. Thus, harmonious cooperation between the judges, prosecutors and attorneys who are the service producers in this context will be realized easily and automatically.

61 Urbániková and Šipulová, "Failed Expectations," p. 2111, footnote 27, with reference to European Network of Councils for the Judiciary, Public Confidence and the Image of Justice (ENCJ, 2017–2018), https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/Reports/ENCJ_Report_Public_Confidence_2017_2018%20adopted_%20GA_1_June_2018.pdf, s. 2117: "Public confidence in the judiciary is determined by its performance, which can include for instance efficiency, access, effectiveness, competence, equality, or fairness. Again, we see these theories as complementary rather than mutually exclusive."

should inform the public about issues causing disruption to its service, whether these are caused by the judiciary itself or by others. If its services are disrupted for reasons outside of its own control, then judicial accountability becomes considerably more important. In this way, society will be able to learn the causes, both within and outside the judiciary, of disruption to judicial services and eliminate them. It is natural that society will quickly remove disruptions when it knows of their existence and the reasons for their existence. Consequently, accountability is also essential in order for the judiciary to protect itself and to be respected.

Today, even in organizations in the private sector, every stage in the production of goods or services has become transparent, ensuring that the consumer has absolute control (i.e. the service producer is fully accountable to the recipients of the service). Since the prerequisite of accountability is transparency, the judiciary, whose services are of vital importance to all segments of society, cannot be free from the need for transparency and accountability. On the contrary, the judiciary must be more transparent and accountable in all matters and at all stages than any other institution.

Therefore, the desired structure of the institutions must have a high degree of transparency and accountability, at the same time as ensuring a high degree of transparency and accountability for judicial services and their elements. Thereby, the judiciary will be fully transparent, producing high-quality services, sharing details of every factor influencing its services with society and answering any questions. The judiciary can demonstrate that it deserves full independence and the right to self-governance first and foremost by adopting the rule of law and exercising a high level of accountability among its own organs and elements.

As explained above, exercising control over the judiciary may be justified in many different ways. To remove these justifications, it is essential to ensure a judiciary that is efficient, transparent and accountable. The judiciary's independence can be realized and defended if the herein-mentioned three conditions are met. In other words, the judiciary deserves to be independent only if it works efficiently, transparently and accountably. Thus, the desired judicial structure should maintain, protect and foster efficient, transparent and accountable work, and on this basis, the judiciary would deserve its independence. Independence is not given, it is earned; if certain privileges are given to the judiciary then these must be restored.

Prevalent Institutional and Individual Independence

Ensuring the rule of law requires a judiciary that can fulfill its functions spontaneously and without requiring permission or approval from the executive or any other power. For this reason, the judiciary must be fully independent. For the judiciary to be fully independent, its structure, organs and elements must be independent in all respects.[62] The

62 Independence should be understood as having all the necessary authorities and powers to act independently, not just as the ability to exercise authority without interference or suggestion from others. For example, if a judge does not have enough knowledge about the dispute before him/her, due to this ignorance he/she becomes dependent on someone else who knows the subject better. When a judge is dependent on judicial services that the parties provide in order to provide judicial services by adjudicating the dispute before him/her, this

independence of the judiciary is not an objective by itself: the individual and institutional independence of the service providers is an essential condition for the quality of judicial services.[63] It is not possible for a person who is not independent to be impartial, and it is not possible for a person who is unable to think freely to find the truth and ensure improvement.

The executive and the legislature are not the only powers that can restrict judicial independence. Substantive, financial and other legal regulations can prevent a judiciary from performing its independent function. Guardianship powers of other institutions, with or without a legal basis, should also be included.[64]

Today, many countries are reluctant to give full independence to the judiciary. This may be because, to use Turkey as an example, the power groups who have succeeded in forming the judicial power from among their dependents have come very close to carrying out a judicial government coup. The struggle between the executive and the judiciary is sometimes a result of written regulations and at other times due to other forms of unwritten practices. However, the reasons are not greatly different between the former Eastern bloc countries striving for Western-style democracy; Japan, where the advancement of liberal judges is restricted; or Germany and other Western countries. The parallel state structure of FETO, the Fethullah Gulen Terrorist Organization, which resulted in the July 15 coup attempt in Turkey in 2016, showed that an unofficial guardianship can be formed in addition to official guardianship forces. In Slovakia, for instance, some judges seized the judiciary from within and made it dependent on them.[65]

The institutional independence of the judiciary is more important than and comes before the personal independence of the judicial elements. Without institutional independence, the personal independence of organs and elements cannot be guaranteed, and thus cannot be sustained. As Turkish and international examples illustrate, the first thing that people holding power want to do is to convert judges, prosecutors and even attorneys into dependent figures, so that the judiciary as an institution becomes dependent.[66] The same powers

makes him/her dependent. A judge who is unable to legally overcome the economic difficulties he/she is having becomes economically dependent, even though at first glance, he/she might be perceived as independent.

63 However, for the judiciary to be fully independent, it must meet the herein-mentioned quality standards so that it can deserve to be independent.

64 For example, the pre-authorization investigation of crimes allegedly committed by public officials makes the use of the judicial function against the public officials completely dependent on the administration.

65 David Kosař, "Beyond Judicial Councils," p. 1580: "Samuel Spáč, Katarína Šipulová, and Marína Urbániková provide a more skeptical picture about the Slovak judicial self-governance as they conclude that, with the help of politicians, the Judicial Council of the Slovak Republic was hijacked by judges who used their powers to capture the judiciary from inside."

66 Indeed, in Spain, 20 of the 21 members of the General Council of the Judiciary, which is authorized in many areas, are elected by the senate and the council of representatives, provided that a majority of two-thirds is established. This situation has attracted the criticism that the judiciary is dependent on politicians. As a result of this dependency, the required two-thirds majority could not be achieved after the 2019 elections and the new General Council of the Judiciary could not be elected. Therefore, the term of office of the current General Council of the Judiciary has expired, yet it continues to take decisions on important issues such as appointment, training and career advancement of judges. This situation in Spain is considered the result of the politicization of the judiciary and defined as

that want to control the judiciary can use judicial councils, which are established to ensure the independence of the judiciary, to cultivate dependence by making judges dependent. Hungary can be given as an example in this regard; as a matter of fact, in the 2018 elections the Fidesz Party received 44.87% of the votes across the country and was granted 133 of the 199 seats in the parliament. Considering that a constitutional amendment in Hungary requires a two-thirds majority vote in the parliament, it is not difficult to guess that the government will endure no difficulty in getting the desired change through the parliament. As seen from the Turkish, Polish[67] and Hungarian[68] examples, in cases where a political party blurs the line between the executive and legislative branches by forming a majority government in the parliament, it can acquire the power to amend the Constitution, and to create a dependent judiciary by making the judicial councils dependent. In these situations, it may not even be possible to preserve the independence of the judiciary with Constitution.

Therefore, the independence of the judiciary must be realized across all judicial institutions, organs and elements. In ensuring judicial independence, judicial councils should not be like a Maginot Line which can be captured or circumvented. Independence should not be specific to a single body; all institutions, service units and their elements must be independent on their own. Independence should

an "institutional anomaly" (European Commission, Rule of Law Report, country chapter on the rule of law situation in Spain, p.2–3).

67 The ruling Law and Justice Party (PiS) in Poland has established a Disciplinary Committee within the Supreme Court (SAD), whose members are appointed by the president from among the judges proposed by the Polish national court register (KRS), according to a law adopted in 2017. Within this framework, judges and prosecutors may be subjected to non-judicial punishment if they criticize the judicial system or decisions regarding the appointment of judges.

68 In Hungary, the National Office for the Judiciary was established in 2011. The reason behind this was explained as follows: the National Judiciary Council, which was responsible for judicial service production, comprised judges elected by their colleagues and had a say in the functioning of the judiciary, did not provide effective judicial services. The majority of the powers regarding the administration of judicial services within the country have been transferred to the president of the National Office for the Judiciary. In the current order, the President of National Office for the Judiciary is elected by a two-thirds majority of votes in the parliament and its duties include overseeing the budget of judicial services, adopting regulations regarding judicial services and taking part in appointing judges. The National Judicial Council, which consists of representatives of judges, performs mainly advisory duties. Even though it is claimed that the National Judiciary Council can supervise the president of the National Office for the Judiciary, international reports clearly illustrate that in practice the National Judiciary Council encounters some difficulties in carrying out effective control over the actions of the president of the National Office due to structural limitations (European Commission, Rule of Law Report, country chapter on the rule of law situation in Hungary, SWD 2020 316 final) For instance, a new Hungarian regulation that reduced judges' retirement age from 70 to 62 resulted in the forced early retirement of hundreds of senior judges even though later this law was repealed on the grounds that it violated the Constitution. The European Commission brought a suit against Hungary before the Court of Justice of the EU, on the grounds that the herein-mentioned amendment violated the principle of proportionality and equal treatment and Council Directive 2000/78/EC and caused age discrimination due to the age difference between the judges (European Commission v. Hungary Case No. C-286/12). In addition, the president of the Supreme Court of Hungary, Andras Baka, who was directly affected by the regulation, filed a lawsuit against Hungary before the European Court of Human Rights, which found that Baka's rights to a fair trial and freedom of expression had been violated (Baka v. Hungary Application No. 20261/12). Although this regulation, which has been subject to much criticism in the international community, was annulled by the Constitutional Court of Hungary on the grounds of unconstitutionality, judges who had been subjected to forced retirement were not reinstated. This was interpreted as a move by the government against the judiciary, as the executive had managed to dismiss judges, including judges of the high courts, who did not share its opinions (G. Halmai, "The Early Retirement Age of the Hungarian Judges," in F. Nicola and B. Davies (eds.), EU Law Stories: Contextual and Critical Histories of European Jurisprudence (Cambridge: Cambridge University Press, 2017), pp. 471–488.

be granted not only to the council at the top of the judicial organization, but to every service unit, professional organization, body and individual found within the judicial organization; and thus, independence must be present throughout the entire judicial system. Each element of the judiciary – legal professions, service units, courts, judges, prosecutors and attorneys – should be independent both separately and individually and collectively as a whole. Each of the organs and elements of the judiciary must be able to defend the institutional and personal independence of the judiciary.

Independence of Functions

The fundamental reason for granting independence to the judicial organs and elements is to enable the judiciary to function independently.[69] The most important aspect of judicial independence is functional independence. The meaning of this is that the judiciary can act and function autonomously in matters that fall within the scope of its mandate, without obtaining permission or approval.[70]

Assuming that the judiciary is functioning independently, the disruptions in this regard can easily be overlooked. Acquiring authorization prior to starting an investigation into crimes allegedly committed by judges, prosecutors and attorneys, who are primarily members of the judiciary, restricts the functional independence of the judiciary. During this process of acquiring authorization, administrative authorities use judicial functions for the administrative investigations they carry out. Judicial authorities also transfer their judicial powers to administrative authorities, relying on what has been achieved in administrative investigations during the proceedings. As a result, the principles of equality and the rule of law fail in terms of public officials; moreover, the functioning of the judiciary, even with disruptions, is delayed as a result of the time taken up by the processes of administrative investigation and authorization.

In addition, the envisaged conditions and procedures for pre-authorization may result in de facto immunities, impunities and extortion of judicial powers that do not conform with the rule of law. Clearly, the fact that senior public officials have the authority to grant investigation permissions regarding crimes allegedly committed by their subordinates may prevent investigations from commencing, as in such cases senior administrative officials may not easily give permission. What will happen if those conducting administra-

69 The structural, financial and institutional independence bestowed on the judiciary and individual independence bestowed on its elements by society is only beneficial to society when the judiciary functions independently.

70 "Acting autonomously" means that citizens are not forced by the judicial authorities to file lawsuits or bring disputes before the court. Acting autonomously means that the judiciary does not have to acquire permission from the administrative authorities to try a person who needs to be tried, and that instead, when a crime is committed the judiciary can try the accused ipso facto. In this respect, Law No. 4483 on the prosecution of public officials and Article 129 (last paragraph) of the Turkish Constitution, which sets the legal foundation of said law, restrict the functional independence of the judiciary. Additionally, the advance on costs regulation in civil cases constitutes a direct violation by the judicial authorities of the people's right to be heard. With this regulation, judicial authorities are almost saying that "you have to take steps to end the dispute you brought before me." The judicial authorities' right to remove case files from proceedings if parties fail to complete certain procedural actions constitutes another intervention of a similar nature, but with an additional punitive aspect. Lastly, the courts desire to "close cases" brought before them directly interferes with citizens' right to the peaceful enjoyment of their possessions.

tive investigations exclude some of those responsible?[71] For instance, a senior public official may have benefited from a crime or given orders to commit a crime, and in doing so, may have been involved in the commissioning of a crime. It is not difficult to imagine that senior public officials will be reluctant to give an investigation permission out of an instinct to protect their colleagues who have been accused of committing a crime.[72]

The Internal Dependency Issue

As the Italian and Turkish experiences illustrate, the judiciary can become dependent because of internal factors as well as external factors. Leaving a judiciary that has become dependent as a result of internal factors on its own with its powers, privileges and immunities does not make it independent. On the contrary, this decision leaves the judiciary adrift and hands over this important power to those who created the internal dependencies in the first place. This so-called independence is, in fact, a transferral of the judicial powers to power groups.

By allowing cassation and appellate court judges to evaluate and grade the performance and judgments of court of first instance judges, the latter then become dependent on the former. It is a fact of administrative science that those who have authority over others can impose their beliefs, whether right or wrong, on those at lower levels.

Therefore, protecting the independence of the judiciary against internal forces is as important as protecting it against external forces. It is more difficult to protect independence against internal forces, because the dependencies that arise within the judiciary may go unnoticed for years and cannot be easily revealed or eliminated. For example, favoritism and similar behaviors can become an ivy strangling the entire organization when seniors supervise subordinates who are unable to object and no one admits the existence of this situation.

To prevent this, we can consider introducing a written rule stating that all judges are at the same level, as Italy did with the amendment to its 1948 Constitution.[73] However,

71 The Constitutional Court ruled on Turkey Soma mining disaster dispute, where 301 miners died, that excluding the responsibility of some public officials involved by using administrative investigation procedures violated the right to a fair trial.

72 As mentioned above, another issue that restricts the judiciary from performing its function independently is that of legislative immunities. Legislative immunity is a legal protection, but this immunity can be lifted with a political decision in the parliament. With the decision to lift immunity, individuals stand trial in courts that do not have the necessary competence, seniority and expertise in line with the requirements of these individuals' duties, and eventually they are unable to fulfil their legislative function. Israeli laws regulate immunity differently to Turkey. In Israel, parliamentarians do not enjoy immunity on election to office. If requested, immunity can be granted later by the parliament as a protection from legal prosecution.

73 Pursuant to Article 107 of the Constitution of Italy, "Judges and Prosecutors are different from each other only due to their duties," it was accepted as a constitutional principle that there would be no difference in rank/seniority between judges and prosecutors. However, this new amendment did not prevent senior judges and prosecutors from establishing de facto authority over novice judges and prosecutors. An improvement was made in this regard, as arrangements were made to allow the election of young members as professional judges and prosecutors of the Italian High Council of the Judiciary (CSM). However, efforts to eliminate the influence of senior judges and prosecutors within the CSM resulted in the creation of power centers called "correnti," created by people of differing opinions, and these power centers have created internal dependencies within the judiciary (Simone Benvenuti and Davide Paris, "Judicial Self-Government in Italy: Merits, Limits and the Reality of an Export Model," German Law Journal, vol. 19, no. 7, pp. 1654– 1659, 1668.

Italian experiences illustrate that sometimes constitutional amendments are not enough to realize an objective. On the contrary, even if a regulation brings all the members of the judicial profession to an equal level, it may reduce or eliminate the transfer of knowledge, experience and wisdom from more experienced members to novices, and the transfer of energy and motivation from novices to more experienced members.

The Relationship between Independence and a Professional Career Plan

Just like gaining independence from external factors, avoiding internal dependencies also requires full transparency and accountability. These two principles can prevent internal dependencies by ensuring that all kinds of transactions regarding internal relations and their basis are fully known through transparency and legal compliance via full accountability.

To realize the above-mentioned objectives, two processes are required: (i) an objective and transparently operating career plan for judicial professions; and (ii) a performance management system that oversees the development and advancement of members of the judicial professions according to the predefined career plan.

A career plan for the judicial professions should be designed in the optimum way to realize the objective of producing high-quality services that is common to these professions, to meet the human resources needs of service units, and to account for all the career levels and sub-levels required by that service. The career plan should clearly set out the roadmap for professional advancement and the milestones and objectives to be achieved. The career advancement envisaged at all levels and sub-levels should be foreseeable and predictable. This career advancement should be based on merit, and those who meet the merit criteria must advance in their careers. The career advancement system should be in line with the human resource needs of the judiciary. Human resources should be trained in accordance with the needs of the judiciary, and the system should not result in either a human resources scarcity or excess. The human resources needs of the judiciary should be determined proactively and shared with the public for this purpose. For example, the law education provided in universities should be planned in accordance with the judicial profession's requirements.

Merit and Performance Management

To ensure that the approach to advancement in the judicial professions contributes to producing high-quality judicial services, merit should be brought to the fore, but without neglecting the value of seniority and experience.[74] The deter-

74 We should avoid reductive questions such as "What is more important, merit or seniority?" Merit is a matter of justice among those applying for a position, and a basic management problem for those seeking a candidate competent to fill a position. As such, merit can never be neglected. But matters such as experience and seniority are also merit issues, even though they cannot be attributed to objective merit criteria and they are therefore qualities that we cannot name and whose content we cannot explain; when seniority and experience exist, we trust that the qualities that we cannot name are present in the person. As the Turkish proverb says, "wisdom does not come with age" – but older people do possess minds formed by experiences. Therefore, a reasonable middle ground should be reached to avoid stereotypical debates and focus on merit while also considering seniority and experience. For example, within the scope of the recommendation of staff panels

mination of merit by objective methods requires effective, fair and impartial performance evaluation. The evaluation of "performance", which means the degree of success in performing assigned duties, ensures not only justice among the members of the judicial profession, but also the alignment of human resources with the competencies required by the judicial system.

The evaluation of service success cannot be considered separately from service management, since it affects service delivery from the beginning through to the end of the evaluation period. Evaluation methods that can be reduced to assessing shorter periods and that can be diversified are highly useful for improving services. Performance management systems that pre-plan the performance of service elements according to institutional and personal goals are well-known management science methods that continually improve the service and achieve institutional and personal success. Service providers knowing what is expected of them in terms of their performance, and their peers' and institution's performance, is the main way to ensure service motivation, constructive competition and professional satisfaction. It is possible to design performance management systems without intervening in the content of the service. However, without such a system, it is not possible to uniformly increase the quality of judicial services.

Another issue is the need to measure the quality of the service from the perspective of service recipients, providers and, ultimately, society as a whole. The notion of "service recipients" should be emphasized, as the definition and measurement of "quality" varies between service recipients. It is not service providers but service recipients who determine the service quality, according to their needs and whether they have received the best available service. As an illustration, consider a dispute arising between consortium members who have joined forces for an infrastructure investment worth millions of dollars. The preferred judicial outcome may be that the court scrutinizes all evidence and submissions over the years and ultimately delivers the best judgment. However, this is the worst outcome for consortium members, because they would prefer to resolve the conflict as soon as possible and without interrupting the project. In other words, consortium members would prefer a simple and quick decision that may not be completely accurate but is fully reasonable. The common law courts are very successful in settling disputes at an early stage in this way, by means of temporary restraining orders[75] and rules for the disclosure of facts and evidence.[76]

Our opinion is that by using performance management, judicial procedures and other similar means, the judicial structure should prioritize providing guidance to parties to

to the minister of justice and the federal president regarding the advancement of judges, Austrian law allows decision-makers to consider a candidate's seniority only when the professional qualifications of candidates coincide.

75 Temporary restraining order and rules for disclosure of facts and evidence.

76 According to official statistics published by the European Commission for the Efficiency of Justice (CEPEJ); for years courts in the UK have had a settlement rate of around 98%. In Germany, on the other hand, the court settlement rate is around 38–40%.

settle their dispute at an earlier stage of the dispute, rather than spending excessive time resolving it in the "most correct" way before a judge. Such a paradigm change has become essential for today's fast-operating economic world. To effectively realize such a change and avoid harming the sense of justice, it is imperative that performance management focus on as a short period as possible, minimizing targets and quickly evaluating transaction types while abandoning protections for privileged groups in ethics, discipline and crimes, and operating systems effectively.

In modern society, artificial intelligence is on the brink of replacing judges, and handling the performance evaluation and management of judicial professions annually through the chief office, using archaic methods such as clearance rates and rate of transfer to following years, is now outdated. Using such methods implies that performance measurement can be achieved by focusing on numbers. However, these methods result in feelings of injustice and decreased motivation within an organization, while satisfying managers with misleading information. Furthermore, such data can be manipulated, and this can result in a lower quality of service, causing more harm than good. In the context of complex service provision, performance evaluation based on numbers alone will always be like comparing apples and oranges, and is therefore extremely inaccurate and damaging.

In summary then the judiciary should consist of service units adapted to the needs of the society, and a career plan for judicial professions should meet the needs of service units. In turn, career development and advancement should be determined according to merit, and merit should be determined according to performance management. Performance management should be integrated with service production that meets the expectations of society. We must pay special attention to preventing dependencies formed by the performance management systems used by the judiciary. Archaic statistics outside this cycle should not be taken into account in performance management.

The judiciary can achieve full independence and the right to self-governance, provided that it works efficiently, produces high-quality services, and is truly transparent and accountable. Transparency and accountability are the keys to both high-quality services and judicial independence. The foremost prerequisite for producing quality services is that the contribution of all the elements involved in service production is of high quality. Therefore, the foundations that must be laid in order to achieve judicial independence from both external and internal influences, legal and illegal forces, are as follows: (i) regulating the production of services, (ii) clarifying the organizations, roles and responsibilities of the production and service elements, and (iii) establishing a judicial mechanism that will ensure the transparency and accountability of the system. To prevent the judicial system from being influenced or losing control, however, it must be secured through the representation of society, not through guardianship. In order to ensure its healthy functioning, transparency and accountability should dominate the operation of the system; and everyone involved should be able

to operate accountably, even if they have no interest in or benefit from it.

Democracy and Judicial Council Experiences of Turkey

The idea of democracy developed by the West, rooted in Ancient Hellenic civilization and strengthened with constitutional protection after World War II, and the state administration style developed by Turkish-Islamic civilization are fundamentally not far from each other in terms of their functions.

In practice, the sovereign rulers of the Ottoman Empire shared legislative, executive and judicial powers with a high council body called the Divân-ı Hümayun (also referred to as the Imperial Council).[77] The origins of Turkey's central administration and bureaucracy are in this Imperial Council, even though it was not a parliament. The Imperial Council used to gather in an open hall in front of the public. The basic principle that "justice is the foundation of the state" ("Adalet mülkin temelidir") dominated the Turkish-Islamic state tradition, and as a result kazaskers/kadıaskers (military judges) attended the Imperial Council, the highest Ottoman state institution. Judges were a power separate from and even considered to be superior to the ruler, in the early Ottoman period and for the Seljuks and previous Turkish states.[78] The sadrazam (grand vizier) and vezirs (viziers), Anatolian and Rumelian kadıaskers[79], the nişancı (court calligrapher), and defterdar (bookkeepers) also attended Imperial Council meetings. The Imperial Council handled legal, administrative and financial judicial affairs. The Anatolian and Rumelian kadıaskers were equipped with very important powers, such as those of appointing judges, recalling judges who were affiliated to the hierarchy and promoting judges to higher ranks.[80] The Imperial Council was considered to be a supreme court of justice, and citizens were allowed to personally express their complaints regarding representatives of the state to the council. The legal basis of this council was not Shariah but historical tradition.[81]

Turkey's transition to the Western style of democratic governance started during the Ottoman Empire at the beginning of the 19th century. During the Tanzimat period, the Ottoman Empire rapidly advanced towards a modern

77 "Divan-ı Hümayun'dan Meclis-i Mebusan'a Osmanlı İmparatorluğunda Yasama" [From the Divan-ı Hümayun to the Meclis-i Mebusan, Legislation in the Ottoman Empire], Mehmet Seyitdanlıoğlu; TANZİMAT, "Değişim Sürecinde Osmanlı İmparatorluğu" [TANZİMAT: Ottoman Empire in the Process of Change] (Halil İnalcık—Mehmet Seyitdanlıoğlu, Türkiye İş Bankası Kültür Yayınları, 2006), p. 378ff. This institution became institutional during the time of the Mehmed the Conqueror and gradually lost its importance in the 17th century, but continued to exist symbolically. İlber Ortaylı, Osmanlı'yı Yeniden Keşfetmek [Rediscovering the Ottoman Empire], 3rd edition (TİMAŞ yayınları, 2006), pp. 135–142.

78 In old Turkish states, the kağans (khans), who were elected in kurultai (general assemblies) or accepted as leaders, committed to govern the country in accordance with the töre (convention). Convention was considered the supreme power in society, and rulers regularly appeared before yargucis (judges) to give account and to comply with decisions delivered against them. Although the country and the state were regarded as the absolute property of the rulers, the role and powers of the ruler as an administrator were constrained on the one hand by the councils and on the other by the töre and yargucis. This tradition continued for centuries under the Seljuks and the Ottomans.

79 Kadıasker or Kazasker: the military judges of the Ottoman army.

80 "Ortaylı, Osmanlı'yı Yeniden Keşfetmek", p. 138.

81 Halil İnalcık, Osmanlı'da Devlet (Hukuk ve Adalet, Kronik Kitap, 2016), p. 60.

state structure in which legislative, executive and judicial powers were separated. On March 24, 1838, by his own will, Mahmud II (1808–1839) restricted his power and transferred some of it to the council he established under the name of Meclis-i Vâlâ-yı Ahkam-ı Adliye (Supreme Council of Judicial Ordinances). On September 26, 1854, this council was divided into two groups, the Meclis-i Ali-i Tanzimat and the Meclis-i Vâlâ-yı Tanzimat. The Meclis-i Tanzimat dealt with issues it deemed appropriate. Additionally, it was able to question and, if necessary, prosecute members of the government, ipso facto using the broad powers recognized in today's modern parliaments. During the same period, the Meclis-i Vâlâ was completely independent in using its judicial powers, and it executed its legislative and judicial powers separately and relatively independently from its executive powers.[82] These were not permanent, as the empire and its institutions collapsed; however, the parliament has continued its existence today, despite interruptions.

In 1950, Turkey took a major step in democratization by establishing the changing of the government through elections. By accepting the institutions of the judicial council and the Constitutional Court with the 1961 Constitution enacted after the 1960 coup d'état, Turkey made significant progress in ensuring the separation of powers and making the legislative, executive and judicial functions and state organs independent from each other. The 1982 Constitution, established by the military junta during the 1980 Turkish coup, preserved the democratic institutions that had been formed before that point, while limiting their functions.[83]

The judicial council entered the Turkish constitutional system for the first time with the 1961 Constitution. The reason behind the introduction of judicial councils was not different from the motivations behind the introduction of similar bodies in France, Italy, Spain and Portugal, which was to limit the executive's influence on the judiciary. Law No. 2556 of 1934 on Judges, which repealed Law No. 766 of 1926, regulates that a commission chaired by the president of the Court of Cassation and comprising the Republic's Chief Public Prosecutor four members of the Court of Cassation, the general director of criminal affairs, the general director of legal affairs, the general director of personal affairs and the head of the Inspection Board of the Ministry of Justice has the authority to determine the status and the progress of judges and prosecutors. Appointments were made by the Minister of Justice.[84] The fact that the executive had the final say in judges' professional careers and could exercise this power to punish or exert pressure on judges was the subject of many complaints. The High Council of Judges was established with

82 Divan-ı Hümayun'dan Meclis-i Mebusan'a Osmanlı İmparatorluğunda Yasama [From the Divan-ı Hümayun to the Meclis-i Mebusan, Legislation in the Ottoman Empire], Mehmet Seyitdanlıoğlu; TANZİMAT, Değişim Sürecinde Osmanlı İmparatorluğu [TANZİMAT, Ottoman Empire in the Change Process] (Halil İnalcık—Mehmet Seyitdanlıoğlu, Türkiye İş Bankası Kültür Yayınları, 2006), p. 378ff.

83 Today, the institutions of democracy have been formed and settled in Turkey, where the democratic management of society has been accepted in a strong and irreversible manner. But their functioning is problematic, lagging behind that of their counterparts in developed countries.

84 Ömer Sever, "Hâkim Bağımsızlığı ve Savcılık Teminatı" [Independence of Judges and Prosecution Guarantee], master's thesis, p. 24ff.

the 1961 Constitution and in response to the problems of political–judicial relations under the 1924 Constitution. The High Council of Judges was created to prevent the executive branch from exerting pressure on judges, and for this purpose, it was authorized to manage the career affairs of judges.[85] According to its original formation, the High Council of Judges comprised 18 permanent and five substitute members. The General Assembly of the Courts of Cassation appointed six of these members, and judges divided into the first class elected another six members. The National Assembly and the Senate of the Republic appointed three members each. The appointment procedure was amended in 1971 with Constitutional Amendment Law No. 1488. The amendment stipulated that only the General Assembly of the Courts of Cassation would appoint members of the High Council of Judges.[86]

Following the 1980 Turkish coup d'état, the High Council of Judges established in 1961 was merged with the High Council of Prosecutors established by the 1971 amendment; as a result, the High Council of Judges and Prosecutors was established as an independent body. However, the minister of justice and the undersecretary to the minister were declared natural members and the minister the chair of the council. Moreover, the council's meetings and decision-making ability was dependent on the participation of the minister of justice. The High Council of Judges and Prosecutors did not have its own secretariat, and the functioning of this council became completely dependent on the Ministry of Justice. For a long time, the individuals who were authorized to elect members of the High Council fluctuated between the high judiciary, parliament and court of first instance judges.

With the constitutional amendment introduced in 2017, the name of the council was changed to the Council of Judges and Prosecutors. At the present time, the executive (ruling party) and legislature (political parties in parliament) elect and appoint the members of the council from among judges, prosecutors and lawyers.[87] Politicians determine all 13 members of the council; seven are elected by the Grand National Assembly of Turkey and six are elected by the executive.

Turkey has been like a perfect laboratory since the 1961 Constitution, when the idea of the judicial council was first put into practice. It can be said that Turkey has had almost all kinds of experiences in terms of judicial councils and the problems they cause, such as the council's external dependence, internal dependence, becoming dependent on legal and de facto powers, and politicization.

Despite many constitutional changes since 1961, Turkey has not yet achieved a perfect result. Although it has established all the institutions of democracy, it has failed to meet the standards of democracy and independence of the judiciary set out in UN resolutions. Following the developments of recent years, Turkey's ranking has slipped back in the international indices of rule of law and democracy. These international

85 Levent Gönenç, Dünyada ve Türkiye'de Yüksek Yargı Kurulları [High Judicial Councils in the World and Turkey], p. 10.

86 Kemal Gözler, 1961 Anayasası [Constitution of 1961], p. 9.

87 In 2017, the ruling party appointed all members of the council because if its majority in the Grand National Assembly, and the name was changed to the Council of Judges and Prosecutors.

indices suggest that the main reason for this regression of democracy is the problems experienced regarding the independence of the judiciary and the rule of law. According to public opinion research, justice and the judiciary are stated year after year as one of the main areas in which Turkey faces problems, and the fact that public confidence levels in the judiciary and in justice have declined throughout the years confirms this.

In Turkey, the problems with democracy are thus concentrated on the rule of law, the independence of the judiciary, transparency and accountability. Society is in a strange dilemma about the independence of the judiciary. While it agrees with the idea that judicial independence is vitally important, a significant portion of society supports the dependence of the judiciary on the executive and on politicians. The main reason behind this dilemma is that although members of the judiciary benefit from certain privileges because their duties require these privileges, the judiciary does not fulfill its duty to society to provide quality judicial services – as can be demonstrated empirically in the case of Turkey.

These developments and the current situation in the country reveal that the judiciary must provide good service and be transparent and accountable in order for society to support its full independence.

A REFORM PROPOSAL FOR THE JUDICIAL SYSTEM IN TURKEY

Overall Rationale

At the very beginning of this study, we started with the objective of presenting the designs and drafts for our proposal for a Supreme Authority of Justice. Our aims were (i) to focus on working efficiently, producing high-quality services; (ii) with a lean structure in line with the requirements of management science; (iii) with full transparency in all processes and decisions; (iv) with full accountability and with all transactions and decisions subject to judicial review; and (v) such that society and anyone who wishes are able to participate and supervise.

The designs and drafts in this book are not intended to restructure the Council of Judges and Prosecutors, which is a judicial council in the classical sense; rather, they encompass the entire judicial system, from courts to judicial procedures and professions, from professional associations to establishing a new court focused on judicial review, considering the full spectrum of the judiciary, with a regulatory body at its center.

The fundamental idea of the design is to enable judicial organizations to produce high-quality services. And for this reason, we envisage a regulatory institution located at the center of service production. It is the correct approach to design a regulatory institution taking into account what it will regulate. The need to establish a regulatory institution focused on producing high-quality services requires regulations to include service units and providers. It is absolutely necessary to ensure the transparency and accountability of the system, allow a judicial review mechanism for all kinds of processes and decisions, and design a court that will provide such control. For these reasons, our design covers a wide spectrum, including the production of judicial services, transparency and accountability.

Our system has three pillars: (i) a regulatory institution; (ii) judicial professions that produce service and their associations; and (iii) a specialized court conducting judicial review, i.e. the Supreme Court of Justice.

Instead of trying to adapt a solution developed by another country considered similar to Turkey, in order to resolve Turkey's own problems, as many have done, we have tried to develop an innovative design providing a radical and permanent solution that is unique to Turkey. We have especially avoided adapting other countries' systems. Therefore, we deliberately ignored international experiences and developments, and came up with an entirely new and creative design by working with a young team.

We first created our own unique design based on problems particular to Turkey, using our own minds, and put it aside; we left it to rest, as was done by the members of the Ahi Community, traditionally.

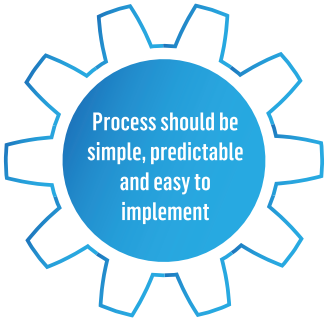
Afterwards, we conducted comprehensive research into the systems of other countries that have experienced the good and the bad in the world. Comparing with other countries' experiences we were satisfied that the solutions with developed for Turkey were wealthy and realistic. We shared the results of this research with the legal community in a series of webinars. Our discussion regarding judicial councils at the beginning of this book aimed to provide a broad perspective on this issue.

ULTIMATE OBJECTIVE: QUALITY JUDICIAL SERVICE AND ELEMENTS OF QUALITY

NOTES

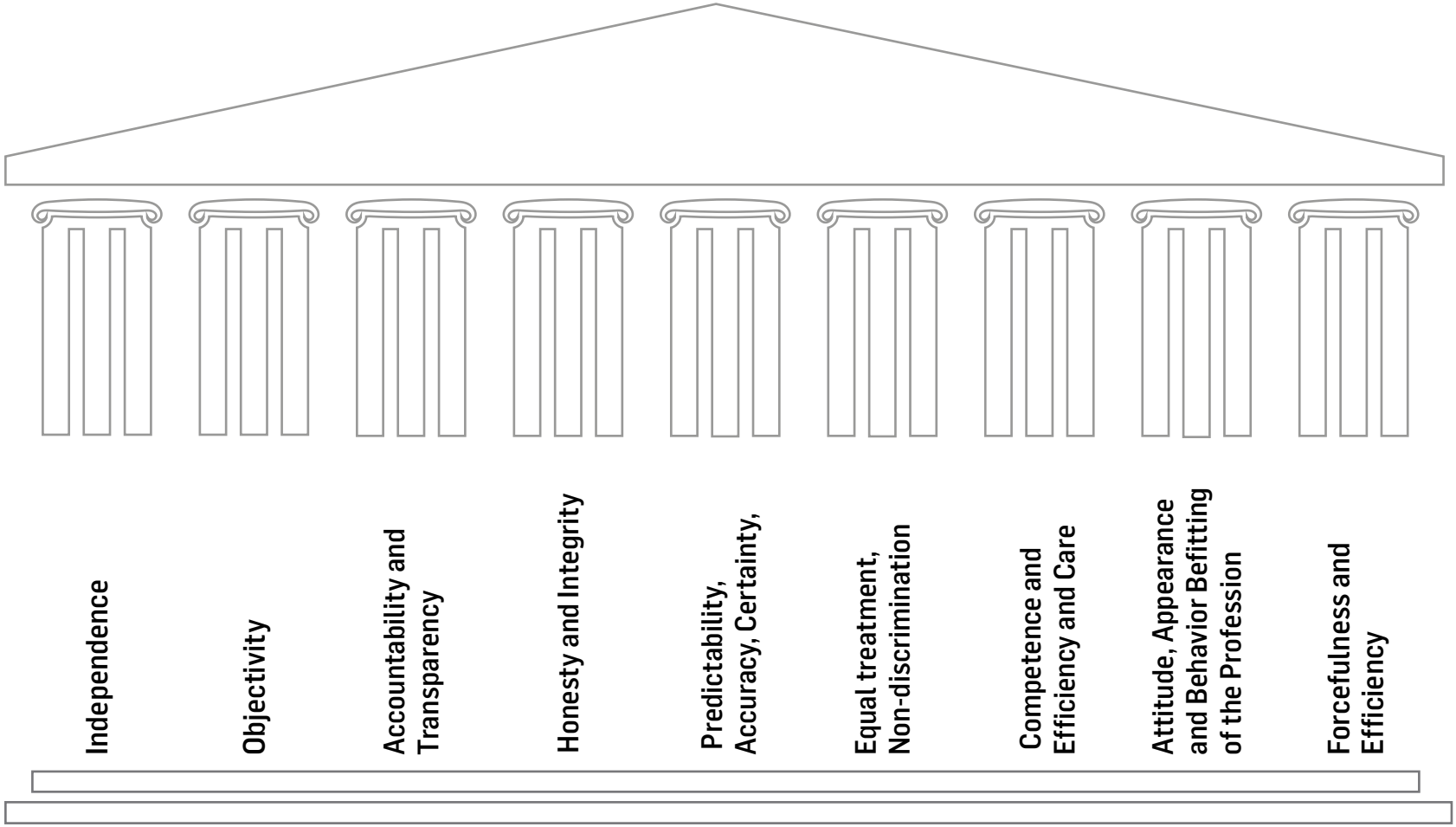
Quality Elements in Judicial Service

- Compliance of the judiciary with fundamental universal values and principles.
- Providing services based on need, effectively and efficiently.
- Knowledgeable, experienced and competent judicial elements.
- Merit of judicial elements must be based on performance.
- Processes must be simple and easy to comprehend.
- Specific, predictable and instructive processes and decisions.
- Decisions must be based on material fact.
- Justice must be achieved "in all conscience"; never compromising justice.
- Adversarial proceedings and equality of arms must be ensured.
- Services must be provided in reasonable time and at reasonable speed.
- Services must be rendered at reasonable costs.
- The judiciary and the public should communicate.



Saim Dursun,
“Dere” (The Creek),
50 x 60cm,
oil on canvas,
spatula technique,
2011

Compliance of the Judiciary With Fundamental Universal Values and Principles



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Providing Services Based on Need, Effectively and Efficiently

- Judicial service must always be available at any time of the day on the week
- The judiciary should be able to function independently in all matters, and their function should not be restricted for any reason
- The right to apply to the judiciary should not be restricted in any way; alternative methods (such as arbitration, mediation) should be encouraged – but should not be mandatory
- Judicial unity should be established; judicial remedies and courts should be structured in a way that provides the best service; and there should be no separate and special courts or judicial remedies that cause waste, confusion and difference in jurisprudence
- Judicial services should be responsive to needs, and the service and protective measures should be easily accessible outside of working days and hours as well
- Decisions should resolve the conflict and provide guidance for the future, and should not cause new conflicts to arise
- Courts should focus on the resolution of disputes brought before them; the solution should not be delayed due to other files, mergers, separations, etc.
- Current workload and responsibilities should be distributed proportionately so that the available legal experts (judges, lawyers) and resources provide good and efficient service; the burden should not be placed on judges alone

Knowledgeable, Experienced and Competent Judicial Elements

- Professional competence, knowledge and experience
- Good education, minimum standards, continuous improvement
- Need-based legal experts in sufficient quantity and quality
- Sufficient quantity and quality of support services
- Before taking office, legal experts should gain proficiency, competence and experience
- Career plan should be based on and operated according to competence, merit, experience and seniority
- Judicial jobs need to be leveled and matched to career levels
- Better and more attractive salaries and social opportunities

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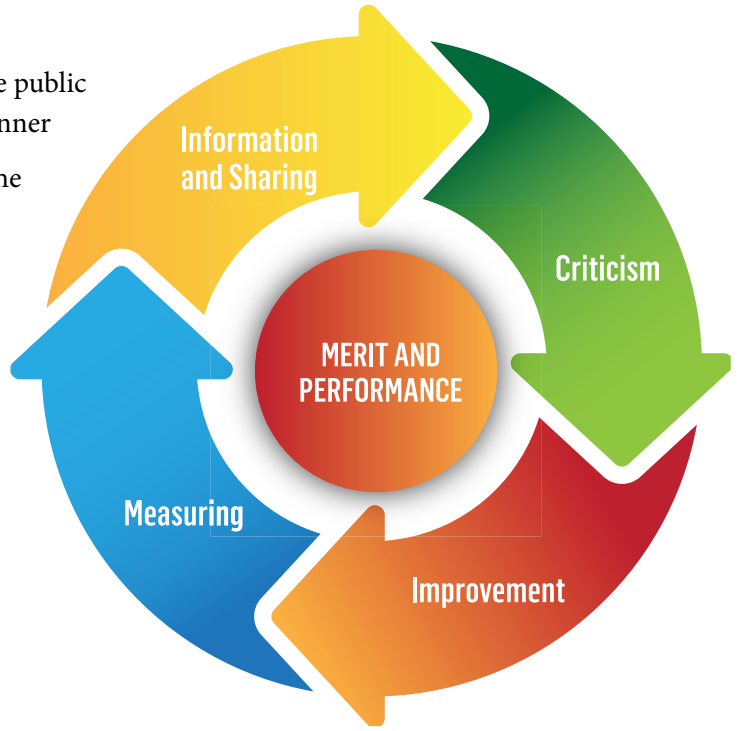
Merit of Judicial Elements Must be Based on Performance

- The performance, criteria and benchmarks of judicial elements should be determined in such a way as to ensure quality service, evaluated objectively and transparently, and the participation of all stakeholders should be ensured in the process
- Objective evaluation results should determine merit and career progress; decisions should be shared with the public
- The effectiveness and efficiency of the judiciary should be observed, measured and evaluated by the public, and comparable information should be shared with the public regularly
- Criticism of the system and decisions taken about the public should be shared with the public in a transparent manner
- The elimination of failures and problems should be the top priority of the legislature and the executive, and they should be corrected immediately



Processes Must be Simple and Easy to Comprehend

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- Jurisdictional laws should be in plain language, easy to comprehend, and not ambiguous or vague
- Use of the system should be simplified as much as possible
- Inter-court division of labor, duties and authorization rules should be simplified; the citizen should be able to easily find the court to apply, and applying to the wrong authority should not be a reason for delay
- Judicial authorities should publish and comply with the guidelines that describe the process, steps and procedures to be performed and the estimated duration of the work they deal with
- Processes should be simple, instructive, easy to comprehend and operable
- The functioning, stages and timing of the processes should be explained
- Everything should be clear and specific, and there should be no surprises in legal proceedings

NOTES

Specific, Predictable and Instructive Processes and Decisions

- The work to be done and the decisions to be made in the legal proceeding should be precisely predetermined and predictable
- Proceedings and decisions should be published and made available free of charge so that they can be easily accessed by all segments of society
- In the proceedings, the material facts must first be fully revealed and proven; the decisions to be made about these material facts should be predictable
- Decisions must be fully compliant with material facts
- Decisions should be understandable and instructive, so that everyone who reads them can learn which rules have been applied, and how, in every circumstance, and what conclusion will be reached
- Confidence must be established that the material facts will be revealed in the legal proceeding, and it must be clear from the beginning what decision will be taken in that event
- Practice and case law should not change from court to court, or from case to case

Decisions Must be Based on Material Fact

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- Judgment must fully reveal the material fact
- Decision must be based on material fact
- Each party must be responsible individually, to each other and to the court, for revealing the material fact
- Conflict cases and evidence must be fully and accurately disclosed and presented before the legal proceeding
- The parties should be made to honestly explain conflict cases completely and accurately
- All evidence must be submitted before the trial
- Revealing the truth should be the right and responsibility of the parties, and the judge should be given the least amount of work in this regard

NOTES

Justice Must be Achieved "in All Conscience"; Never Compromising Justice

- The system must always achieve justice
- Anyone seeking their rights should always have access to justice and the abuse of rights (being a tool for injustice) should be prevented
- Conflict must be dealt with promptly and effectively
- Preliminary and protective measures should be implemented effectively
- Conflicting values should be preserved and not dissolved in the process
- Practice, processes and decisions must be correct, fair and accurate
- Decisions must be executed easily, completely and immediately, and administrative authorities must comply with and implement decisions spontaneously and promptly
- Legal expenses and costs must be fully recovered

Adversarial Proceedings and Equality of Arms Must be Ensured

NOTES

- The strongest and the weakest must be equal in seeking rights
- The parties should have equal power against each other
- The judge must be equidistant from the claim and defense
- The system should also be equitable and fair in its relations with the parties
- All judicial elements should be subject to the same ethical rules and be accountable
- Unrestricted access to all information and documents related to the judiciary should be provided
- All allegations and evidence of the parties should be discussed at the hearing and with the judge

NOTES

Services Must be Provided in Reasonable Time and At Reasonable Speed

- Conflicts should be responded to quickly and effectively (with preliminary measures)
- Processes that prolong the overall process unnecessarily should be avoided
- Attorneys, not judges, should collect the evidence
- It should be ensured that the files are completed at the beginning of legal proceedings, and this burden should not be imposed on the judge
- Files should be prepared in such a way that the decision can be made immediately by starting the legal proceeding
- Preliminary issues must be resolved quickly and as soon as possible
- There should be a fast and effective precautionary system for responding immediately to emergencies outside of working days and hours
- Justice should never be sacrificed for speed!

Services Must be Rendered at Reasonable Costs

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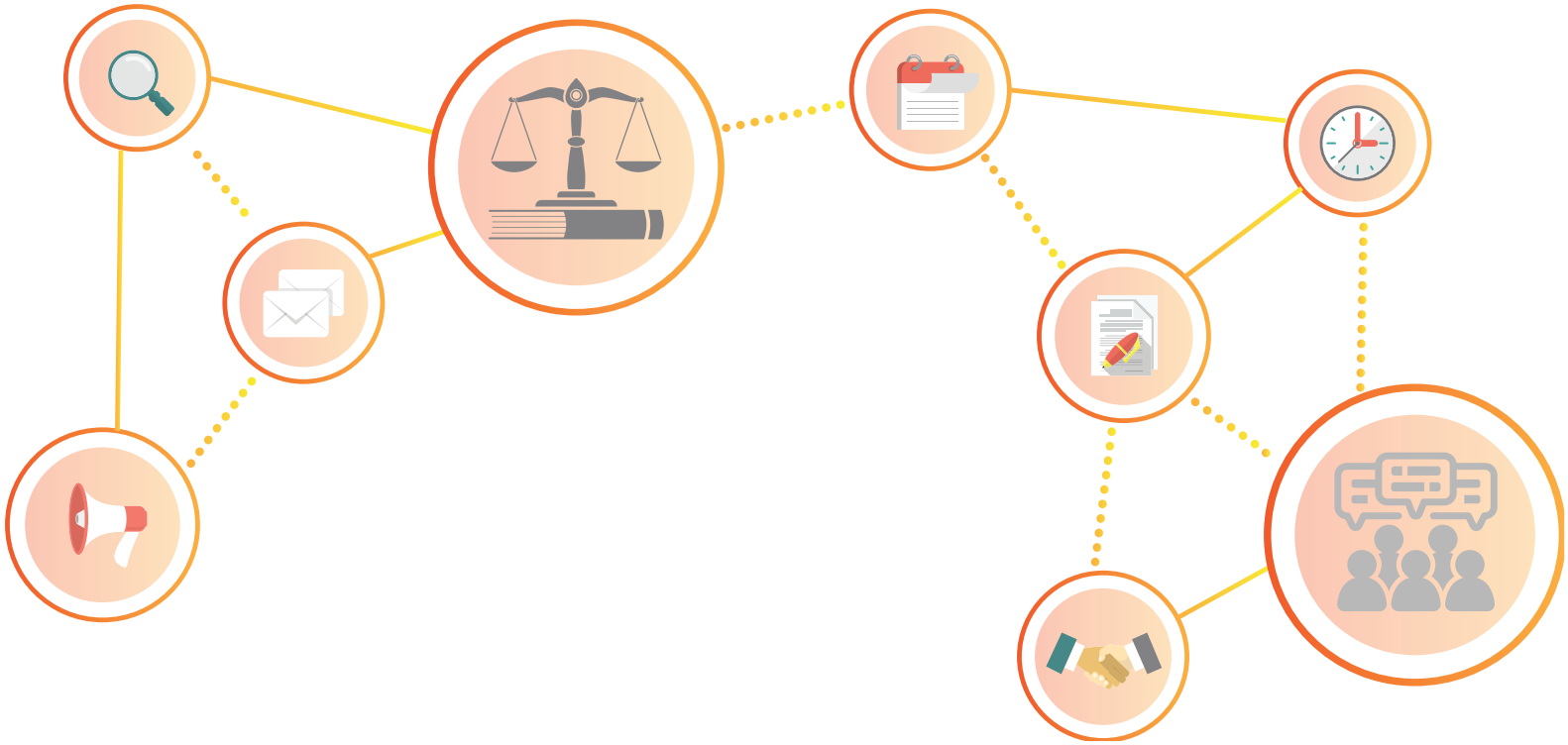
- Reasonable cost processes appropriate to the nature of the works should be developed
- Fees and expenses should not make access to justice difficult; they should either not be applied at all or be proportionate to the service; the state should not get a share of the dispute
- There should be legal experts and other service providers sufficient to meet the needs
- There should be a high-quality and affordable defense services market
- Minimum wage scales must meet minimum service standards
- Methods such as legal aid, legal insurance, etc. should be developed
- Everyone is entitled to compensation for defense expenses
- Sufficient resources should be allocated to enable a high-quality judiciary, but there should be no waste



The Judiciary and the Public Should Communicate

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- The parties should be able to communicate with competent and official judicial elements
- The judge should be able to ask questions of the parties and should lead the proceedings objectively
- A verbal explanation of the parties' defenses in the legal proceedings should be ensured
- All evidence should be discussed at the oral hearing; parties, experts and witnesses must be present at the oral hearing and must be questioned orally
- Appeals and complaints about judicial elements should not be kept confidential and should be accessible to the public
- Judicial authorities should inform the public in relation to their affairs, restrictions and other issues
- All decisions and actions taken in relation to the elements of the judiciary should be explained and should be subject to objection and to litigation
- Public opinion polls should be conducted on a regular basis with regard to judicial services; feedback should be collected and this should be shared with the public
- Judicial authorities should share with the public all relevant data on the work they deal with, while ensuring the protection of personal data

1
AN INCLUSIVE, FULLY ACCOUNTABLE AND TRULY INDEPENDENT REGULATORY INSTITUTION

- Supreme Authority of Justice
- Permanent Council of Justice

Atty. Mehmet Gün
Atty. Hande Hançar
Atty. E. Melis Özsoy
Atty. Havva Yıldız

Rationale

The system we are proposing focuses on the production of judicial services, and the "Supreme Authority of Justice" (also referred to as "SAoJ") as an institution regulating service production lies at the center of this system. Just like the legislative and executive powers, we have designed the SAoJ to be self-governing. We have attempted to address any concerns that may arise regarding the independence of this important power. Based on Turkey's experiences and complaints, we aim to provide a solution that is as sound and healthy as possible for the problems the current system faces. Thus, we have paid attention to complying with the requirements of management sciences on the one hand and democratic legitimacy on the other.

We give particular importance to the independence of the SAoJ; we have arranged the composition of the members in such a way that no individual, group or coalition would create internal or external dependencies and influence over the institution. We have developed a method of appointing members to the SAoJ that will represent all segments of society and ensure that it always remains independent from the legislative and executive powers. We envisage that the process of determining the members of the SAoJ will include a wide range of stakeholders in society in depth, and that the SAoJ should be pluralistic and financially autonomous.

Lastly, we have regulated the independence of the judiciary in such a way that this independence will extend to the entire judiciary, every organ and element, and that each organ and element can protect and develop its own independence.

We have established membership representing all segments of society in such a way as to provide qualitative resources to the SAoJ to fulfill its functions. The institution will have membership of such number and quality that it can perform all its functions without the need for external human resources. Official and private institutions representing all segments of society will determine the qualified members of the institution from among those with merits. To ensure transparency and accountability, all decisions, including candidacy selections, nominations, elections and appointments, will be subject to judicial review. Membership of the SAoJ will be limited in duration, and measures have been taken to maintain institutional memory. Re-election is possible, but each member will be prohibited from serving for more than a certain period of time.

The duties and powers of the Ministry of Justice and the Council of Judges and Prosecutors will be transferred to the regulatory body and thus the restrictions on the independence of the judiciary will be removed.

The SAoJ's functions focus mainly on determining Turkey's legal, justice and judicial policies, priorities and principles, on providing judicial services, and on the procedures for the admission, advancement, discipline and dismissal of judicial professionals.

We envisage abolishing the pre-authorization of investigation of crimes allegedly committed by members of judici-

ary as well as public officials.

The regulating authority of the SAoJ will cover all kinds of legal services. The SAoJ will determine the legal, justice and judicial policies, preferences, and priorities of Turkey, as well as the standards of judicial services; and will take the necessary measures to develop all judicial professions individually and as a whole in line with the objectives to be determined. The SAoJ will undertake the duties and powers already given to the executive, namely the Ministry of Justice.

Our Permanent Council of Justice proposal aims to establish a consultation mechanism in line with Turkish state traditions and to bring all stakeholders together under an institutional roof every year to achieve justice. The Permanent Council of Justice will ensure regular meetings with judicial public officials, courts, and professional and civil society representatives, and thus will ensure that advisory decisions are taken to improve the law in accordance with the current needs and awareness is raised and continuously updated among the public, the SAoJ, professional associations and judicial service units.

NOTES

The Supreme Authority of Justice

1- The judicial council will be transformed into a regulatory Authority.

2- The Authority's main objective will be to perform high–quality judicial services and create added value.

3- The Authority will be devised as a simple organization that is both transparent and accountable.

4- The Authority will be fully independent and self–governing.

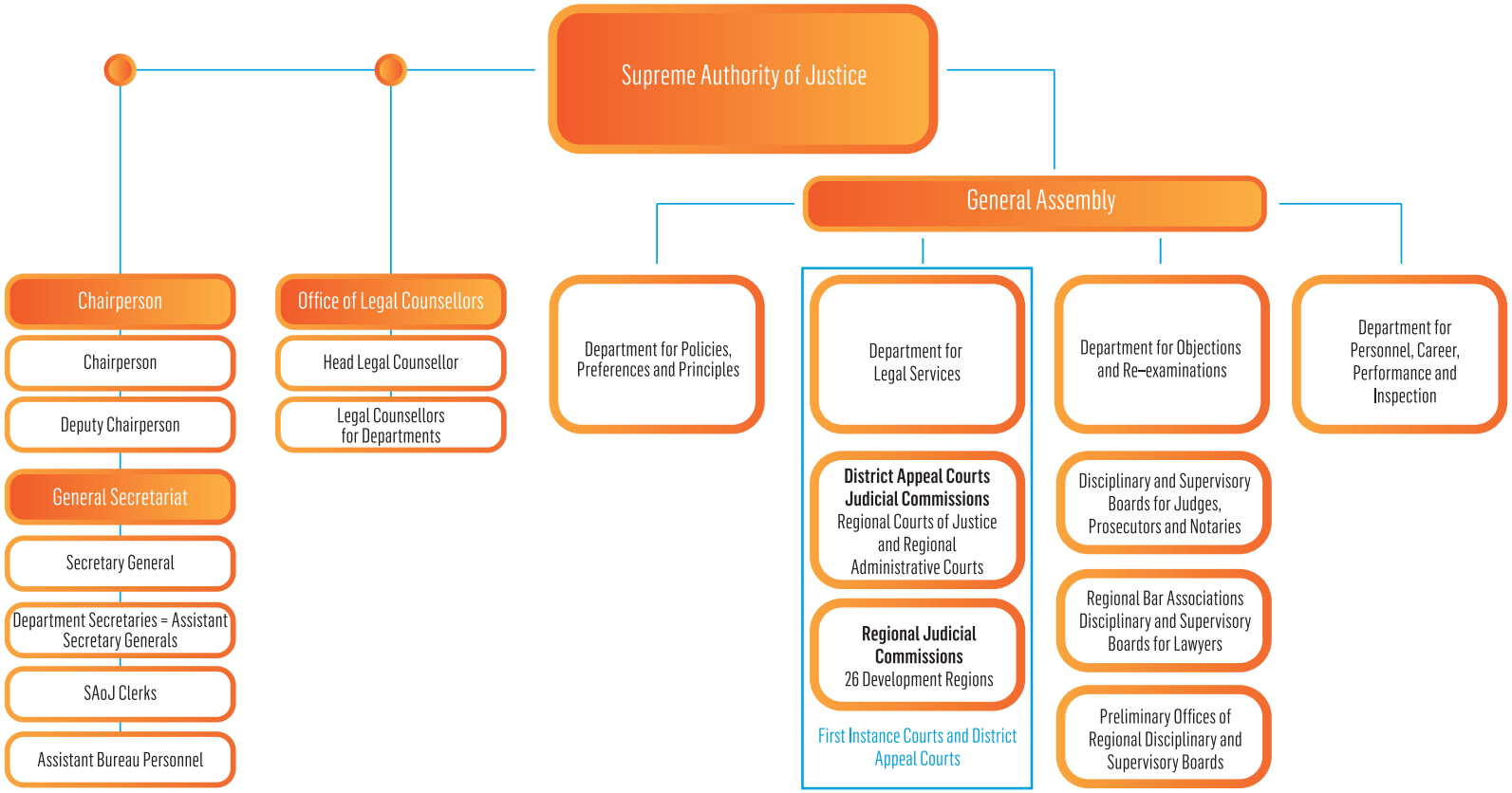
5- The Authority will function as one general assembly and four separate departments.

6- The legal counsellors of the President and the departments will be independent in their legal opinions.

7- The Authority will comprise 90 members with different qualifications and disciplines, as necessitated by the Authority's functions.

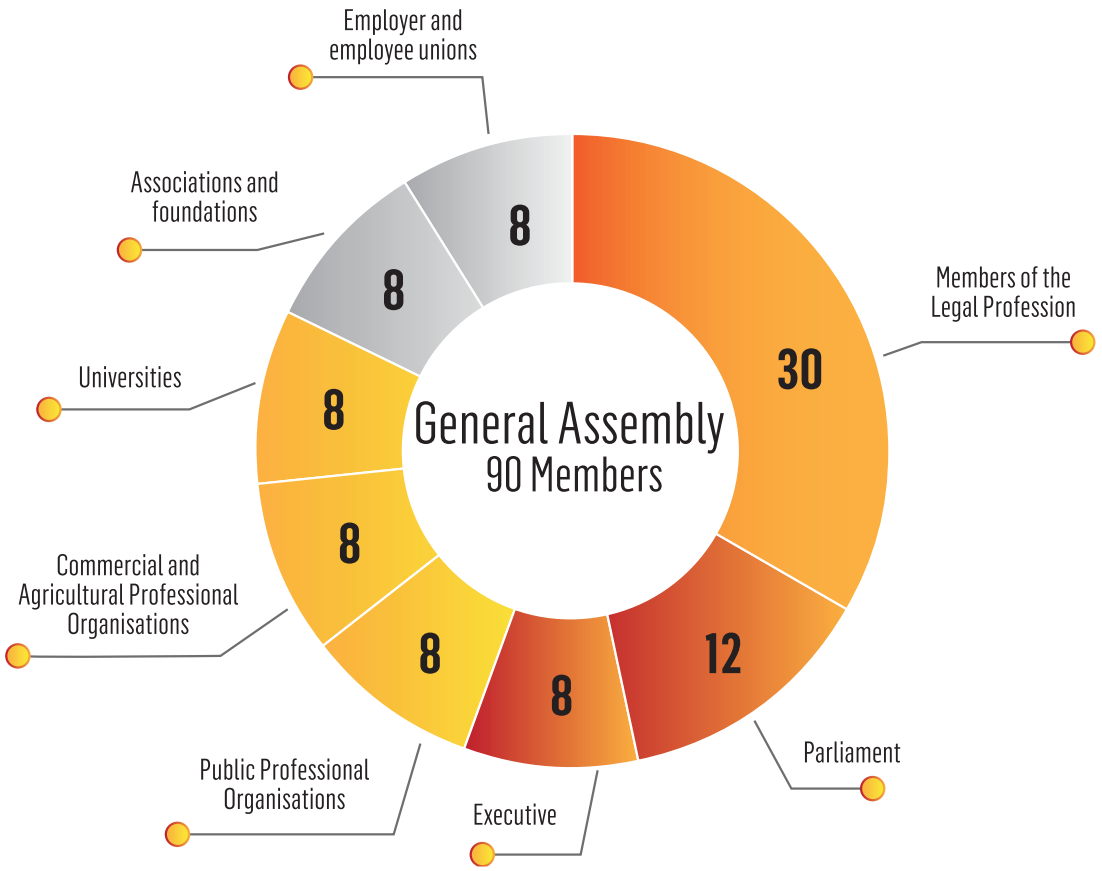
8- Stakeholders from all segments of the society will elect the 90 members of the Authority from among competent candidates in a transparent and accountable manner.

Organization Chart of the Supreme Authority of Justice



NOTES

The Composition of the SAoJ General Assembly



- Regard has been given to fair representation of all segments of society, whereby the balance between civil and public institutions, and the individual and institutional establishments was protected.
- The aim is to ensure that all stakeholders have a say in and influence on the country's judicial services.

The Composition, Responsibilities and Authorities of the Supreme Authority of Justice

NOTES

Supreme Authority of Justice ("SAoJ" or "Authority"): A judicial professional organization with an administrative legal personality that consists of qualified members elected to reflect the preferences of all segments of society, determining and ensuring the implementation of judicial policies in accordance with the needs of the country, carrying out its activities in accordance with democratic principles, and independently representing the independent judicial power of the state. It is a regulatory judicial institution hierarchically above the independent judicial professional associations.

The main objective of SAoJ: To ensure that the judiciary creates added value by providing high–quality judicial services to society. Accordingly, it makes or approves necessary regulations, actions and decisions to ensure the provision of those high–quality judicial services.

The responsibilities of the SAoJ include:

- Determining the needs and priorities of society with respect to judicial services;
- Establishing policies that are in accordance with the determined principles and priorities;
- Constructing judicial service units and distributing the workload among judicial members in a balanced manner;
- Developing sufficient competent judicial members, while ensuring their efficiency, competence, discipline and respectability;
- Guiding the legal professions and their service units to produce harmonious, cooperative, and efficient legal services;
- Determining a budget and resources to guarantee their appropriate distribution; and
- Ensuring transparency and accountability in all judicial institutions, professions and service units.

NOTES

The number of SAoJ Members, their Qualifications and Combinations

The number and qualifications of the SAoJ members have been determined in a way that ensures the availability of sufficient human resources for the functions of the Authority, and the reasonable and equitable representation of all segments of the society, and that prevents any of the represented stakeholders from having undue influence over the Authority on their own or by forming coalitions. The members of the Authority should be determined by stakeholders/institutions who have expertise on the qualitative competence of the candidates.

The main focus was to ensure that the Authority's functions were fulfilled in the best manner possible; subsequently, the optimal number of permanent and substitute members of the departments that could fulfil these functions was determined. Finally, the professional qualifications and expertise of the members were determined and the number of members, their qualifications and the institutions that would appoint them were accordingly established.

- Professional disciplines necessitated by the functions of the Authority and its departments: Judge, Prosecutor, Lawyer, Notary, Courthouse Staff, Professor of Constitutional and Administrative Law, Professor of Administrative and Political Sciences, Public Administration Specialist, Statistics – Economics Expert, Public Finance–Budget Specialist, Sociologist – Anthropologist, Education – Communications Faculty Member, Psychologist – Psychiatrist
- The total number of members, including the Chairperson and the Deputy Chairperson is 90.

- These 90 members will be elected by the parliament, executive, members of the legal professions, public professional associations, commercial professional associations as led by the Union of Chambers and Commodity ("TOBB"), universities, associations and foundations, and employer and employee unions, in a way that represents their interests but prevents duplicate representation.

The number of SAoJ members and qualifications are determined with the objective of providing the institution with sufficient number of people with the required skills and competence in various disciplines so as to enable the institution to perform its functions properly while ensuring that the whole of the society and all stakeholders are fairly represented in regulating the judiciary. In addition to legislative, executive and the judiciary itself other stakeholders such as commercial and agricultural professional associations, labor and employer unions, non-governmental organizations, foundations determine appropriate number of members.

The total number and composition of the SAoJ members has been determined in a manner that no groups or coalition can exert influence over the judiciary and judicial independence is truly safeguarded. The legislator and executive arms of the state may appoint less than a third of members and are a minority. Members of legal profession appoint slightly more members than the legislator and executive. However, they do not gain majority and are prevented from forming a judicial cast

NOTES

The Distribution of SAoJ Members to Departments in Accordance with their Qualifications

Professional Qualifications	Policy Dept.	Legal Services Dept.	Objections Dept.	Personnel Dept.	TOTAL
Judge	3	3	3	4	13
Prosecutor	3	3	3	4	13
Lawyer	3	3	3	4	13
Notary	2	1	1	1	5
Courthouse Staff	2	1	1	2	6
Professor of Constitutional Law	5	1	1		7
Professor of Administrative Law	3	1	1		5
Professor of Administrative and Political Sciences	4	1		1	6
Public Administration Specialist	3	1		1	5
Statistics – Economics Expert	2	1			3
Public Finance and Budget Specialist	2	2			4
Sociologist – Anthropologist	3				3
Education – Communications Faculty Member	3			2	5
Psychologist – Psychiatrist				2	2
TOTAL	38	18	13	21	90

The occupational disciplines of the SAoJ members are determined by considering the functions of the SAoJ Departments and distributed in an appropriate number to ensure effective and efficient operation.

For example, there are more members of the legal profession due to the nature of the work that will be undertaken in the Department for Objections and Re–Examinations.

There are enough members from each professional discipline for the Department for Policy, Preferences and Principles, which determines the needs and priorities of the country and the appropriate measures necessitated by such needs.

The Qualifications of the SAoJ Members and Their Distribution According to their Electing Stakeholders

NOTES

In addition to the qualifications of the members to be sent by the stakeholders/sources, it is also taken into consideration that certain stakeholders may have better access to qualified members from certain disciplines.

For example, while members of the legal profession nominate the majority of judges, prosecutors, lawyers and courthouse staff, the universities nominate the majority of professors and faculty members.

	Judge	Prosecutor	Lawyer	Notary	Courthouse Staff	Constitutional Law Professor	Administrative Law Professor	Professor of Administrative and Political Sciences	Public Administration Specialist	Statistics–Economics Expert	Public Finance and Budget Specialist	Sociologist–Anthropologist	Education – Communications FM	Psychologist–Psychiatrist	TOTAL
Parliament	1	1	1	1	1	1	1	1	1	1	1		1		12
Executive / Regulatory and Supervisory Bodies						1	1	1	1	1	1	1	1		8
Members of the Legal Profession	8	8	8	1	4	1									30
Labor Unions	1	1	1			1	1	1	1				1		8
Associations and Foundations	1	1	1			1		1			1	1	1		8
Public Professional Organisations	1	1	1	1					1		1			2	8
Commercial and Agricultural Professional Organisations	1	1	1	1	1			1	1	1					8
Universities				1		2	2	1				1	1		8
TOTAL	13	13	13	5	6	7	5	6	5	3	4	3	5	2	90

NOTES

Members Elected by the Legislative Branch

Political parties with more than 20% of the votes determine six members, with three members for each majority party. The remaining six members are determined by the political parties, with 7.5% to 20% of the votes distributed equally among the minority parties. If the six members are not divisible by the number of parties, the remainder members are determined by the political parties with the most votes. For example, if there are four minority parties choosing six members, they will first choose the four members, and the two remainder members will be chosen by the two political parties that received the most votes during the latest general election.

Political parties nominate at least two candidates for each position before the SAoJ General Assembly election period. Sufficient candidates must be nominated, otherwise no candidate is deemed to have been nominated.

The General Assembly of the Parliament elects the members, starting from the candidates of the party that has the minimum votes. Meeting and decision quorums are not required for this election. No other elections are held for the qualified member elected. For example, if the eighth–ranked member is elected by the parliament from among the candidates to be nominated by the first party with the right to elect a single member, there will be no re–election for this position. With regard to those who have the right to choose more than one member, the members who receive the most votes are considered to have been elected.

		Parties by vote rates, from least to most votes				
		5th Party	4th Party	3rd Party	2nd Party	1st Party
		2 members	2 members	2 members	3 members	3 members
Professional Qualifications	**No. of Members**	24 cand.	24 cand.	24 cand.	24 cand.	24 cand.
1- Judge	1		1			
2- Prosecutor	1			1		
3- Lawyer	1				1	
4- Notary	1					1
5- Courthouse Staff	1					1
6- Professor of Constitutional Law	1	1				
7- Professor of Administrative Law	1				1	
8- Professor of Administrative and Political Sciences	1		1			
9- Public Administration Specialist	1					1
10- Statistics–Economics Expert	1	1				
11- Public Finance and Budget Specialist	1				1	
12- Education – Communications Faculty	1			1		
TOTAL	**12**	1st Election	2nd Election	3rd Election	4th Election	5th Election

Members Elected by the Executive Branch

NOTES

As with the legislative branch, the importance of representation for the supervisory and regulatory bodies of the executive branch, which are closely related to the economic and social life of the country, has been recognized.

The supervisory and regulatory authorities determine eight candidates, one for each qualification, as per the table below. These lists are notified to the SAoJ.

The President of the country elects one member for each qualification from among the candidates approved by the SAoJ, according to the recommendation by the Minister of Justice. It is possible for one person to be nominated from different authorities.

Professional Qualifications	No. of members	SPK	RTÜK	RK	BDDK	BTK	EPDK	KİK	Kamu Gözetimi Muhasebe DSK	KVKK
Professor of Constitutional Law	1	1	1	1	1	1	1	1	1	1
Professor of Administrative Law	1	1	1	1	1	1	1	1	1	1
Prof. of Administrative and Political Sciences	1	1	1	1	1	1	1	1	1	1
Public Administration Specialist	1	1	1	1	1	1	1	1	1	1
Statistics–Economics Expert	1	1	1	1	1	1	1	1	1	1
Public Finance and Budget Specialist	1	1	1	1	1	1	1	1	1	1
Sociologist–Anthropologist	1	1	1	1	1	1	1	1	1	1
Education – Communications Faculty Member	1	1	1	1	1	1	1	1	1	1
TOTAL	**8**									

SPK: Capital Markets Board of Turkey **RTÜK:** Radio and Television Supreme Council **RK:** Competition Authority
BTK: Information and Communication Technologies Authority **EPDK:** Energy Market Regulatory Authority
KİK: Public Procurement Authority **KGK:** Public Oversight Accounting and Auditing Standards Authority
KVKK: Personal Data Protection Authority **BDDK:** Banking Regulation and Supervision Agency

NOTES

Members Elected by the Legal Profession

Balanced representation of the legal professions is crucial, as the Authority will regulate the services of those legal professions. As mentioned before, the number of legal professional members constitute a third of the General Assembly, which is high, but not high enough to take decisions on its own.

Lawyers elect eight lawyer members, judges elect eight judge members, prosecutors elect eight prosecutor members, notaries elect one notary member and one constitutional law professor member, and courthouse staff elect court courthouse staff members.

Before the election, candidates are mainly nominated by the legal professional associations' board of directors. Those who want to become members can also apply individually as independent candidates.

The list of members is reviewed by the SAoJ, and, at most, three times the number of candidates' names with the required qualifications are published. This is done on a first–come–first–served basis.

Professional Qualifications and their Member Source	No. of Members
Judges – elected by the judges	8
Prosecutors – by the prosecutors	8
Lawyers – by lawyers	8
Notaries – by the notaries	1
Constitutional Law Professor – by the notaries	1
Courthouse staff – by the courthouse staff	4
TOTAL	**30**

After that, the legal professions hold elections among themselves. Those who receive the most votes are elected as members.

Members Elected by the Public Professional Associations

The representation and election of members of the associations for healthcare workers, architects and engineers is also regulated. Taking into account their member numbers, the TMMOB is entitled to elect five members to the General Assembly, while the other public professional associations can elect three members.

The professional associations responsible in the fields of human/animal health will elect the two Psychologist–Psychiatrist members and one judge member, while the other five members will be elected by the TMMOB.

The TMMOB notifies SAoJ of the two candidates for each of the five positions. The TMMOB elects the five members from among the members approved by the SAoJ. Those who receive the most votes are elected.

The Board of Directors for each of the remaining public professional associations picks two candidates for each of the three positions. The associations gather to hold an election to elect the three members from among the members approved by the SAoJ. In the elections held separately for each expertise, the member with the most votes is elected.

Public Professional Organisations	No. of members
Turkish Medical Association (TTB)	83.000
Turkish Veterinary Medical Association (TVHB)	20.000
Turkish Dental Association (TDB)	22.681
Turkish Pharmacists' Association (TEB)	30.000
Union of Chambers of Turkish Engineers and Architects (TMMOB)	579.868
TOTAL	**735.549**

Professional Qualifications	No. of members
Judge	1
Prosecutor	1
Lawyer	1
Notary	1
Public Administration Specialist	1
Public Finance and Budget Specialist	1
Psychologist–Psychiatrist	2
TOTAL	**8**

NOTES

Members Elected by Other Commercial/Agricultural Associations

These associations will elect eight members.

Most of these associations, with the exception of the TESK and TÜRMOB, are also members of the chambers and commodity exchanges under the Union of Chambers and Commodity Exchanges of Turkey ("TOBB"). In order to prevent duplicate representation and to cultivate co–operation and conciliation, these associations are expected to determine their candidates. TOBB will then hold an election to determine the final members.

The central Board of Directors of each organization will determine two candidates for each position and send the list to the SAoJ, which will then approve the candidates fulfilling the qualifications requirement.

The central Board of Directors of the TOBB elects the members from among the final list of candidates.

Professional Qualifications	No. of members	Turkish Appraisers Association (TDUB)	Insurance Association of Turkey (TSB)	Turkish Capital Markets Association (TSPB)	Union of Turkish Agricultural Chambers (TZOB)	Confederation of Turkish Tradesmen and Craftsmen (TESK)	Union Of Chambers Of Certified Public Accountants of Turkey (TÜRMOB)
Judge	1	1	1	1	1	1	1
Prosecutor	1	1	1	1	1	1	1
Lawyer	1	1	1	1	1	1	1
Notary	1	1	1	1	1	1	1
Courthouse Staff	1	1	1	1	1	1	1
Professor of Administrative and Political Sciences	1	1	1	1	1	1	1
Public Administration Specialist	1	1	1	1	1	1	1
Statistics–Economics Expert	1	1	1	1	1	1	1
TOTAL	**8**	**1**	**1**	**1**	**1**	**1**	**3**

Members Elected by Universities

NOTES

The Council of Higher Education (YÖK) nominates two candidates for each position.

It is also possible for individuals to become independent candidates.

Accordingly, a maximum of five candidates is allowed for each position, on a first– come–first–served basis.

Candidates who are approved by the SAoJ are entered into the elections held for each professional qualification.

The university students elect the members from among the candidates. Those with the most votes are elected.

Professional Qualification	No. of Members
Notary	1
Professor of Constitutional Law	2
Professor of Administrative Law	2
Professor of Administrative and Political Sciences	1
Sociologist – Anthropologist	1
Education – Communications Faculty Member	1
TOTAL	**8**

NOTES

Members Elected by Associations and Foundations

Non–governmental organizations are represented in the Authority by a total of eight members.

- Public–benefit Associations elect three members: one Professor of Constitutional Law, one Professor of Administrative and Political Sciences, and one Judge.
- Public–benefit Foundations elect three members: one Public Finance and Budget Specialist, one Sociologist–Anthropologist, and one Prosecutor.
- Other sectoral associations that do not have public–benefit status elect two members: one Lawyer and one Education – Communications Faculty Member.

Each of the above sections determines, at most, twice the number of candidates and reports these to the SAoJ. It is also possible for individuals to apply as independent candidates on a first–come–first–served basis.

Professional Qualification	No. of Members
Judge	1
Prosecutor	1
Lawyer	1
Professor of Constitutional Law	1
Professor of Administrative and Political Sciences	1
Public Finance and Budget Specialist	1
Sociologist – Anthropologist	1
Education – Communications Faculty Member	1
TOTAL	**8**

The SAoJ approves, at most, three members for each position. A general assembly of presidents of each of the above sections elects the members from among the candidates approved by the SAoJ.

Members Elected by Employer and Employee Unions

NOTES

Labor unions are represented in the Authority by a total of eight members.

Since Employer Unions are, in effect, already represented by the TOBB and other professional associations, two members will be elected by them, whereas Employee Unions will be represented by six members.

Public employees and private–sector employees were evaluated in two separate groups in the following manner:

- Public employee trade union confederations elect three members: one Judge, one Professor of Constitutional Law and one Public Administration Specialist
- Private employee trade union confederations elect three members: one Prosecutor, one Professor of Administrative Law and one Professor of Administrative and Political Sciences
- Employer union confederations elect two members: one Lawyer and one Education – Communications Faculty Member

Professional Qualifications	No. of Members
Judge	1
Prosecutor	1
Lawyer	1
Professor of Constitutional Law	1
Professor of Administrative Law	1
Professor of Administrative and Political Sciences	1
Public Administration Specialist	1
Education – Communications Faculty Member	1
TOTAL	**8**

In each segment, federations recommend as many members as the number of members they will elect.
It is also possible for individuals to apply as independent candidates on a first–come–first–served basis.

The SAoJ announces, at most, three times the number of candidates for each group. A general assembly of confederation presidents in each group elects members for their groups from among the approved candidates.

NOTES

Department for Policies, Preferences and Principles

Formation:

Once the permanent and substitute members required for all Departments are elected, all of the remaining members form this Department. It consists of 38 members, including the Chairperson and the Deputy Chairperson. The remaining members are expected to include members with the qualifications specified in the table on the right. The total number may be slightly more or less in accordance with the rules of nomination.

There is no distinction between permanent and substitute members in this Department. All members are considered to be permanent members. The Chairperson and Deputy Chairperson of the General Assembly of the SAoJ also serve as the Head of Department and his/her assistant.

Professional Qualifications (Targeted)	No. of Members
Judge	3
Prosecutor	3
Lawyer	3
Notary	2
Courthouse Staff	2
Professor of Constitutional Law	5
Professor of Administrative Law	3
Professor of Administrative and Political Sciences	4
Public Administration Specialist	3
Statistics–Economics Expert	2
Public Finance and Budget Specialist	2
Sociologist–Anthropologist	3
Education – Communications Faculty Member	3
TOTAL	**38**

Responsibilities:

- Establishing, developing and publishing policies relating to judicial services, law and justice, in accordance with the needs of the country;
- Determining the principles, priorities, targets and deadlines within the framework of this policy;
- Determining and planning the resources, including the budget, as required within the framework of the policies, priorities and preferences;
- Establishing general principles and making recommendations on the establishment or abolition of courts, or the determination and change of jurisdictions.

Department for Legal Services

NOTES

Formation:

Consists of 12 permanent and six substitute members elected by the General Assembly of the SAoJ. Qualitative candidacy and priority election procedures ensure the desired qualifications of the members.

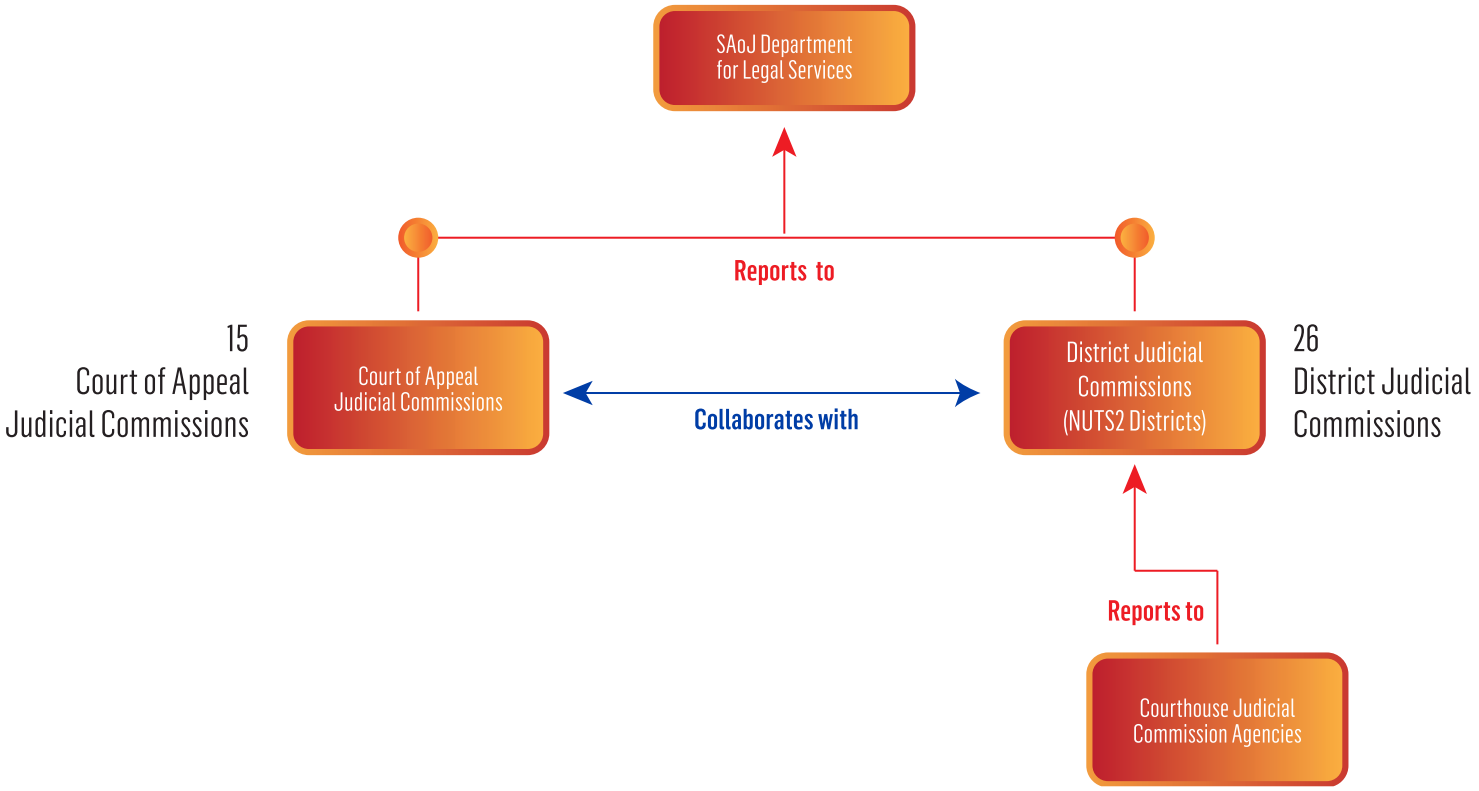
Responsibilities:

- Establishing, abolishing or changing the jurisdiction of Courts;
- Determining court personnel such as judges, prosecutors and other courthouse staff;
- Assigning court personnel to specific courts (either permanently or temporarily);

Professional Qualifications	No. of Members
Judge	3
Prosecutor	3
Lawyer	3
Notary	1
Courthouse Staff	1
Professor of Constitutional Law	1
Professor of Administrative Law	1
Professor of Administrative and Political Sciences	1
Public Administration Specialist	1
Statistics–Economics Expert	1
Public Finance and Budget Specialist	2
TOTAL	**18**

- Determining and declaring whether courts and other judicial institutions and professional members provide high–quality services (through surveys, etc);
- Making decisions on the establishment, abolishment and classification of the notary public offices, and the decisions to appoint public notaries; and
- Making decisions on budget proposals.

Administration of Judicial Services
Central and Regional Administration



The Structure of the Department for Legal Services

District Judicial Commissions and Courthouse Agencies

NOTES

The Department for Legal Services under the SAoJ is responsible for the smooth and efficient provision of judicial services throughout the country, and also for the management of judicial service facilities in accordance with efficient, continuous and high–quality service production.

In accordance with the principles of "central planning – decentralised administration", a centrally planned operation and careful observation and evaluation ensures information is gathered from all service units, even the most distant ones, and decisions or necessary interventions can be made quickly.

The Department of Judicial Services serves its functions throughout the country by virtue of the Court of Appeal Judicial Commissions, established for the Regional Courts of Appeal, and the District Judicial Commissions established for the first–instance courts in the 26 Development Zones.

District Judicial Commissions have agency offices within the courthouses in their respective districts.

The responsibilities of the commissions and their agencies:

- Ensuring judicial service facilities, including their buildings, data processing, communication, security systems, parking, transportation, electricity, water and ventilation facilities are properly maintained without interruption, and eliminating any disruptions by taking the necessary measures;
- Making temporary appointments and providing information for said appointments for the continuation of legal services without interruption, in cases of illness or similar temporary obstacles that prevent judges, prosecutors or other courthouse staff from performing their duties, upon the decision of the Commission or the decision of its Chairperson in urgent cases;
- Supporting the SAoJ in personnel matters, supervising shifts, reviewing performance, and other management matters pertaining to all courthouse staff other than judges and prosecutors;
- Handling disciplinary matters and supervising courthouse staff other than judges and prosecutors; and
- Reporting to the SAoJ while performing their duties, and co–operating with other Judicial Commissions when necessary.

NOTES

Judicial Commissions

- Court of Appeal Judicial Commissions are established for each Regional Court of Appeal, whereas District Judicial Commissions are established for all courthouses and first–instance courts in each of the Development Zones.
- Court of Appeal Judicial Commissions consist of the Presidents of the Regional Court of Appeal and Regional Administrative Court of Appeal; the Chief Prosecutor of the Court of Appeal; one permanent and one substitute member from each of the Presidents of criminal, civil, administrative and tax chambers; and two permanent substitute lawyer members nominated by the Unions of Regional Bar Associations. The SAoJ decides which elected members become permanent and which become substitutes. In the absence of the Chief Prosecutor of the Court of Appeal, the Deputy Chief Prosecutor attends the Commissions, while in the absence of the permanent member, the substitute member attends the Commissions.
- District Judicial Commissions consists of the most senior Chief Prosecutor in the development zone; one permanent and one substitute member from each of the senior members of the criminal, civil, administrative and tax courts; and two permanent and two substitute lawyer members nominated by the Unions of Regional Bar Associations. The SAoJ decides which elected members become permanent and which become substitutes. In the absence of the Chief Prosecutor of the Court of Appeal, the Deputy Chief Prosecutor attends the Commissions.
- It is preferred that the members of the Regional Judges' Associations, Regional Prosecutors' Associations and Unions of Regional Bar Associations are elected as members of the Judicial Commissions.
- For the quorum for the meeting to be met, at least two–thirds of the Commissions' members should be present. A majority of attendees can take decisions.
- The most senior member chairs the Commission; in his/her absence, the most senior chamber president acts as deputy. The Chairperson of the Commission may assign duties and powers to one or more of the members to implement the decisions taken by the Commission.

Courthouse Judicial Commission Agencies

In all courthouses within NUTS2 Development Zones where Judicial Commissions have been established, **Courthouse Judicial Commission Agencies** are also established.

Judicial Commission Agencies comprise the most senior two judges working in the relevant courthouse (one civil–law and one criminal–law judge), the chief prosecutor of the courthouse, and two lawyers whose offices are registered with the bar within the jurisdiction of the relevant courthouse. The most senior member is the Chairperson of the Agency and the second–most senior member is the Deputy Chairperson.

Responsibilities of the Courthouse Judicial Commission Agencies:

Perform the duties related to the management of the courthouses and their facilities, as well as the duties assigned by the Judicial Commission and its Chairperson; and

Report to the Commission any issues that might affect the service in courthouses.

NOTES

Obligation of the Experts to Register to the Expert Registry Maintenance of the Expert Registry

- For each Regional Court of Appeal, a Regional Expert Registry is kept.
- The Expert Registry is maintained by the Registry Office of the Court of Appeal Judicial Commissions and is supervised by the SAoJ Department for Legal Services.
- Anyone who has been appointed as an expert by the courts, anyone who has ever submitted an expert opinion on disputes subject to trial, and those who have obtained opinions from these persons must be registered with the Registry. The registration procedure is determined by SAoJ through regulation.
- The following information about their expert is recorded in the Expert Registry:
  - Information and documents regarding the identity and contact information, their specialist subject, educational history, competence, and experience;
  - Information on the duties they have performed, the public and private institutions and persons with which they have a connection;
  - Their professional studies, works and articles, or information on their resources,
  - All copies of their opinions submitted to public trials and information on the case files; and
  - Information and documents on any complaints, disciplinary and criminal investigations, and civil cases against them.
- The information in the Registry is available to all legal professionals and is electronically accessible.
- Lawyers can freely examine the Registry without having to act on behalf of a client, and take copies of documents without incurring any fees. Non-lawyers can also access the Registry with the approval of the Judicial Preparation Court.

The Department for Objections and Re–examinations

NOTES

Formation:

Consists of nine permanent and four substitute members elected by the General Assembly of the SAoJ. Qualitative candidacy and priority election procedures ensure the desired qualifications of the members.

Responsibilities:

- Rendering decisions regarding the objections against the decisions of the SAoJ institutions;
- Re–examining Department decisions rendered in relation to objections and complaints made against the decision of the Legal Professional Associations; and
- Rendering decisions regarding the objections against the decisions of the disciplinary and supervisory boards of the Legal Professional Associations.

Professional Qualifications	No of Members
Judge	3
Prosecutor	3
Lawyer	3
Notary	1
Courthouse Staff	1
Professor of Constitutional Law	1
Professor of Administrative Law	1
TOTAL	**13**

NOTES

The Department for Personnel, Career, Performance and Inspection

Formation:

Consists of 16 permanent and five substitute members elected by the General Assembly of the SAoJ. Qualitative candidacy and priority election procedures ensure the desired qualifications of the members.

The Department operates in two panels: (1) The panel responsible for the matters of judges, prosecutors and courthouse staff consists of nine permanent members and three substitute members. (2) The panel responsible for the matters of lawyers and notaries consists of seven permanent and two substitute members.

Responsibilities:

- Making decisions about entry, admission, appointment and promotion in legal professions;

Professional Qualifications	No of Members
Judge	4
Prosecutor	4
Lawyer	4
Notary	1
Courthouse Staff	2
Professor of Administrative and Political Sciences	1
Public Administration Specialist	1
Education – Communications Faculty Member	2
Psychologist – Psychiatrist	2
TOTAL	**21**

- Making decisions and taking actions regarding the personnel matters, career developments and performance evaluation of legal professionals;
- Reviewing the performances of legal professionals and improving their performance; and
- Inspecting the members of the legal professions in terms of ethics and discipline, helping to investigate their crimes and misdemeanors, imposing and enforcing their sanctions.

Disciplinary Investigations and Prosecutions Regarding SAoJ Members

NOTES

Criminal allegations, complaints and reasonable suspicions that require disciplinary investigation or criminal prosecution, which are notified to the Authority, are processed in the following order and manner:

1- The first examination is carried out by the Chairperson of the Authority. S/he decides whether to process this application and announces the decision urgently.

2- It is possible to object to the decision not to process within 15 days of the announcement/notification to the concerned person. The objection is resolved by the Department for Objections and Re–examinations. It is possible to file a cancellation action against this decision of the Department before the Supreme Court of Justice.

3- The Chairperson appoints a member from among the Heads of Departments as the investigator and assigns the disciplinary investigation. The Head of Department who is appointed as the investigator member finalises his/her investigation within 30 days at the latest and submits his/her report to a Board comprised of Heads of Departments.

4- A Board of Heads of Departments either (1) decides on the extension of the inquiry, (2) dismisses the charges or (3) decides to impose a disciplinary sanction. If the action also constitutes a crime as per the criminal codes, then a criminal complaint is filed with the Republic's Chief Public Prosecutor's office. It is possible to resort to legal remedies against all actions except for the decision on the extension of the inquiry.

5- The disciplinary investigations of the Chairperson and the Heads of Departments are carried out by the Republic's Chief Public Prosecutor. Republic's Chief Public Prosecutor submits his/her report to the General Assembly, who then renders one of the above decisions.

6- Anyone can request the correction of the disciplinary decision if there is a mistake of fact, or directly file a cancellation action against the disciplinary decision before the Supreme Court of Justice, within 30 days of notification/ announcement.

NOTES

Legal Remedies Against SAoJ Decisions and Judicial Review

Except for the recommendations of the Policies and Preferences Department, all decisions and actions of the Authority are open to judicial review.

- All interested persons are entitled to bring cancellation actions before the Supreme Court of Justice against all decisions and actions of the Authority. If they wish, they can also object to the decision before the Department for Objections and Re–examinations under the SAoJ before filing a court action.
- It is possible to object to an SAoJ decision within 15 days of the date of announcement of the decision or the date of notification to the relevant party.
- The Department for Objections and Re–examinations is required to render its decision within 15 days. Otherwise, the objection is considered to be rejected.
- The petitioner can withdraw his/her objection without waiting for the decision regarding the objection to be rendered, and instead file a cancellation action.
- It is possible to file a cancellation action against an SAoJ decision within 30 days of the date of the announcement of the decision or the date of notification to the relevant party.
- The decision of the Supreme Court of Justice can be appealed before the Constitutional Court within 60 days as of the notification of the decision to the concerned person.

Autonomous Judicial Budget

NOTES

The budget that will enable the judiciary to fulfill all its functions, duties, and powers in an impartial and independent manner, and in a manner that will provide quality service to the society, is determined by the SAoJ and sent to the executive bodies and the parliament to allocate the necessary resources from the general budget.

- The budget for the judiciary is priorily allocated from the general budget.
- It is managed by the SAoJ and used to cover the remuneration and other rights of the judiciary and the expenses of the judicial organs.
- The budget allocated for the judiciary cannot be less than ...% of the general budget of the government and less than 0.30% of the GDP determined for the previous calendar year. In any case, the judicial budget is determined in accordance with the personnel, facility operating and other needs of the judiciary.
- Out of the revenues of the general budget, the item of judicial fees, service duties are determined in line with the recommendations of the Authority and in a way that facilitates the right to access justice.
- Infrastructure investments for buildings, data processing facilities, facility management, education, conference and recreational facilities needed for the production of high-quality judicial services by service production units such as judicial bodies and their components, courts and enforcement offices are not included in this budget. The government ensures that these investments are made by determining the priority needs.

NOTES

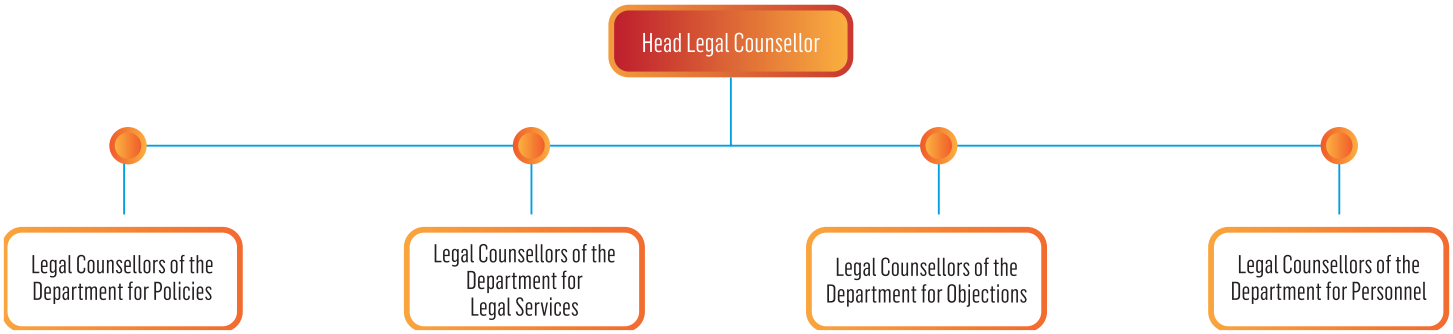
Supervision of SAoJ Activities

The activities and income/expenses of the SAoJ are subject to internal and external supervision. The Constitutional Court supervises whether the SAoJ carries out its activities in accordance with its purpose.

- The SAoJ records its activities, all income earned, and all expenses incurred in an accountable manner and reports the results to the public online in accordance with the principles of integrated reporting.
- The purpose of integrated reporting is to provide realistic information about the activities, plans and resources of the SAoJ, and to ensure that the public can make long–term and healthy predictions.
- Reports are prepared by reviewing the reports of the President and Legal Counsellors of the Departments, and the decisions, records and activities of the SAoJ, and are announced to the public in June and December of each year.
- The SAoJ primarily obtains self–audit reports from independent service organizations based on the reports it publishes. These self–audit reports are notified to the Constitutional Court and are announced on the SAoJ website so members of the public may express their opinions.
- The Constitutional Court reviews these self–audit reports and the issues raised by the public and publishes the final audit report following its inspection.
- If any irregularities/crimes are detected, these are notified to the Chairpersonship of the SAoJ, and it is possible to have recourse to prosecution through the office of the Republic's Chief Public Prosecutor.

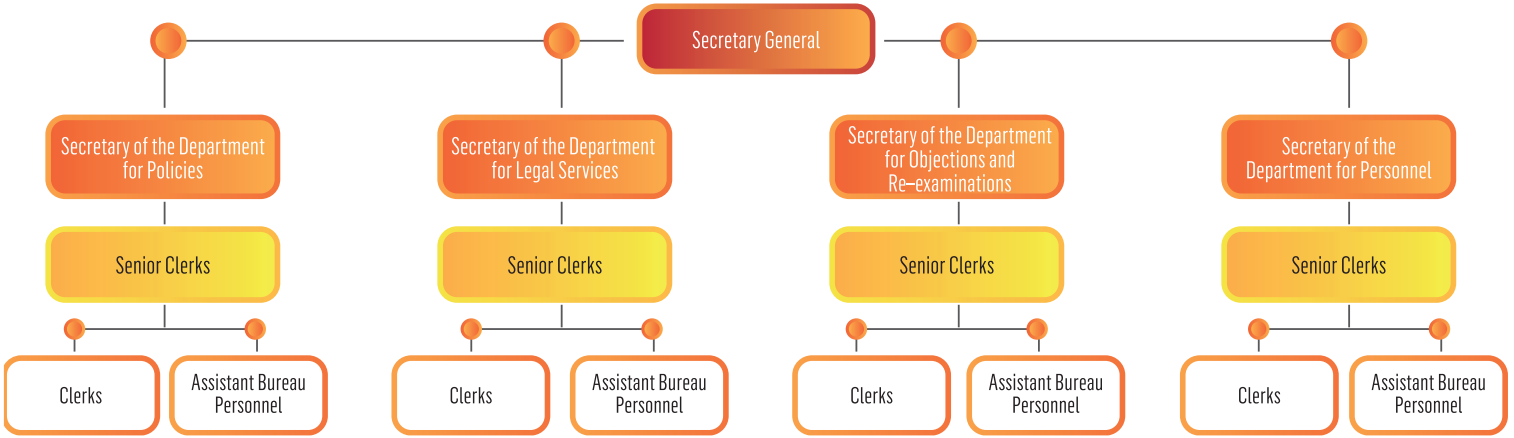
The Composition and Organization of the Office of Legal Counsellors

NOTES



- The Office of Legal Counsellors consists of at least two legal advisors appointed for each department under the leadership of the Head Legal Counsellor.
- The Legal Counsellors fulfil their duties independently of the Chairperson of the SAoJ and the Heads of Departments. Although they are dependent on the Authority with respect to their personnel affairs, they are independent in terms of their functions. They can be held accountable only to the General Assembly of the Authority and not to the Chairperson of the Authority or the Heads of Departments.
- The Head Legal Counsellor is directly elected by the SAoJ General Assembly, whereas members of the Department of the Legal Counsellors are elected from among the candidates chosen by the Head Legal Counsellor and appointed to the relevant departments in accordance with their expertise.
- The main responsibilities of the Legal Counsellors: To provide independent advice to the Chairpersonship, the General Secretariat and the Heads of Departments on legal matters, to provide legal opinions on the regulations to be issued by the Authority, and to represent the Authority before the competent authorities in all disputes. Legal Counsellors are obliged to inform the General Assembly of any activities of the Chairperson, Secretary General or Heads of Departments that are deemed unlawful or contrary to their legal opinions.

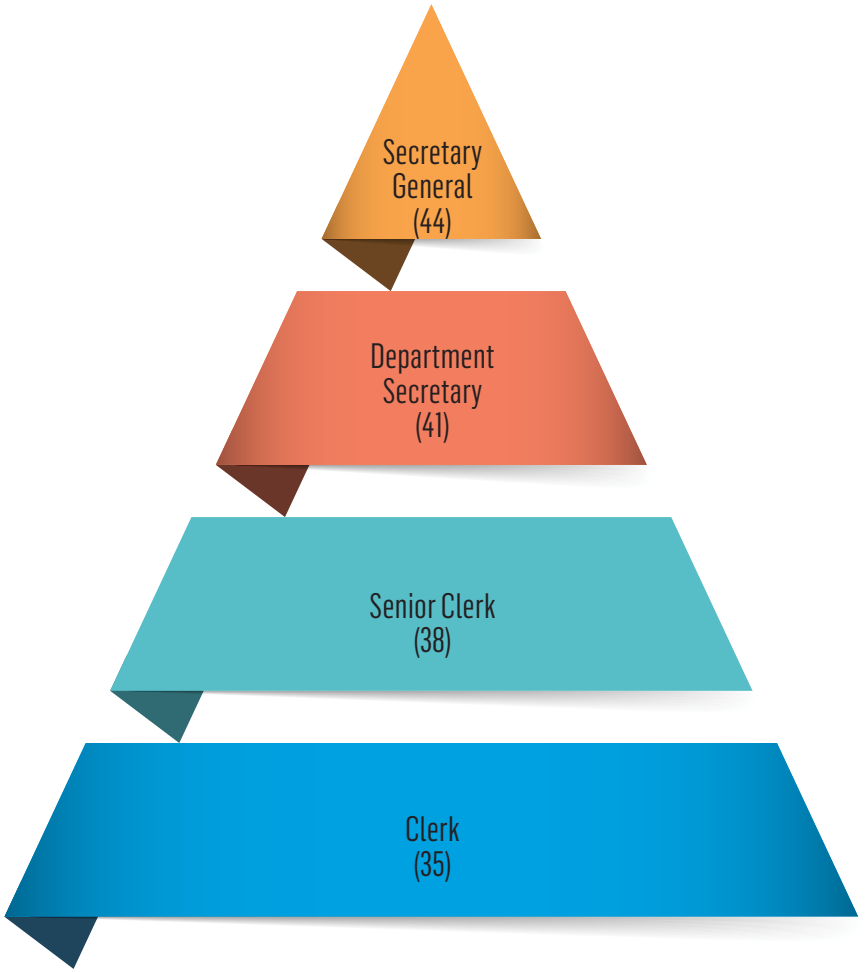
The Composition and Organization of the General Secretariat

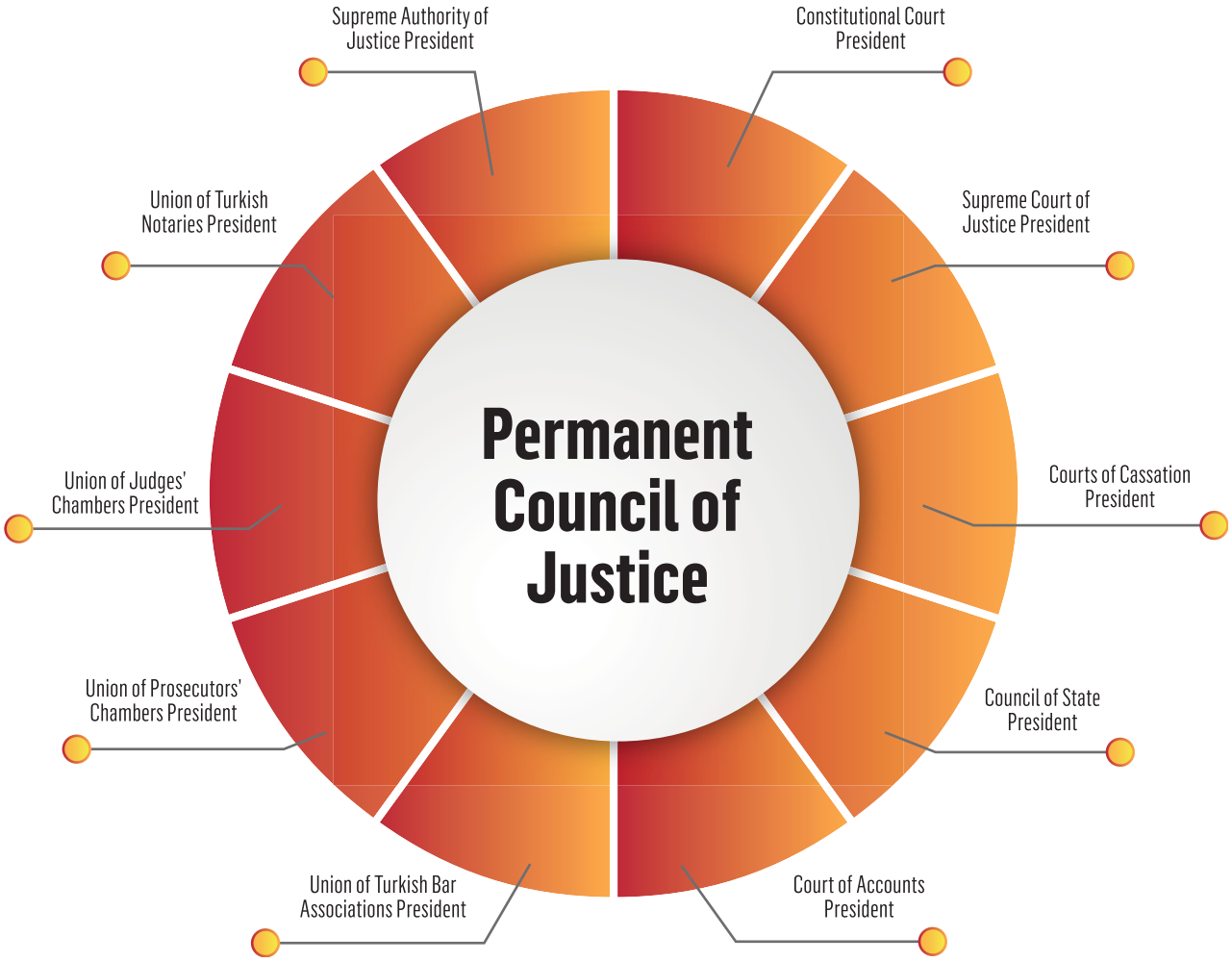


- According to the organization of the General Secretariat, there is a bureau secretariat for each department.
- The Department Secretaries work under the direction of the Secretary General, who works under the direction of the Chairpersonship.
- The Senior Clerks, the Clerks and the Assistant Bureau Personnel perform their duties under the direction of the relevant Department Secretary and form the sub–units of the General Secretariat.

Career Advancement for the Staff of the General Secretariat

- A merit–based career plan has been devised for the court Clerks, with the possibility of becoming the Secretary General of the Authority.
- The aim of this career plan is to improve the competences of these judicial officials, which consequently would ensure the improvement of judicial services and provide measurable efficiency.
- Candidates who are eligible to enter the Clerk positions of the Authority start their profession with a nine–year contract.
- At the end of each three–year tenure, personnel are subject to a performance evaluation. Those who meet the performance criteria are promoted to the higher position.
- According to the above evaluation, the Department Secretaries are appointed by the Secretary General of the Authority, whereas the Secretary Generals are appointed by the Chairperson of SAoJ. Career advancement for these two positions is therefore not automatic.




Supreme Authority of Justice President
Constitutional Court President
Union of Turkish Notaries President
Supreme Court of Justice President
Permanent Council of Justice
Union of Judges' Chambers President
Courts of Cassation President
Union of Prosecutors' Chambers President
Council of State President
Union of Turkish Bar Associations President
Court of Accounts President

Permanent Council of Justice

- The Permanent Council of Justice is an advisory institution established to develop co-operation between judicial institutions and judicial professions in the field of the rule of law, empowering trust in justice, judicial independence and unity in jurisprudence; determining problems in this respect, advising on their solution and disclosing the same to the public.
- It comprises the presidents of the following institutions: the Constitutional Court, Supreme Court of Justice, Courts of Cassation, Council of State, Court of Accounts, the SAoJ, Union of Judges' Chambers, Union of Prosecutors' Chambers, Turkish Bar Association (also known as the Union of Turkish Bar Associations), Union of Turkish Notaries. Secretariat duties are carried out by the institution whose president is the most senior member.
- It holds a meeting at least twice a year at the institution of the most senior member. The president determines the agenda with regard to the rule of law, the judiciary, judicial services, the economy and democracy, and adds to it issues notified to him/her, categorising them into groups in such a way that the meeting proceeds in the most efficient way. He/she declares the agenda at least seven days before the meeting and informs the participants.
- Members of the public, especially non-governmental organizations' representatives, are permitted and indeed encouraged to participate in the council's first meeting, which is held within the first three months of the year. Meetings are held in the style of a conference with a moderator, and are designed and conducted in such a way that participants can freely share their opinions, thoughts and suggestions with regard to any items on the agenda.
- In these meetings, matters submitted by the public and selected by the most senior member are discussed, and decisions are taken. All decisions taken are advisory. They are disclosed to the public via the council's website, and minutes of the discussions are compiled and published as a booklet.
- The council's second meeting is held six months after the first meeting. Any developments regarding decisions taken in the first meeting are discussed, and additional advisory decisions are taken to accelerate these developments. These decisions are notified both to the relevant institutions and to the public.

2
FULLY INDEPENDENT JUDICIAL PROFESSIONAL ASSOCIATIONS

Atty. Mehmet Gün
Atty. Hande Hançar
Atty. Muhammed Demircan
Atty. Utku Süngü

Rationale

We have designed a system in which each judicial profession will have its own fully independent professional organization. We stipulate that these will be regulated under the Constitution as judicial professional associations. We envisage that judgeship, prosecutorship, attorneyship and notaryship will be organized at equal levels, in a self-governing and fully independent way.

These judicial professional associations will be structured by considering the development plan and objectives in parallel with the court structure, economic and demographic issues. While the judgeship and prosecutorship regulations will be limited to the jurisdiction of each regional court of appeal, attorneyship regulations will be limited to the jurisdiction of unions of regional bar associations.

The center for all judicial professional associations will be located in Ankara, the capital of Turkey. These central unions will focus on the highest representation of the professions. Professional associations will fulfill their essential functions for their members through regional chambers, or associations. In this way, it will be possible for the members of a profession to have easier access to professional associations and to be effective, and for the associations to serve their members more effectively.

The judicial professional associations will be organized as independent institutions, and their duty and responsibility will be to protect the rule of law and the independence of judicial professionals. The SAoJ will have a duty to defend, protect and develop the independence of the judicial professions. And the SAoJ's intervention in the professional associations has been carefully prevented. Instead of the Ministry of Justice, the SAoJ will be authorized in issues such as the admission, career advancement, discipline and dismissal of judicial professionals. Professionals admitted into the profession by the SAoJ will themselves manage the professional associations of which they are members, using democratic methods that ensure diversity and inclusiveness in governance. We envisage that the professional associations, in addition to defending the rule of law, will focus on improving their professions to provide high-quality services as determined by the SAoJ. Disciplinary and supervisory organs will be restored, with a structure that will work efficiently and effectively at an optimum level to improve professional accountability in the judicial professions.

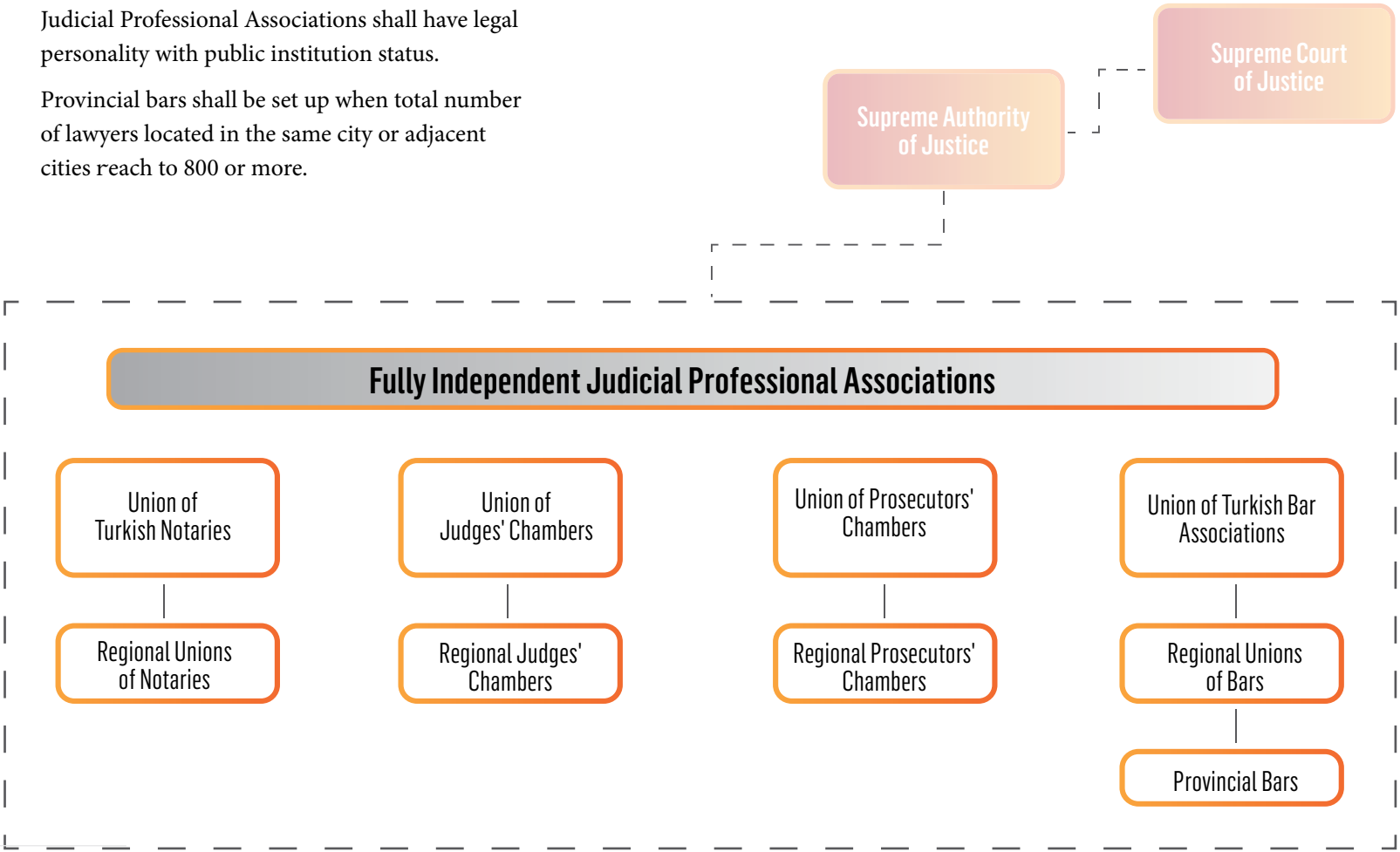
The structuring of the courts, which are considered as judicial service units, will enable the concentration of expertise in the judiciary at the centers on the one hand, and on bringing the service to the public through the end units on the other.

A single law will regulate the judicial professions, in parallel with each other, uniformly and harmoniously. An approach to career planning, including levels of admission into the legal professions, internship, supervision and assistance, has been developed with the aim of increasing the quality of service by increasing the competence of the service providers. Common career plans for the legal professions and inter-professional transition regulations aim to improve the human resources of the judiciary and to shift such resources between different roles when necessary. With this uniform career plan and inter-professional transitions, the effective use of resources and positive professional cooperation are developed. In this way, it will be possible for prosecutors to be positioned at the same level as attorneys by leaving the bench in courts.

Judicial Professional Associations

Judicial Professional Associations shall have legal personality with public institution status.

Provincial bars shall be set up when total number of lawyers located in the same city or adjacent cities reach to 800 or more.



NOTES

Outline of the Proposed Judicial Professional Associations

1- Judges, public prosecutors, attorneys and notaries each constitute their own independent judicial professional associations.

2- Judicial professional associations are regulated by the judiciary and distinguished from other chambers and professional associations.

3- They are organised in parallel with the Regional Courts of Appeal. Their central offices are in Ankara.

4- The regional chambers are focused on the service provided by the profession, while the central organization is focused on its representation and essential policies.

5- The board of directors is the principal decision-making body. It is inclusive of different opinions in representation.

6- Candidacy to the bodies is transparent in a way that promotes merit-based results. It is subject to judicial review.

7- The election of one person is conducted by run-off voting, and the election of multiple people by proportional representation. It is prohibited to use a delegation or closed lists.

8- The decisions of the professional associations' bodies are subject to objection before the Supreme Authority of Justice (SAoJ) and to judicial review before the Constitutional Court.

9- Everyone admitted to the profession by the SAoJ is a member of the profession's registry and the professional association of the region in which he/she conducts his/her profession. Attorneys register with the professional association and bar in the region in which they set up their office.

10- The central organization's board of directors comprises the regional presidents of the boards of directors. The president of the central organization is elected by all members of the profession.

11- The Board of Discipline and Supervision carries out its activities in the regions where there is a relatively high number of attorneys, while, for judges, public prosecutors and notaries, it carries out its activities in the center.

12- The fundamental policymaker is a well-attended, permanent Council of Law.

Primary Purpose and Objectives

- To improve the judicial professions as a constituent element of the judiciary in order to provide a high-quality service to the public, and to restructure the judicial professions as an independent body to serve this purpose.
- All members of the judicial professions shall have their own judicial professional association.
- Judicial professional associations shall consist of all active members of the profession.
- Any external intervention to the judicial professions shall be prevented.
- Members of the profession shall be trained and progressed in accordance with their mission.
- Positive, respectable and efficient co-operation shall be established with members of other judicial professions.
- The transparency and accountability of judicial professions shall be improved.

NOTES

Professional Associations Structured in Parallel with the Localities of the Judicial and Regional Courts of Appeal

Supreme Authority of Justice, the Permanent Council of Justice and the central Union of Judicial Professional Associations (JPAs) are located in Ankara.

The regional unions of the JPAs are within the localities of the regional courts of appeal.

Regional Unions of Bars and Chambers of JPAs are established along with regional courts of appeal.

- 15 Regional Judges' Chambers
- 15 Regional Prosecutors' Chambers
- 15 Regional Unions of Bars, and 75 to 80 City Bars
- 15 Regional Unions of Notaries

Regional Courts (15 BAM)

Source: Judges and Prosecutors Concil

Organisational Structure of the Judicial Professional Associations

NOTES

- Each of the judicial professional associations (JPA) shall have public institution status.
- Central union, regional chambers for all JPAs and in case of lawyers provicial bars shall have independent legal entity status.
- Central unions of JPAs shall be based in Ankara. Regional chambers shall be located in the provinces where regional courts of appeal are located.
- Each of central, regional or provincial JPAs shall be totally independent, they shall be governed democratically by managements democratically elected by their active members.
- All JPAs shall be governed by a president elected bay all members via run-off elections and board of directors. Presidents and the board of directors will appoint executive boards. Unions' board of directors shall be comprised of the presidents of regional chambers.
- Directors of the board for regional chambers of judges and prosecutors and the provincial bars shall be elected by all active members. The director receiving the highest number of votes serve as the president. Board of directors of the regional union of bars shall be comprised of the presidents of the provincial bar presidents.
- JPAs comply with the principles and policies set by the SAoJ by regarding and considering the recommendations by their central unioons.

NOTES

The Management and Administration of the Judicial Professional Associations, and the Quorums of a Meeting and a Decision

Management and Administration

- The central and regional professional associations are administrated by their respective presidents.
- The City Bars are administrated by the City Bar president.
- The Representation Offices are administrated by the representative body or the president.
- The board of directors and other bodies are called to the meeting by the president ex officio or at members' request.
- The president determines the agenda, adds members' requests and orders the items of the agenda. Any suggestions raised in the meeting are discussed at the end as any other business.

Quorum of Meeting and Decision: Board of Directors

- The quorum of a meeting is a simple majority of all full members.
- The quorum of a decision is a simple majority of the members who attend the meeting.

Quorum of Meeting and Decision: Boards of Discipline and Supervision

- The quorum of a meeting is a qualified majority of two-thirds of all full members.
- The quorum of a decision is a simple majority of the members who attend the meeting.
- If there is more than one department, the quorum is applied for each department.

The Candidacy, Determining of Candidates, and Elections to the Judicial Professional Associations' Bodies

NOTES

Election of Qualified Members

- The requirements and necessary qualifications of candidates to the judicial professional associations' bodies are determined by the SAoJ in a way that promotes the merit-based results. The required qualifications and seniority for candidacy to the Board of Discipline and Supervision shall be higher and more restrictive.
- The SAoJ reviews those who are willing to be candidates and announces the candidature by determining which have fulfilled the requirements and possess the necessary qualifications.
- Those who are willing to be candidates and who accept a nomination to the candidacy should be prepared to be transparent. He/she must accept that any personal information and any information regarding his/her professional, academic and private life that may have an effect on the election may be shared with the public. He/she must disclose this information and respond to any questions about unclear issues in that regard.

Election to Bodies

- The presidency election, through which one person will be elected, is held by run-off voting. If a majority is not reached in the first run, the second run is between the two candidates who obtain the highest number of votes. There should be at least three weeks' interval between the two rounds.
- If there is more than one person to be elected, such as a board of directors, the election will be held by proportional representation. In such elections, it is prohibited to use closed lists or previously marked open lists.
- Those who obtain the highest number of votes in the proportional-representation elections are determined as full and substitute members, respectively.
- If a separate election is not held for the presidency, the member who obtains the highest number of votes is elected president. In case the boards are split up into more than one department, the member who obtains the highest number of votes shall be the president of the department. Other members shall be divided into departments in accordance with the number of votes they obtain.

NOTES

Objections and Judicial Remedies to a Judicial Professional Assiociation's Decision

All the decisions and acts of the presidents, boards of directors, and boards of discipline and supervision of the unions and regional unions of judicial professional associations shall be subject to objection before the SAoJ and, separately, shall be subject to the judicial review of the Supreme Court of Justice. The reason for any legal action against their decisions and acts shall be their incompliance with the SAoJ's policies, preferences and principles.

- The objection against a decision of a city bar's president and board of directors shall be made first of all before the regional union of bars.
- No objection or any other judicial remedy can be recoursed against the acts and decisions of a professional association's Representation Offices (which do not have legal personality). Only if the board of directors or president of the relevant unit (which/who has legal personality) acts or takes a decision, objection or other judicial remedy can there be recourse against these acts and decisions.
- Any real and legal person, whether it is related to his/her interest or not, may object or have recourse to judicial remedies against transactions and decisions that are subject to objection and judicial remedy.
- Before having recourse to judicial remedy, an objection must be made before the SAoJ.
- Any decision taken by the SAoJ regarding an objection can be recoursed to the Supreme Court of Justice to request that the decision be annulled.
- The judgment of the Supreme Court of Justice is final.

THE UNION OF JUDGES' CHAMBERS AND REGIONAL JUDGES' CHAMBERS

NOTES

The Union of Judges' Chambers and Regional Judges' Chambers

The Union of Judges' Chambers and Regional Judges' Chambers comprise judges who are admitted to the judgeship profession. They are judicial professional associations having legal personality and public institution status.

The primary purpose and objectives of the Union of Judges' Chambers and Regional Judges' Chambers are as follows:

- To represent judges, advocating for their independence and accountability;
- To ensure professional unity and solidarity among prosecutors;
- To encourage the continuous development of the judgeship profession and judges themselves, and to uphold the respect for the same;
- To determine professional problems and offer solutions;
- To establish ethical rules for the judgeship profession and submit them for the approval of the SAoJ; and
- To conduct disciplinary investigations into judges' conduct, excepting the sanction of dismissal from the profession.

Saim Dursun,
“Dalda”
(On the Branch),
30 x 70cm,
oil on canvas,
spatula technique,
2011

Judges' Chambers and Union Membership

NOTES

Intern, trainee and assistant judges who pass the written test and interview of the judgeship profession and enter a trainee or assistant judgeship, and those who are admitted to the judgeship profession are automatically members of the Union of Judges' Chambers.

- Judges are registered to the chambers in which they serve and in accordance with the level in their professional career.
- Judges are also registered to the relevant Regional Judges' Chambers in the region in which they serve.
- Intern, trainee and assistant judges are registered to the Regional Judges' Chambers in the region in which they serve. However, they do not have a right to vote in the election of the bodies of the Union of Judges' Chambers or the Regional Judges' Chambers.
- Intern, trainee and assistant judges can forward any requests, proposals and complaints regarding their career level or their profession to the Union of Judges' Chambers and Regional Judges' Chambers.
- Intern, trainee and assistant judges, and those who are admitted to the judgeship profession, can exercise the rights granted to them by the law. They can form groups among their career-level peers for the purposes of solidarity.

The Organization of the Union of Judges' Chambers and Regional Judges' Chambers

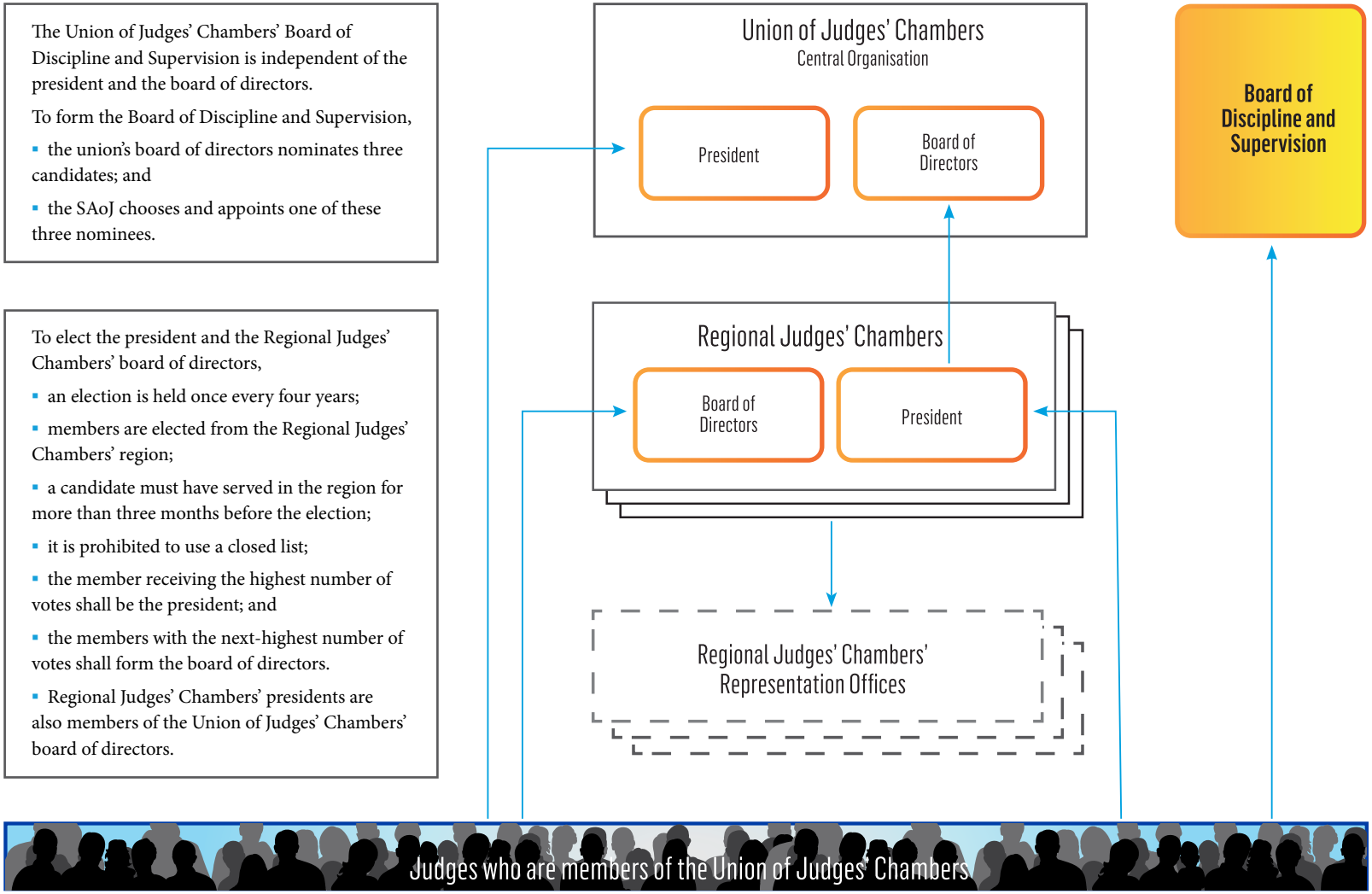
The Union of Judges' Chambers' Board of Discipline and Supervision is independent of the president and the board of directors.

To form the Board of Discipline and Supervision,

- the union's board of directors nominates three candidates; and
- the SAoJ chooses and appoints one of these three nominees.

To elect the president and the Regional Judges' Chambers' board of directors,

- an election is held once every four years;
- members are elected from the Regional Judges' Chambers' region;
- a candidate must have served in the region for more than three months before the election;
- it is prohibited to use a closed list;
- the member receiving the highest number of votes shall be the president; and
- the members with the next-highest number of votes shall form the board of directors.
- Regional Judges' Chambers' presidents are also members of the Union of Judges' Chambers' board of directors.



The Union of Judges' Chambers' Board of Discipline and Supervision

NOTES

Main Objective: Ensuring and promoting the rule of law and legal security, and the development of the profession and the profession's members for this purpose; ensuring legal professionals' comply in fulfilling their duties by adhering to the policies, preferences and principles set by the SAoJ, as well as professional rules, ethical principles and values, with the purpose of promoting solidarity, harmony and co-operation with each other and members of other professions; determining incompliant conduct, imposing the necessary sanctions and conducting awareness activities.

Formation, meeting and decisions

- The board is independent of the Union of Judges' Chambers' president and board of directors.
- From the three candidates nominated by each Regional Judges' Chambers, the SAoJ appoints one member from each region.
- The members appointed by the SAoJ from each Regional Judges' Chambers form the Board of Discipline and Supervision.
- The members elect the president among themselves.
- The quorum of a meeting is two-thirds of all the members, and the quorum of a decision is the simple majority of the members attending the meeting.

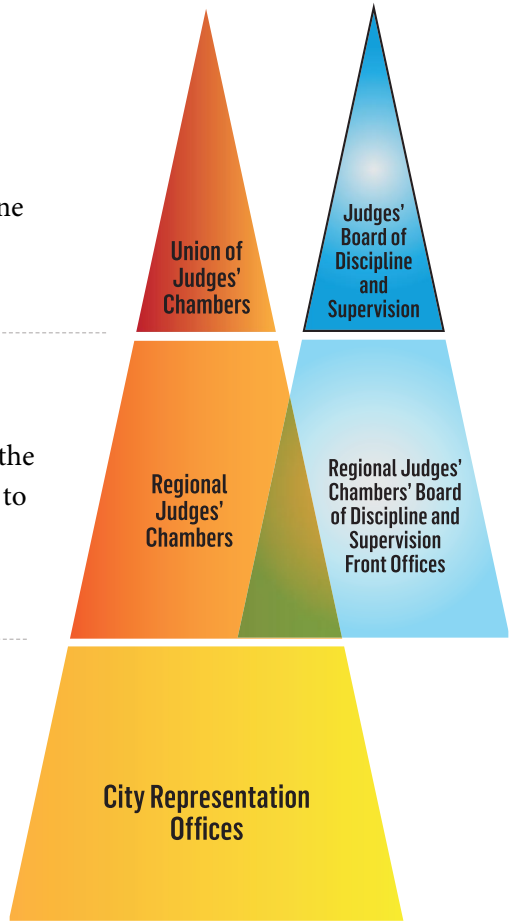
Duties

- Investigate all allegations. However, the board can impose only warnings and reprimands as sanctions.
- Notify and send cases to the SAoJ that require more severe sanctions.
- Offer advisory opinion regarding professional disciplinary rules.

NOTES

The Hierarchical Structure of the Union of Judges' Chambers, Regional Judges' Chambers and City Representation Offices

- The Union of Judges' Chambers, and its Board of Discipline and Supervision, are in Ankara.
- Regional Judges' Chambers will be set up in the center of the city where a Regional Court of Appeal is located, in order to represent all the judges in the region.
- With the board of directors' resolution, Regional Judges' Chambers' city Representation Offices can be set up in cities or other administrative units.



THE UNION OF PROSECUTORS' AND REGIONAL PROSECUTORS' CHAMBERS

NOTES

The Union of Prosecutors' Chambers and Regional Prosecutors' Chambers

The Union of Prosecutors' Chambers and Regional Prosecutors' Chambers comprise prosecutors who are admitted to the prosecutorship profession. They are judicial professional associations having legal personality and public institution status.

The primary purpose and objectives of the Union of Prosecutors' Chambers and Regional Prosecutors' Chambers are as follows:

- To represent prosecutors, advocating for their independence and accountability;
- To ensure professional unity and solidarity among prosecutors;
- To enourage the continuous development of the prosecutorship profession and prosecutors themselves, and to uphold the respect for the same;
- To determine prosecutors' professional problems and offering solutions;
- To establish ethical rules for the prosecutorship profession and submit them for the approval of the SAoJ; and
- To conduct disciplinary investigations into prosecutors' conduct, excepting the sanction of dismissal from the profession.

Prosecutors' Chambers and Union Membership

NOTES

Intern, trainee and assistant prosecutors who pass the written test and interview of the prosecutorship profession and enter a trainee or assistant judgeship, and those who are admitted to the prosecutorship profession are automatically members of the Union of Prosecutors' Chambers.

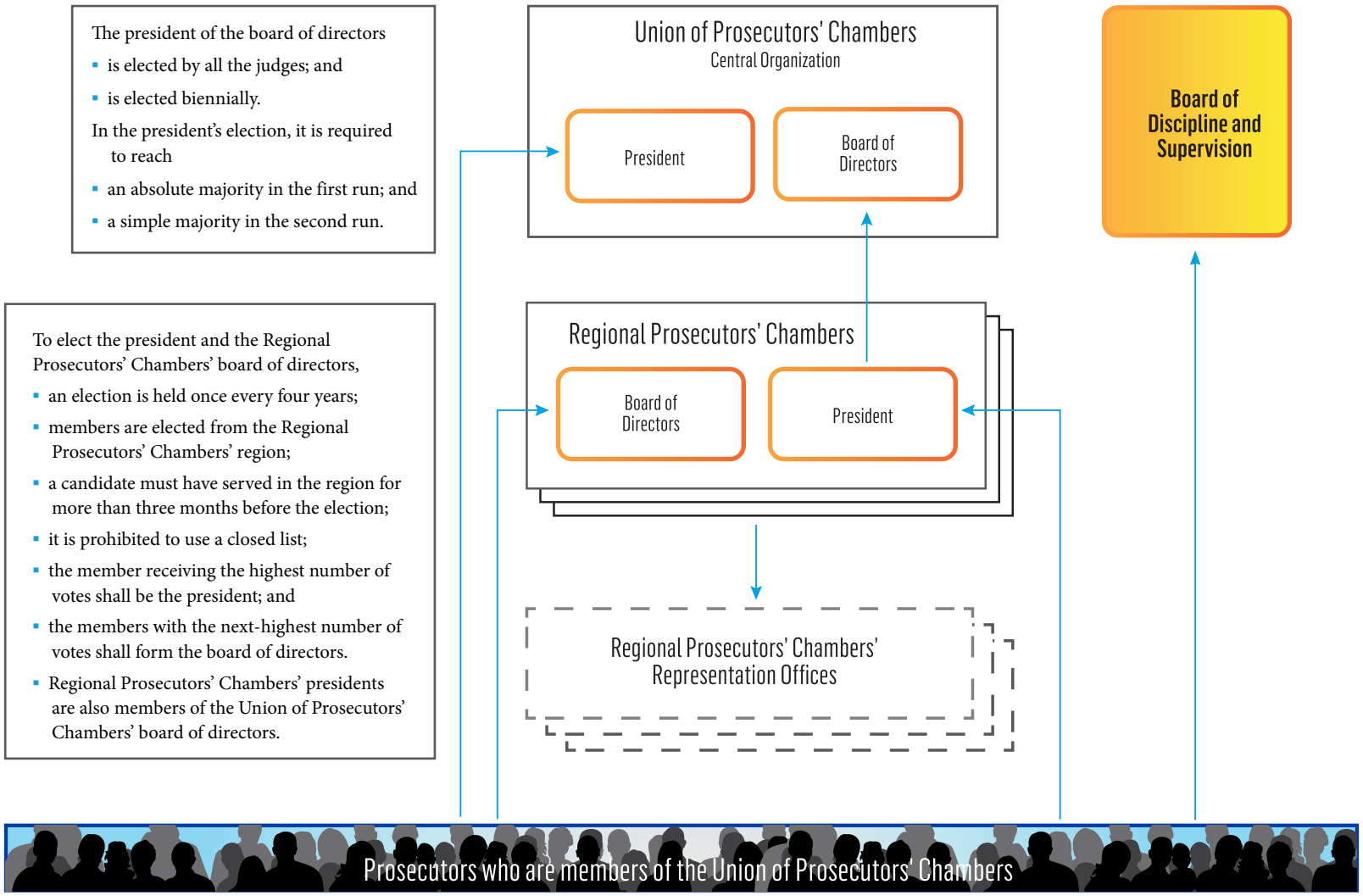
- Prosecutors are registered to the chambers in which they serve and in accordance with the level in their professional career.
- Prosecutors are also registered to the relevant Regional Prosecutors' Chambers in the region in which they serve.
- Intern, trainee and assistant prosecutors are also registered to the Regional Prosecutors' Chambers in the region in which they serve. However, they do not have the right to vote in the election of the bodies of the Union of Prosecutors' Chambers and Regional Prosecutors' Chambers.
- Intern, trainee and assistant prosecutors can forward their requests, proposals and complaints regarding their career level or their profession to the Union of Prosecutors' Chambers and Regional Prosecutors' Chambers.
- Intern, trainee and assistant prosecutors, and those who are admitted to the prosecutorship profession, can exercise the rights granted to them by the law. They can form groups among their career-level peers for the purpose of solidarity.

The Union of Prosecutors' Chambers and Regional Prosecutors' Chambers' Elections

The president of the board of directors
- is elected by all the judges; and
- is elected biennially.

In the president's election, it is required to reach
- an absolute majority in the first run; and
- a simple majority in the second run.

To elect the president and the Regional Prosecutors' Chambers' board of directors,
- an election is held once every four years;
- members are elected from the Regional Prosecutors' Chambers' region;
- a candidate must have served in the region for more than three months before the election;
- it is prohibited to use a closed list;
- the member receiving the highest number of votes shall be the president; and
- the members with the next-highest number of votes shall form the board of directors.
- Regional Prosecutors' Chambers' presidents are also members of the Union of Prosecutors' Chambers' board of directors.



The Union of Prosecutors' Chambers' Board of Discipline and Supervision

NOTES

Main Objective: Ensuring and promoting the rule of law and legal security, and the development of the profession and the profession's members for this purpose; ensuring legal professionals' comply in fulfilling their duties by adhering to the policies, preferences and principles set by the SAoJ, as well as professional rules, ethical principles and values, with the purpose of promoting solidarity, harmony and co-operation with each other and members of other professions; determining incompliant conduct, imposing the necessary sanctions and conducting awareness activities.

Formation, meeting and decisions

- The board is independent of the Union of Prosecutors' Chambers' president and board of directors.
- From the three candidates nominated by each Regional Judges' Chambers, the SAoJ appoints one member from each region to form the Board of Discipline and Supervision.
- The members elect the president among themselves.
- The quorum of a meeting is two-thirds of all the members, and the quorum of a decision is the simple majority of the members attending the meeting.

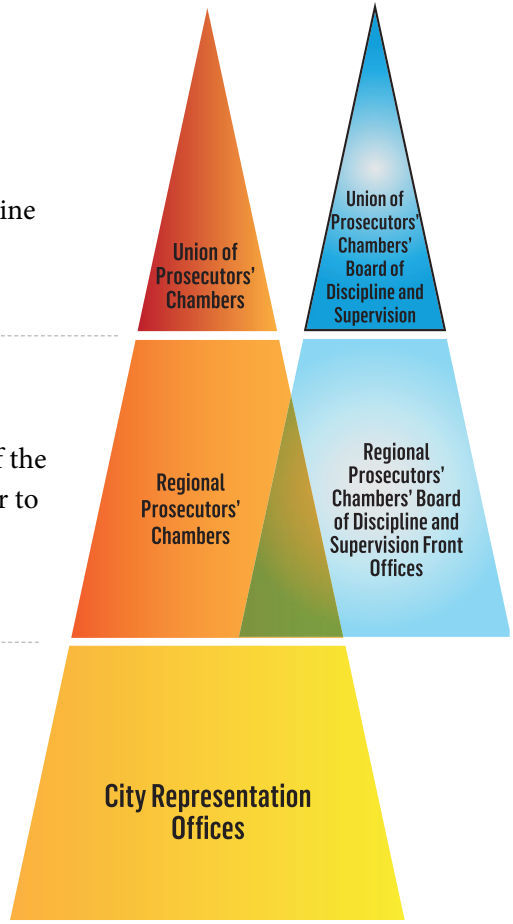
Duties

- Investigate all allegations. However, the board can impose only warnings and reprimands as sanctions.
- Notify and send cases to the SAoJ that require more severe sanctions.
- Offer advisory opinion regarding professional disciplinary rules.

NOTES

The Hierarchical Structure of the Union of Prosecutors' Chambers, Regional Prosecutors' Chambers and City Representation Offices

- The Union of Judges' Chambers, and its Board of Discipline and Supervision, are in Ankara.
- Regional Judges' Chambers will be set up in the center of the city where a Regional Court of Appeal is located, in order to represent all the judges in the region.
- With the board of directors' resolution, Regional Judges' Chambers' city Representation Offices can be set up in cities or other administrative units.



PROVINCIAL BARS
UNIONS OF REGIONAL BAR ASSOCIATIONS
THE UNION OF TURKISH BAR ASSOCIATIONS

NOTES

The Duties and Authorities of Provincial and Unions of Regional Bar Associations and the Union of Turkish Bar Associations

Provincial and Unions of Regional Bar Associations and the Turkish Bar Association (also referred to as the Union of Turkish Bar Associations) are judicial professional associations that comprise attorneys and act in accordance with the democratic principles. Additionally, the herein-mentioned judicial professional associations are legal entities and have the status of a public institution.

The main objectives of attorneys who are working under the Provincial and Unions of Regional Bar Associations and the Union of Turkish Bar Associations are advocating for and upholding the rule of law and fundamental human rights and freedoms, and improving the attorneyship profession with this purpose in mind. Therefore, the duties and authorities of the bar associations include the following:

- Representing attorneys, advocating for attorneys' and bar associations' independence and accountability;
- Establishing and fostering professional unity, solidarity and co-operation among attorneys;
- Ensuring that attorneys are harmoniously and respectfully co-operating with other professions;
- Continuously improving the attorneyship profession and attorneys' professional order, ethics and morality, and increasing attorneyship prestige;
- Ensuring honesty and truthfulness in relationships between attorneys, with members of other legal professions, and with business owners;
- Determining the problems associated with the profession and offering solutions; and
- Carrying out necessary works to meet attorneys' common needs.

The Membership of Provincial and Unions of Regional Bar Associations and the Union of Turkish Bar Associations

NOTES

Intern and trainee attorneys who are successful in the attorneyship written exam and the interview, assistant attorneys, and those who are admitted to the attorneyship profession are registered to the attorneyship registry by the Supreme Authority of Justice (SAoJ) and are automatically members of the Union of Turkish Bar Associations.

- Attorneys who are admitted to the profession and intern attorneys are automatically members of the Provincial and Unions of Regional Bar Associations in the province and region in which their office or workplace is located.
- Those who are admitted to the attorneyship profession, attorneyship vocational internship, attorney traineeship and the profession of attorney assistant are under an obligation to register to the attorneyship registry of the Provincial and Unions of Regional Bar Associations in the province and region in which their office or workplace is located, and to inform them as and when they transfer/move their office or workplace.
- Intern, trainee and assistant attorneys do not have a right to vote and cannot be nominated or elected to serve for a Provincial or Unions of Regional Bar Associations or the Union of Turkish Bar Associations. However, they can form membership groups within those associations, and can forward their requests and suggestions to their Provincial and Unions of Regional Bar Associations' or the Union of Turkish Bar Associations bodies.
- Interns are not required to pay the associations' membership fees.
- Attorneys shall exercise the rights granted to them by the law without being subjected to any restriction; interns and trainees can also exercise their rights in accordance with the attorneyship profession's purpose and within the restrictions set out for them.

Election Chart of the Union of Turkish Bar Associations and Other Bar Associations

The President of the Union of Turkish Bar Associations (UTBA) is elected by all practicing attorneys in a two rounds election:

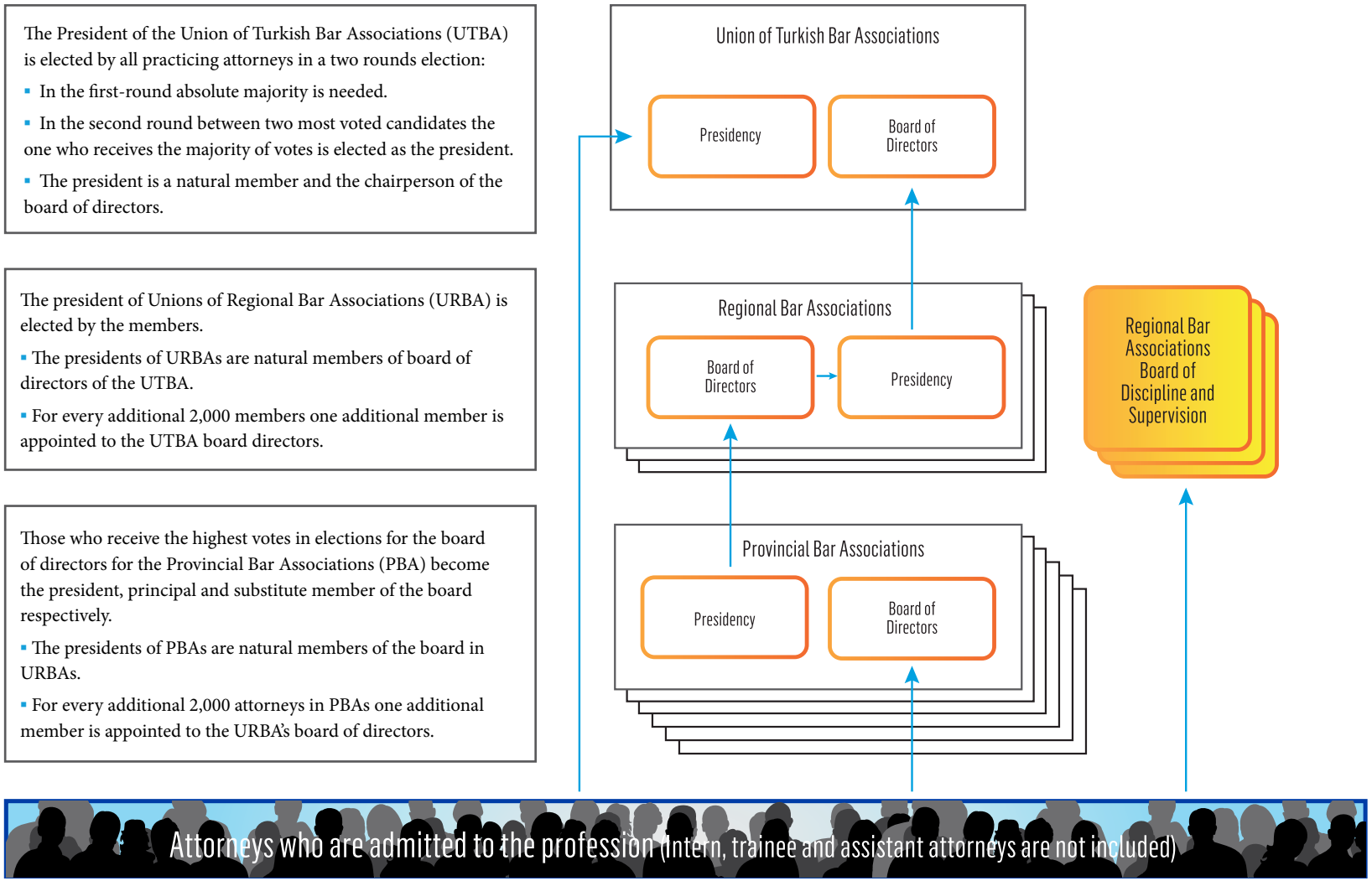
- In the first-round absolute majority is needed.
- In the second round between two most voted candidates the one who receives the majority of votes is elected as the president.
- The president is a natural member and the chairperson of the board of directors.

The president of Unions of Regional Bar Associations (URBA) is elected by the members.

- The presidents of URBAs are natural members of board of directors of the UTBA.
- For every additional 2,000 members one additional member is appointed to the UTBA board directors.

Those who receive the highest votes in elections for the board of directors for the Provincial Bar Associations (PBA) become the president, principal and substitute member of the board respectively.

- The presidents of PBAs are natural members of the board in URBAs.
- For every additional 2,000 attorneys in PBAs one additional member is appointed to the URBA's board of directors.



Provincial Bar Associations and election of its organs

NOTES

- Provincial Bar Associations are judicial professional associations with the status of a public institution. They are democratically managed and have have independent legal personality.
- In cities where 800 or more practicing attorney have their registered offices provincial bar associations are set up. Where the number is less than 800 a joint provincial bar association is formed to cover all adjacent provinces located within the jurisdiction of the same regional court of appeal. There can be only one bar association within one city.
- In provincial bar associations with a member count of 5.000 or less, in addition to presidet five principal and two substitute directors are appointed to the board. President determines the number of the vice-presidents and their duties.
- When the member count exceeds 5.000 ten principal and five substitute directors are elected in addition to the president. After the president four directors who receive the highest number of votes serve as vice-president with the following duties: the first vice-president responsible for vocational education and development, the second for advisory, the third for elections and the forth representation and press. President ad vice-presidents alltogether five of them represent the provincial bar association.
- President represent the PBA at the Unions of Regional Bar Associations. PBA with more than 2.000 members elect 1 additional representative for every additional 2.000 members. Additional representatives are elected by th eboard from among vice-presidents. In the event theres no suifficient number of vice-president then all of addtional representative are elected from among members.

NOTES

The General Principles of the Bodies of the Provincial and Regional Bar Associations and the Union of Turkish Bar Associations

Board of Directors

- The highest decision-making body of the associations.
- The chairperson represents the associations both internally and externally.
- The chairperson must act in accordance with the decisions of the board of directors.

Board of Directors' Meeting

- A simple majority of the principal members of the board of directors constitutes the meeting quorum.
- The decisions can be adopted with the absolute majority of the voters that are represented during the meeting.

Chairperson

- Represents the association.
- Oversees and directs the board of directors and the executive committee.

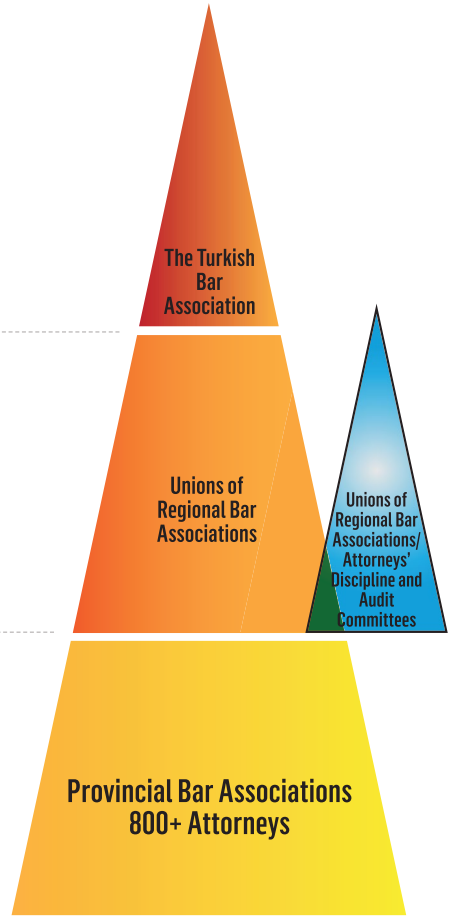
Organization Chart of the Bars

NOTES

- **The Union of Turkish Bar Associations** comprises the representatives of the Provincial and Unions of Regional Bar Associations.
- The Unions of Regional Bar Associations comprise the Union of Turkish Bar Associations.

- **The Unions of Regional Bar Association** covers all the Provincial Bar Associations located within the jurisdiction of a Regional Court of Appeal.
- Provincial Bar Associations compose Unions of Regional Bar Associations.

- **A Provincial Bar Association** is established in every city center where the offices and workplaces of more than 800 attorneys are located.
- A **Joint Provincial Bar Association** can be established to cover all adjacent provinces that are **located within the jurisdiction of the same Regional Court of Appeal** in cases when provinces do not have the required number of attorneys to establish a Provincial Bar Association individually.



PROVINCIAL BAR ASSOCIATIONS

The Organization of the Provincial Bar Associations

NOTES

Provincial Bar Associations have independent judicial professional associations with the status of public institution. They have a legal personality and are independent.

- Provincial Bar Associations are established in cities where there are at least 800 attorneys. In cases where there are fewer than 800 attorneys in a province, a Joint Provincial Bar Association can be established to cover all the adjacent provinces located within the jurisdiction of the same Regional Court of Appeal. There can only be one Provincial Bar Association in each city.
- When a Provincial Bar Association has more than 5,000 members, a sufficient number of board of directors' vice chairpersons should be appointed. It is mandatory to share vice chair duties among the vice chairpersons.
- Apart from the province where the Provincial Bar Association is located, the representative offices of the Provincial Bar Association can be found in judicial units, such as courthouses. The representative offices assist in the fulfilment of services provided by the bar associations, such as legal aid or the right of representation (as in the compulsory representation of the accused as mandated by law).
- Provincial Bar Associations operate and make decisions in accordance with the objectives of the attorneyship profession, and in accordance with the policies and principles determined by the SAoJ and the Union of Turkish Bar Associations.

- The bodies of the Provincial Bar Associations comprise a president, a board of directors and an executive committee.

NOTES

Formation of Provincial Bar Associations' Bodies

Chairperson, Vice Chairpersons and Board of Directors of the Provincial Bar Associations

- The president and the directors of the board are elected by the attorneys registered in that Provincial Bar Association by proportional representation.
- It is forbidden to use block lists or suchlike during the elections.
- The one who receives the highest votes is declared the president of the Provincial Bar Association and the chairperson of the board of directors. Following the chairperson, the top-five people who receive the highest votes become principal members of the board of directors, and the following two people become the substitute board members.
- In a Provincial Bar Association where the member count does not exceed 5,000, the chairperson of the board of directors determines the number of vice chairpersons and their duties.
- When the member count exceeds 5,000, 10 principal and five substitute board of directors' members are elected.
- Following the election of the chairperson, the top-five people who receive the highest votes during the board of directors' election serve as vice chairpersons. The one who receives the second-highest vote is declared the person who is responsible for vocational education and development, the one who receives the third-highest vote is declared the advisor/consultant, the one who receives the fourth-highest vote is declared the person responsible for elections, and the one who receives the fifth-highest vote is declared the person responsible for representation and press. All represent the Provincial Bar Associations.

Executive Committee of the Provincial Bar Associations

- The executive committee comprises the chairperson and two vice chairpersons of the Provincial Bar Associations' board of directors and the Provincial Bar Associations' secretary and bookkeeper.

UNION OF REGIONAL BAR ASSOCIATIONS

NOTES

The Formation and Organs of Unions of Regional Bar Associations

Unions of Regional Bar Associations (URBA) have independent legal personality and the status of a public institution.

The objectives of URBAs are to ensure the rule of law through out the country, especially within their region , an to protect and develop fundamental human rights and freedoms, and, with that purpose, to improve the attorneyship profession. Therefore, the duties and authorities of the URBA's include the following:

- Advocating and defending independence and accountability of the attorneys and the bar associations, and of the judiciary and the rule of law.
- Establishing and fostering unity, solidarity and cooperation among lawyers and judicical professionals
- Improving professional standards, prestige, ethics and morality
- Ensuring integrity among the professionals and in relations with the recipients of legal services and in general society
- Identifying and addressing the problems and the needs of the members

URBAs form the organisational back bone of the attorneyship profession. URBAs are independent in their decisions and operations. However they function in harmony by following the recommendations of the Union of Turkish Bar Associations and by adhering the policies and principles set by the SAoJ.

URBAs bodies comprise of the president, board of directors, executive committee and the Discipline and Supervision board.

President of the PBA form the board of directors (and the additional representatives of JBAs if any) of the URBAs which elect its own president by a simple majority of the directors.

An independent discipline and supervision board is established within every URBA having jurisdiction over all lawyers within the jurisdiction.

Attorneys' Discipline and Audit Committees within the Unions of Regional Bar Associations Jurisdiction

NOTES

The Main Objectives: Ensuring and strengthening the rule of law and a legally trustworthy environment; improving the attorneyship profession; ensuring compliance with professional rules, ethical principles and values that improve and foster unity, solidarity and co-operation among attorneys, and with other professions; ensuring attorneys are fulfilling their duties in accordance with the SAoJ's policies and principles; identifying violations of said policies and principles; sanctioning such violations and raising awareness regarding such activities.

Formation and Meeting and Decision Quorums

- This committee is independent of the Union of Turkish Bar Associations, its president and its board of directors.
- The SAoJ appoints one member for each region among three candidates nominated by the Unions of Regional Bar Associations.
- The members appointed by the SAoJ comprise the judges of a Discipline and Audit Committee. The president of a Discipline and Audit Committee is elected by its members.
- In regions where the member count does not exceed 5,000, a Discipline and Audit Committee comprises seven members: five principals and two substitutes.
- For each additional 5,000 members, seven additional members are appointed to the Discipline and Audit Committee: five principals and two substitutes. In this case, the Discipline and Audit Committee operates in two chambers.
- For every additional 5,000 members, the number of Discipline and Audit Committee members likewise increases, and the committee operates by establishing an additional chamber.
- The meeting quorum is two-thirds of its members. The decisions can be adopted with the absolute majority of the voters that are represented during the meeting.

Duties

- Investigates all manner of allegations; however, this Discipline and Audit Committee is authorised only to give warnings or censure.
- Notifies the SAoJ if the complaints or allegations require severe penalties or necessitate an official disciplinary investigation.
- Provides opinions on professional ethics and disciplinary rules.

NOTES

The Union of Turkish Bar Associations and Its Duties

The Union of Turkish Bar Associations is an independent judicial professional organization that has a legal personality and the status of a public institution. The headquarters of the Union of Turkish Bar Associations is located in Ankara. The bodies of the Union of Turkish Bar Associations comprise a president, a board of directors and an executive committee. The Union of Turkish Bar Associations is fully independent in performing its duties and exercising its powers.

The main objectives of the Union of Turkish Bar Associations are to ensure the rule of law, to protect and develop fundamental human rights and freedoms, and, with that purpose in mind, to improve the attorneyship profession.

The duties of the Union of Turkish Bar Associations include the following:

- Developing suggestions regarding the SAoJ's policies and principles and for the improvement of co-operation and solidarity among the judicial professions;
- Advocating for attorneys', bar associations', and their bodies' independence and accountability;
- Representing all attorneys and Provincial and Unions of Regional Bar Associations at the highest level;
- Representing attorneys before the public and other relevant authorities on matters concerning the attorneys and the attorneyship profession by compiling the Provincial and Unions of Regional Bar Associations' suggestions;
- Determining the problems associated with the profession and offering solutions; and
- Establishing relations and co-operating with official and private professional institutions and associations both at home and abroad.
- The board of directors is the final deciding authority. The president of Union of Turkish Bar Associations acts in accordance with the board of directors' decisions.

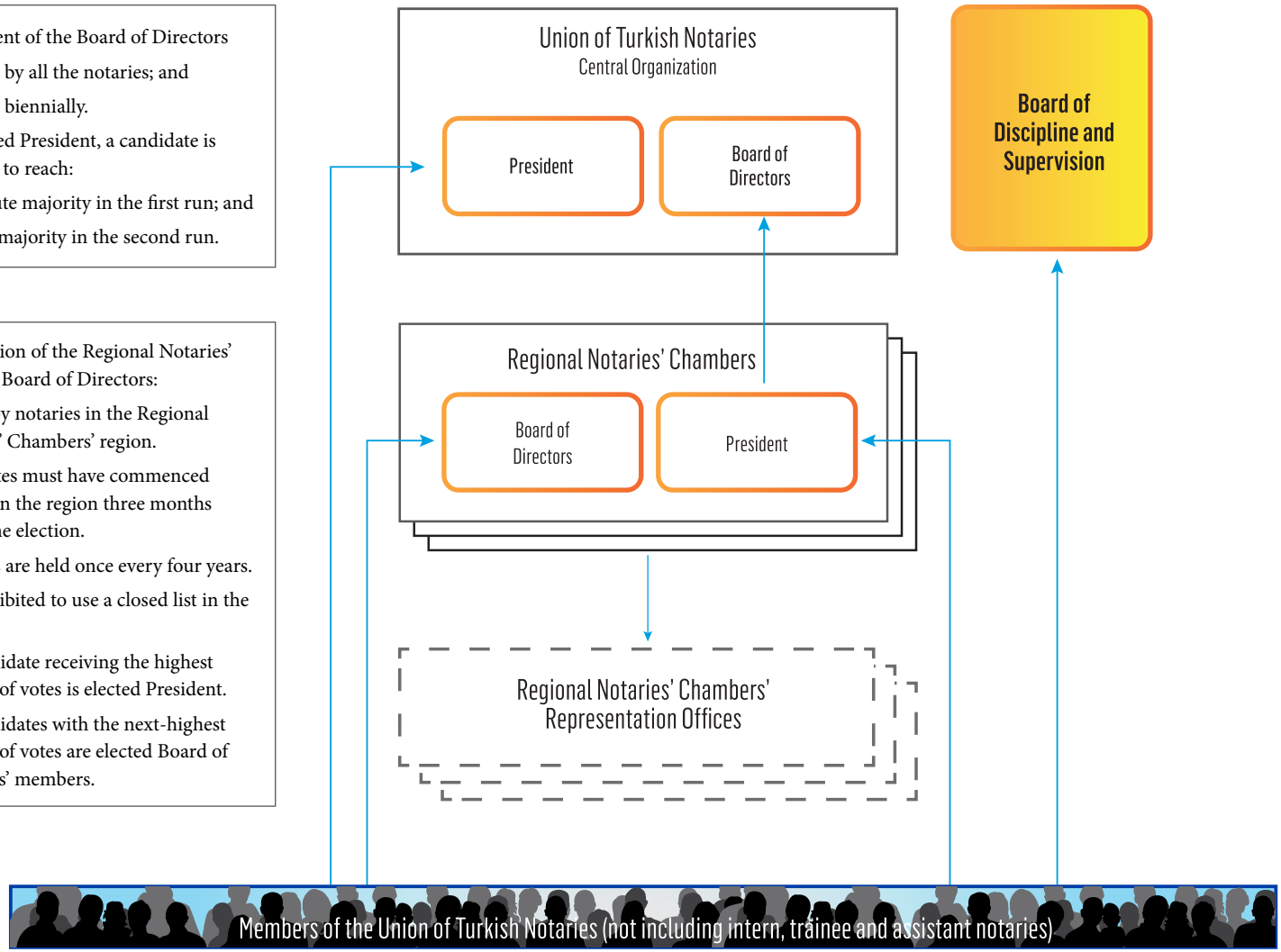
THE UNION OF TURKISH NOTARIES
REGIONAL CHAMBER OF NOTARIES

The Union of Turkish Notaries and the Regional Notaries' Chambers: Organization and Bodies

The President of the Board of Directors
- is elected by all the notaries; and
- is elected biennially.

To be elected President, a candidate is required to reach:
- an absolute majority in the first run; and
- a simple majority in the second run.

The formation of the Regional Notaries' Chambers' Board of Directors:
- Elected by notaries in the Regional Notaries' Chambers' region.
- Candidates must have commenced serving in the region three months before the election.
- Elections are held once every four years.
- It is prohibited to use a closed list in the election.
- The candidate receiving the highest number of votes is elected President.
- The candidates with the next-highest number of votes are elected Board of Directors' members.



The Union of Turkish Notaries and the Regional Notaries' Chambers

The Union of Turkish Notaries and the Regional Notaries' Chambers are two independent judicial professional associations that have both legal personality and public-institution status. They carry out their works in accordance with democratic principles.

Their main objective is to ensure and promote the rule of law and legal security, and to develop the notaryship profession and notaries for this purpose; to promote solidarity, harmony and co-operation between notaries and the members of other professions; and to represent notaries. They act in accordance with the policies, preferences and principles set out by the Supreme Authority of Justice.

The scope of their duty includes the following:

- Advocating for the members of the profession and their independence;
- Determining professional principles, ethical values and principles and submitting these for the Supreme Authority of Justice's approval;
- Developing the competence, efficiency and accountability of and respect for the profession and its members;
- Determining notaries' professional problems and offering solutions to these; and
- Conducting disciplinary investigations into notaries – however, disciplinary investigations requiring the sanction of dismissal are conducted by the Supreme Authority of Justice.

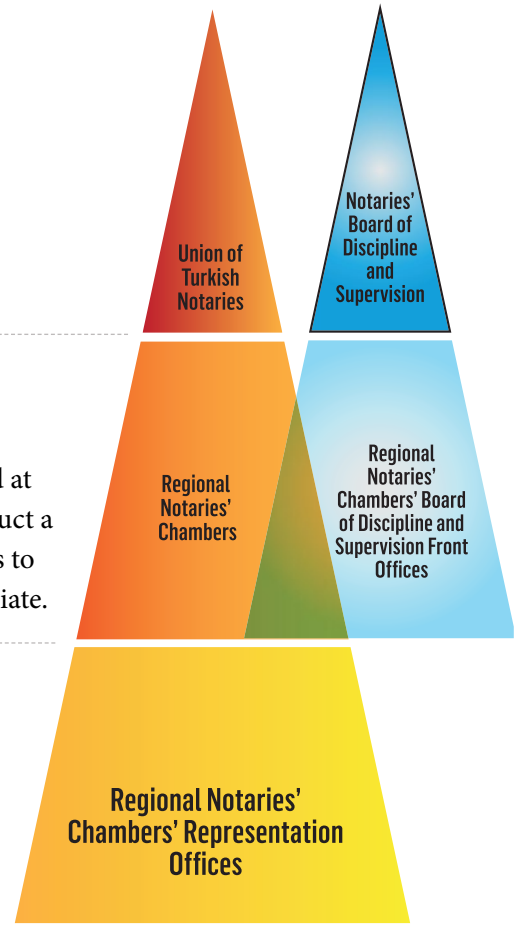
NOTES

The Hierarchical Structure of the Notaries' Professional Associations

- The Union of Turkish Notaries comprises representatives of the Regional Notaries' Chambers.

- Regional Notaries' Chambers are established in all cities where a Regional Court of Appeals is located.
- The Board of Discipline and Supervision Front Offices are located at the Regional Notaries' Chambers. They receive a complaint, conduct a pre-examination, note the alleged deficiencies and forward details to the Notaries' Board of Discipline and Supervision, where appropriate.

- If required, and there are proven benefits, with the resolution of the Regional Notaries' Chambers' Board of Directors, city or district Notaries' Representation Offices can be set up. These Representation Offices do not have legal personality.



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“Sitem”
(Disapproval),
50 x 80cm,
oil on canvas,
spatula technique,
2011

THE UNION OF TURKISH NOTARIES

NOTES

The Notaries' Board of Discipline and Supervision

Main Objective: To ensure and promote the rule of law and legal security, and to develop the notaryship profession and notaries for this purpose; to promote solidarity, harmony and co-operation between notaries and members of other professions; and to determine any incompliant conduct, imposing the necessary sanctions and conducting awareness-raising activities, where necessary. They act in accordance with the policies, preferences and principles set out by the Supreme Authority of Justice.

Formation, Meeting and Decisions

- The board is independent of the Union of Turkish Notaries' President and Board of Directors.
- From the three candidates nominated by each Regional Notaries' Chambers, the Supreme Authority of Justice appoints one member for each region.
- The members appointed by the Supreme Authority of Justice for each Regional Notaries' Chambers form the Board of Discipline and Supervision.
- The members of the board elect the President among themselves.

Duties

- The board may investigate all manner of allegations – however, it may impose only warning and reprimand sanctions.
- If it is convinced that a case requires more severe sanctions, it refers it to the Supreme Authority of Justice and requests the initiation of a disciplinary investigation.
- The board may offer its advisory opinion regarding professional disciplinary rules.

The Regional Notaries' Chambers' Board of Directors: Formation and Duties

NOTES

Formation

- The board comprises nine members elected for a term of four years by all the notaries admitted to the profession.
- The candidates must have practiced as a notary for at least five years at the time of the election.
- Any notary who has served in the region for at least three months can participate in the election.

Purpose, Duties and Authorities:

The board takes decisions and acts to uphold the rule of law, to protect and further human rights, and to develop the notaryship profession within the framework of this noble cause. The following are included within the scope of their duties and authorities:

- Advocating for the board's independence and accountability;
- Representing notaries in the region;
- Meeting the personal and common needs of the notaries in the region, such as training and development, and determining any problems, offering solutions and sharing these with the relevant institutions;
- Continuously developing the notaryship profession; maintaining professional order, ethics and morals; and upholding the respect for the same;
- Improving honesty and trust; ensuring and developing unity, solidarity and co-operation among notaries; and ensuring that relationships between notaries and other professionals are conducted with harmony and respect;
- Taking decisions and acting in accordance with the Union of Turkish Notaries' policies, preferences and principles.

3
SPECIALIZED COURT FOR TRANSPARENCY AND JUDICIAL REVIEW

- Supreme Court Of Justice
- Constitutional Court Revision
- Law On Republic's Chief Public Procesutor's Office - Draft

Atty. Mehmet Gün
Atty. Hande Hançar
Atty. A. Dilara Kaçar
Atty. Zübeyde Çapar

Rationale

For the Specialized Court

All decisions of the SAoJ will be easily accessible by the public to ensure full transparency, including in relation to the candidacy, nomination and appointment to serve in the bodies of judicial professional associations or judicial service units (courts); admission, career advancement, discipline, and dismissal of judicial professionals; the establishment and closure of courts; and the auditing of the performance of the legal professions related to the judiciary.[1]

Through enhanced transparency, the conformity of decisions with the law will be increased and merit will be strengthened. More importantly, by ensuring the accountability and judicial control of all processes and decisions in the system, we aim to strengthen the judiciary and increase the confidence of society in justice.

In order to strengthen the confidence of society, not only those directly concerned but every individual will be able to request a judicial review of all kinds of processes and decisions within the judicial system.

When the judiciary produces a high-quality service that is truly transparent and fully accountable and gains society's trust, then it can acquire and maintain its full independence and the possibility of self-governance.

This is why particular attention has been given to ensuring that all judicial bodies and elements are transparent and accountable from top to bottom. For this reason, every type of decision and procedure will be subjected to judicial review, in administrative terms, including candidacy, nomination and election to organs; admission into professions; judicial professionals' promotion; and disciplinary sentences and dismissal.

We envisage establishing a specialized court for this purpose, and this court will use different trial procedural rules to ensure that it can review all the case files rapidly.

One of the three pillars of our design is the establishment of judicial review and a specialized court capable of conducting this review. We have designed an expert Supreme Court of Justice ("SCoJ") that will operate according to a special procedure in order to perform judicial review effectively. This court, which will be a new addition to the Turkish judicial system, will be fully independent from the SAoJ and will have the characteristics of a high court conducting trials as a court of first instance. Since the issues falling within the jurisdiction of the SCoJ are directly related to the constitutional system, with a few exceptions, the decisions of the SCoJ will be open to appeal before the Constitutional Court.[2]

1 While transparency will serve to increase the conformity of decisions with the law, it will also strengthen merit and, more importantly, the SAoJ by providing judicial control and accountability, and society's confidence in justice will thus increase.

2 This specialized court will also reveal new opportunities in other areas that currently contain problems. For example, by repealing the investigation pre-authorization requirement in relation to senior public officials and judicial elements, which renders them virtually immune from criminal liability in connection with their professional functions and personal conduct. Investigation of such allegations, considering the sensitivity of the duties of the individuals concerned, could be assigned to this specialized court. Likewise, both legislative immunity and the rule of law can be strengthened by assigning the investigation

For Constitutional Court Revision:

The Constitutional Court is currently in need of a critical revision. The number of members of the court, the qualifications of its members, and the processes of nomination, selection and appointment, are not enough to build confidence in the country's top judicial institution. The way the court discharges its function is not adequate to ensure full compliance with the Constitution. There are a limited number of people who are authorized to file an action against the Constitution in the legislative activities of the General Assembly. This situation is also the fundamental reason for the formation of gaps and contradictions in the rulings of the court and in the compliance of these rulings with the Constitution. Rules annulled due to unconstitutionality can at the same time continue to exist in laws that have not been filed for annulment.

It is not possible to say that the Constitutional Court is able to completely prevent the restriction of the institutional, individual and functional independence of the judiciary through legislative activities. The Constitutional Court may annul those provisions that it finds violate the independence of the judiciary. However, it cannot eliminate the situation that arises as a result of the implementation of the law it has annulled.

It is a cold fact that the political views effective in the appointment of its members have an effect on the decisions of the Constitutional Court. The desire of politicians to determine the formation of the court by appointing people who are loyal to them and share their political views causes short-term political considerations to take precedence over the long-term interests of the country in the determination of candidates and the appointment of members. This status seriously hinders the principles of merit, transparency and accountability in the process of determining, nominating and selecting candidates for court membership. Having come to the fore in their subjects and gained prestige in society are not the basic criteria required in order to be appointed to the court. The importance of being loyal and close to a certain political view has prevented the highest merit being the determining factor in membership.

Although members are appointed to such an important duty, the fact that their merits are not guaranteed and the methods and processes of nomination and appointment depend on personal preferences causes a loss of trust in the court and a decrease in respect for its decisions. These are among the most important frailties of the Constitutional Court. This situation is also the principal cause of the politicization of the court and its members.

On the other hand, the court lacks sufficient human re-

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and prosecution of those benefiting from legislative immunity to the jurisdiction of this court. And by abolishing immunities, this system may prevent the removal of immunities by a political decision.

The proposed specialized court offers a good opportunity to effectively protect legislative immunity and, at the same time, prevent compromises to the rule of law. Abolishing immunities will help prevent the granting of legal protection for political reasons, and also this specialized court can supervise trials. This way, the effective protection of immunities by the judicial authorities can be ensured, the scope of immunities can be clarified through judicial opinions, and at the same time judicial procedures can be prevented from harming the essence of immunity.

sources and structures to effectively fulfill the duties assigned to it. The transfer to the Constitutional Court of the applications piled up in the European Court of Human Rights within Turkey has exceeded the capacity of the court and restricted its ability to perform its normal functions.[3]

In the solution proposals herein, it is stipulated that the place of appeal for the decisions of the Supreme Court of Justice will be the Constitutional Court. Although its size cannot be predicted, this duty will bring an important workload to the Constitutional Court. It is foreseen that the Supreme Court of Justice will have a special proceeding and will make quick and effective decisions. Therefore, it is imperative to ensure that the appeal process in the Constitutional Court runs equally effectively and quickly.

For these reasons, it is stipulated that the Constitutional Court will have three separate departments. One of the departments must be assigned solely to examining individual applications. The other two departments should fulfill judicial and legislative duties.

Performing a full assessment of the Constitutional Court is beyond the purpose and scope of this study. However, the fact that this court has been designated as the authority of appeal for decisions of the Supreme Court of Justice, which was established to ensure the effective accountability of the judicial power, makes it necessary to identify any factors that may have negative effects on this purpose and to make suggestions to remedy them.

The lack of capacity in the Constitutional Court, merit disruptions, the effects of short-term political considerations, some contradictions in court decisions and politicization problems are the main issues to be taken into account. In order to eliminate these disruptions, revision proposals limited to these issues have been developed. Our purpose is to effectively protect the independence of the judiciary, to prevent the problems from spreading through appeal decisions in the Constitutional Court to the decisions of the Supreme Court of Justice and from there to the entire judicial organization. Non-compliance with the law and partizanship are viruses that spread insidiously within state institutions. As in the fight against the Covid-19 pandemic, it is imperative to take the necessary precautions and to apply them with sensitivity, even in the case of the slightest possibility that these viruses may pass to jurisdiction.

In summary, our proposals for the revision of the Constitutional Court are as follows: (i) increasing the number of members of the court from 15 to 30; (ii) structuring the court into three departments of 10 members each; (iii) tasking one of the departments with examining individual applications; (iv) Requiring that newly elected members work in the individual application department until the positions of any of the previously elected members become vacant; (v)

3 As a matter of fact, individual applications that fall within the scope of the Court's duty and could not be finalized in a reasonable time, were transferred to an administrative unit within the Ministry of Justice and the judicial function of the court was transferred to an administrative body. The transfer of the function of the judiciary to the executive power is in blatant contradiction to the principles of democracy, separation of powers and the rule of law of the state – something which is so obvious as to need no further explanation. The exercise of judicial power by an element of the executive in democratic state administration is never acceptable.

continuously updating the composition of the membership of the first and second departments through annual rotation between the members of these departments tasked with the court's ordinary functioning; (vi) ensuring merit and increasing the professional competence and qualifications of members by providing transparency and accountability in the processes for becoming a candidate and the nomination and selection for court membership.

The court having three departments will triple its work capacity. Each department, consisting of 10 members including the president, will ensure the homogeneity of the different approaches to decision-making. The newly elected members working initially in the individual applications department will increase their familiarity with the functioning of the court and constitutional issues, and more importantly, will largely eliminate political interests and considerations in the election of members. This is because those who are successful in the elections will have withdrawn from the political scene and lost their influence by the time their selected member can be effective. Rotation between the members of the other two departments will prevent schisms in circles as well as the ossification of differences in jurisprudence.

For the Role of the Chief Public Prosecutor's Office in relation to the Supreme Court of Justice:

In our proposal, we wanted to establish a new status for the Republic's Chief Public Prosecutor's Office separate from the Republic's Chief Public Prosecutor's Office of the Courts of Cassation, which will be responsible for investigating and prosecuting cases before the SCoJ.

Instead of creating a new office for the Chief Public Prosecutor specific to the SCoJ, we prefer to transform the Republic's Chief Public Prosecutor's Office of the Courts of Cassation into an office that focuses mainly on protecting the Constitution. Duties including representing the public and protecting the Constitution are parallel to and sometimes overlap with the current duties of the Republic's Chief Public Prosecutor's Office of the Courts of Cassation. Indeed, the duties to be fulfilled by the SCoJ – which will be a specialized court specific to the judiciary representing one of the three pillars of the democratic system based on the separation of powers, on behalf of the public – are closely related to the protection of the constitutional system.

We envisage using the terms Republic's Chief Public Prosecutor and "Republic's Chief Public Prosecutor's Office" in relation to the prosecutors who will be serving before the Constitutional Court and the SCoJ. The prosecutors who will be serving before the Courts of Cassation will use the terms "Chief Public Prosecutor's of the Cassation Courts"[4] and

4 It is said that Mahmut Esat Bozkurt, who was the minister of justice at the time, proposed to Mustafa Kemal Atatürk that prosecutors should be referred to as "prosecutors of the Republic" to separate them from judges and attorneys, because of the prosecutors' role as the protectors of the Republic. This term causes the prosecutors' position to be perceived as a special position, even though prosecutors have equal power, responsibility and importance in the proceedings to that of judges and prosecutors. Can it be said that the reason behind this terminology change is that prosecutors who have "special" status are granted the authority to govern the courts instead of justice commissions? The rationale of Mahmut Esat Bozkurt is not wrong: prosecutors should be the guardians of the Republic. However, in the Turkish system aimed at protecting the Republic, only those prosecutors whose main duty is to protect the Republic should bear the

"Chief Public Prosecutor's Office of the Cassation Courts." This difference in terminology will clarify the constitutional duties and functions of the Republic's Chief Public Prosecutor's Office of the Courts of Cassation and help simplify the institution.[5]

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title of "prosecutor of the Republic", and other prosecutors should be called only "prosecutor."

5 It can be said that under the current system, the separation of the responsibilities of prosecutors according to the stages of "investigation", "trial" and "appeal" is an enormous waste of resources. Having different prosecutors undertaking different tasks at different stages is not conducive to high-quality service production. The ability of a prosecutor, who is not responsible for the investigation, to contribute and create value at a hearing is considerably limited. It should not be expected that the "appellate" prosecutors, who will not have participated in the investigation and trial stages at the courts of first instance and thus will not have observed the developments in the case, will understand the legal issues before the appeal through reading the paperwork or will be able to contribute to the appellate review. As a matter of fact, what prosecution offices mostly do consists of writing "opinions" on the documents pertaining to appealed cases to, so to speak, fulfill the formality. Prosecutors, like attorneys, should follow the dispute from the investigation stage until the final judgement is delivered; and their performance should be evaluated according to their success at these stages.

SUPREME COURT OF JUSTICE

NOTES

The Supreme Court of Justice

1- The Supreme Court of Justice ("SCoJ") reviews the legality of all types of transactions and decisions made regarding the judicial structure, organs and functioning.

2- 26 of 52 qualified members are directly elected by the Supreme Authority of Justice ("SAoJ"), and the remaining 26 are elected by the SAoJ from the candidate pool of individuals nominated by judges, prosecutors, lawyers and notaries.

3- All elections and appointments of members based on merits are subject to judicial review in a transparent manner.

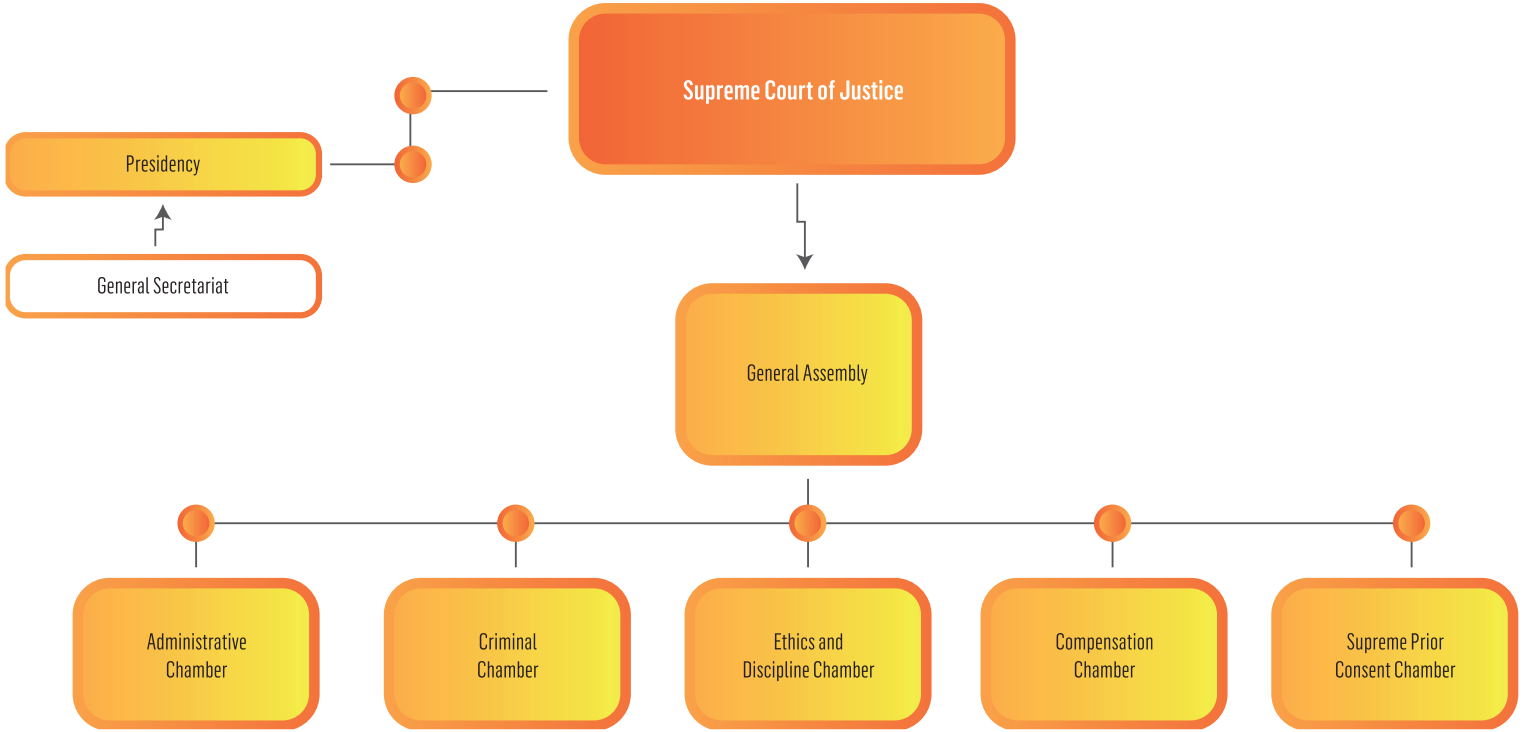
4- A judge's tenure is eight years, and it is renewable for a consecutive term of four years. As a result, a judge's tenure shall not exceed 12 years. The retirement age will be 70.

5- The SCoJ comprises five chambers: Administrative, Criminal, Ethics & Discipline, Compensation and Supreme Chamber of Prior Consent.

6- Each chamber acts as a specialized court conducting expedited judicial review, and comprises seven residing and three alternate judges.

7- Anyone can bring an action before the SCoJ and a decision will be delivered within 90 days. Legal fees cannot be imposed on the defendant.

Organization Chart of the Supreme Court of Justice



NOTES

The Composition and Responsibilities of the Supreme Court of Justice ("SCoJ")

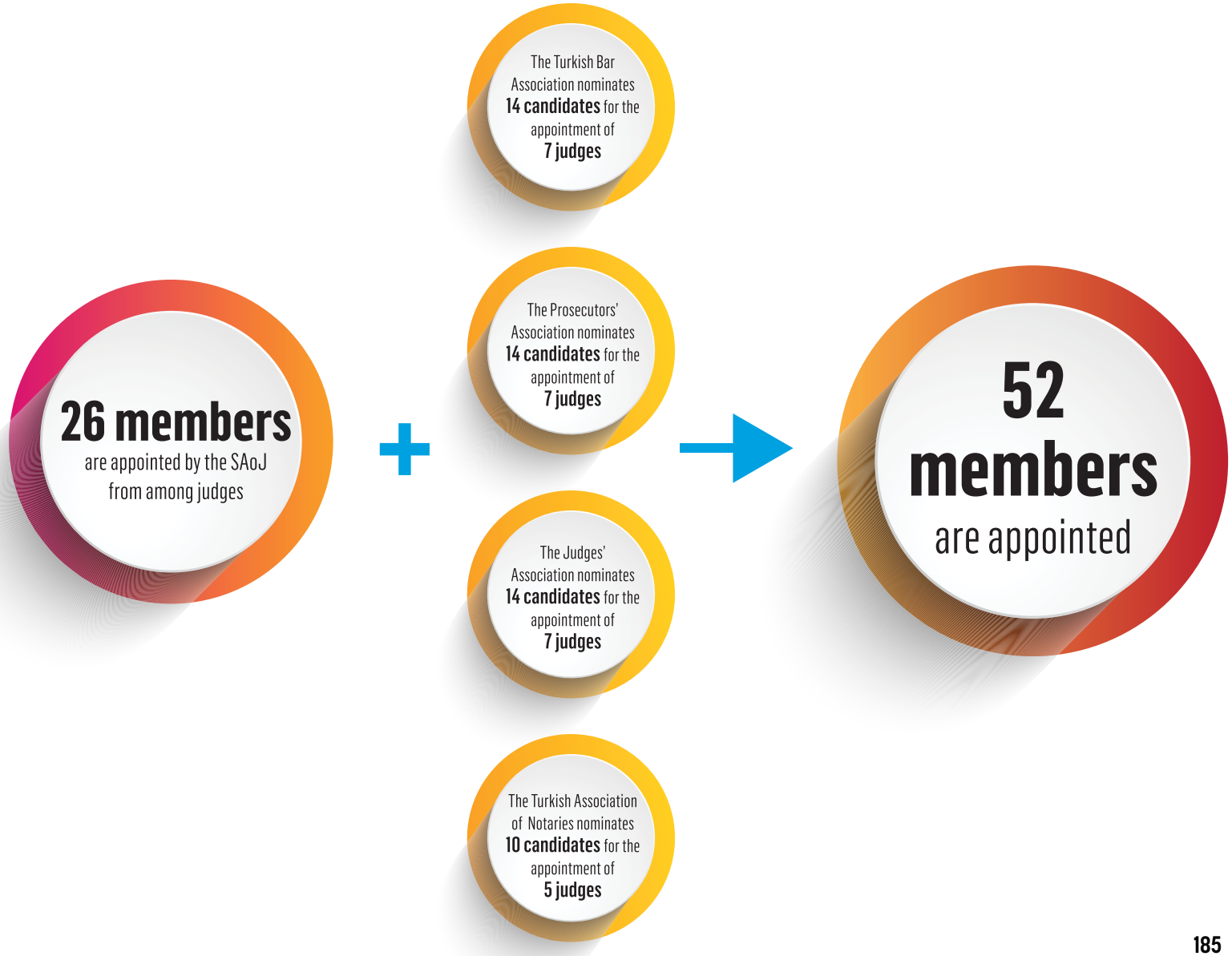
The SCoJ comprises 52 members, of which 26 are directly elected by the SAoJ and the remaining 26 are elected from a candidate pool comprising 42 individuals nominated in equal number by judges, prosecutors and lawyers. An additional 10 candidates are nominated by the Turkish Notary Association. The SCoJ comprises five chambers acting as specialized courts and a General Assembly.

The principal duty of the SCoJ is to review the legality of all transactions and decisions made regarding the judicial organs and elements of other institutions and persons. Additionally, the SCoJ is the deciding authority on matters regarding legislative immunity in relation to the approval of indictments and the investigation of senior public servants.

The SCoJ's jurisdiction covers the following:

- Reviewing the legality of all decisions made by the SAoJ;
- Reviewing the legality of all decisions made in relation to judicial appointments such as elections, nominations and candidacy;
- Reviewing the legality of disciplinary decisions and sentences imposed on members of the legal profession; and
- Reviewing the decision of a lower criminal court on the prosecution of public servants as an appellate court.

The Nomination, Election and Appointment of the Members



NOTES

The SCoJ Membership and Appointment Procedure

- Those who wish to be appointed as a judge must declare their intentions to the SAoJ.
- The SAoJ releases a list of the names of candidates who meet the eligibility criteria.
- The names of the nominees are selected from this list.
- First, the candidates who are nominated by the legal profession are evaluated based on merit and appointed by the SAoJ.
- Then, the SAoJ directly appoints 26 members from among its judges.
- The SAoJ appoints a sufficient number of qualified judges to meet the needs of each chamber.
- A judge's tenure is eight years, and it is renewable for a consecutive term of four years. As a result, a judge's tenure shall not exceed 12 years.
- Judges cannot be relieved of their duty or forced to retire before the age of 70 except at their own request.
- Judgeship is automatically terminated if a disciplinary sentence is imposed on a judge that requires his/her removal from office, or if a judge commits a crime that is serious enough to result in the loss of required eligibility criteria.

The Composition of the Chambers

A chamber is composed of 10 judges. Those judges must have the necessary experience and qualifications to serve in a chamber that acts a specialized court. In order to realise this objective, it is contemplated that each chamber will comprise lawyers and academicians from various legal disciplines in accordance with the requirements of that chamber.

The table below shows the envisaged qualifications and indented distribution of the SCoJ judges.

	Constitutional Law Professor	Administrative Law Professor	Criminal Law Professor	Lawyers specializing in Administrative Law	Lawyers specializing in Criminal Law	Administrative Court Judge	Criminal Court Judge	TOTAL
Administrative Chamber	2	1		2		2	3	10
Criminal Chamber		1	2		2	1	4	10
Compensation Chamber		2	1	1	1	2	3	10
Ethics and Discipline Chamber	1	1	1	1	1	2	3	10
Supreme Chamber of Prior Consent	2		1	1	1	1	4	10
	5	5	5	5	5	8	17	**50**
	15			**10**		**25**		**50**

NOTES

The Administrative Chamber

The Administrative Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of two constitutional law professors, one administrative law professor, two lawyers specializing in administrative law, two administrative court judges and three criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The principal duty of this chamber is to review the legality of every decision made by the SAoJ. Additionally, this chamber reviews every decision made during the election and appointment process of the Republic's Chief Public Prosecutor. This chamber also decides on the termination or suspension of SAoJ membership on request.

Occupation	Number
Constitutional Law Professor	2
Administrative Law Professor	1
Criminal Law Professor	0
Lawyer specializing in Administrative Law	2
Lawyer specializing in Criminal Law	0
Administrative Court Judge	2
Criminal Court Judge	3
TOTAL	**10**

The Criminal Chamber

NOTES

The Criminal Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of one administrative law professor, two criminal law professors, two lawyers specializing in criminal law, one administrative court judge and four criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The principal duty of the Criminal Chamber is to try SAoJ members and senior public officials for offences relating to their professional functions and personal conduct. This chamber has the authority to approve or reject the indictments prepared by the Republic's Chief Public Prosecutor.

Occupation	Number
Constitutional Law Professor	0
Administrative Law Professor	1
Criminal Law Professor	2
Lawyer specializing in Administrative Law	1
Lawyer specializing in Criminal Law	2
Administrative Court Judge	1
Criminal Court Judge	4
TOTAL	**10**

NOTES

The Ethics & Discipline Chamber

The Ethics & Discipline Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of one constitutional law professor, one administrative law professor, one criminal law professor, one lawyer specializing in administrative law, one lawyer specializing in criminal law, two administrative court judges and three criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The principal duty of the Ethics & Discipline Chamber is to review the legality of the disciplinary sentences delivered to the members of the legal profession either directly by the SAoJ or the relevant legal professional association.

All decisions delivered by this chamber are final and not subject to appeal except for dismissal decisions, which can be challenged before the Constitutional Court.

Final decisions are delivered, in written form, to the relevant legal professional association of which the plaintiff is a member.

Occupation	Number
Constitutional Law Professor	1
Administrative Law Professor	1
Criminal Law Professor	1
Lawyer specializing in Administrative Law	1
Lawyer specializing in Criminal Law	1
Administrative Court Judge	2
Criminal Court Judge	3
TOTAL	**10**

The Compensation Chamber

NOTES

The Compensation Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of two administrative law professors, one criminal law professor, one lawyer specializing in administrative law, one lawyer specializing in criminal law, two administrative court judges and three criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The Compensation Chamber exercises jurisdiction over malpractice compensation cases brought against the state with regards to judges and prosecutors, malpractice compensation cases brought against lawyers and notaries, and other compensation cases brought against the state regarding the administrative actions taken by judicial bodies.

Compensation actions may be filed against the state for any type of mistake or fault committed by judges and prosecutors that results in the loss of rights or damages.

The Constitutional Court exercises jurisdiction over malpractice claims against the judges of the SCoJ.

Occupation	Number
Constitutional Law Professor	0
Administrative Law Professor	2
Criminal Law Professor	1
Lawyer specializing in Administrative Law	1
Lawyer specializing in Criminal Law	1
Administrative Court Judge	2
Criminal Court Judge	3
TOTAL	**10**

NOTES

The Supreme Chamber of Prior Consent

The Compensation Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of two constitutional law professors, one criminal law professor, one lawyer specializing in administrative law, one lawyer specializing in criminal law, one administrative court judge and four criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The principal duty of the Supreme Chamber of Prior Consent is to evaluate the indictments prepared by the Republic's Chief Public Prosecutor against the President, Ministers and Members of Parliament for the offences relating to their professional functions and to prepare and submit a report to the General Assembly of the SCoJ.

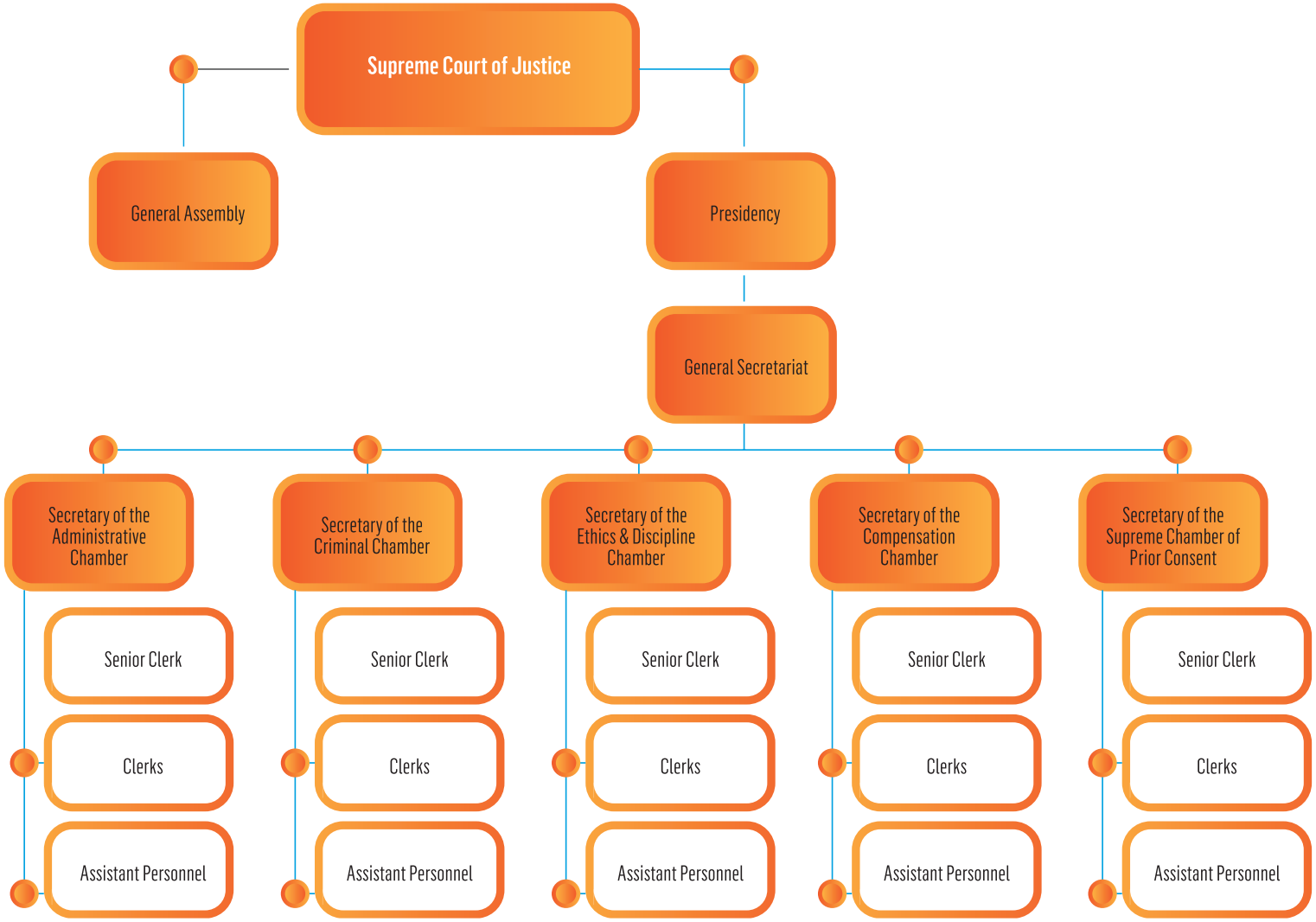
The General Assembly of the SCoJ has the authority to approve or reject the indictments.

Occupation	Number
Constitutional Law Professor	2
Administrative Law Professor	0
Criminal Law Professor	1
Lawyer specializing in Administrative Law	1
Lawyer specializing in Criminal Law	1
Administrative Court Judge	1
Criminal Court Judge	4
TOTAL	**10**

General Overview of the Supreme Chamber of Prior Consent

	Investigating Authority	Evaluation of the Indictment	Approval of the Indictment	Prosecution	Appeal
Members of SAoJ	Attorney General		Approval of the indictment is not required	General Assembly of the SCoJ	Constitutional Court
President, Ministers and Members of Parliament	Attorney General No need to obtain prior consent	The SCoJ's Supreme Chamber of Prior Consent	General Assembly Quorums Meeting: 1/3 Decision: 2/3	Constitutional Court In its capacity as the Supreme Criminal Tribunal	
Senior Public Servants	Attorney General No need to obtain prior consent		Approval of the indictment is not required	Criminal Chamber of the SCoJ	Constitutional Court
Low-Level Public Servants	Attorney General No need to obtain prior consent		Court of Inquiry	Specialized Criminal Courts	Criminal Chamber of the SCoJ

Administrative Organization Chart of the Supreme Court of Justice



The General Assembly (as a Court)

NOTES

The General Assembly comprises all the sitting and substitute judges of the SCoJ. The General Assembly holds meetings only when necessary. The General Assembly meetings can be held with the presence of a third of its members. If the meeting quorum is not met in the first meeting, no meeting quorum will be required for the second meeting. The decisions can be adopted with two-thirds of the voters that are represented during the meeting.

The principal duty of the General Assembly is to appoint sitting and substitute judges for the chambers, to act as a court of first instance for the dismissal/removal of cases brought against SAoJ members, and to approve or reject indictments prepared against public officials who benefit from legal immunity or who must be tried before the Supreme Criminal Tribunal.

The duties and responsibilities of the General Assembly include the following:

- Permitting investigation orders and approving indictments prepared by the Republic's Chief Public Prosecutor with regard to the alleged crimes committed by the President, Ministers or Members of the Parliament;
- Trying cases with regard to the removal of SAoJ members from office;
- Adopting and amending internal regulations, bylaws and other guidelines;
- Appointing the President and Deputy President of the SCoJ; and
- Resolving jurisdictional disputes between the chambers, balancing out their workload, and forming new courts or additional judicial units within the same chamber when necessary.

NOTES

The Authorities and Responsibilities of the Presidency

The General Assembly of the SCoJ elects the President of the SCoJ. The presidency election consists of four rounds. In the first two rounds, the one who receives two-thirds of the votes will be named the President. However, if no candidate receives enough votes in the first two rounds, then a third round of voting is held. In the third round, the one who receives a simple majority of the votes will become the President. If no candidate receives enough votes in the third round, then a fourth round of voting is held with the top-two candidates. In the fourth round, the one who receives the majority of the votes will be named the President and the runner-up the Deputy President of the SCoJ. Elections are held every two years.

The principal duty of the President is to oversee the administration of the SCoJ and represent the SCoJ in public and before governmental authorities. Additionally, the President's duties include the following:

- Transferring powers to the Deputy President of the SCoJ when necessary;
- Presiding over the General Assembly and ensure its functioning;
- Overseeing the operation of the chambers, informing the General Assembly, and making sure the chambers continue to operate efficiently and properly by intervening when necessary;
- Ensuring the courts and chambers are operating efficiently and properly, and taking measures to realise that objective;
- Appointing and employing the General Secretary, the Deputy Secretaries who are the head secretaries of the chambers, and other court personnel;
- Approving and publishing the bylaws, internal regulations and other guidelines adopted by the General Assembly; and
- Auditing whether court costs correspond with the SCoJ's budget.

Assistants and Reporting Judges of the SCoJ

NOTES

Taken into consideration their workload, sufficient numbers of assistant judges and trainee judges are employed. For every sitting and substitute judge, an assistant judge must be employed.

To be appointed as an assistant judge: Those who wish to be appointed as an assistant judge must meet the eligibility criteria for appellate court judges and have either a masters or a doctorate in law, economics or political sciences.

The principal duties of an assistant judge include completing tasks assigned by judges; drafting the reasoning and preparing the draft version of judgments; analyzing reports given by the presiding judge, supplementing if necessary; and supervising and guiding trainee judges. Additionally, assistant judges are expected to participate in and work with the commissions decided by the presiding judge. They may also give lectures at universities or deliver speeches at conferences.

In order to be appointed as a trainee judge: Those who wish to be appointed as a trainee judge must successfully complete the judgeship internship and be authorized by the SAoJ to work as a trainee judge.

The principal duties of a trainee judge include examining case files, summarizing the submissions of the parties and expert reports; assisting the court following a hearing or discovery; and researching doctrine and case law according to the instructions given by the sitting or assistant judge.

NOTES

General Principles for Proceedings Before the SCoJ

Actions must be filed within 30 days. For the subject of the decision this period starts following the notification; for others it starts following the publication of the decision.

- Anyone who wishes to have a decision annuled can file action against the deciding authority.
- SCoJ has to deliver judgement within 30 calendar days.
- The SCoJ follows a special expedited procedure and cases are adjudicated in one hearing.
- Hearing is conducted by hearing the arguments, assessing the evidence. Only one time adjournment is permitted and no later than two weeks.
- Hearing date is set in consultation with parties and take place even parties are absent and the court delivers ruling at the hearing.
- Court records and the hearing are open to the public and always reachable online.
- SCoJ may decide to stay enforcement of decisions until it delivers its ruling.
- Claimants losing the action cannot be ordered to pay legal fees and the cost while the losing institution reimburses the claimant for reasonable costs.
- It is compulsory to enforce SCoJ's decisions immediately.

General Principles for Proceedings Before the SCoJ

Pre-Trial	1st Stage Parties' Submission: Complaint and Reply	2nd Stage Parties' Submission: Reapplication and Rejoinder	3rd Stage Final Hearing
Claims must be filed within 30 days. For the people who are the subject of the decision, this limitation period starts from the day following the date of notification. For other people who are not the subject of the decision, it starts from the day following the date of the publication of the decision on the relevant website. Anyone can bring a suit to challenge the legality of any type of transaction or decision made All decisions are published on the SAoJ's website.	A defendant has 10 days to file a response, starting from the day following the date of service. A limitation period cannot be extended. The parties shall submit the evidence they wish to rely on during the first submission phase. The court authorizes the parties to collect the necessary evidence. An authorized party or parties must complete the evidence collection before the second submissions phase.	A plaintiff has 10 days to file a reapplication starting from the day following the date of notification of the response. A defendant has 15 days to file a rejoinder starting from the day following the notification of the reapplication. At this stage, the court may convene a hearing. During this hearing, the parties present their arguments and explain their evidence.	The court must convene a hearing date within 15 days of the completion of the second submission phase. This hearing is completed in one session. During this hearing, legal arguments and evidence are discussed. At the end of this hearing, the court must deliver an oral judgment. The court has 15 days to issue a reasoned judgement following the date of the final hearing.

CONSTITUTIONAL COURT REVISION

The Court's Duties
Organizational Structure
Number and Qualifications of Its Members

Constitutional Court Revision in Outline

NOTES

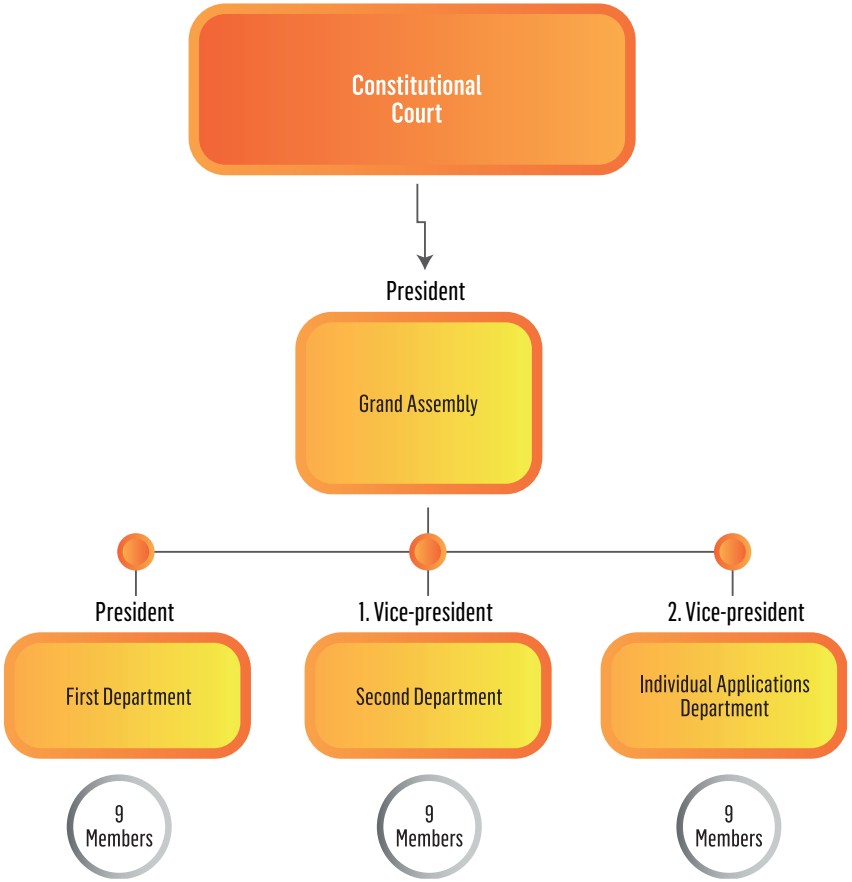
- The court consists of 30 members. The majority of members are department of law faculty members and members of the judiciary.
- The court works in three departments. Two departments are responsible for the court's normal functions; the third is responsible for individual applications.
- The president of the Court is the president of the Grand Council and the first department, the second department is chaired by the first vice-president and the Individual Applications Department is chaired by the second vice-president.
- Newly elected members start working in the Individual Applications Department. If there is a vacancy in the first or second departments, members proceed from the third department to serve there according to the date of their election.
- Members are ranked according to their election dates, and their place in the first or second department is determined by whether they are in an odd-numbered or even-numbered row.
- One-third of first and second department members alternate departments every year.

Organization Chart of the Constitutional Court

The president of the court is the president of the Grand Council and the first department; the second department is chaired by the first vice-president; and the Individual Applications Department is chaired by the second vice-president.

Newly elected members start work in the Individual Applications Department first; if there is a vacancy in the membership of the first or second department, they move on to this department.

Every year, one-third of the members of the first and second departments rotate to the other department.



Duties and Powers of the Constitutional Court

The Constitutional Court's duties are in 4 categories:

1- to review the constitutionality of the laws enacted by the TGNA and the presidential decrees

2- to audit the activities of the political parties

3- to act as a supreme criminal court having jurisdiction over the offences of immune people i.e., MPs, president, ministers.

4- to review individuals' complaints on basic human rights violations under the ECHR and the Constitution – i.e., individual applications since 23 September 2012

Constitutional review actions can be filed by either the president, any of the 2 groups of political parties having the highest seats in the TGNA i.e., ruling and main opposition parties) and MPs of 1/5th of the TGNA i.e., 120 MPs out of 600.

Judicial courts may bring objections on the constitutionality of the provisions that they are to apply.

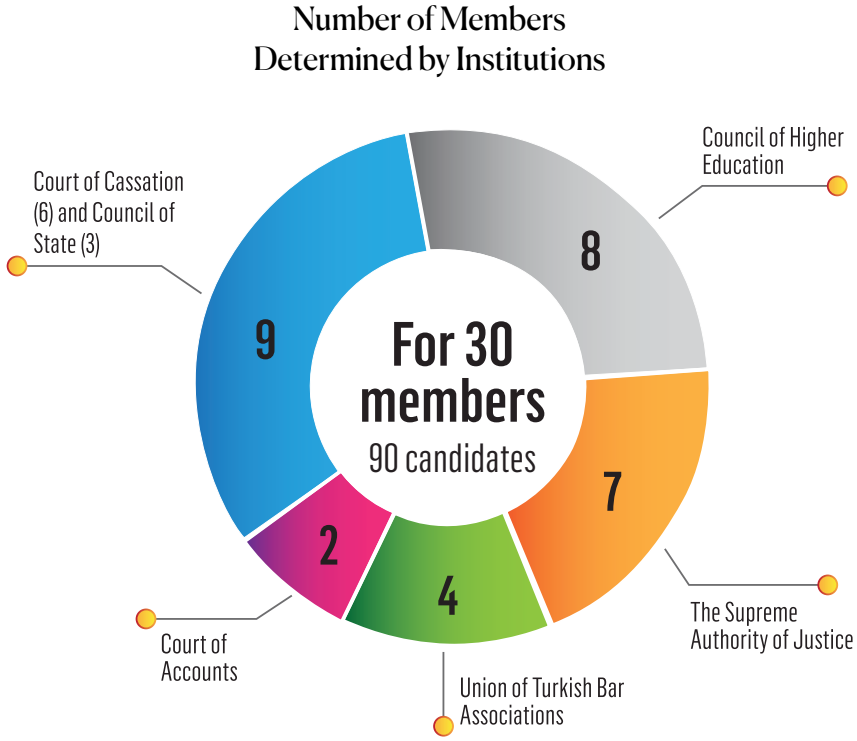
The State Council and the Administrative Courts have jurisdiction to adjudicate on Constitutionality of the secondary rules i.e., implementation regulations.

BJA proposes that all matters involving and requiring conformity to Constitution are reviewed and adjudicated by the constitutional court. Also BJA proposes that not only a few and limited group but the whole society and any member of the public should be allowed to apply to the Constitutional Court. Actions can be too many, but subject matters are always a few and the court can deal with all applications at the same time, in a manner similar to class actions in the USA.

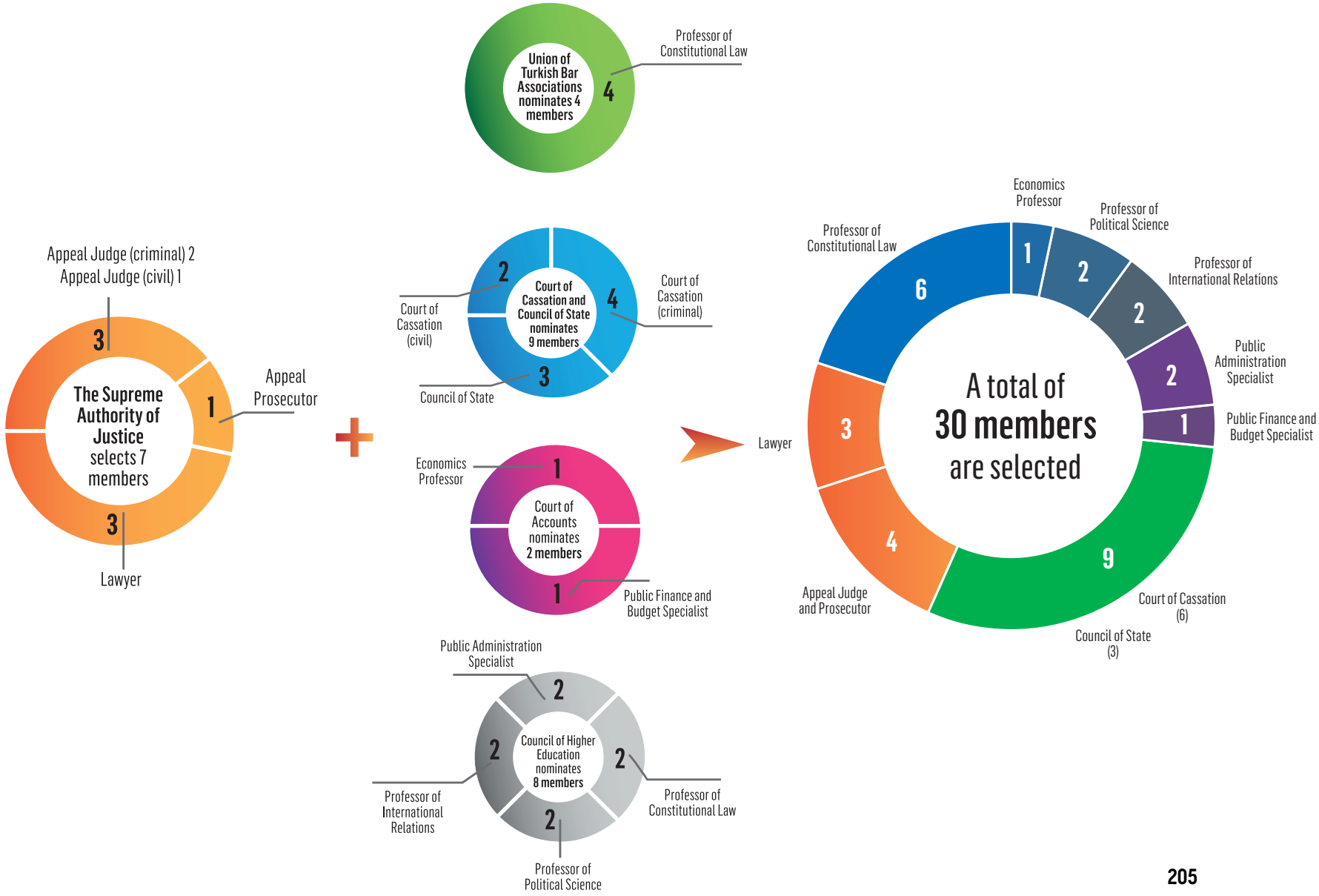
NOTES

Qualitative Distribution of Constitutional Court Members

- The President of the Republic appoints 17 members by selecting from candidates determined by the Council of Higher Education, the Court of Cassation and the Council of State, based on merit.
- The Grand National Assembly of Turkey selects six members from among the candidates determined by the Court of Accounts and Union of Turkish Bar Associations.
- Seven members are selected and appointed from among the candidates for nomination in the final list of the Supreme Authority of Justice, based on merit.



Nomination, Selection and Appointment of Members



Qualifications of members of the Constitutional Court and distribution of the sources nominating and selecting them

Candidates for nomination are first announced in the preliminary list according to competence and merit.

After public debate and objections, the final list of Candidates for nomination is announced.

Nominating institutions determine candidates from the definitive list based on merit.

The institution that makes the selection does so based on merit.

Candidates for nomination, nomination and election decisions are subject to judicial review in the Supreme Court of Justice.

	Court of Cassation Member (Criminal Law)	Court of Cassation Member (Law)	Council of State Member	Appeal Judge (Criminal Law)	Appeal Judge (Law)	Appeal Chief Prosecutor	Attorney at Law (Self-employed)	Professor of Constitutional Law	Professor of Political Science	Professor of International Relations	Public Administration Specialist	Economist Professor	Public Finance and Budget Specialist	TOTAL
Court of Accounts nominates – Grand National Assembly of Turkey selects												1	1	2
Court of Cassation nominates – President of the Republic selects	4	2												6
Council of States nominates – President of the Republic selects			3											3
Union of Turkish Bar Associations nominates Grand National Assembly of Turkey selects								4						4
Council of Higher Education nominates – President of the Republic selects								2	2	2	2			8
General Assembly of Supreme Authority of Justice selects from Definite Candidate list				2	1	1	3							7
TOTAL	4	2	3	2	1	1	3	6	2	2	2	1	1	30

Saim Dursun,
“Dingin” (Calm),
60 x 70cm,
oil on canvas,
spatula technique,
2013

LAW ON REPUBLIC'S CHIEF PUBLIC PROSECUTOR'S OFFICE - DRAFT

CHAPTER ONE
General Provisions

SECTION ONE
Purpose, Scope and Definitions
Scope

ARTICLE 1 – (1) The qualifications, duties, term of office and nomination of Chief Prosecutors and Deputy Chief Prosecutors are regulated as per the provisions of this Law.

(2) Candidacy for nomination, determination of those who fulfill the candidacy requirements, announcement of candidates for nomination, public disclosure of the personnel and other personal information, and public debate on the same are also regulated as per the provisions of this Law.

SECTION TWO

The Qualifications to be Elected as a Chief Prosecutor or Deputy Chief Prosecutor, and the Nomination Process

Qualifications to be Elected as Chief Prosecutors and Deputy Chief Prosecutors

ARTICLE 2 – (1) To be elected as a Chief Prosecutor or Deputy Chief Prosecutor, the following qualifications should be sought:

a) Being over 55 years old,

b) Having completed a bachelor's degree in law,

c) Having at least 20 experience as a prosecutor,

d) An absence of any psychological or physical health problem preventing the fulfilling of the duties

e) Having the high level of morality and character required for the duty

f) An independence of any political opinion, absence of any political party membership and absence of performing a duty in a political party or movement in the past; and

g) Absence of any criminal conviction during their professional career, even if it is absolved or removed from the criminal records and an absence of any disciplinary sanction arising from any actions performed in the past.

The Procedure for the Determination of Candidates for Nomination

ARTICLE 3 – (1) Anyone who fulfills the qualifications sought to be Chief Prosecutors and Deputy Chief Prosecutors may submit directly to the Supreme Authority of Justice or to the judicial professional institutions that nominate candidates at least three months before the date of the election. The person who applies for candidacy for nomination is deemed to accept the public disclosure of all kinds of information related to himself/herself, including their confidential professional records. Additionally, they have to answer the questions asked or explain their reasons for not answering them.

(2) Judicial professional associations' boards of directors can notify their candidates for nomination (the number of candidates are to be determined by these boards of directors) to the Supreme Authority of Justice Personnel, Career, Performance and Audit Department at least three months before the date of the election.

(3) The Supreme Authority of Justice Personnel, Career, Performance and Audit Department shall announce a list of

the candidates for nomination notified by the professional organization or applied through direct application by ranking them based on their merit and shall publicly disclose the candidates' personnel and personal information.

(4) The candidates for nomination are to freely debate before the public. They are to be interviewed by TRT (Turkish Radio and Television Corporation) before an inclusive stakeholder panel. Candidates shall answer all questions asked and candidly disclose information to the public. The information that arises from these debates will also be included in the file of candidates for nomination.

The Procedure for Judicial Professional Associations' Nominations

ARTICLE 4 – (1) Following the public debates but before 45 days at the latest, the judicial professional associations' board of directors shall determine their nominees and notify them to Supreme Authority of Justice. Judicial professional associations shall nominate and notify the following maximum number of nominees: Union of Prosecutors' Chambers – 6, Union of Judges' Chambers – 4 and Union of Turkish Notaries – 2. Different professional organizations can nominate the same person.

(2) The judicial professional associations' boards of directors shall determine the nominees based on open and justified vote. Everyone can vote for one nominee. The name and surname of the person voting, the name and surname of the person voted for and the justification of the voting must be written in the ballot paper. The nominees listed based on the number of votes shall be notified to the Supreme Authority of Justice along with the number of votes received and the justifications put forward by the voters who voted for this nominee.

(3) An annulment action can be filed before the Supreme Court of Justice with regard to the elections organized in judicial professional associations for the nomination of candidates because of incompliance with the open ballot. A justification for an annulment is required, and the form and legitimacy of any incompliance must be specified. The Supreme Court of Justice will decide on such a case as an urgent matter and without having a hearing session. The Supreme Court of Justice can annul the election altogether or can annul it only regarding certain candidates. The ones whose candidacies are annulled shall not be taken into consideration in the election to be held in the Supreme Authority of Justice's general assembly.

The Nomination and Election of a Chief Prosecutor and Deputy Chief Prosecutor

ARTICLE 5 – (1) The candidates proposed by the judicial professional associations shall be nominated by being elected based on the open and justified vote by the Supreme Authority of Justice's general assembly. Everyone can vote for one candidate. The name and surname of the person voting, the name and surname of the person voted for and the justification of the voting must be written in the ballot paper.

(2) The election of the Chief Prosecutor or Deputy Chief Prosecutor shall be a runoff election with three runs.

(3) In the first run, the person among the candidates who

obtains the simple majority of all the members in the Supreme Authority of Justice's general assembly shall be nominated as the Chief Prosecutor and the person who obtains the second-highest number of votes shall be nominated as the Deputy Chief Prosecutor.

(4) In case, no candidate obtains the simple majority of the votes in the first run, a second run shall be organized among the four candidates who obtain the highest number of votes in the first run. In the second run, the person who obtains the simple majority of all the members in the Supreme Authority of Justice's general assembly shall be nominated as chief prosecutor and the person who obtains the second-highest number of votes shall be nominated as the Deputy Chief Prosecutor.

(5) In case among the candidates running for the second run, no one obtains the simple majority of the votes, a third run shall be organized. The third run shall be between the two candidates who obtain the highest number of votes in the second run. In the third run, the person who obtains the simple majority of votes of the members who participate in to the vote shall be nominated as the Chief Prosecutor and the other shall be nominated as the Deputy Chief Prosecutor.

(6) Between each and every voting round, there should be a minimum of one week and a maximum two weeks.

(7) All decisions taken during the nomination and election of the Chief Prosecutor and Deputy Chief Prosecutor and deputy chief prosecutor shall be subject to judicial review. An annulment action can be filed before the Supreme Court of Justice with regard to the election because of incompliance with the open ballot. A justification for an annulment is required, and the form and legitimacy of any incompliance must be specified. The Supreme Court of Justice will decide on such a case as an urgent matter and without having a hearing session. The Supreme Court of Justice can annul the election altogether or can annul it only regarding certain candidates. From the point affected by an annulment decision, the elections shall be run once again until a final election is made.

SECTION THREE

The Term of a Chief Prosecutor and Deputy Chief Prosecutor

The Term and Its Termination

ARTICLE 7 – The term of the Chief Prosecutor or Deputy Chief Prosecutor is five years in total. Their re-nomination and re-election are prohibited.

The Termination of Duty

ARTICLE 8 – (1) The Chief Prosecutor and Deputy Chief Prosecutor cannot be removed from office during their term and they continue their duty until a new election is held, except in the circumstances below.

(2) In the following circumstances, the Chief Prosecutor's or Deputy Chief Prosecutor's duty is terminated before the normal termination date:

a) Being unable to fulfill their duties because of health problems; in this case, the health condition should be ac-

curately determined with a full-fledged public hospital's medical board report.

b) Mandatory retirement due to age limit,

c) Being sentenced as a final judgment for a crime preventing nomination for duty or being sentenced to a final disciplinary sanction.

(3) In the case of the duty of the Chief Prosecutor or Deputy Chief Prosecutor being terminated before the normal termination date, the ordinary procedure or a new nomination and election for their replacement shall commence. In case of a sudden discharge due to a health condition or other unexpected reason a new election procedure shall commence immediately. Until the new nomination and election process is complete, the chief Prosecutor's duties shall be temporarily fulfilled by the Deputy Chief Prosecutor. In case both duties are terminated unexpectedly, the Court of Cassation's Chief Prosecutor, or, in his/her absence, the Court of Cassation's Deputy Chief Prosecutor will take charge of the duty temporarily until a new election can be held.

SECTION FOUR

Chief Prosecutor

The Duties of the Chief Prosecutor and Deputy Chief Prosecutor

ARTICLE 9 – (1) The Chief Prosecutor has the following duties.

a) Investigating and representing the public in the prosecution of the crimes alleged to have been committed by those people who have the immunity such as the President of the Republic, ministers or members of parliament, and whose trial shall be conducted before the Supreme Court of Justice, or the Constitutional Court in the capacity of the Supreme Court by the members of Supreme Authority of Justice, judges, prosecutors and high-level public officials.

b) Acting as Chief Prosecutor before Constitutional Court and Supreme Court of Justice,

c) Initiating the case for closing down a political party and performing duties assigned as per other laws,

d) In person or through the Deputy Chief Prosecutor, auditing the compliance of political parties' constitutions and programs, and their founders' judicial background with the provisions of constitution and law, primarily and following its establishments; following up their activities, where needed, site auditing; and examining, investigating, regarding the political party, a member of the political party and its establishment, and

e) Investigating and prosecuting crimes against constitutional order and its operation regulated under Turkish Criminal Code section 5 in order to uphold the constitution.

(2) The Deputy Chief Prosecutor performs the duties given by the Chief Prosecutor. Additionally, in case the Chief Prosecutor is unable to perform its duties for a reason mentioned in the law, he/she undertakes all the duties and responsibilities of the Chief Prosecutor until a new one will be elected.

4
MERIT and OPEN COMPETITION BASED APPOINTMENTS FOR JUDGE and PUBLIC PROSECUTOR POSITIONS

- In the First Instance and Appeal Courts
- In the Constitutional Court, Court of Cassation and Council of State
- For the Republics Chief Public Prosecutor
- Law on Appointment of Members of the Constitutional Court, the Court of Cassation and the Council of State-Draft

Rationale

Judges and prosecutors will be appointed to the courts of first instance and appeal, according to their merits. Their merits will be determined by the needs of the courts. All legal professionals who possess the necessary requirements will be able to apply. Professional knowledge, expertise, experience, personal and social competencies, success in previous positions, and written exam and oral interview results will be taken into consideration. An open competition method will be used to elect from among those who demonstrate merit. Serving in areas of hardship will be encouraged. Additional qualifications will be sought for popular locations.

Anyone who possesses the necessary requirements of being a member of the Constitutional Court, Supreme Court of Appeals or Council of State will be able to apply to the Supreme Authority of Justice as a candidate for nomination six months before the election date. The Supreme Authority of Justice will list those applications that it finds to possess the membership requirements by scoring them according to their merits; it will then announce the applications to the public for the submission of objections and opinions.

The central unions of judicial professional associations will inform the Supreme Authority of Justice about their candidates for the offices of the chief public prosecutor and the deputy chief public prosecutor. Those who meet the membership requirements will also be able to apply directly to the Supreme Authority of Justice as a candidate for nomination. The Supreme Authority of Justice will grade the applications that it determines to meet the membership requirements, sort them according to their merits and disclose them to the public. Opinions about, and any objections to, the candidates will be collected from the public. Announced candidates will attend an interview before an inclusive panel; they will be obliged to give honest answers and explanations in response to all questions asked.

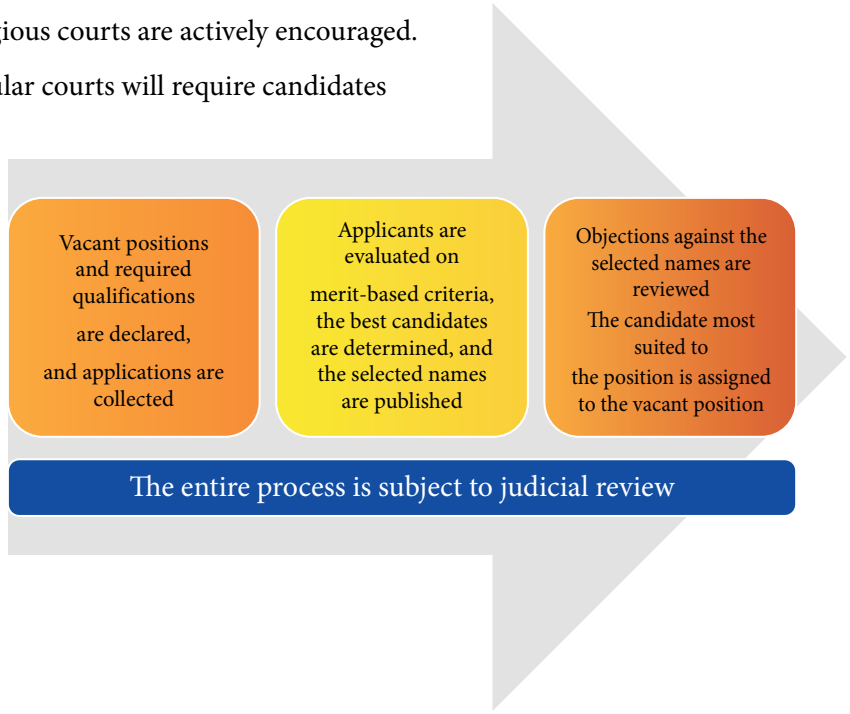
Subsequently, the general assembly of the Supreme Authority of Justice will elect five individuals from among the 10 candidates with the highest merit for each position; these five people who receive the highest number of votes will be appointed. Votes will be cast openly in three rounds of voting, and the factors justifying the election of the preferred candidates will be given. The president will elect as a member the most qualified candidate from among these five candidates. The decisions of the Supreme Authority of Justice in the nomination of candidates and those of the president in the election of a member from among the candidates will be actionable in the Supreme Court of Justice.

Admission and Appointment of Judges and Public Prosecutors

at First-Instance Courts and Regional Appeal Courts

NOTES

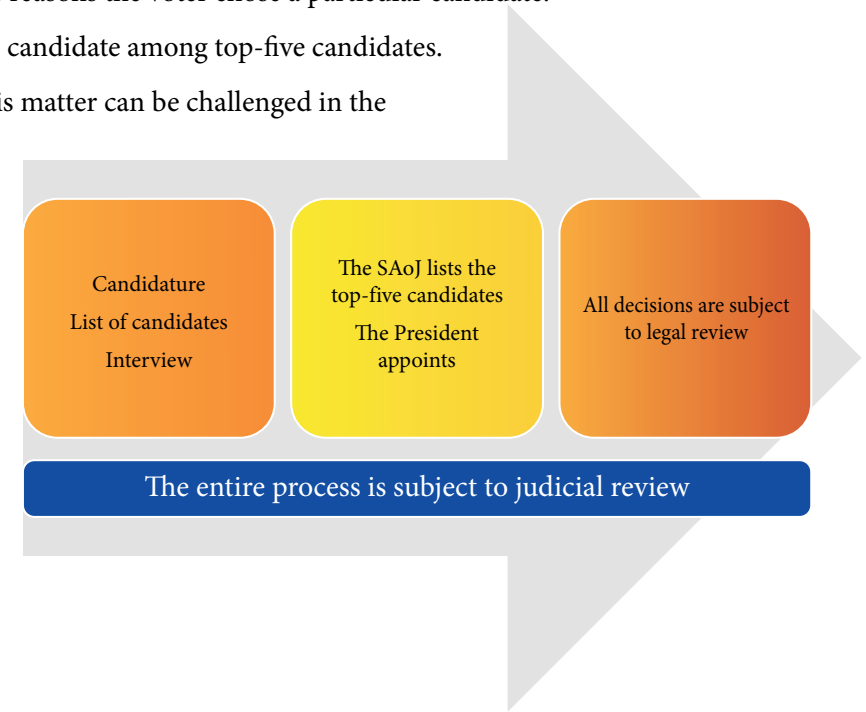
- Judges and public prosecutors are appointed on merit-based criteria.
- The required qualifications are set depending on the needs of the court.
- Professional knowledge, expertise, experience, personal and social skills, as well as past accomplishments and the scores of written and oral exams are considered.
- The appointments are made based on open competition among the qualified candidates.
- All judicial professionals having the required qualifications may apply.
- Applications for positions at less prestigious courts are actively encouraged.
- Applications for positions at more popular courts will require candidates to have additional skills.



NOTES

Merit and Open Competition Based Candidature, Selection and Appointment to the Constitutional Court, the Court of Cassation and the State Council

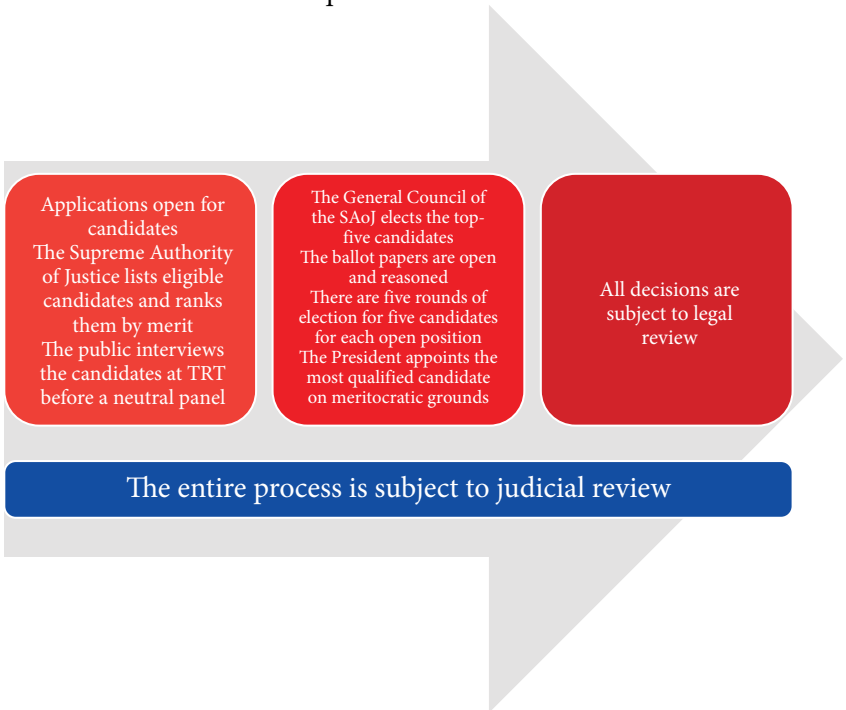
- Anyone with the required qualifications for at least six months before the application date is eligible.
- The SAoJ lists and declares the names of the candidates with the required qualifications and all relevant information to the public.
- The General Assembly of the SAoJ scores and ranks the candidates.
- The candidates declare all information to the public and respond to their questions. They are interviewed by an independent panel on national TV and radio.
- The SAoJ General Assembly elects the top-five candidates with the best qualifications for each position from a shortlist of 10.
- Ballot papers will be open and will list the reasons the voter chose a particular candidate.
- The President appoints the most qualified candidate among top-five candidates.
- The SAoJ's and President's decisions in this matter can be challenged in the Supreme Court of Justice



Merit and Open Competition Based Candidature, Election and Appointment to Republic's Chief Public Prosecutor, Deputy Republic's Chief Public Prosecutor and Assistant Republic's Chief Public Prosecutor Positions

NOTES

- Parliament nominates three candidates, the legal professional associations nominate one candidate, other professional associations each nominate one candidate, and NGOs nominate one candidate.
- Anyone with the required qualifications for at least six months before the application date is eligible.
- The Supreme Authority of Justice declares the names of the candidates with the required qualifications and all relevant information to the public.
- The General Assembly of the Supreme Authority of Justice scores and ranks the candidates.
- The candidates declare all information to the public and respond to their questions. They are interviewed by an independent panel on national TV and radio.
- The SAoJ General Assembly elects the top-five candidates with the best qualifications for each position from a shortlist of 10.
- Ballot papers will be open and will list the reasons the voter chose a particular candidate.
- The President appoints the most qualified candidate of the top-five candidates.
- The SAoJ's and President's decisions in this matter can be challenged in the Supreme Court of Justice



Law on Appointment of Members of the Constitutional Court, the Court of Cassation and the Council of State

Draft

CHAPTER ONE

General Provisions

Article 1 – Scope

(1) Applications for nomination candidacy and nominations for the memberships of the Constitutional Court, Court of Cassation and Council of State, the number of which are specified in their relevant laws, as well as their elections and appointments are subject to the provisions of this law.

Article 2 – Candidacy for Nomination and Application Process

(1) Anyone who meets the criteria for candidacy can directly apply to the Supreme Authority of Justice as a nomination candidate six months before the date of election.

(2) The Supreme Authority of Justice determines the candidates meeting the stipulated criteria. The Authority then ranks the candidate by grading their merits as the fundamental qualification sought and discloses these rankings to the public along with all the information in the personal files of the candidates.

(3) The nomination candidates are interviewed on Turkish Radio and Television Corporation ("TRT") by an inclusive stakeholder panel. The nomination candidates respond to all the questions asked and candidly disclose relevant information to the public.

Article 3 – Nomination Procedure

(1) Upon evaluating the information and documents obtained during the public debate, the General Assembly of the Supreme Court of Justice determines and announces the 10 candidates with the highest qualifications and merit.

(2) The election for candidate selection commences subsequent to the finalization of the list without objection or the final decision of the objections against the list or the expiration of the objection period.

(3) The General Assembly holds five elections among the candidates in the list and determines the person with the highest vote in each election as a candidate. Persons who were elected in the previous election cannot participate in the next election.

(4) Voting in the General Assembly is open ballot. It is obligatory to write a reasonable explanation on the ballot papers showing the reason for the candidate's preference. Votes without such explanation are considered invalid.

Article 4 – Member Election Procedure

(1) The President elects the relevant member out of the 5 members determined as stipulated under Article 3 of this law, by determining the most competent.

(2) In this decision, it is imperative that justification be given in a way to show the reason for choosing the most competent one and what kind of evaluation and preference is made among the competencies of different degrees.

(3) It is possible to file an annulment action before the Supreme Court of Justice against the election decision of the President on the grounds that sufficient reasoning was not shown, or the election was not made based on competence. In case of annulment, the President announces chooses and announces the most qualified member instead of the member whose election decision was annulled. It is also possible to file an annulment action against this decision on the ground that the election was not made based on competence.

5
A UNIFORM CAREER PLAN FOR ALL JUDICIAL PROFESSIONS

- The Law on the Judicial Professions

Atty. Mehmet Gün
Atty. Hande Hançar
Atty. Muhammed Demircan
Atty. Utku Süngü

Rationale

A uniform career plan is foreseen for all the legal professions, adapting to the structure and function of the judicial service units (courts). The career plan of the legal professions will have at least three major degrees. Each degree will have a maximum of three levels. Progression between the levels within degrees will depend on seniority, while progression between degrees will depend on a combination of success in the profession and seniority. The progression of judges and prosecutors will depend on the availability of open positions in the higher courts to which they can advance. The aim is to develop human resources in line with the needs of the courts.

It is envisaged that legal professionals will be brought to the standard of competence, knowledge and experience required by the judicial authorities and that the most difficult jobs will be performed by the most senior, experienced and competent persons.

For admission to the legal professions, it is envisaged that candidates will have reached the age of personal maturity when fully authorized, on the one hand, and when judged to be fully competent, knowledgeable and experienced enough to perform their duties accurately, on the other. For full admission to the profession, it is stipulated that all candidates will perform an official internship, as well as summary and assistant roles and gain experience in the profession. In order to progress through all these professional stages, it is envisaged that there will be a written examination and an oral interview in front of a committee on which the elements of each profession are present, and that these interviews will be recorded and subject to judicial review in order to ensure objectivity.

Progress in all professions will depend on merit. Merit will be determined through modern performance evaluation that identifies the elements which ensure quality service. In addition, it is envisaged that up-to-date and continuous training, guidance and mentorship (based on the road guides of the Ahi community) will be provided. For this purpose, it is envisaged that retired professional leaders will continue in their profession as mentors/"road guides" as long as they are healthy, and the mandatory retirement age will be raised to facilitate this.

Thus, it will be ensured that the professions of judge, prosecutor and attorney develop in parallel and in an equal manner. Transition between professions will be facilitated when the needs of society require it or professionals desire it, and it will be ensured that the human resources of the country in the field of law are used dynamically and effectively in accordance with the needs.

Currently, conflicts between judicial officials, especially judges and citizens, and refusal and withdrawal issues, mainly regarding whether or not a judge will hear a case, are examined and decided in the normal course of administration, which is unhealthy, open to abuse and causes delay.

It is stipulated that the examination of such issues that may arise between citizens and judicial officials will be supervised by the Supreme Authority of Justice, which will be responsible for both the provision and quality of the service and management of service units, and judicial supervision by the Supreme Court of Justice. In this way, on the one hand, it will be ensured that the Supreme Authority of Justice is aware of problems regarding the service between the courts and the citizen at first hand, and on the other the abuse of withdrawal and refusal authorities will be prevented.

Outline of the Proposed Law on Judicial Professions

NOTES

1- There will be a uniform career plan for all judicial professions that is compatible with the structure and functioning of the court system. There will be at least three professional degree and, in every degree, three levels that are uniform across all the judicial professions.

2- Admission to legal professions shall be through (i) general introductory training; (ii) training for specific profession; (iii) serving for two years reporting professional; and (iv) having worked as an assistant judicial professional for three years.

3- Career advancement will be in degrees, based on success and seniority, or, in levels, based on seniority only.

4- The career advancement of judges and prosecutors will be dependent on the availability of a position at the higher degree.

5- In order to be appointed one must succeed in written exam and oral interview prior to each appointment.

6- All interviews will be conducted by a qualified board, and interviews are recorded and broadcast. Appointments will be based on merit and experience, and on the basis of fair and open competition.

7- All judicial professionals will be subjected to performance evaluation, and advancement will be based on performance, with levels based on the standards of national culture set by the Ahi Community. Up-to-date and vocational education, guidance and mentorship will be made available ("yol atalığı" in the Ahi Community).

8- The Supreme Authority of Justice (SAoJ) will review recusal motions, all the complaints made against judges, and disputes between judges and civilians.

NOTES

Principal Aims and Objectives

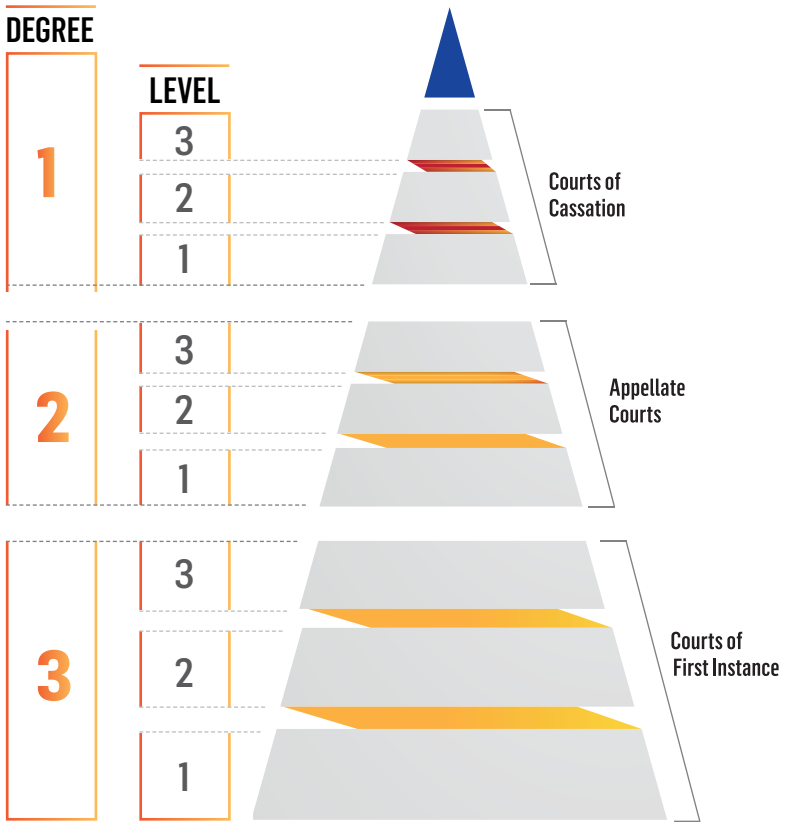
The main objective is to transform the service quality of the courts so they become more efficient, competent and internationally competitive. Moreover, we aim to improve the current structure of the Courts of First Instances, Regional Courts of Appeal and Courts of Cassation to ensure the efficient and effective use of resources.

For this purpose, we aim to accomplish the following objectives:

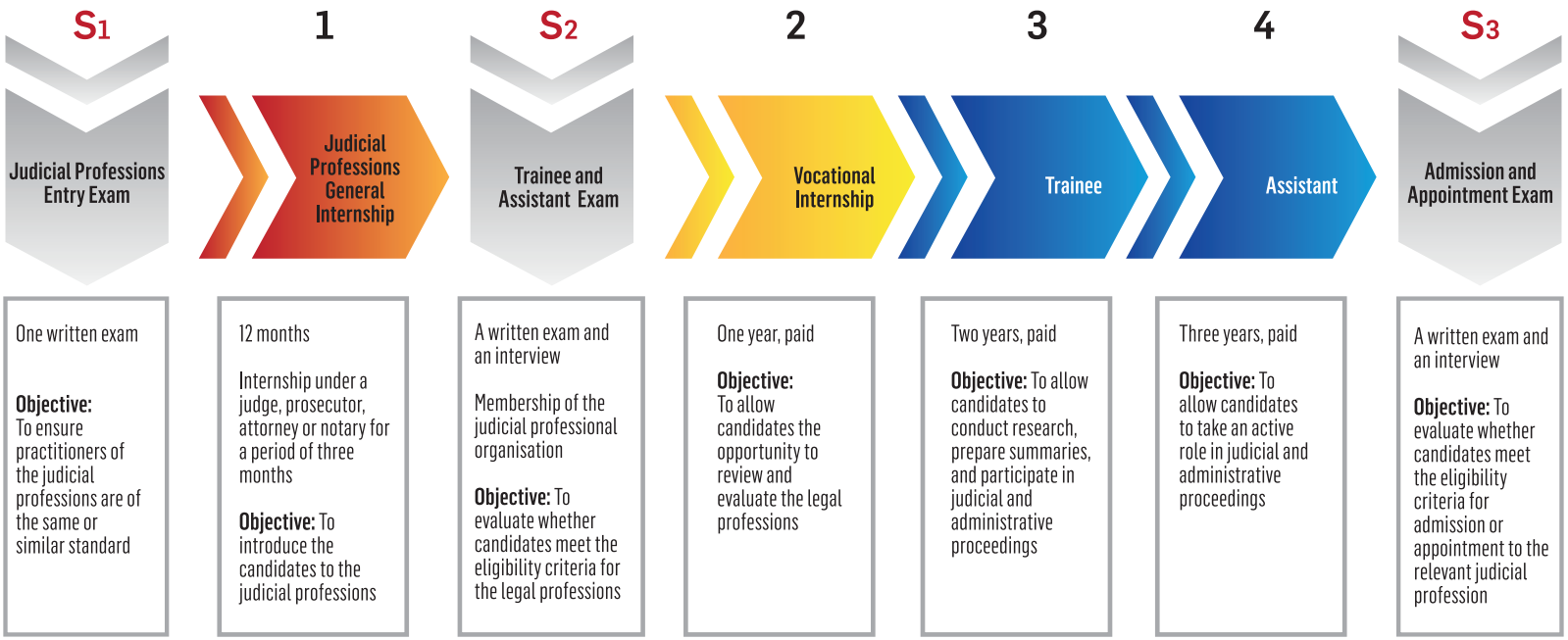
- Unifying the organization of the judicial professions in line with the court structure;
- Unifying the systems in place to become a judge, prosecutor, attorney and notary;
- Unifying the career plans, promotions and appointment systems of judges, prosecutors, attorneys and notaries;
- Easing the transition between judicial professions through standardisation; and
- Making the judicial professions internationally competitive in terms of competence and efficiency.

The Proposed Career Plan for the Judicial Professions

- The SAoJ organises the career plans of judicial professionals by considering the court structure and the importance of their functions.
- The proposed career plan is prepared in such a way that it allows easy transition between the same level of judicial professionals.
- Judicial professions are categorised into three degrees according to the court instances (first, second and third), and there are three levels at each degree.
- Career advancement in levels is automatic and based on experience and performance.
- The career advancement of judges and prosecutors depends on the availability of a position at a higher level, and judges and prosecutors must apply for that available position.
- The SAoJ plans the career advancement in levels according to the needs of the judicial services.
- The SAoJ determines the period of time to be spent at each level and sub-level, the education to be received, and the career advancement criteria to move to the next level or sub-level.



Entry to the Judicial Professions



The Judicial Professions' Entry Process and Conditions: Judges, Prosecutors, Lawyers and Notaries

NOTES

- The SAoJ prepares the judicial professions' entry exam, conducts interviews, and is both the authorising and the appointing authority.
- Vocational interns are paid.
- Those who complete a vocational internship will work as a trainee for two years. Those who succeed at that will work as an assistant for a further three years.
- The SAoJ appoints trainee and assistant judges and prosecutors. The SAoJ evaluates the application based on merit. Merit-based appointment is also applicable to an internship undertaken under an attorney or a notary.
- The SAoJ oversees, audits and records the entire process and is the deciding authority throughout. All of the decisions taken by the SAoJ are subject to judicial review.

NOTES

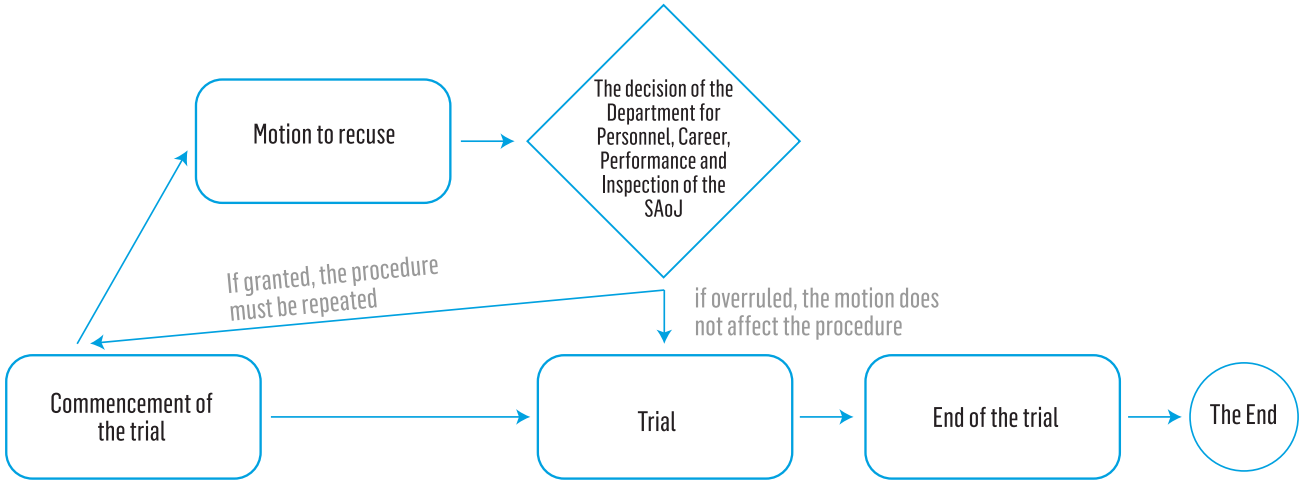
Judges' and Prosecutors Relations with the Parties and the Public

The SAoJ's and SCJ's Review of Recusal Requests.

Motions to recuse a judge or a prosecutor and any accusations or complaints about a judge raised are immediately forwarded to the SAoJ. After evaluating the complaint and examining whether or not it is appropriate for the judge to hear the case, or the prosecutor to handle investigation the SAoJ may decide to recuse the judge or the prosecutor and transfer the case to another judge.

In the event legal action is brought against such decision the SCoJ must deliver a ruling in as short a time as possible.

Recusal motions do not suspend the proceedings before the court. If the motion for recusal is accepted, all the procedures from the time the relevant party raised the motion to recuse the judge or the prosecutor are repeated.



Judicial Profession Raporteurs

NOTES

The SAoJ authorises those who have successfully completed their chosen vocational training to work as a trainee in the relevant judicial professions for at least two years.

Trainee judges and prosecutors are appointed on merit and on the basis of fair and open competition.

Trainee attorneys and notaries must apply to the SAoJ to work under an attorney or a notary who has notified the SAoJ regarding their need for a trainee. Trainee attorneys and notaries are appointed on merit and on the basis of fair and open competition. The SAoJ is notified.

A trainee's duties include the following:

- Summarizing petitions, lawsuit briefs, evidence and reports in the case file assigned to them;
- Conducting legal research, preparing drafts, doing the necessary follow-ups after a process/ procedure and accompanying members of the relevant judicial profession; and
- Fulfilling whatever duty is required of them by members of the relevant judicial profession.

NOTES

Vocational Internship for Judicial Professionals

Judge interns observe judges while they are working and during hearings, assist them while they engage with the administrative authorities, participate in training, and fulfill whatever duties imposed by the bylaws.

- Prosecutor interns observe prosecutors while they are working and during hearings, assist them while they engage with the administrative authorities, participate in training, and fulfill duties imposed by the bylaws.
- Attorney interns conduct research, prepare case files, assist the attorney in correspondence with third parties, assist attorneys when they engage with administrative authorities, attend hearings with attorneys, assist in defense, participate in training and fulfill duties imposed by the bylaws.
- Notary interns observe notary procedures, assist notaries while they engage with the administrative authorities, participate in training, and fulfill duties imposed by the bylaws.
- All interns' performance is evaluated according to the performance evaluation system
- All interns are paid a salary not less that the minimum wage set for civil servants.
- The salary is sett annually by the relevant union of judicial professions.

Assistants for Judicial Professions

NOTES

Those who have worked as a rapporteur judicial professions for at least two years and are found to be successful in the performance evaluation are appointed by the SAoJ to work as an assistant judicial professional. They work under the supervision and instructions of a fully qualified, experinced judicial professional and trainee to become fully skilled in the chosen profession. Assistants are appointed on merit and on the basis of fair and open competition.

- Assistant notaries apply to the SAoJ to work under an attorney who has notified the SAoJ regarding his/her need for an assistant. Assistant attorneys are assigned on merit and the SAoJ is informed the outcome.
- Assistant attorneys apply to the SAoJ to work under an attorney who has notified the SAoJ regarding his/her need for an assistant. Assistant attorneys are assigned on merit and the SAoJ is informed the outcome.
- Assistant participate in the adjudication of disputes, performs tasks assigned by their principals, generally assist them but cannot substitute in place of their principals.
- An assistant attorney can attend hearings in the Judicial Preparation Courts related to the cases the principal attorney is working on and complete the relevant tasks in the Enforcement Office, if authorized by the principal attorney.
- Assistants are managed and directed by their principals; they examine the file, petition, evidence and other documents given to them, they carry out research on case-law, literature, prepare drafts as instructed and guided.
- Assistants, in limited circumstances they carry out communications with judicial and administrative authorities,
- Assistants prepare files, order the evidence, questions to witnesses and help form opinion on the evidence.
- And perform other duties given to them by their principals.

NOTES

The Admission and Appointment Exam

- Those who have completed their vocational internship and have worked as a trainee for at least two years and an assistant for at least three years are eligible to take the exam.
- The SAoJ conducts the written exams as well as the interviews for each of the judicial professions. The first stage of the exam is written. Those who are successful in the written exam are then interviewed.
- The written exam and the interview asses the candidates' legal knowledge, analysis, application, communication and other social skills, and performance evaluation results.
- Video and audio recordings of the interviews are made and, following the interview, the recordings are published on the SAoJ's website.
- Those who score at least 70 out of 100 are considered successful.
- Anyone can object to an exam result and these are subject to judicial review. Any required revision or annulment of an exam result is given priority and resolved promptly.
- Those who are successful are appointed.

The Admission and Appointment Interview for the Judicial Professions

NOTES

Interview boards comprise seven SAoJ members. If there are not enough members who to'fulfill the criteria stated below, interview board members are selected from among judges, prosecutors, attorneys and notaries.

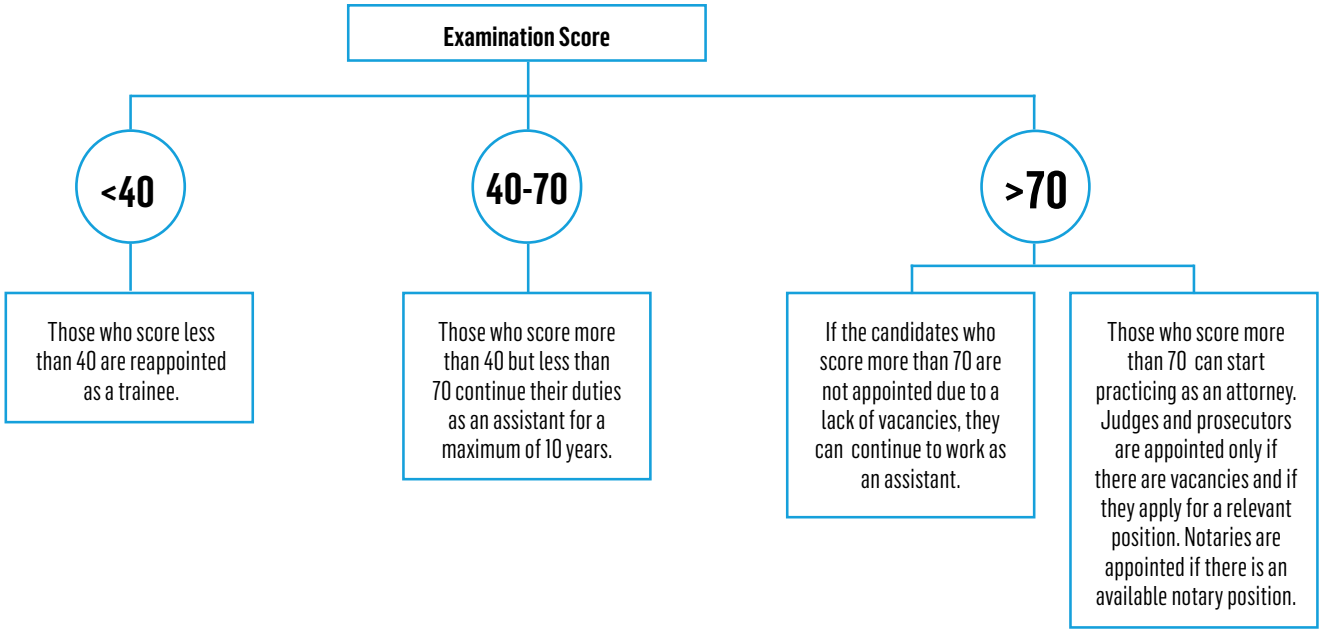
	Judge	Prosecutor	Attorney	Notary	Academician	Psychologist
Interview Board of Judges						
Interview Board of Prosecutors						
Interview Board of Lawyers						
Interview Board of Notaries						

NOTES

The Evaluation of the Written Exam and Oral Interview

If no red flags arise during the interview that would prevent a candidate from being admitted to the judicial profession:

- His/her average score is calculated from the interview and written examination score.
- A decision is made based on this score and according to the table shown here.
- A certification is issued indicating that the candidate can practice in the relevant judicial profession.
- He/she can be appointed as a judge or a prosecutor if there is an available judge or prosecutor position.
- He/she can apply to be a notary if there is an open notary position.



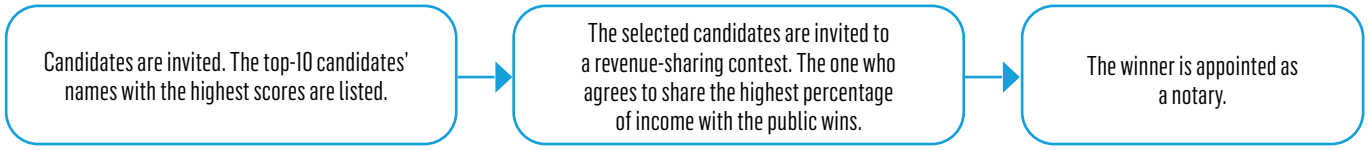
Notary Appointments via Open Competition

NOTES

Notary appointments are made taking into consideration the following: (1) Notaries should provide a better service; (2) appointments should be based on merit; (3) income received from notary public activities must be fairly distributed between the notaries and the public, and (4) fairly distributed among notaries.

For that reason:

- The SAoJ grades notaries by their qualifications, seniority and performance.
- Notary public offices are graded by the economic status of the region, the intensity of the work performed, the service they provide to the community, and the income obtained from the notary public service in previous years.
- When there is a vacancy for a notary position, an open competition is organised and the top-10 candidates' names with the highest score are listed.
- Notaries are appointed on merit and on the basis of open and fair competition to serve for the period determined.
- The selected candidates are invited to a revenue-sharing contest. The one who agrees to share the highest percentage of their income with the public is appointed as a notary.
- Candidates cannot offer to share less than 50 percent of their income. If the candidates offer the same amount, the one who received the highest score is appointed as a notary.



NOTES

Commencing to Judicial Professionals

- Newly appointed attorneys can immediately start practicing law as an attorney. Once they have incorporated their law firm, they must notify its address to the Unions of Regional Bar Associations and the SAoJ.
- In accordance with the special provisions of notaries, they must apply to the vacancies first. If they are successful, they can immediately start practicing their notary public duties.
- Judges and prosecutors are appointed by the SAoJ in accordance with the needs of the courts and prosecutor's offices, taking into consideration their knowledge, experience, expertise, performance evaluation and exam scores. The SAoJ regularly updates and publishes the available judgeship or prosecutorship positions and the expected qualifications for the positions available.
- Those would-be judges and prosecutors whose qualifications meet the needs of a specific court are appointed by the SAoJ. If there are no candidates with the required qualifications, then the candidates with the closest qualifications are appointed.
- Judges and prosecutors are appointed on merit, and the most competent candidate among those who seek appointment in the same region or province is appointed to the relevant court.
- The SAoJ is the appointing authority.

Performance Evaluation of Judicial Professionals

NOTES

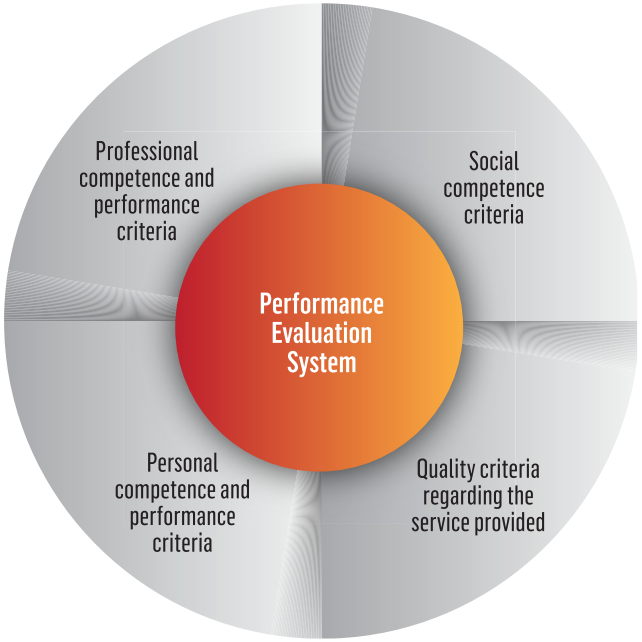
The SAoJ evaluates the performance of the current judicial professionals and announces the results once a year, in order to ensure the quality of the judicial system. It reports on:

- Quality criteria regarding the service provided;
- Personal competence and performance criteria;
- Professional competence and performance criteria;
- Social competence criteria; and
- Other criteria

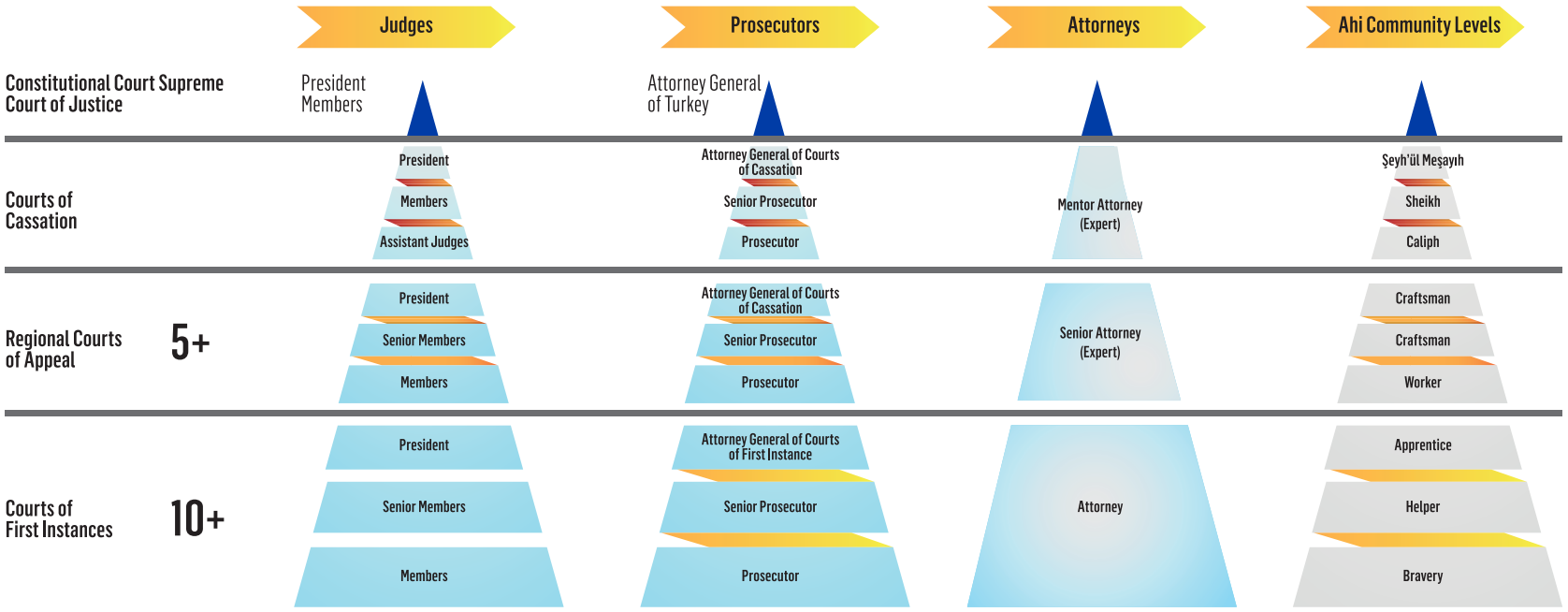
Via a questionnaire, judges, judicial officials, attorneys and citizens give feedback about the judicial professionals with whom they have engaged.

All results are evaluated during an evaluation meeting with the professional mentors, and strengths and areas of development are determined.

An individualised vocational training plan is prepared, incorporating these findings.



Comparative Career Degrees and Levels of Judicial Professions

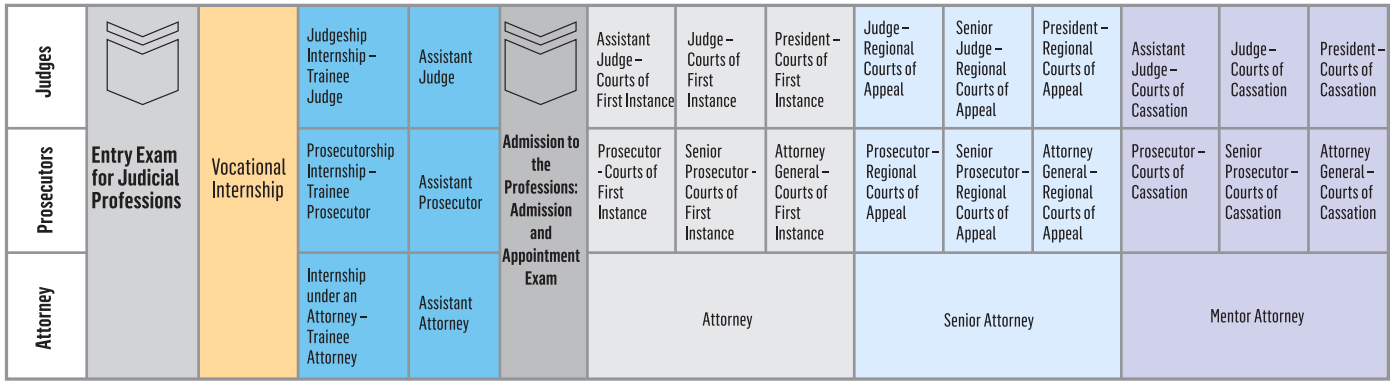


Transition Between Judicial Professions

NOTES

With the implementation of a uniform career plan it is aimed to enable the judiciary to efficiently utilize the human resources because members of judicial professions will be able to switch between professions at the same or lower degree or levels depending on the success in the written exam and interview for admission and appointment.

- The SAoJ will regularly update and publish capacity and the needs of each judicial profession.
- The SAoJ will prepare and conduct exams and interviews at least every year
- Those who succeed in exams and interview will have to do a one year mandatory internship for the profession they want to switch to
- For transition to other judicial professions, the candidates' success in his/her previous profession and degree and level, performance evaluation scores , written exam and oral interview scores, foreign language knowledge, academic studies he/she has completed such as masters, doctorate or professorship will be evaluated.



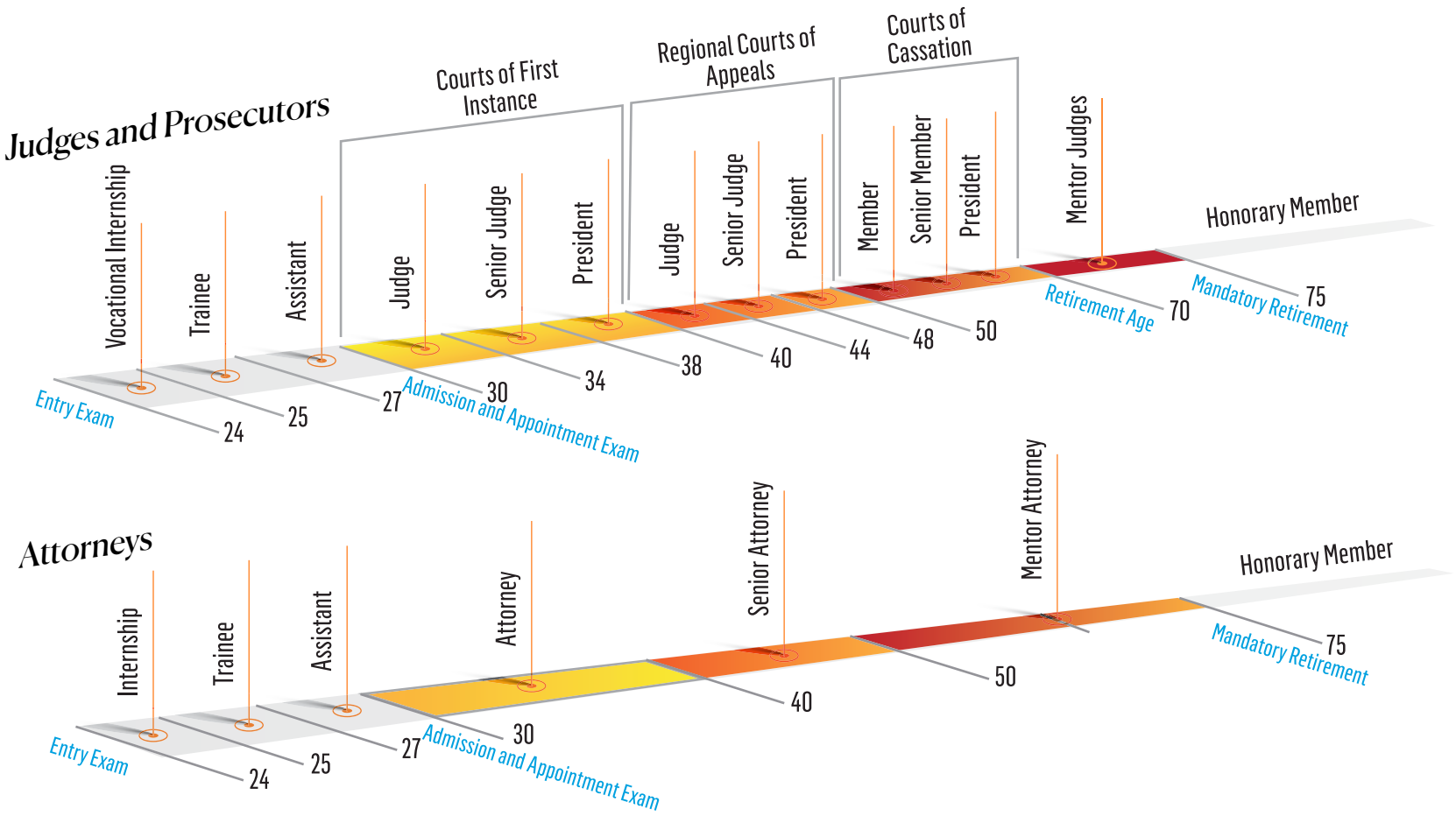
NOTES

Vocational, Up-to-Date and Continuing Education for Judicial Professionals

All judicial professionals will receive regular and continuous education and training throughout their professional life completion of this training is a prerequisite for advancing in degrees and levels. The SAoJ determines the outline and basic principles for in-profession training. Judicial professional associations, together with the Justice Academy prepare a detailed education plan regarding their members' needs.

- For every 30 calendar days trainees, reporters and assistant professional receive minimum 3 days of compulsory in-profession education.
- Trainingng judges and ass.
- The results of such training is measured by written exam and oral interview.
- Those who advance to a higher level must complete two months' intensive training before starting their duties. Those who succeed in the written exam at the end of their training and education can start working at the higher level. However, those who fail must repeat the training, and if they fail again, their higher-level advancement is cancelled.
- The result of education is measured by written exam and oral interview. One-year training period for judges of the Courts of Cassation and Council of State.
- Judicial professionals may receive their training through conferences and seminars. Their participation in and credit obtained from these events can substitute a written exam score, but credit obtained from such events cannot exceed 20 percent of the total score.
- Those who aspire to work and successfully fulfill their duties in deprived regions, or those who have achieved outstanding success while performing their duties will be sent to receive a masters or doctoral education in Turkey or abroad. The relevant judicial association will cover their expenses, including but not limited to education and accommodation.

Judges' and Prosecutors' Career Advancement by Age
A Comparison with the Envisaged Attorney Career Plan



NOTES

Professional Guidance and Mentorship

In the traditional judicial professions, individuals attain mastery by using their skills repeatedly for long periods of time and accumulated years of experience are paramount to developing this mastery. Professional mentorship has been considered a prerequisite for career advancement, yet the mandatory retirement rule applied to judges and prosecutors results in the loss of experienced mentors. It is indisputable, however, that judicial professionals use their knowledge rather than their physical strength in order to do their jobs, and, with that in mind, some countries appoint Supreme Court Justices for life.

- Senior judicial professionals can continue to work as mentors. Those who have gained enough experience to reach this level of seniority are assigned responsibilities appropriate to their new position – for example, the duties of an appellate court.
- In order to fulfill a higher-level responsibility, those who are recently appointed to such a role may undertake it under the supervision of a senior judicial professional.
- The mentor-mentee relationship will last until the final stage of the relevant judicial profession. Those who are retired can share their knowledge, experience and expertise with younger professionals. The SAoJ regulates mentorship with bylaws.
- Those who have gained enough experience to be a mentor, or those who have reached the mandatory retirement age can apply to the SAoJ to be a mentor. Mentorship applications are evaluated by the SAoJ, and the SaoJ registers the names of mentors.
- Mentors can be appointed to those who succeed in the admission and appointment exam and request a mentor.

Saim Dursun,
“Gergin” (Nervous),
30 x 60cm,
oil on canvas,
spatula technique,
2013

Working Days and Hours, and Annual Planning

NOTES

- Judges and prosecutors can choose their working days until the expiration of their term of office, plan the dates when they will not be in court due to vocational training, conferences, etc, and choose the dates when they will take annual leave. They must inform the SAoJ and Unions of Regional Bar Association of the above-mentioned dates and take the utmost care that their court work is not interrupted.
- Judges and prosecutors may take 30 days of paid leave every year. They may use their annual leave in July and August and, if they wish, they may also use a week in January. Public holidays falling within the leave period do not result in the extension of annual leave.
- The provisions of the Civil Servant Law apply to judges' absences, sickness leave and unpaid leave. They must take the utmost care and appropriate measures to compensate for any interruption.
- The judicial holiday is abolished. The SAoJ does the necessary planning and takes the necessary precautions to ensure that judges' annual leave does not interrupt the judicial service provided.
- Judges and prosecutors abide by daily and weekly working hours. If necessary, they continue to work outside of their working hours and on holidays, and to serve in the courts. Their working time is recorded, and the records are approved by the court administrators.
- The SAoJ takes certain measures to compensate for overtime and gives priority to the planning of training, education and vacations. It also takes into account issues such as the allocation of judicial payments.

NOTES

The Public Registry of Judicial Professionals

The SAoJ keeps a registry of judicial professionals. The details of all judicial professionals who are admitted to the profession are found in this registry. A digital version is published on the SAoJ's website so that anyone may easily access the records, if necessary. Judicial professionals' personal information and other information that has a bearing on their security is not published. The following information can be found in the registry:

- All documents submitted for his/her exams;
- The questions and answers from his/her written examination, interview minutes, and written examination and interview scores;
- Documents relating to his/her internship, trainee and assistant judge and other judgeship duties;
- If there are any, other documents and information about his/her duties other than as a judge;
- All articles written by him/her;
- His/her performance evaluation results;
- All promotion, demotion or suspension decisions or any other decision taken about his/her;
- All judgements, and if the judgements are appealed, the appeal results;
- Recusal motions and the results;
- Complaints, and disciplinary and criminal investigations, and his/her results; information about his/her financial status;
- Information about his/her social status and his/her relationships; and
- Any other relevant information.

JUDGESHIP

NOTES

The Main Objectives of Judgeship

Judgeship is a public service. Judges are one of the three founding pillars of the judiciary.

Judges' duties include revealing the facts about a civil, criminal, administrative or tax-related dispute; ensuring claims and defenses are discussed and evaluated; resolving disputes with consideration for each party's arguments; and delivering a just judgement.

Judges fulfill their duties with due care and devotion to duty in line in order to realize the social goals below. They benefit from certain guarantees and privileges enshrined to them to realize these goals:

- To ensure the rule of law;
- To protect and develop fundamental rights and freedoms;
- To strengthen the notion of justice in society;
- To encourage reconciliation to sustain peace and tranquility in society;
- To provide a high-quality judicial service;
- To accurately resolve disputes;
- To apply the law in accordance with its meaning and purpose; and
- To eliminate discrepancies in regulations and case law.

The Guarantees Enshrined to Judges

NOTES

- A judge cannot be relieved of his/her duties before his/her term of office has expired.
- A judge's level can be reduced in the case of poor performance or failed exams.
- A judge can be appointed to another jurisdiction only when the SAoJ prepares a new rotation plan and it is determined in advance.
- Due care and importance must be given to obtain a judge's consent in the case of a transfer of jurisdiction. However, if that is not possible, then the appointing authority must give its justified and reasoned decision.
- Measures should be taken to ensure that any judge who has started to review a case has the opportunity to close the case prior to his/her transfer. When planning the distribution of case files to courts, the career, rotation and transfer of a judge should be taken into consideration.
- As a rule, courts cannot be closed. However, if there are compulsory reasons for the closure of a certain court, then all the cases reviewed by the then sitting judge must be transferred to the court where the judge is newly appointed due to closure. Due care should be given to ensure that the judge who reviewed a case has the opportunity to close the case.
- A judge's financial benefits and other personal rights cannot be denied.
- A judge cannot be forced to retire before the age of 70 except at their own request.

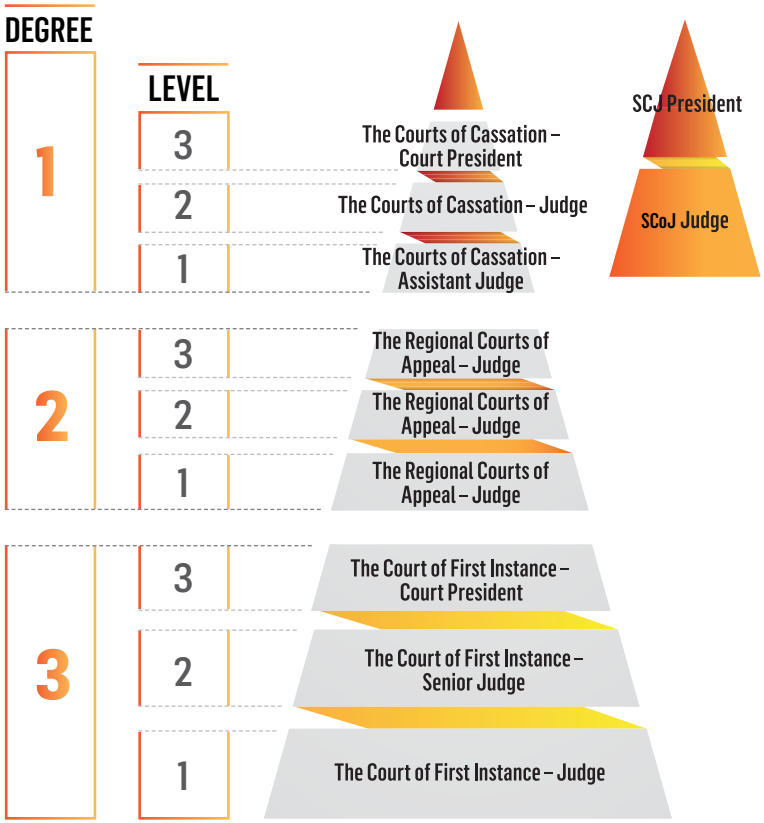
NOTES

Judgeship Career Levels and Sub-levels

The career plan for judges: There are three degrees, namely, the Court of First Instance, the Regional Courts of Appeal, and the Courts of Cassation. Each degree has three levels. Judges start their career from the first level of the first degree.

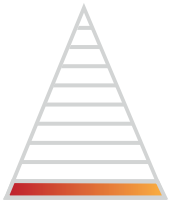
The degree at which each candidate should start following the judicial profession transition is determined by their test results.

- Career advancements are determined on application and/or ex officio.
- Level career advancements are determined on application.
- Judges' remuneration and other personal rights are determined according to their degree and level.



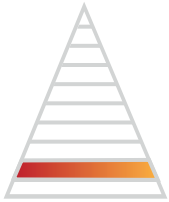
3rd Degree:
First Instance Courts
Advancement Criteria for Judges

NOTES



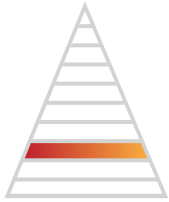
The Court of First Instance – Judges:

- Must be at least 29 years old.
- Must have passed the admission and appointment exam.



The Court of First Instance – Senior Judges

- Must have served as a judge in a Court of First Instance for at least four years.
- Must have scored at least 65 in their performance evaluation.

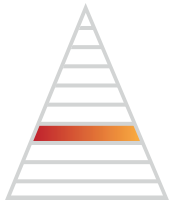


The Court of First Instance – Court President

- Must have served as a senior judge in a Court of First Instance for at least four years.
- Must have scored at least 70 in their performance evaluation.

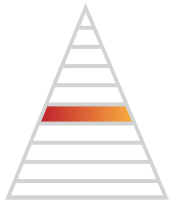
NOTES

2nd Degree: Regional Courts of Appeal Advancement Criteria for Judges



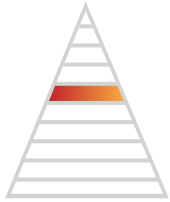
The Regional Court of Appeal – Judge

- Must have served as a court president in a Court of First Instance for at least two years.
- Must have scored at least 75 in their performance evaluation.
- Must have published at least two articles in peer-reviewed journals on a subject or subjects that correspond to the jurisdiction of the courts they served.
- Must have a masters degree.



The Regional Court of Appeal – Senior Judge

- Must have served as a judge in a Regional Court of Appeal for at least two years.
- Must have scored at least 80 in their performance evaluation.
- Must have published at least two articles in peer-reviewed journals on a subject or subjects that correspond to the jurisdiction of the courts they served.
- Must have a masters degree.

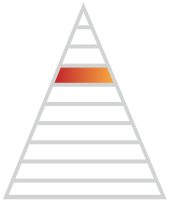


The Regional Court of Appeal – Court President

- Court presidents are selected from among the senior judges currently serving in the Regional Courts of Appeal.

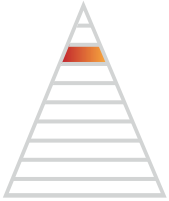
1st Degree:
Courts of Cassation
Advancement Criteria for Judges

NOTES



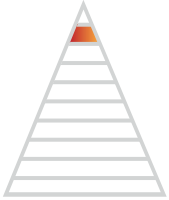
The Court of Cassation – Judge

- Must have served as a judge in a Regional Court of Appeal for at least five years.
- Must have scored at least 80 in their performance evaluation.
- Must have published at least five articles in peer-reviewed journals on a subject or subjects that correspond to the jurisdiction of the courts they served.
- Must have a masters degree.



The Court of Cassation – Senior Judge

- Must have served as an assistant judge in a Court of Cassation for at least two years.
- Must have scored at least 90 in their performance evaluation.
- Must have published at least seven articles in peer-reviewed journals on a subject or subjects that correspond to the jurisdiction of the courts they served.
- Must have a masters and doctorate degree.



The Court of Cassation – Court President

- The court president is selected from among the senior judges currently serving in the Courts of Cassation.

PROSECUTORSHIP

The Main Objectives of Prosecutorship

NOTES

Prosecutorship is a public service. Prosecutors are one of the three founding pillars of the judiciary.

Prosecutors' duties include examining and investigating complaints, violations and alleged violations of the rules that society is obliged to adhere to that would constitute a crime; impartially revealing the material facts; bringing and prosecuting accused people before competent courts on behalf of the public.

Prosecutors fulfill their duties with due care and devotion to duty in line in order to realize the social goals below. They benefit from certain guarantees and privileges enshrined to them to realize these goals:

- To ensure the rule of law;
- To protect and develop fundamental rights and freedoms;
- To strengthen the notion of justice in society;
- To encourage reconciliation to sustain peace and tranquility in society;
- To provide high-quality judicial service;
- To accurately resolve disputes;
- To apply the law in accordance with its meaning and purpose; and
- To eliminate discrepancies in the regulations and case law.

NOTES

The Guarantees Enshrined to Prosecutors

- A prosecutor cannot be relieved of his/her duties before his/her term of office has expired.
- A prosecutor's level can be reduced in the case of poor performance or failed exams.
- A prosecutor can be appointed to another jurisdiction only when the SAoJ prepares a new rotation plan and it is determined in advance.
- Due care and importance must be given to obtain a prosecutor's consent in the case of a transfer of jurisdiction. However, if that is not possible, then the appointing authority must give its justified and reasoned decision.
- Measures should be taken to ensure that a prosecutor can complete the tasks he/she has begun prior to any transfer. Due care should also be given to allow a prosecutor to complete any investigation he/she has started.
- A prosecutor and his/her assistant act on behalf of the public during investigations and prosecutions.
- A prosecutor's financial benefits and other personal rights cannot be denied.
- A prosecutor cannot be forced to retire before the age of 70 except at their own request.

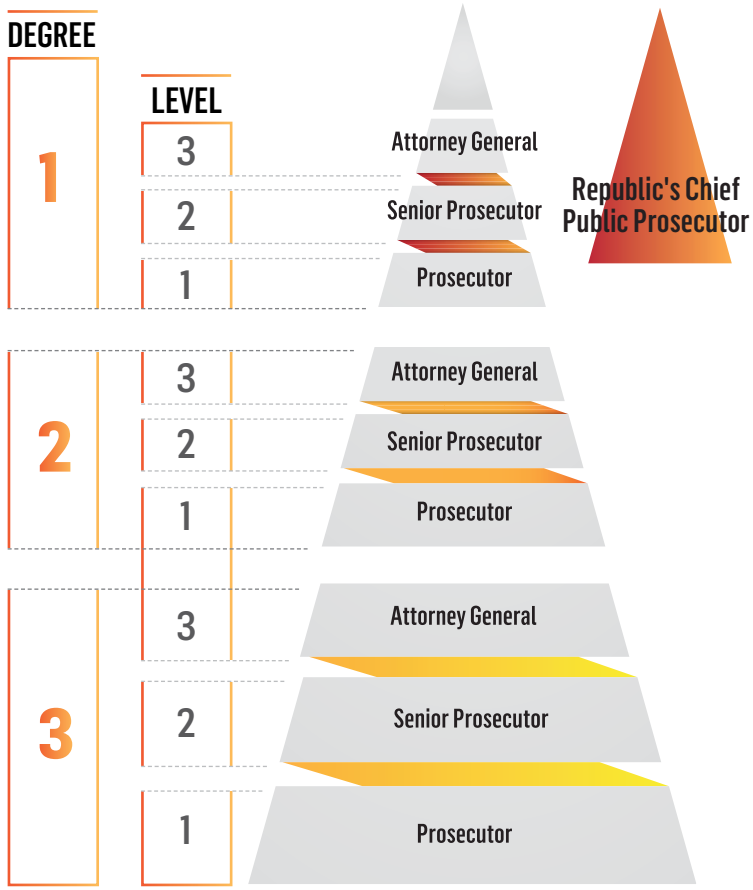
Prosecutorship Career Degrees and Levels

NOTES

The career plan for prosecutors: There are three degrees, namely, the Court of First Instance, the Regional Courts of Appeal, and the Courts of Cassation. Each degree has three levels. Prosecutors start their career at the first level in the first degree.

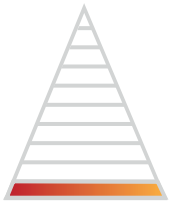
The degree at which each candidate should start, following a judicial profession transition, is determined by their written and oral examination scores.

- Career advancements are determined on application and/or ex officio.
- Level career advancements are determined on application.
- Prosecutors' remuneration and other personal rights are determined according to their degree and level.



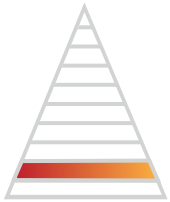
NOTES

3rd Degree: First Instance Prosecutors Advancement Criteria and Qualifications



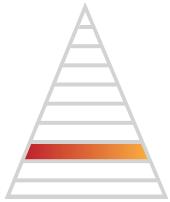
The Court of First Instance – Prosecutors

- Must be at least 29 years old.
- Must have passed the admission and appointment exam.



The Court of First Instance – Senior Prosecutors

- Must have served as a prosecutor in a Court of First Instance for at least four years.
- Must have scored at least 65 in their performance evaluation.

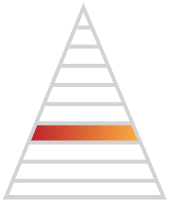


The Court of First Instance – Chief Public Prosecutor

- Must have served as a senior prosecutor in a Court of First Instance for at least four years.
- Must have scored at least 70 in their performance evaluation.

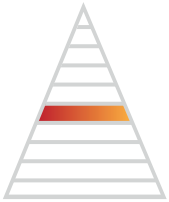
2nd Degree:
Regional Court of Appeal Prosecutors
Advancement Criteria and Qualifications

NOTES



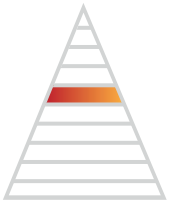
The Regional Court of Appeal – Prosecutor

- Must have served as an Chief Public Prosecutor in a Court of First Instance for at least two years.
- Must have scored at least 70 in their performance evaluation.
- Must have a masters degree.



The Regional Court of Appeal – Senior Prosecutor

- Must have served as a prosecutor in a Regional Court of Appeal for at least two years.
- Must have scored at least 75 in their performance evaluation.
- Must have published at least two articles in peer-reviewed journals on a subject or subjects that correspond to the jurisdiction of the courts they served.
- Must have a masters degree.

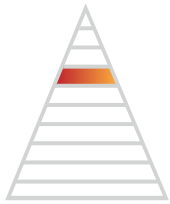


The Regional Court of Appeal – Chief Public Prosecutor

- The attorney general of the Regional Courts of Appeal is selected from among senior prosecutors currently serving in the Regional Courts of Appeal.

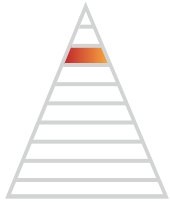
NOTES

1st Degree: Courts of Cassation Prosecutors Advancement Criteria and Qualifications



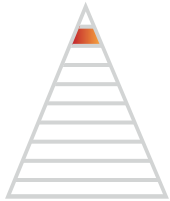
The Court of Cassation – Prosecutor

- Must have served as a prosecutor in a Regional Court of Appeal for at least five years.
- Must have scored at least 85 in their performance evaluation.
- Must have published at least five articles in peer-reviewed journals on a subject or subjects that correspond to the jurisdiction of the courts they served.
- Must have a masters degree.



The Court of Cassation – Senior Prosecutor

- Must have served as a prosecutor in a Court of Cassation for at least two years.
- Must have scored at least 90 in their performance evaluation.
- Must have published at least seven articles in peer-reviewed journals, on a subject or subjects that correspond to the jurisdiction of the courts they served.
- Must have a masters and doctorate degree.



The Court of Cassation – Chief Public Prosecutor

- The Chief Public Prosecutor of the Courts of Cassation is selected from among senior prosecutors currently serving in the Regional Courts of Appeal.

Saim Dursun,
“Olta”
(Fishing Rod),
50 x 50cm,
oil on canvas,
spatula technique,
2013

ATTORNEYSHIP

NOTES

The Main Objectives of Attorneyship

Attorneyship is a public service. Attorneys are one of the three founding pillars of the judiciary.

Attorneyship is considered an extension of society and, while performing their duties, attorneys are considered to be civil servants. They must protect the rule of law, as well as fundamental rights and freedoms. They may fulfill their duties independently and freely.

Attorneys represent those seeking legal aid before all kinds of official and private judicial bodies, arbitrators, official and private persons, boards and institutions. They defend the strengthening of the rule of law and compliance with the law in every situation. They share their opinions and suggestions about interruptions, to the judicial process and other problems that may occur.

The objectives of attorneyship include:

- Protecting justice, the rule of law, and fundamental human rights and freedoms. Attorneys utilize their powers and duties to realize these goals;
- Informing individuals about their rights and obligations, and managing legal relations in a way that does not cause further conflict and, instead, encourages cooperation; and
- Assisting individuals to resolve their issues fairly and effectively, thereby strengthening reconciliation and solidarity in society.

The Guarantees Enshrined to Attorneys

NOTES

- To do whatever in their power is necessary to reveal the material truth, protect individuals' rights, and accurately resolve disputes.
- Official and private institutions, organizations and other people must assist the attorney by providing information and documents requested and by answering the attorney's questions honestly. The attorney must only use their authority in relation to cases they have been working on.
- Any disputes arising during the exercise of this authority shall be resolved before a Judicial Preparation Courts in the place where the attorney ought to have exercised this authority or where the underlying dispute ought to be resolved. The Judicial Preparation Courts will give priority to this dispute and resolve it promptly. The attorney may use this authority through the Judicial Preparation Courts as well.
- An attorney may transfer his/her authority to the interns, trainees and assistant that have been assigned to him/her or to other relevant bureau personnel.
- In the absence of an agreement with their clients stating otherwise, an attorney can charge the amount designated by the SAoJ's tariffs for their service. Minimum attorney fees are determined realistically, according to market conditions. The effort expended, the time spent, the attorney's career plan, the service market, the economic conditions and public access to the legal services are all taken into consideration when calculating this amount.
- An attorney's fees must not be less than the minimum tariff.

NOTES

Admission to the Judicial Profession and Bar

- Those who succeed in the bar examination are registered to the attorneys' registry by the SAoJ.
- Registered attorneys may open an office wherever they want or start working with another judicial professional. Attorneys must register their workplace address, tax registry number and other office registry information with the relevant provincial and Unions of Regional Bar Associations. If an attorney relocates their place of business, they must notify their previous and next provincial and Unions of Regional Bar Associations.
- An attorney must also register their offices with the relevant provincial or Unions of Regional Bar Associations registry.
- Attorneys operate under the relevant provincial and Unions of Regional Bar associations where their offices are located. They are under the authority of the SAoJ regarding their personal rights (including any disciplinary action requiring their removal), but are under the authority of the provincial bar association, working with the Unions of Regional Bar Associations, in terms of their professional solidarity and development with regard to any disciplinary action.

Attorneys' Permitted and Prohibited Activities

NOTES

Assistant and trainee attorneys and those who are admitted to the attorneyship vocational internship:

- Can become a political party member and can engage in all sorts of political actions;
- Must not engage in commercial activities that require personal liability;
- Can become a board member or a shareholder of a company and can purchase publicly traded company shares on the stock market. However, they must inform the provincial and Unions of Regional Bar Associations about such transactions; and
- Must resign from all political activities and terminate all political relations if they apply to be a member of a bar association's body.

Activities that are incompatible with exercising the profession of attorney

- Except for the activities stated above, any services and duties performed in return for payments such as daily or monthly wages or deductions, works related to being an insurance broker, tradesman or artisan, or any work that might impair the dignity of the profession cannot be combined with an attorney's duties.

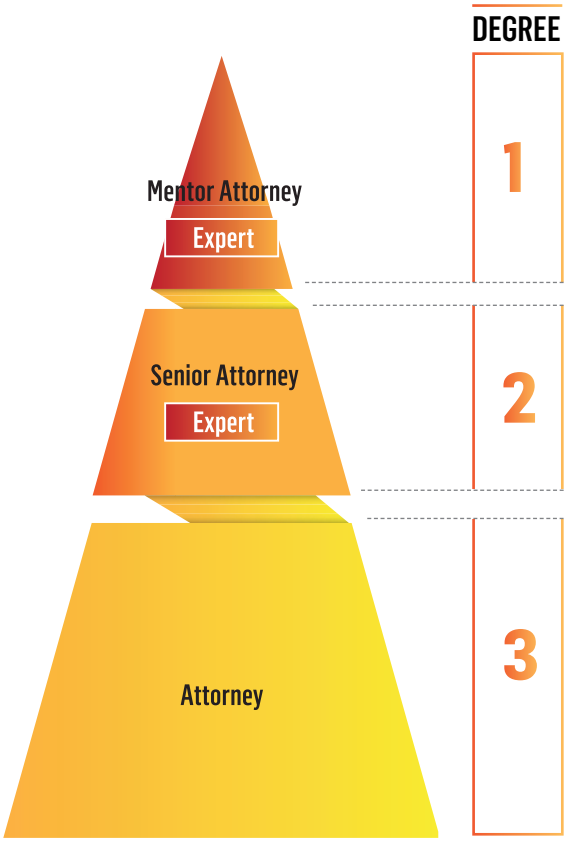
Prohibitions

- Those who work in state economic enterprises or their companies, affiliates and subsidiaries within the scope of Decree No. 233 of the State Economic Enterprises cannot undertake a lawsuit against the government for a period of two years following the termination of their employment relationship with the herein mention enterprises.
- Those who are transferred from judgeship or prosecutorship to attorneyship cannot work on or give opinions on a case that is being reviewed by the courts in which they have previously served either as a judge or a prosecutor.

NOTES

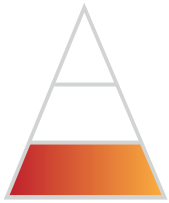
Advancement Criteria and Qualifications for Attorneys

- Attorney careers are regulated in three degrees.
- The career degrees and advancement criteria are regulated by the bylaws enacted by the SAoJ.
- Degree advancements are determined by the SAoJ on application.
- The application is evaluated in a meeting by the representatives of the Unions of Regional Bar Associations. The candidate's written and oral exams and interviews are evaluated, and the process is supervised by the SAoJ.
- Attorneys start practicing law at the first degree. The degree at which a candidate should start, following a judicial profession transition, is determined separately by the SAoJ according to their written and oral examination scores.
- An attorney can become an expert on subjects determined by the SAoJ.
- Attorneys wishing to be an expert must fulfil the relevant SAoJ criteria. In order to become an expert, one must first reach the degree of a senior attorney.



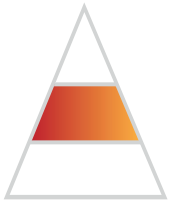
Advancement Criteria and Qualifications for Attorneys

NOTES



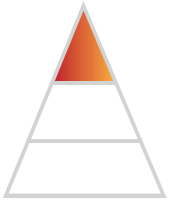
In order to be admitted as an attorney in the 1st degree

- Must be at least 29 years old.
- Must have passed the admission and appointment exam.



In order to become a senior attorney in the 2nd degree

- Must have worked as an attorney for at least 10 years.
- Must have scored at least 80 in their performance evaluation.
  Those who have worked as an attorney in a certain number of cases as specified by the bylaws enacted by the SAoJ and who took certain responsibilities as regulated by the bylaws enacted by the SAoJ are called senior attorneys.



In order to become a mentor attorney in the 3rd degree

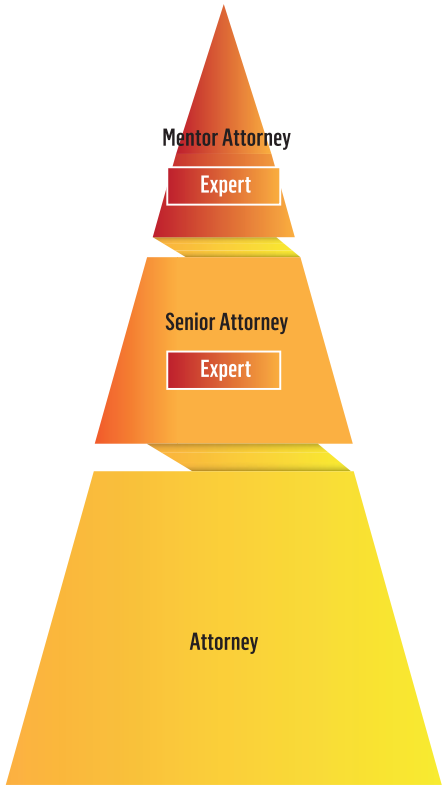
- Must have worked as an attorney for at least 10 years.
- Must have scored at least 90 in their performance evaluation.

  Those who have worked as an attorney in a certain number of cases as specified by the bylaws enacted by the SAoJ and who took certain responsibilities as regulated by the bylaws enacted by the SAoJ are called mentor attorneys.

NOTES

Advancement Criteria and Qualifications for Attorneys

Attorneys may assume responsibility for matters as approiate to their seniority. They may add to their team junior attorneys while remaining actively and solely responsible.



Courts	Attorneys Who Able to Duty
The Courts of Cassation	= Mentor Attorney + Senior Attorney + Attorney
The Regional Courts of Appeal	= Senior Attorney + Attorney
Panel Courts	= Senior Attorney + Attorney
Courts with only one sitting judge	= Attorney

NOTARYSHIP

The Notaryships' Nature, Objectives and Prohibited Activities

The Nature of Notarial Services

- Notaryship is a public service. Only those who are authorised by the SAoJ can act as a notary. The SAoJ establishes different-level notary public offices where they are needed. Notaries are appointed to newly established notarial offices based on fair and open competition.

The Main Objectives of Notaryship

- Completing all duties assigned to them by the law, documenting all transactions that may result in legal liability, so as to ensure legal security.
- Performing their duties in such a way as to minimize or prevent legal disputes from arising and establishing trust in the documents and, ultimately, the trust of individuals in public service.

Prohibited Activities

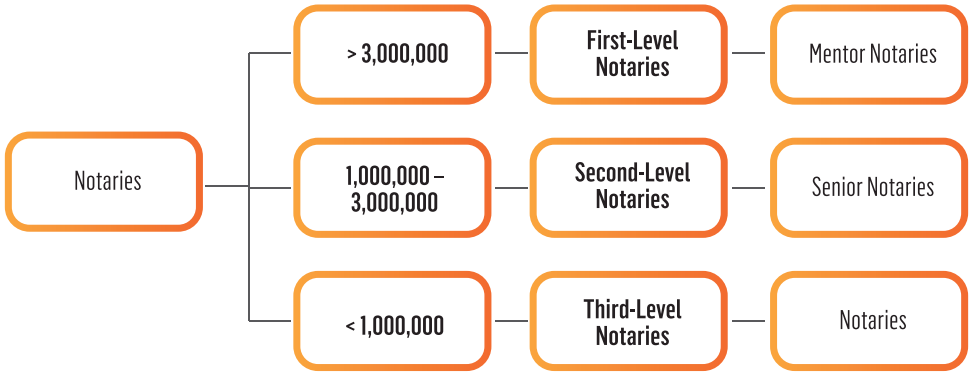
- Notaries must not become a member of any political party and must not participate in political-party activities of any sort.
- Except for the duties assigned to them by the judicial authorities, and the duties attached to being the president or a member of a charitable organization, or an arbitrator, or the executor of a will, no other duties can be combined with notarial duties.
- Notaries cannot engage in commercial activities and cannot become guarantors within the meaning of Article 28/1 of the Law No 657 on civil servants.
- Notary candidates must have dissolved their previous business activities and terminated their previous political-party attachments before they start an internship.
- Notaries cannot use middleman, cannot advertise and cannot undertake any action that would constitute unfair competition.
- Notaries can not execute a verbal or written agreement among themselves regarding notary fees under any circumstances.
- Notaries can apply a discount to the fees for their transactions and services specified in the tariff providing they do not compromise the minimum standards of their services.

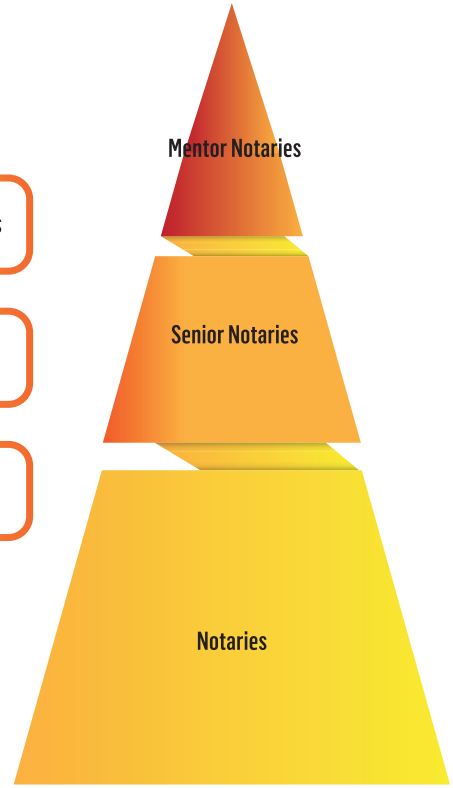
Notaries and Notary Classifications

NOTES

The career plan for notaries: There are three notaryship levels, namely, the **Notary**, the **Senior Notary** and the **Mentor Notary**. Level career advancements are determined by the SAoJ on application. The level at which each candidate should start, following a judicial profession transition, is determined separately by the SAoJ.

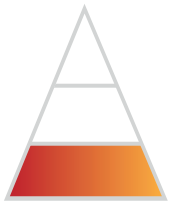
- Testaments and other related transactions, the issuance of a certificate of inheritance, and sales transactions involving the transfer of ownership of registered properties with the promise of real-estate sales can be made only by mentor notaries.
- 1st level notaries comprise mentor notaries
- 2nd level notaries comprise senior notaries and mentor notaries
- 3rd level notaries comprise notaries at all level





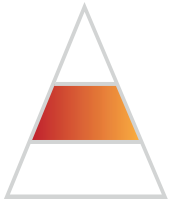
NOTES

Advancement Criteria and Qualifications for Notaries



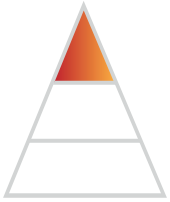
In order to be admitted as a notary

- Must be at least 29 years old.
- Must have passed the admission and appointment exam.



In order to become a senior notary

- Must have served as a notary for at least 10 years.
- Must have scored at least 80 in their performance evaluation.



In order to become a mentor notary

- Must have served as a senior notary for at least 10 years.
- Must have scored at least 90 in their performance evaluation.

Working Days and Hours, and the Authorisation of Notaries

NOTES

- Notaries are obliged to serve during working hours and to complete all transactions themselves. This rule does not apply on official holidays and during the notary's annual leave.
- Notaries can transfer their authority to perform notarial duties to an assistant notary who is under their direct supervision and who is assigned to them for a certain period by the SAoJ. A notary must inform the SAoJ and the Turkish Association of Notaries about the transfer of authority.
- Notaries operate during official working days and hours. If they wish, they can also work after hours and during the weekend and holidays.
- The SAoJ arranges notarial services in such a way that the public can easily access notaries during the weekend, in the evenings and at night. The Turkish Association of Notaries ensures there are always enough numbers of notaries on duty.
- Notaries can take 30 calendar days of paid leave every year. Public holidays falling within the leave period do not result in the extension of annual leave.
- Notaries can use their annual leave in July and August and can also take it in January, as long as this does not cause an interruption to notarial services. Notaries can determine the dates when they are going to use their annual leave, but must inform the Turkish Association of Notaries and the SAoJ about these dates.
- Notary public offices continue their activities even in the absence of the notary.
- Notaries must show who will be acting as their proxy and what powers the proxy will be using on their behalf on the dates when they are not at the notary public office due to leave of absence, illness or vacation. A notary must inform the Turkish Association of Notaries and the SAoJ about the transfer of power.

6
OPTIMUM STRUCTURE OF COURTS AND MODERNIZED JUDICIAL PROCEDURES

Atty. Mehmet Gün
Atty. Hande Hançar

Rationale

The main purpose of our proposals is to provide the judicial units with an optimum structure and geographical distribution to enable them to provide quality judicial services to society and bring the service to the public. The headquarters of the Supreme Court of Appeals and the Council of State, which are the final courts of appeal, will be located in Ankara and their jurisdiction will cover the whole of Turkey. The 15 regional courts of appeal, established by taking into account regional needs, will be preserved exactly as they are. The regional administrative courts, which are currently gathered in seven regions, will be divided into 15 regions and matched with the regional courts of appeal. It is proposed that the first-instance administrative and tax courts should be combined with the first-instance judicial courts, but that they should also act as specialized courts.

First-instance courts will be provided with an optimum structure on the basis of 26 development regions. The courts of the committee, hearing issues that require experience and expertise, will be concentrated in easily accessible centers. The newly proposed judicial preparation courts, together with courts that need to be able to intervene quickly, will hear relatively small and easy cases, and will serve at the feet of the citizen. Rules of procedure will be developed so that all kinds of cases can be heard and concluded in a single session. It is proposed that preparation judicial courts should be established in order to carry out trial preparation procedures, to help attorneys perform their duties effectively and in full compliance with the law, and to prevent abuses.

Thus, it is estimated that it will be possible to reduce the number of courts from more than 7,000 to around 2,000–3000.

Civil, criminal and administrative procedures will be modernized. The preparation phase of the proceeding will, on the one hand, complete cases and, on the other encourage the re-establishment of honest behavior, compromise, solidarity and cooperation. As soon as conflicts arise, they will be recorded in a database, i.e. the National Conflict Database, and given a reference number indicating year, sector and region information in the Ministry of Justice "National Judiciary Informatics System" (UYAP). Services will be planned proactively and the reference number will not change until the conflict is resolved.

Disputes that are passed to the court as their file has matured will be resolved in a "single session" proceeding after the petition has been exchanged. The parties will explain the facts and evidence honestly, and the attorneys will collect evidence, find and assign experts, and ensure that the questions of the other party are answered. Judicial commissions will be content with keeping the records of experts and maintaining discipline.

Thus, the rates of peace and reconciliation before the proceeding will increase, and reconciliation and mediation institutions will demonstrate their true function without the need for coercion. However, in the event that a dispute cannot be resolved, cases that currently last four to five years in the first-instance courts will be resolved as a result of a highly satisfactory trial within three to four months from the date of submission to the court.

Saim Dursun, “Ses” (Sound), 45 x 60cm, oil on canvas, spatula technique, 2011

The Outline of the Optimum Structure of Courts and Modernized Judicial Procedures

NOTES

1- The Cassation Courts are in the capital city, Ankara.

2- The structure of the Regional Appeal Courts in the existing 15 regions will be maintained. It is advised that the judicial competence area of the seven Regional Administrative Appeal Courts be matched with the judicial competence area of the Regional Appeal Courts. It is also advised that the first-instance Administrative and Tax Courts be combined with the first-level Civil Courts, and the former two are organized as specialised courts within the general first-instance court structure.

3- The first-instance courts will be restructured in an optimal manner, based on the 26 Development Regions. The specialized courts' experience and expertise will be concentrated in easily accessible central areas, while, for minor conflicts, matters requiring expedited attention, and preparation work for a single-hearing adjudication, the judiciary will be on people's doorstep, allowing them easy access to justice.

4- Civil, criminal and administrative judicial procedures will be modernized, the preparation stages being used to enhance the integrity of the parties, improve aspects of amicable settlement, and reinstate co-operation and collaboration, while helping to prepare cases in the event they progress to court adjudication.

5- Each case will be recorded in a database of disputes in the National Judicial Network Project (UYAP) with a reference number that will indicate the year, the business sector and the region, and this number will not be changed.

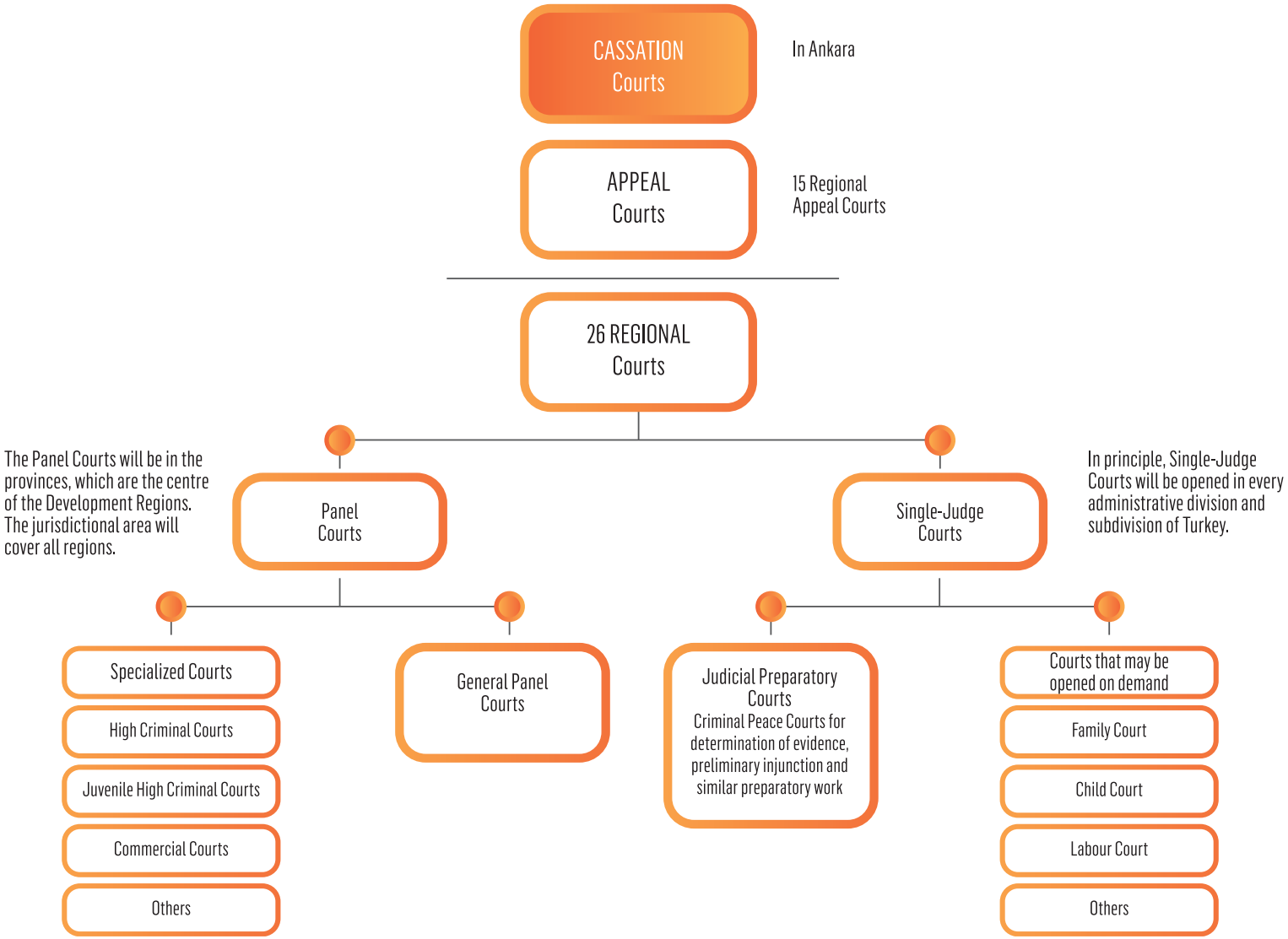
6- The case file before the court will be complete and the case will be concluded in a single hearing after the exchange of petitions.

7- The experts will be selected and assigned by the lawyers, and the judicial commissions will be responsible for the registry of these experts.

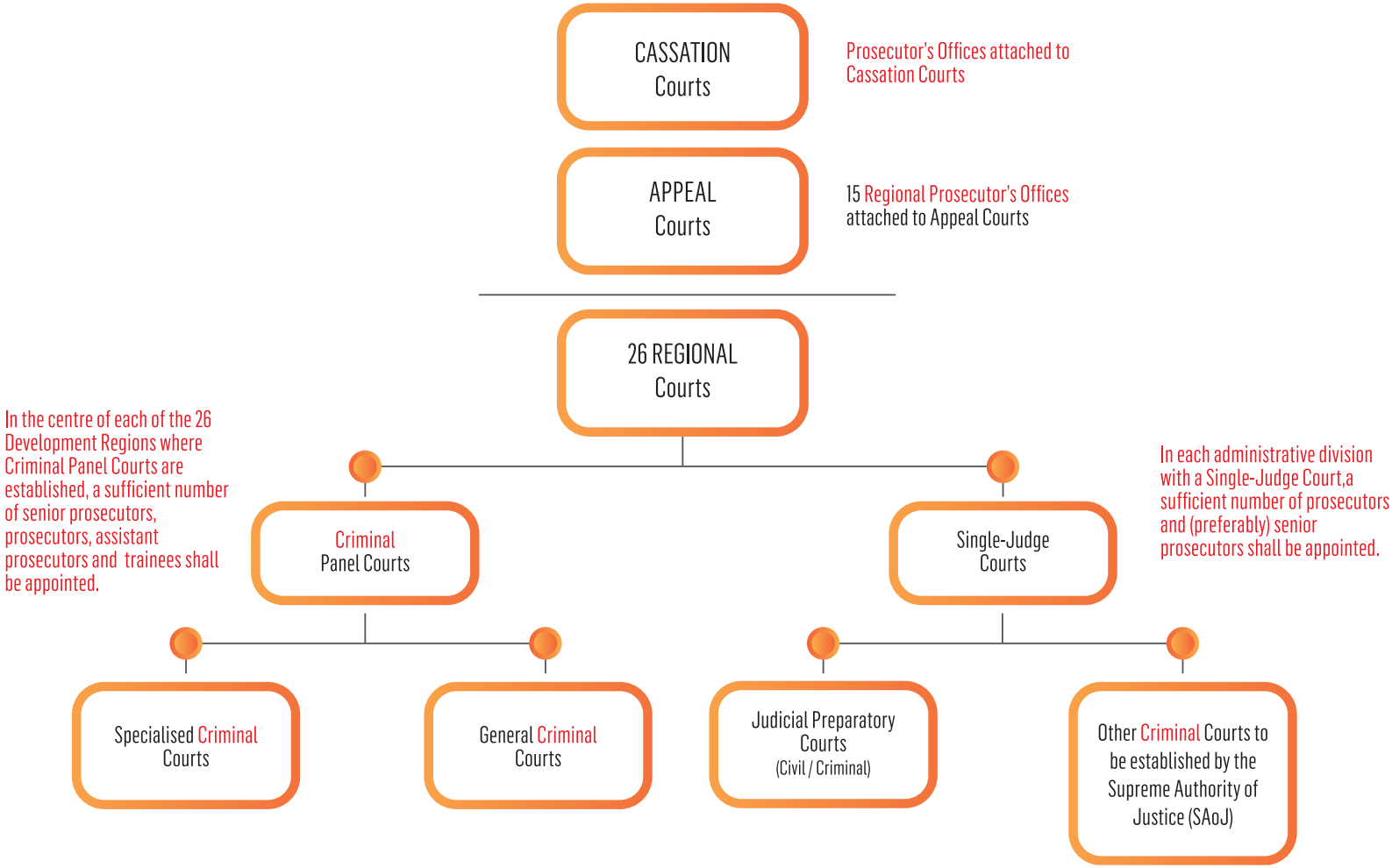
A First-Instance Court Structure Based on the Development Regions

The restructuring of the first-instance courts will be based on the 26 Development Regions determined by the Nomenclature d'Unités Territoriales Statistiques (NUTS) system. They will be organized in line with the needs of each region, taking into consideration their demographic structure, social relations, business activities and GDP capacity.

The Structure of the Courts, Based on the 26 Development Regions



Prosecutor's Offices Structured in Line with Court Structure



First Instance Courts Based in the Development Regions

NOTES

- The Cassation Courts are subject to their own special laws. They are in Ankara and have jurisdiction over the whole of Turkey.
- The Supreme Authority of Justice is authorized to establish, merge or abolish courts or their specialization, and has jurisdiction over all courts except the Cassation Courts.
- Regional Appeal Courts shall be established in 15 regions to cover one or more than one Development Region.
- The First-Instance Courts consist of two types: Single-Judge Courts and Panel Courts. Panel Courts are classified as general courts or specialized courts. The general courts have the jurisdiction of specialized courts in areas where there are no such courts.
- Panel Courts are established in the province that is at the center of each Development Region. Their jurisdiction is over the entire Development Region.
- In principle, Single-Judge Courts are also established in the province that is at the center of each Development Region. Depending on the needs of inhabitants, and based on available transportation or other factors, Single-Judge Courts shall also be established in districts or smaller administrative divisions within the region.
- In principle, Single-Judge Courts dealing with urgent needs in civil, criminal or administrative matters such as interrogation, preliminary injunction, preliminary attachments, discovery, determination of evidence, collecting evidence shall be established in each administrative division. In exceptional cases, these courts may be established to cover several administrative divisions.
- The Supreme Authority of Justice may decide to establish Single-Judge Courts 'to deal with family or labour matters, depending on the needs of the inhabitants in an administrative division, based on the quantity and quality of conflicts.

NOTES

Judicial Preparation Courts

- These courts are not separated into civil, criminal or administrative courts. They deal with all preliminary issues such as interrogations, collecting evidence, determination of evidence, and ordering for preliminary injunction or preliminary attachment in all types of conflicts, whether civil, criminal or administrative.
- In principle, these courts shall be established in each administrative division.
- In exceptional cases, they may be established to cover several administrative divisions. The Supreme Authority of Justice makes this decision based on economic size, and available transportation and human resources, as well as the social needs of the inhabitants of the administrative divisions.
- These courts are Single-Judge Courts, and first-level judges shall be seated. Depending on the court's needs, vocational interns and assistant judges shall also be assigned.
- Their task is to deal with all urgent and preliminary issues such as interrogations, collecting evidence, determination of evidence,and ordering for preliminary injunction or preliminary attachment in civil or criminal conflicts, and to ensure legal security.
- Any decision of these courts can be appealed before the Panel Court located in the center of the region.

The Advantages of Modernized Judicial Process Management

NOTES

- Data collected regarding (i) the quality of conflicts, (ii) related business fields, and (iii) geographical areas enables the need for judicial services to be foreseen and also enables parties to settle their conflict and/or better prepare for trial.
- The preparation and settlement stage (i) ensures the parties are open and honest with each other, establishes a courteous relationship between them and thereby encourages settlement. (ii) In the event the dispute is not settled, it ensures the case is filed with complete information and documents, and the trial can be completed in one hearing. (iii) Finally, it ensures that a conflict is resolved by one judge before he/she is moved to another court. In brief, all conflicts will be resolved in one hearing, without wasting resources.
- The intervention of a Judicial Preparation Court during the preparation stage provides an easily accessible, fast, efficient and effective service to the public. The judge of the Settlement Court supervises the preparation of the case file in a thorough manner.
- The direct appointment of experts by lawyers saves the court's time and enhances the quality of the expert reports. It also ensures that expert reports are prepared within two to three weeks, rather than the two to three years it has traditionally taken, and requires the appointment of more than one expert panel to be able to compile a complete report. The courts will thereby be saved an unnecessary workload.
- Taking the statements of the accused, witnesses and cross-examination experts during the preparation stage saves time and facilitates the single-hearing trial.

Modernized Judicial Procedures in Civil Law Conflicts

Conflict

Registration of the conflict with the UYAP

The conflict will be registered with the national conflict database of the UYAP and given a reference number indicating the year, the business sector and the region.

The conflict will be considered to have started when any of the following steps has been taken:

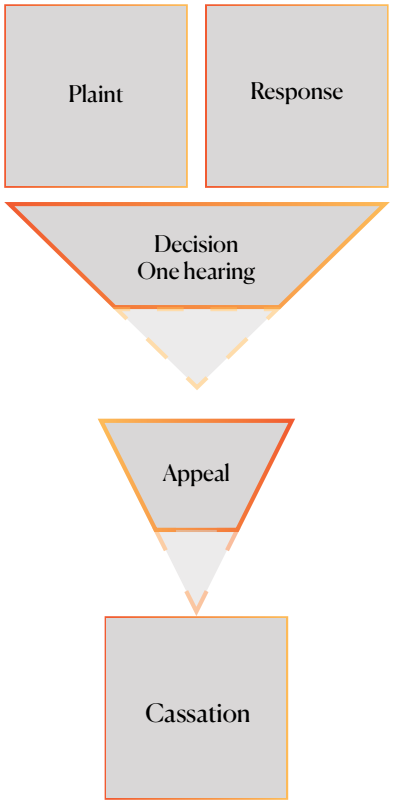
- The lawyer writes a letter;
- A cease-and-desist letter has been sent via a Notary Public; or
- The parties directly apply to the court to ask for determination of evidence, a preliminary injunction or preliminary attachment, etc.

This registration will suspend the statutory limitations or the clock for deadlines during the disclosure, preparation and settlement stage.

Preparation&Mediation Stage

- The material facts and evidence regarding the conflict are mutually disclosed and submitted.
- The lawyers collect other evidence.
- The witnesses are heard directly by lawyers or via a Notary Public or Judicial Preparation Court.
- The lawyers find experts, if necessary, and ask them to prepare reports and respond to the queries of the counter party.
- The parties, the witnesses and the experts are obliged to disclose what is known or what ought to be known to them.
- Any disputes during this stage will be resolved by a Judicial Preparation Court without a trial.
- This stage should be completed within six months unless the parties agree otherwise.
- Any party can progress to the trial stage at any time.
- The parties settle. If there is no settlement, the mandatory mediation stage will be deemed to have been completed.

Trial, Appeal, Cassation



Saim Dursun, “Sebep” (Reason), 44 x 64cm, oil on canvas, spatula technique, 2013

Modernized Judicial Procedures in Criminal Law Conflicts

Conflict

All criminal investigations take a single number in UYAP

The conflict will be registered with the national conflict database of the UYAP and given a reference number that will indicate the year, the business sector and the region.

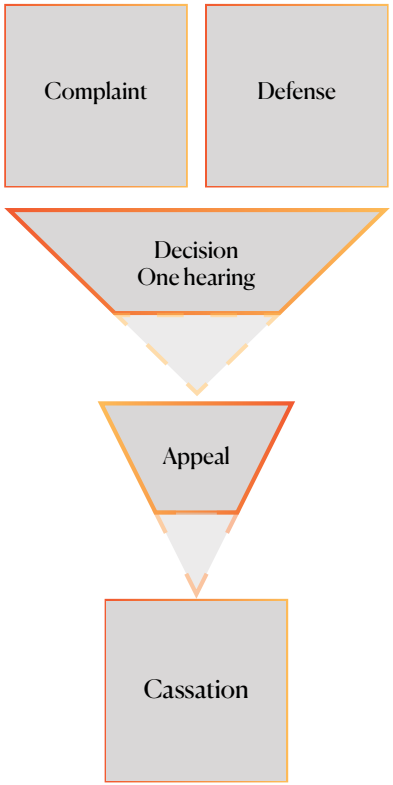
The criminal investigation will be considered to have started when any of the following steps has been taken:

- A complaint has been filed to the Prosecutoror the police;
- There has been an ex-officio investigation, a police detention or similar; or
- There has been an accusation or investigation by an administrative office.

Preparation & Mediation Stage

- Evidence will be collected by the Prosecution Office and defence lawyers. If necessary, the Judicial Preparation Court will also help.
- The statements of the witnesses will be taken by the Judicial Preparation Court in the presence of the parties and their lawyers.
- The prosecutors and lawyers have full liberty to find experts. The experts are appointed directly by lawyers or via a Judicial Preparation Court, and they prepare their reports.
- The cross-examination of the lawyers will be done by the Judicial Preparation Court.
- The parties, witnesses and experts are obliged to disclose what is known to them and, if anything is not known, they should disclose the reason.
- Detention or other precautionary measures are decided by the Judicial Preparation Court, and such decisions can be objected to before the authorized Criminal Court.

Trial, Appeal, Cassation



Modernized Judicial Procedures in Administrative and Tax Law Conflicts

Conflict

All administrative conflicts take a single number at UYAP

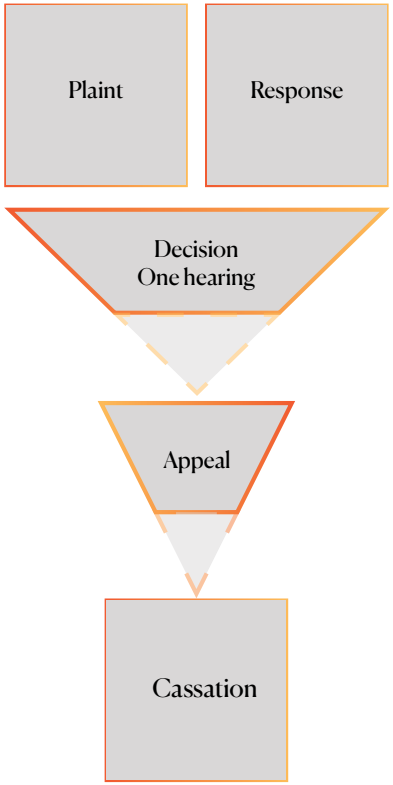
The conflict will be registered with the national conflict database of the UYAP and given a reference number that will indicate the year, the business sector and the region.

The administrative or tax-related conflict will be considered to have started when an individual files an Administrative Procedural Law (IYUK 11) application against an administrative decision or applies using a dispute resolution mechanism.

Preparation & Mediation Stage

- The relevant administration will provide the individual concerned with full access to the file regarding the decision or act that is subject to complaint.
- The individual concerned will provide the relevant administration with full access to all the information and documents related to the conflict.
- The officers and legal counsel will come together with the individual concerned and his/her lawyer to try mediation. An ombudsman may also be invited.
- The officers and lawyers have full liberty to find experts. The experts are appointed directly by lawyers or via a Judicial Preparation Court and prepare their reports.
- The cross-examination of the lawyers will be undertaken by the Judicial Preparation Court.
- The experts are obliged to disclose what is known to them and, if there is anything not known, they should disclose the reason.
- Determination or the preliminary measures for a suspension are decided by the Judicial Preparation Court. Such decisions can be objected to before the authorized Administrative Court.

Trial, Appeal, Cassation



7
PROPOSED CONSTITUTIONAL PROVISIONS CONCERNING THE JUDICIARY

Rationale

At the end of the book are the constitutional provisions that form the constitutional basis of the judicial bodies and their elements and guarantee their functioning for the implementation of our proposals.

The essence of the proposals summarized above is turned into constitutional provisions in the final chapter of the book.

Along with the provisions regarding the Permanent Council of Justice, the Supreme Authority of Justice, independent judicial professional associations, the Supreme Court of Justice and the Constitutional Court, there are provisions regarding the regulations for the courts and legal professions.

The basic principles of the supervision of the judiciary and the legal professions through the processes of judges, prosecutors and lawyers and the legal judicial process are regulated comprehensively in the Constitution, and this has constitutional guarantee.

PERMANENT COUNCIL OF JUSTICE

ARTICLE X

The Permanent Council of Justice comprises the presidents of the Constitutional Court, Supreme Court of Justice, Court of Cassation, Council of State, Court of Accounts, Chamber of Judges, Chamber of Prosecutors, Union of Turkish Bar Associations and Turkish Association of Notaries.

Under the chairmanship/presidency of the most senior member, the Permanent Council of Justice meets at least twice a year. The Permanent Council of Justice delivers advisory opinions for the development of cooperation between judicial organizations and the professions, and determination of problems on issues of the rule of law, strengthening confidence in justice and judicial independence, and issues relating to unification of the case law. The Permanent Council of Justice can issue a decision on the unification of judgements to resolve the differences between different judgements delivered in different jurisdictions on the same issue.

The first meeting of the Permanent Council of Justice takes place in the first three months of the year, and all parts of society, especially non-governmental organizations' representatives are allowed and encouraged to attend the meeting in a prepared manner. The second meeting is held after six months of the first meeting, when the developments regarding the decisions taken in the first meeting are evaluated.

Meetings of the Permanent Council of Justice are held as conferences with a moderator and are designed and conducted in such a way that participants can freely share their opinions, thoughts and suggestions with regard to any items listed in the agenda.

The President/Chairman informs the members by declaring a meeting date at least 7 days before the actual meeting after preparing an agenda by categorizing the discussion topics notified by the members and any other relevant issues.

SUPREME AUTHORITY OF JUSTICE

ARTICLE XXX:

The Supreme Authority of Justice is a fully independent regulatory authority, that ensures the judiciary creates added value by providing high-quality judicial services to society, protects the rule of law, protects and further develops fundamental rights and freedoms in order to strengthen the confidence in justice, and represents the judiciary at the highest level, together with independent judicial professional associations.

Within this framework, the Supreme Authority of Justice determines the needs and priorities of society with respect to judicial services, establishes policies that are in accordance with the determined principles and priorities, constructs courts and judicial service units, distributes the workload among judicial members in a balanced manner, develops and guides the judicial professions to deliver high-quality judicial service, and ensures and improves the harmonious and efficient work, transparency and accountability of all judicial organizations, professions and service units.

The Supreme Authority of Justice performs its duties impartibly and independently in accordance with the principles of judicial independence and democratic management. The Supreme Authority of Justice is the highest rank in the hierarchy, therefore no authority or person can give orders or instructions to the Supreme Authority of Justice.

The Supreme Authority of Justice comprises the General Assembly; the Department for Policies, Preferences and Principles, which comprises 38 members, including the Chairman and the Deputy Chairman; the Department for Legal Services, which comprises 12 permanent and six substitute members; the Department for Objections and Re-examinations, which comprises nine permanent and four substitute members; and the Department for Personnel, Career, Performance and Inspection, which comprises 16 permanent and five substitute members. The Supreme Authority of Justice performs its duties through the departments listed herein. The Chairmanship and the General Secretariat ensures the functioning of the Supreme Authority of Justice and the Office of Legal Counsellors independently ensures legal compliance of the Supreme Authority of Justice's actions through issuing opinions.

The Supreme Authority of Justice comprises 90 members, who reflect the preferences of all segments of the society, with different qualifications and disciplines, as necessitated by the Supreme Authority of Justice's functions. The election of the members is held in accordance with democratic principles:

(i) Members of judicial professions and officers elect 30 qualified members of the Supreme Authority of Justice. The members of the judicial professions and officers select these members through the Supreme Authority of Justice through an election held among the candidates nominated by the board of directors or from individual applicants who are found to meet the eligibility requirements. There will be a maximum of three times the number of candidates for each available membership. Candidates are listed according

to merit and order of application. Lawyers elect eight lawyer members, judges elect eight judge members, prosecutors elect eight prosecutor members, notaries elect one notary member and one constitutional law professor member, and courthouse staff elect four courthouse staff members.

(ii) The Turkish Grand National Assembly elects 12 qualified members of the Supreme Authority of Justice. Political parties with more than 20% of votes determine six members with three members for each majority party. The remaining six members are determined by the political parties with 7.5% to 20% of votes, distributed equally among the minority parties. If the six members are not divisible to the number of parties, the remaining members are determined by the political parties with the most votes. Political parties nominate at least two candidates for each position. Sufficient candidates must be nominated, otherwise, no candidate is deemed to have been nominated. The General Assembly of the Turkish Grand National Assembly elects the members, starting with the candidates of the party that has the minimum votes. Meeting and decision quorums are not required for this election. Among the 12 members elected by the Turkish Grand National Assembly, there must be one judge, one prosecutor, one lawyer, one notary, one courthouse staff member, one constitutional law professor, one administrative law professor, one administrative and political science professor, one public administration specialist, one statistics or economics expert, one public finance and budget specialist, and one educator or communication faculty lecturer.

(iii) The legislative branch elects eight qualified members of the Supreme Authority of Justice. The Capital Market Bonds of Turkey, Radio and Television Supreme Council, Banking Regulation and Supervision Agency, Information Technology and Communication Authority, Energy Market Regulatory Authority, Public Procurement Authority, Personal Data Protection Authority, and Public Oversight, Accounting and Auditing Standards Authority, which are supervisory and regulatory authorities, nominate eight candidates comprise one constitutional law professor, one administrative law professor, one administrative and political science professor, one public administration specialist, one statistics or economics expert, one public finance and budget specialist, and one educator or communication faculty lecturer. The President of Turkey elects one member for each qualification according to the recommendation by the Minister of Justice.

(iv) The Public Professional Associations elect eight qualified members of the Supreme Authority of Justice. Among eight members, two members must be either a psychologist or psychiatrist, one judge, one prosecutor, one lawyer, one notary, one public administration specialist, and public finance and budget specialist. The professional associations in the fields of human/animal health other than Union of Chambers of Turkish Engineers and Architects will elect the two psychologist-psychiatrist members and one judge member. The election will be held among the candidates nominated by the board of directors of the Turkish Medical Association, Turkish Veterinary Medical Association, Turkish Dental Association and Turkish Pharmacists'

Association, and all members of these professions can vote in the election. The Union of Chambers of Turkish Engineers and Architects elects the remaining five members, nominating two candidates. Among these five members, there must be one judge, one prosecutor, one lawyer, one notary, one public administration specialist and one public finance and budget specialist.

(v) The Turkish Appraisers Association, Insurance Association of Turkey, Turkish Capital Markets Association, Union of Turkish Agricultural Chambers, Confederation of Turkish Tradesmen and Craftsmen, the Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey, which are economical/agricultural organizations, elect eight qualified members of the Supreme Authority of Justice. Among eight members, one judge, one prosecutor, one lawyer, one notary, one from the courthouse staff, one administrative and political science professor, one public administration specialist, and one statistics or economics expert. The board of directors of the herein-mentioned economical/agricultural organizations nominate two candidates for each position and the board of directors of the Union of Chambers and Commodity Exchanges of Turkey elects the members from among the final list of candidates.

(vi) University students elect eight qualified members of the Supreme Authority of Justice: One notary, two constitutional law professors, two administrative law professors, one administrative and political science professor, one sociologist, and one educator or communication faculty lecturer. Elections are held among the candidates nominated by the universities or a pool of five people comprising of qualified candidates who made an individual application.

(viii) Universities, non-governmental organizations, foundations and associations elect eight qualified members of the Supreme Authority of Justice, consisting of one judge, one prosecutor, one lawyer, one constitutional law professor, one administrative and political science professor, one public finance and budget specialist, one sociologist or anthropologist and one psychologist or psychiatrist. Public benefit associations and public benefit foundations each elect three members, and other sectoral associations that do not have public-benefit status elect two members. The herein-mentioned foundations and associations nominate at most twice the number candidates. A general assembly of presidents of each aforementioned sections elect the members from among the candidates nominated by the associations and foundations. If there are individual applications, three candidates are determined for each position.

(ix) Labor unions elect eight qualified members of the Supreme Authority of Justice. Federations nominate the equivalent number of members as they will elect. It is also possible for individuals to apply as independent candidates. For each position, three candidates will be nominated. Public-employee trade union confederations elect three members: One judge, one constitutional law professor and one public administration specialist. Private-employee trade union confederations elect three members: One prosecutor, one administrative law professor, and one administrative

and political sciences professor. Employer union confederations elect two members: One lawyer and one educator or communications faculty member. A general assembly of confederation presidents in each group elects members for their group from among the approved candidates.

During the selection and election of candidates for the Supreme Authority of Justice's membership, all the information about the process and candidates shall be shared with the public. The entire process shall be transparent, subject to judicial principles and governed by the democratic principles.

The Department for Personnel, Career, Performance and Inspection of the Supreme Authority of Justice reviews the individual applications and determines which meet the eligibility criteria. It declares and draws up a list of the eligible candidates within 15 days from the application date. This list is used to determine the candidates for election. In the first Supreme Authority of Justice membership election, the duties and obligations of the Supreme Authority of Justice shall be performed by the general assembly of Council of Judges and Prosecutors. It is forbidden to a hold closed list or marked-ballot list election.

Except for the recommendations of the Policies and Preferences Department, all decisions and actions of the Supreme Authority of Justice are open to judicial review. All interested persons are entitled to bring annulment actions against all decisions and actions of the Supreme Authority of Justice.

The Supreme Authority of Justice prepares a draft budget that will enable the judiciary to fulfill its functions and duties, and exercise its powers effectively, impartially and independently in a manner that will provide a quality service. The draft budget is then sent to the parliament. The budget allocated to the judiciary cannot be less than ….% of the general state budget and 0.30% of the gross domestic product of the previous year, excluding infrastructure investments such as building, information processing, facilities management, education, conference and recreation facilities. The budget of the judiciary has a priority in the allocation of the general budget. The Supreme Authority of Justice manages the budget. Other matters shall be regulated by law.

THE SUPREME COURT OF JUSTICE

ARTICLE X

The Supreme Court of Justice comprises 52 members.

26 of the 52 qualified members are directly elected by the Supreme Authority of Justice from the candidate pool comprising judges, and the remaining 26 are elected by the Supreme Authority of Justice from the candidate pool of individuals nominated by judges, prosecutors, lawyers and notaries.

The Supreme Court of Justice comprises five chambers: Administrative Chamber, Criminal Chamber, Ethics and Discipline Chamber, Compensation Chamber and the Supreme Chamber of Prior Consent acting as specialized courts, and a General Assembly. The chambers comprise 10 members: seven sitting judges and three substitute judges. Judges must have the necessary experience and qualifications to serve in a chamber that acts as a specialized court. The General Assembly comprises all the sitting and substitute judges of the Supreme Court of Justice.

The principal duty of the Supreme Court of Justice is to review the legality of all transactions and decisions made regarding the judicial organs and elements of other institutions and persons.

The Supreme Court of Justice's jurisdiction covers the following, reviewing the legality of all decisions made by the Supreme Authority of Justice; all decisions made in relation to judicial appointments such as elections, nominations and candidacy; disciplinary decisions and sentences imposed on members of the legal profession; reviewing; all decisions of a lower criminal court on the prosecution of public servants as an appellate court. In addition, the Supreme Court of Justice is the deciding authority on matters regarding legislative immunity in relation to the approval of indictments and the investigation of senior public servants.

The Supreme Court of Justice follows a specialized expedited procedure and must deliver a judgement within 90 days.

All decisions except those delivered by the Supreme Court of Justice that are deemed final can be challenged before the Constitutional Court.

INDEPENDENT JUDICIAL PROFESSIONAL ASSOCIATIONS

Article 159

Members of the judgeship, prosecutorship and attorneyship, who constitute the founding pillars of an independent judicial power of the state, separately establish their own professional associations. These judicial professional associations operate independently in accordance with judicial independence and with the principles of democratic management. Judicial professional associations are legal entities and have the status of a public institution.

Judicial professional associations, in parallel with judicial structures, establish regional judicial professional associations within the jurisdiction of regional courts of appeal. The headquarters of each judicial professional organization is located in the capital of Turkey. A Provincial Bar Association is established in each city center of a province where there are more than 800 practicing attorneys.

The main objectives of judicial professional associations include defending, protecting and improving the rule of law, and fundamental rights and freedoms, and advancing the members of the relevant judicial professional organization to realize this purpose.

All decisions and actions of the judicial professional associations are open to judicial review. All interested persons are entitled to bring annulment actions before the Supreme Court of Justice within 30 days of the date of notification or announcement.

The Discipline and Audit Committees of judges, prosecutors and notaries are located in the capital of Turkey, and the Discipline and Audit Committees of attorneys within the jurisdiction of the Unions of Regional Bar Association. For other professional associations, Discipline and Audit Committees operate independently and are established at their headquarters, located in the capital.

The disciplinary decisions of the judicial professional associations can be objected before the Department for Objections and Re-examinations. The decision of the Department for Objections and Re-examinations can be appealed before the Supreme Court of Justice, the decisions of which are final.

Disciplinary offenses requiring dismissal are prosecuted by the Supreme Authority of Justice. An appeal can be lodged against the first decision before the Department for Objections and Re-examinations. The decisions of the Department for Objections and Re-examinations can be appealed before the Supreme Court of Justice. The decisions of the Supreme Court of Justice can be challenged before the Constitutional Court.

COURTS, JUDICIAL PROFESSIONS, LEGAL GUARANTEE FOR JUDGES AND PROSECUTORS

Establishment and Independence of Courts; Open Trials and Reasoned Decisions

Article xxx–

The formation, duties and powers, functioning and trial procedures of the courts shall be regulated by law. Tribunals and specialized courts are established in the center of development zones; court of inquiries and single-judge courts are established in the centers of civil administrations whose population and added value created for society justify such establishment.

No military courts shall be established other than military disciplinary courts. However, in a state of war, military courts with the jurisdiction to try offenses committed by military personnel in relation to their duties may be established.

Trials in courts are conducted with the participation of judges, lawyers, and prosecutors. Judges and public prosecutors shall serve as civil and administrative judiciary, and perform their duties and advance in their careers accordingly. Lawyers can improve their skills and practice in the herein-mentioned areas of law.

Judges and prosecutors who are admitted to the profession and also undertake other administrative duties in public institutions cannot not use their judicial titles while performing their administrative duties. When they wish to return judges and prosecutors who undertake administrative duties in public institutions wish to return to their judicial profession, they can continue their careers at the level they first left to undertake administrative duties. In other words, the time spent performing administrative duties is disregarded in the calculation of judges' and prosecutors' tenure.

Judges and prosecutors shall be independent in the discharge of their duties and issue judgement in accordance with the Constitution, laws, and their personal conviction, conforming to the law.

No organ, authority, office or individual may give orders or instructions to courts, judges and prosecutors relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions. Courts, judges and prosecutors cannot exercise behaviors that could influence lawyers.

Lawyers shall be independent in the discharge of their duties and perform their duties in accordance with the Constitution, laws, and their personal conviction conforming to the law. In fulfilling their duties, lawyers act as founding pillars of the judiciary and as court officers. Public and private organizations, institutions and persons shall assist lawyers to perform their duties, answer lawyers' questions, and deliver all kinds of documents and records as asked by lawyers. Measures and methods to prevent lawyers from abusing their herein-mentioned authority are regulated by law.

During parliamentary meetings, no questions can be

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“Gökyüzü” (Sky),
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asked, and no discussion can be hold with regard to exercise of judicial powers. Members of parliament shall not issue statements or act in a way that might influence those who will deliver the judgement in an ongoing case. However, persons and institutions can criticize judges', prosecutors' and lawyers' negligence, misconduct and attitudes during judicial processes via legitimate means.

With regard to disputes referred to the courts, the parties and anyone who is in some way connected to the dispute, such as witnesses, experts, arbitrators or attorneys must demonstrate honest behavior, submit all the necessary evidence, share all the necessary information, honestly answers all the questions asked by the court, and if for some reason they cannot answer, must justify their behavior and provide the necessary assistance to resolve the dispute in the most effective and accurate manner. Violations of these obligations, in the form of abusing the judicial process, not disclosing information and not submitting the required evidence are considered as contempt of court and sanctioned by preventive detention.

Except for exceptional circumstances that necessitate the postponement of the proceedings, the adjudication is completed with only one hearing. At the end of this hearing, the court must deliver an oral judgement. The court has 15 days to issue a reasoned judgement following the date of the final hearing. All courts shall follow this method of adjudication when delivering a judgement.

Court hearings are open to the public. It may be decided to conduct all or part of a hearing in a closed session, but only in cases where absolutely necessitated by public morals or public security. Special provisions regarding the trial of minors shall be laid down in the law.

Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution. Acts contrary to the previous sentence are considered violations of the Constitution. In case of violations, the Republic's Chief Public Prosecutor's Office has the power to initiate an investigation and prosecute. Those who give decisions and instructions regarding such a matter are punished as the main perpetrator of the crime, and those who follow these decisions and instructions are punished as the persons who assist another to commit an offense. For the commission of this crime, the exercise force is not required to have been an element of this crime. It is accepted that the element of force and violence is present when the criminal act includes the exercise of legal and public powers legally vested to a public office or the non-exercise of the said powers which should have been exercised. The two-thirds of the penalty determined in the criminal regulation is imposed. The provisions of a reduction or suspension of sentence, and the suspension of pronouncement of judgement and parole are not applicable.

Judicial Professions

ARTICLE 140 – Judgeship, prosecutorship, attorneyship and notaryship are judicial professions.

The procedure of admission to the judicial professions includes an objective written and an oral exam aimed at revealing the most competent candidates. The Supreme Authority of Justice performs and supervises the procedure of admission to the judicial professions and delivers the final decision on admission.

In order to be admitted to the judicial profession, candidates must have passed the entrance exam, and completed the relevant judicial profession's internship, traineeship and assistantship.

Each judicial profession has three levels and, in each level, there are a number of sub-levels. This coordination allows easy transition between the judicial professions.

Judges and prosecutors cannot be assigned to different duties outside of their current duties and civil, criminal, or administrative law jurisdictions, except at their own request.

The retirement age of judges and prosecutors is 70. However, if a medical certificate is issued attesting that a judge or a prosecutor is medically fit to perform his/her duties, then he/she can continue to serve as a judge or a prosecutor.

Judges, prosecutors, and judicial officers cannot undertake any official and private duties other than those specified by law. Judges and prosecutors are answerable the Supreme Court of Justice with regard to their administrative duties.

Judicial professionals appointed to administrative positions by the Supreme Authority of Justice are graded, evaluated and promoted according to the career levels of their profession and benefit from all kinds of rights granted to their degree.

Other issues regarding the judicial professions are regulated by law.

Security of tenure of judges, prosecutors and lawyers; Principle of natural judge

ARTICLE 139 – The Supreme Authority of Justice appoints judges and prosecutors.

Judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of the tenure of judges. Judges cannot be relieved of their duty or forced to retire before the age of 70 except at their own request, but can retire after the age of 65 at their own request.

The Supreme Authority of Justice appoints sufficient number of judges and prosecutors in accordance with the needs of the judiciary using competency-based selection in a manner that encourages competition among candidates. The length of term of office is specified for each appointment.

During working hours, judges and prosecutors shall perform the duties of the court they are assigned to. Judges and public prosecutors shall not assume any official or private occupation other than those assigned to them.

Judges and prosecutors shall not be relieved of their duty and transferred to another court in another jurisdiction except at their own request; shall not be forced to retire before the age prescribed by the Constitution; nor shall they be de-

prived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a post. If a judge or prosecutor is promoted to a higher level or sub-level, the status of appointment to a higher level or sub-level this appointment constitute an exception due to the routine rotation announced by the Higher Authority of Justice two years prior. Unless judges and prosecutions poorly perform while fulfilling their duties or are subject to a disciplinary action, they cannot be appointed to another place before the end of their term of office.

The tenure of a judge or a prosecutor is automatically terminated when they commit a crime that is serious enough to result in the loss of required eligibility criteria. Judges and prosecutors shall step down when they are unable to perform their duties due to health reasons if it is certain that they cannot be treated. When the Supreme Court of Justice decides that the professionals concerned are unsuitable to remain in the profession due to indiscipline, poor performance or other accountability failures, they are dismissed from the profession.

In the event that judges and prosecutors are investigated or prosecuted for a crime that prevents their admission to the profession, the Supreme Authority of Justice may decide to suspend the accused from their judicial duties for the duration of the investigation and prosecution if the confidence of justice will be damaged if the accused continues to perform their judicial duties. The Supreme Authority of Justice will make a decision on the subject of suspension by taking into account the nature of the accusation, investigation and evidence.

The qualifications, appointment, rights and duties, salaries and allowances of judges and prosecutors; their promotion, temporary or permanent a change in their post or jurisdiction, the initiation of disciplinary proceedings and the imposition of disciplinary penalties, the conduct of an investigation and the subsequent decision to prosecute them on account of offenses committed in connection with, or in the course of, their duties, a conviction for offenses or instances of incompetence requiring their dismissal from the profession, their in-service training, and other matters relating to their personnel status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.

No one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established. Once the hearing of a trial has started, as a rule, the judge cannot be changed. A judge is obliged to conduct the hearing until the end and give his/her reasoned opinion.

Supervision of the Judiciary and the Services of the Judicial Professions

ARTICLE 144 – The Supreme Authority of Justice supervises the judiciary and the services of the judicial professions. This supervision is performed through judicial inspectors, who are elected from judges, prosecutors, and lawyers.

The audits or investigations are performed to improve the judicial profession and ensure that services it provides both individually and as a whole, meet the standards determined by the Supreme Authority of Justice, so that the judicial professions can develop in a way to achieve this goal. Audits/ investigations cannot be against the objective of protecting the independence of the judicial professions and defending the rule of law.

During the investigations, judicial inspectors notify the Republic's Chief Public Prosecutor's Office regarding the matters that may constitute a crime so that the Republic's Chief Public Prosecutor's Office can conduct the necessary investigations.

Other matters regarding this subject shall be regulated by law.

APPOINTMENT OF SELECTION OF JUDGES RESIDING IN HIGHER COURTS

Nominations to the Constitutional Court, Court of Cassation, Council of State, Court of Accounts, Republic's Chief Public Prosecutor and Deputy Republic's Chief Public Prosecutor

ARTCILE XXX:

Anyone who wishes to be nominated for the Constitutional Court, Court of Cassation, Council of State, Court of Accounts, Republic's Chief Public Prosecutor and Deputy Republic's Chief Public Prosecutor and who meet the eligibility criteria, satisfy the merit criteria and do not have any obstacles that might prevent them from becoming a candidate can apply to the Supreme Authority of Justice.

The Department for Personnel, Career, Performance, and Inspection of the Supreme Authority of Justice draws up a merit-based list and declares the names of the candidates after conducting an evaluation to determine which applications meet the eligibility criteria. All types of professional and private information, excluding personal data, regarding the candidates are disclosed.

Candidates' qualities in terms of merit and their fitness to perform the tasks they are seeking to take on are freely debated before the public. In the meantime, the nominees must honestly answer all the questions directed to them, and if they cannot, must explain why. Any nominee who cannot answer the questions and present a justifiable reason is eliminated.

The Department for Personnel, Career, Performance, and Inspection of the Supreme Authority of Justice determines the names of the candidates after evaluating all the information disclosed to and all the answers shared by the public. For every position, a list comprising 5 to 10 people id drawn up and declared.

Every candidate whose name is on the final candidate short list participates in a session of the Grand National Assembly of Turkey, where they answer question directed at them. Additionally, candidates participate in a session prepared by the Turkish Radio and Television Corporation during which they are also subject to questioning. Both sessions are broadcast live and recorded by the Grand National Assembly of Turkey and the Turkish Radio and Television Corporation so that anyone who is interested can watch them at a convenient time.

The most qualified person is appointed. When more than one candidate is to be elected, an election is held for each available person. At every election, the most qualified member in terms of merit is elected. The candidate who was elected in the previous election cannot participate in ensuing elections. Sessions organized by the Grand National Assembly of Turkey and the Turkish Radio and Television Corporation are considered.

Elections are held on the basis of open and justified votes. The name and surname of the candidates are stated on the ballot papers. Voters must explain the reasoning behind their votes on the ballot. Ballots that do not include reasoning are invalid.

Voters must justify their vote and explain why their choice of candidate is the most qualified candidate on the basis of merit and among the other candidates having different degrees of merit.

NOMINATION AND APPOINTMENT PROCEDURE AND JUDICIAL REVIEW

ARTICLE XXX:

Nomination and appointment procedure to the Constitutional Court, Court of Cassation, Council of State, Court of Accounts membership as well as the Republic's Chief Public Prosecutor and Deputy Republic's Chief Public Prosecutor are open to judicial review. The Supreme Court of Justice has the jurisdiction to hear any cases related to the herein-mentioned nomination and appointment procedures.

Anyone who claims that the nomination and appointment procedure violated the law and therefore wishes to annul a decision regarding the herein-mentioned nomination and appointment procedures can bring a suit before the Supreme Court of Justice. However, cases filed for the annulment of the membership appointment decision of the Grand National Assembly of Turkey due to incompatibility with the Rules of Procedure of the Grand National Assembly of Turkey or the Constitution shall be resolved before the Constitutional Court.

Within this framework, actions against any decision of the Department for Personnel, Career, Performance and Inspection of the Supreme Authority of Justice taken for the determination of the candidates shall be filed to the Department for Objections and Re-examinations. The decisions delivered by the Department for Objections and Re-examinations of the Supreme Authority of Justice can be appealed before the Supreme Court of Justice. Once the candidates have been determined, any decision taken after this time period can be appealed before the Supreme Court of Justice even though an objection has not been filed to the Department for Objections and Re-examinations prior this date.

Failure to comply with the voting conditions or providing insufficient justification for the vote is grounds for the annulment of the decision.

If the herein-mentioned failure affects a candidate or more than one candidate, it can be decided to annul the entire election. Another election will be held.

The case files are merged when there is more than one cases filed with the same cause of action. The issues raised in separate case are evaluated separately within the same case file and a single decision is delivered.

The Supreme Court of Justice will review the cases as a priority and deliver a ruling within 30 days.

The President's Obligation to Choose the Most Qualified Candidate:

CLAUSE XXX:

In cases where the President is authorized to elect according to the relevant laws- for example the election of the members of the Constitutional Court, Court of Cassation, Council of State, Court of Account and other relevant courts the President is obliged to elect the most qualified candidate from a list prepared by the Supreme Council of Justice. With regard to the herein-mentioned elections, the President does

not have discretion and must elect the most qualified candidate for the position shall justify the reasons why the elected candidate was the most qualified giving reasons for his/her choice. The President has to justify that he/she made an accurate evaluation of the candidates among different degrees of merit.

CONSTITUTIONAL COURT

Constitutional Court Membership and Appointment Procedure

ARTICLE 146 –

The Constitutional Court comprises 30 members and operate in three chambers.

The members elect a president and two vice presidents. The term of office of the president and vice president of the Constitutional Court is three years.

The Constitutional Court has three chambers, and each chamber comprises 10 members. The first 20 members appointed to the Constitutional Court operates as two chambers comprising 10 members. The president of the Constitutional Court presides over the first chamber and the first vice president of the Constitutional Court presides over the second chamber. The appointed members, except for the president and the vice presidents, shall be listed according to their date of appointment. Those in uneven numbers of rows appointed to the first chamber and those ranked even numbers appointed to the second chamber. The members of the first and second chambers partially rotate every six months. The rotation starts with the earliest-appointed members for a duration of one year with three members serving in their own chamber are appointed to other chambers. At the end of this one-year period, they return to their own chambers. The last nine members appointed to the Constitutional Court shall form the Individual Application Chamber under the presidency of

the vice president of the Constitutional Court. The chambers of the Constitutional Court start adjudication with the participation of the chamber president and six of its members.

The Grand Chamber of the Constitutional Court comprises all the members of the Constitutional Court. The president of the Constitutional Court presides over the Grand Chamber. The Grand Chamber evaluates the case law of the chambers and issues decisions on the unification of judgements to resolve differences pertaining to case law. The claims lodged against the ministers and the president are resolved before the Grand Chamber. The Grand Chamber's decisions are final. Every year, the Grand Chamber evaluates the performance of the members serving in the different chambers of the Constitutional Court. With the vote of two-thirds of its members, the Grand Chamber may decide to terminate the membership of those who arbitrarily do not participate in deliberations and fulfill their duties as a judge without any apparent reason.

The Supreme Authority of Justice determines the candidacy eligibility and merit criteria according to article XXX. of the Constitution. The Supreme Authority of Justice declares the name of the candidates in a list that is ranked on the basis of merit. Institutions can nominate a maximum of three candidates for each membership position.

The General Assembly of Court of Accounts nominates two candidates: an economics professor and a public finance professor. The Union of Turkish Bar Associations nominates four candidates who have been practicing law for more than 15 years and who are constitutional law professors. The Grand National Assembly of Turkey holds a different vote for each position. Elections consist of two rounds. In the first round, for each appointment a vote of two-thirds of the total number of members is required. If no candidate receives enough of the votes, then a second round of voting is held 14 days later with the top-two candidates. In the second round, the one who receives three-fifths of the votes of those who were present during the vote shall be appointed.

The President appoints the remaining 12 members, nominated by the relevant institution, based on merit from among the qualified candidates who meet the below listed eligibility criteria:

Four members are appointed from among judges who have served for at least five years as a senior member or a president in a criminal chamber of the Court of Cassation. Two members are appointed from among judges who have served for at least five years as a senior member or a president in a civil chamber of the Court of Cassation. The General Assembly of the Court of Cassation appoints the candidates on the basis of merit, and open and justified votes.

Three members are appointed from among judges who have served for at least five years as a senior member or a president before the Council of State. The General Assembly of the Council of State appoints the candidates on the basis of merit, and open and justified votes.

Two members are appointed from among constitutional law professors, two members from among political sciences

professors, two members from among international relations professors, and two members from among professors who have conducted their studies on senior public officials. The Council of Higher Education appoints the candidates on the basis of merit, and open and justified votes.

Three members are appointed from among lawyers, two members are appointed from among judges who serve as the presidents of the Criminal Chambers of the Regional Courts of Appeal, one from among judges who serve as the presidents of the Civil Chambers of the Regional Courts of Appeal, and one from among prosecutors who serve as Regional Courts of Appeal's prosecutors. The Supreme Authority of Justice appoints the candidates on merit and on the basis of open and justified votes. The nominees must have completed a bachelor's degree as well as a master's degree or doctorate in their specialist subject, and have published articles.

Appointments made by the President are subjected to judicial review before the Supreme Court of Justice in accordance with Article XXXX of the Constitution.

DUTIES AND POWERS OF THE CONSTITUTIONAL COURT

ARTICLE 148

The duties and powers of the Constitutional Court include the following: Evaluating the constitutionality of legal rules; reviewing individual applications; adjudicating political party dissolution requests; auditing political parties; reviewing appeals in its capacity as the Supreme Criminal Tribunal, reviewing appeals against the decisions of the Supreme Court of Justice; applying the constitutional provisions; and delivering judgements that comply with the constitution.

The following provisions apply to annulment actions filed as a part of constitutionality analysis:

(a) The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, presidential decrees and the rules of procedure of the Grand National Assembly of Turkey; presidential decrees issued during a state of emergency or in time of war, and Supreme Authority of Justice membership appointments and decide on individual applications. Constitutional amendments shall be examined and verified only with regard to their form.

(b) Any natural person, or private or public person/entity, can bring an action within the period of filing a lawsuit before the Constitutional Court. Claims regarding violations of the substance of laws and the suspension of execution are resolved a priority. The Constitutional Court immediately

starts adjudicating the cases filed by the President, political parties, political party groups, parliamentarians, the Supreme Authority of Justice, judicial professional associations and institutions regulated in the Constitution. Lawsuits filed by other natural and legal persons within the filing period are combined and the Constitutional Court delivers a ruling including all the claims raised.

(c) Claims regarding presidential decrees issued during a state of emergency or in time of war are subjected to preliminary evaluation and a summary judgement is issued based on the preliminary findings. Any presidential decrees issued during a state of emergency or in time of war violating the law shall be immediately annulled and their execution shall be immediately suspended. In cases where the plaintiff claims form and substance violation, it is not possible to issue a suspension-of-execution decision. However, after the declaration of annulment, the application of the order might be suspended or postponed until the end of the state of emergency or war.

(d) Claims of unconstitutionality raised before the courts of administrative, tax, criminal and civil law shall be resolved the Constitutional Court. When a party raises an unconstitutionality allegation regarding a subject that has already been resolved, the case can be referred to the Constitutional Court if the court hearing it is convinced of the seriousness of the claim of unconstitutionality submitted by one of the parties according to Article 152 of the Constitution.

(e) The verification of laws as to form shall be restricted to consideration of whether the requisite majority was obtained in the last ballot; the verification of constitutional amendments shall be restricted to consideration of whether the requisite majorities were obtained for the proposal and in the ballot, and whether the prohibition on debates under expedited procedure was observed. Verification as to form may be requested by the President of the Republic or by one-fifth of the members of the Grand National Assembly of Turkey. Applications for annulment on the grounds of defect in form shall not be made until after 10 days have elapsed from the date of promulgation of the law; and it shall not be appealed by other courts to the Constitutional Court on the grounds of defect in form.

Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights, which are guaranteed by the Constitution, has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted. In the individual application, judicial review shall not be made on matters required to be taken into account during the process of legal remedies. Procedures and principles concerning the individual application shall be regulated by law.

The Constitutional Court reviews the appeal requests filed against the decisions of the Supreme Court of Justice. The Constitutional Court can uphold, partially uphold or overrule the Supreme Court of Justice's decision. If the Constitutional Court overrules the appealed decision, it will send the case file back to the Supreme Court of Justice speci-

fying the reason for the overrule. The Supreme Court of Justice reviews the case files following the overrule as a priority and promptly delivers a new judgement. The Constitutional Court, on its own, corrects the minor mistake made by the Supreme Court of Justice.

The Constitutional Court utilizes the below-mentioned authority when reviewing political party dissolution requests:

(a) Following an application filed by the Republic's Chief Public Prosecutor reviewing the conformity of the bylaws with the Constitution and democratic management principles, and if non-conformity is found, annulling the political party bylaws.

(b) Auditing the legality of the acquisitions, revenue, and expenditure of political parties. Political parties are obliged to present a report prepared by private auditing institutions that have the characteristics determined by the Constitutional Court or whose competence has been formerly disclosed. The Constitutional Court may review the all transactions and reports, or if it wishes, it can conduct an inspection limited to certain areas or topics.

(c) Ensuring the disclosure of activities, income and expenditure of the political party presidents, those who serve in the central administration and supervisory bodies, the President, President's deputies, ministers, deputy ministers, and senior public officials in a regular and transparent manner. Reviewing the herein-mentioned financial statement at the Republic's Chief Public Prosecutor's Request.

(d) Deciding on the issues of political party membership of those who engage in activities in regard to the abolition of the Constitution and constitutional order, and attempt to change permanent and unalterable provisions of the Constitution, and prohibiting those people from engaging in political activities of a similar nature.

(e) Resolving the following disputes: political party dissolution, withdrawal of public subsidies disputes, injunctions and determining whether a political party should be wound up.

(f) Reviewing the dismissal of any parliamentarians' decision made by the Grand National Assembly of Turkey.

The Constitutional Court in its capacity as the Supreme Criminal Tribunal shall try, for offenses relating to their functions, the President of the Republic; the Speaker of the Grand National Assembly of Turkey; the deputies of the President of the Republic; the ministers; the presidents and members of the Constitutional Court; High Court of Appeals and Council of State, the chief public prosecutors of High Court of Appeals and Council of State, the Deputy Chief Public Prosecutor; and the president and members of Chambers of Judges, Chambers of Prosecutors and Court of Accounts.

The Republic's Chief Public Prosecutor or Deputy Republic's Chief Public Prosecutor shall act as a prosecutor before the Supreme Criminal Tribunal. The decisions of the Supreme Criminal Tribunal can be appealed before the Constitutional Court's General Assembly. The decisions of the

Constitutional Court's General Assembly are final.

The Supreme Court of Justice evaluates the indictments prepared by the Republic's Chief Public Prosecutor against the President, ministers and members of parliament for the offenses relating to their professional functions, and to prepare and submit a report to the General Assembly of the Supreme Court of Justice, where a decision to approve or reject the indictments is delivered. Authority to prosecute lies with the Supreme Tribunal Court.

The Constitutional Court shall also perform the other duties given to it by the Constitution. Within this context, the Constitutional Court elects its president, first and second vice presidents, and the president and vice president of the court of disputes/conflicts.

Saim Dursun,
“Kürek” (Shovel),
50x70 cm,
oil on canvas,
spatula technique,
2013

EPILOGUE

Saim Dursun's spatula-stroke paintings throughout this this book, each embodying diverse, strong colors from the remote corners of Anatolia, also reflect Turkey's historical experience, and the depth and richness of its culture. In their own field of justice, jurists should do as Saim does with his canvas and spatula, and strive to uncover the values we hold with regard to justice by removing the dust and mold obscuring them, to offer them to the wider world.

The Turks' concept of the rule of law and justice is greater than Westerners and most other advanced cultures often give credit to. Turks perceive justice not only as the mere determination of right and wrong, but as the basis for peaceful coexistence, collaboration and solidarity within society. It is inscribed in courtrooms, as it is in everybody's heart, that justice is the foundation of the state. Turks' faith and perception of justice has flourished, right from the era when sultans were held accountable in court just as their subjects were, while at the same time, in other countries, kings had absolute superiority and control over judges.

However, it is a bitter fact that the basic principles Turkey adopted and the institutions it has established to make justice a reality, as well as the methods and mechanisms of conflict resolution it has developed, yield results that are lagging behind its contemporaries. A clear example of this is the fact that Turkey enacted the integrity principle into its civil procedure law but failed to introduce mechanisms and sanctions to ensure that the parties to a dispute disclose facts and evidence honestly during civil proceedings.

Establishing a justice system which can compete with its contemporaries will help Turkey to strengthen its economy, increase its international competitive power and secure a sustainable increase in the welfare of its people.

Turkey is like an excellent laboratory, where the foundations of many advancements in the field of the judiciary, the rule of law and democracy can be developed. In this regard, Turkish society is ready to give as much as it can. Society is hungry for progress, always ready to try new ideas and solutions and not hesitant to make very rapid and radical changes. At the same time, given the abundance of problems waiting to be resolved, it is not difficult to find issues for which

to develop innovative solutions. The solutions that will be developed for the needs of Turkish society, which chose a liberal democratic order, will undoubtedly yield valid solutions to problems in other countries once they have been tested in Turkey. Therefore, advances in Turkey will also lead to the rapid development of other countries that follow Turkey's example.

Criticism, ideas and suggestions from the international community are key for Turkey to develop exceptional solutions in this field and gain an exceptional place in the world. Turkey may not agree with all of these, but it must listen, understand them and develop itself according to their direction. Likewise, Turkey should consider adding value to the common culture of humanity while finding solutions for its own problems. Laboring in areas that are not accepted internationally will be of little benefit to Turkey.

Being aware of all of these factors, we have developed this package of proposed solutions that we think will ensure the efficient functioning, accountability and full independence of the judiciary. These will bring about definitive and final resolutions on full independence and proper separation of judicial power from other powers of the state, and therefore on the issue of separation of powers, which is the biggest problem for many democracies. It will be a valuable contribution to the international community in relation to both judicial independence and democracy.

Hence, we are proud to share this package with the international community and Turkey at the same time.

We, kindly request readers to join the discussion, feed us with criticism, proposals and endorsement on our proposed solutions, and contribute to our efforts to improve the rule of law, independence of the judiciary and democratic institutions.

Atty. Mehmet Gün
On behalf of the project team
April 2022

daha iyi yargı

TURKISH JUDICIAL REFORM
A to Z

Atty. Mehmet Gün - Atty. Hande Hançar - Atty. Muhammed Demircan - Atty. Utku Süngü
Atty. Ayşe Dilara Kaçar - Atty. Zübeyde Çapar - Atty. Elif Melis Özsoy - Atty. Havva Yıldız

In order to bring forward a radical solution to Turkey's judicial problems, we have sought to design a system: (i) that focuses on working efficiently, producing a high-quality service; (ii) with a lean structure in line with the requirements of management science; (iii) with full transparency in all processes and decisions; (iv) that is fully accountable and in which all transactions and decisions are subject to judicial review; and (v) which society as a whole and any individual who wishes to is able to participate in and supervise.

The designs and drafts we have formulated are not intended to restructure the Council of Judges and Prosecutors, which is a judiciary council in the classical sense; rather, they encompass the entire broad spectrum of the judicial system, from courts to judicial procedures and judicial professions, from professional organizations to a new court providing judicial review, with a regulatory body at its center.

The fundamental idea is to ensure that the judicial organization produces a high-quality service.

Hence, we have envisaged a regulatory authority at the center of service production and designed the authority by considering the issues that it would regulate. We have resolved the questions of the transparency and accountability of the system, which includes service units and producers, and of judicial review of all processes and decisions by establishing a court that will ensure these elements. The system we have designed has three pillars, each of which is fully independent: (i) a regulatory institution; (ii) professions that produce services and their organizations; and (iii) a specialized court to ensure judicial review, i.e. the Supreme Court of Justice.

We have purposely avoided adapting to Turkey's requirements a solution developed by another society for its own needs, as many have done before. Working with a young team, we have created a new and completely original design that brings forward radical and permanent solutions to problems. Through the subsequent examination of international experience, we are confident that our solutions are healthy, well established and fit for purpose.