

Start of 2021–2022 Judicial Year

Press Information Note

25 August 2021

High prosperity is possible with a high-quality judiciary

From 1980 to 2020, Turkey's share in the world economy decreased from 0.86% to 0.85%. As the share of developing economies increased by 80%, Turkey's share of the economy of this group of countries decreased from 3.57% to 1.9%, which is approximately half. When its share is calculated among developed countries excluding China, it should have increased by 80% to 7.2% but in fact it decreased by 25% to 3.1%. In short, Turkey lags behind while other developing economies increase their share in the world economy.

Turkey's score in the international rule of law indices has decreased from 0.80 to 0.20 in recent years; parallel to this, the country's per capita annual income decreased from US\$12,500 to \$8,500 in 2020.

In order to have a higher share in the world economy, to raise the national income above the "middle income" level and to rapidly increase the welfare of the people, the most important issue that Turkey has to deal with is the judiciary. The duty of the judiciary is also a public service, and this service must be of high quality.

Turkey can increase its share of increasing world GDP by ensuring the rule of law with a high-quality judiciary and strengthening the belief in justice, and by increasing the per capita national income five to six times in a short period.

The rule of justice and law means a powerful and prosperous state

Justice is a belief formed when pre-agreed rules are applied independently and impartially to every case to which they relate. The belief in justice is strengthened by ensuring the rule of law in all areas of social life. Society and individuals gain trust as confidence grows that justice and the rule of law will be achieved. A self-confident society and individuals increase their wellbeing and become stronger.

The rule of justice and law is a public service that is more vital to society than health and safety. This is because the basis of all other social services is the rule of law and belief in justice. This public service is rendered by the judiciary and the courts constituting the judiciary, legal professionals such as judges, prosecutors and attorneys, and auxiliary service officers.

The Judicial Year, which begins on 1 September each year, is the opportunity to remember all of these facts, draw attention to the problems and discuss the solutions. This year, we again came together for a purpose. Welcome; you have honored us. Thank you very much for giving us the opportunity to explain the proposals we have developed for the fundamental solution of judicial problems.

Rule of law, stability in the judiciary and state administration

The rule of law means the confidence that the rules of law will be applied in the same way to everyone, at all times and in all areas, and that everyone will act in accordance with the rules. Building trust in the rule of law is primarily the duty of the judiciary.

The nature of its duty means that the judiciary can apply the rules of law independently and impartially, and that it can be trusted. In order to be able to be trusted, it is imperative that the judicial power be separate from the legislative and executive powers, whose compliance with the law it will oversee; that it has the capacity to perform its duties effectively; that it acts in accordance with the law itself; and that it should be designed to be fully independent. This is because, as international experience shows, the judiciary, if it is more or less dependent on the legislature or the executive, cannot carry out its duties in a stable and effective manner. This leads to disruption of the rule of law, destabilization and arbitrariness in state administration.

Politicians acting in harmony in making the judiciary dependent

The political views – some of which do not agree on what good state administration is, some suggesting strengthening the presidential system and some suggesting strengthening the parliamentary system, although they are seemingly opposite – in essence agree with the goal of seizing state power and using it at their own pleasure.

Politicians' very weak and commonplace discourse on the judiciary and the rule of law, while not surprising, is disappointing.

They act as if the problems of the judiciary either do not exist or will end by themselves if the government changes. They do not make enough effort to analyze the problems and produce realistic and permanent solutions. They seem to have agreed not to solve their obvious problems as well as to keep the judiciary unable to carry out its duty. They have not revealed the imagination or the practical ideas necessary to make commonplace phrases such as “independent judiciary” and “rule of law” a reality. In action, inaction and discourse, they cooperate harmoniously.

As a result, the judiciary and the rule of law have almost been left unattended, despite their presenting the country's most vital problems. Under these circumstances, the responsibility of identifying the problems of the judiciary and developing solutions falls to opinion leaders and non-governmental organizations (NGOs).

Politically neutral: Better Justice Association

Better Justice Association is a politically neutral think-tank. The Association was founded by attorneys, businesspeople and opinion leaders who believe that sustainable development is possible with the rule of law. It operates to identify the problems of the Turkish judiciary, to develop solutions and to create consensus.

The judiciary is the most important among the three basic structural problems we have identified in our book *Turkey's Middle Democracy Issues and How to Solve Them*. Our Association has studied the subject in depth and developed innovative solutions under nine key headings. The designs and drafts of the developed solutions have been published by the Association in Turkish and English as a whole book under the title *Turkish Judicial Reform A to Z* and opened up for discussion among the Turkish and the global public.

Internationally accepted solutions to Turkey's needs

The solutions we have developed for Turkey's needs, based on the realities of Turkey, define the ultimate goal of the reform efforts that our country has been making for a long time as quality judicial services. We present our designs and drafts ready-made, alongside showing step-by-step what needs to be done to achieve these solutions.

Our designs, which we have developed with an innovative approach and the effectiveness of which we have ensured by comparing them with the systems of about 20 developed countries, offer progressive solutions to the problems that are experienced also in other countries to varying degrees. That this has now begun to be discussed even in the international arena is quite exciting.

The book, which was written by a team of nine people as a result of more than a year of feverish research and discussion, and which is the product of the knowledge and expertise that we have accumulated over a period of more than 10 years, outlines in detail the main problems of the judiciary and their step-by-step solutions.

Effective and stable state administration and prosperity, secured by high-quality judicial services and the rule of law

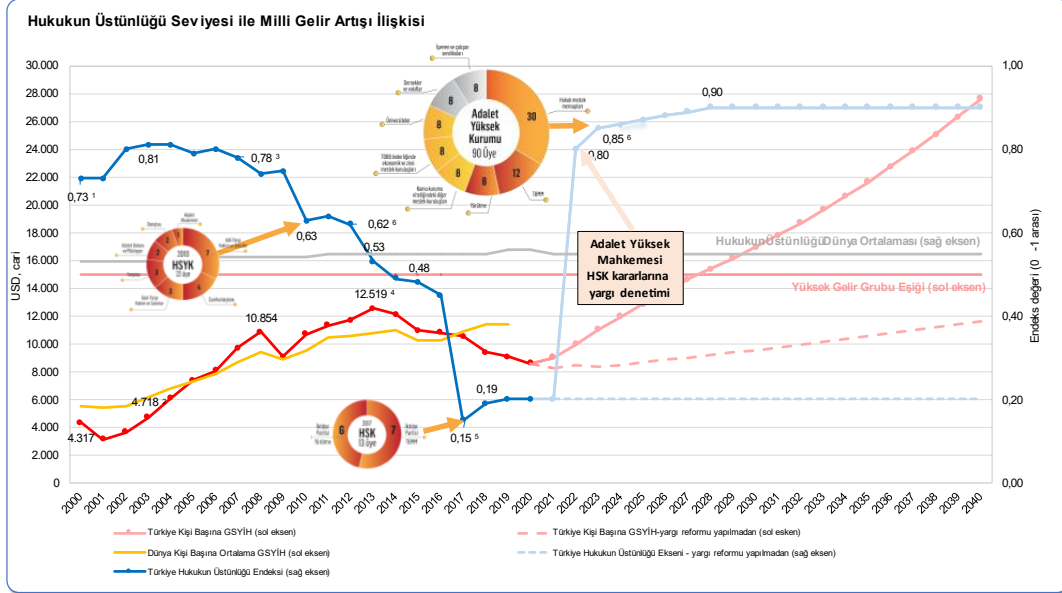
Turkey, by making the judiciary efficient, transparent, accountable and fully independent and ensuring that the rule of law prevails in all areas, can achieve stable and effective state administration at the level of its contemporaries. It is of great benefit to appreciate this, because only then can the country's potential be realized.

Quality judicial services will:

- While ensuring the rule of law, also strengthen the sense of justice, freedom and trust in society and individuals;
- Restore the function of providing objective information and exchange of ideas to the media, and ensure that voices expressing opposing views are heard by society and that society obtains healthy information on the basis of which to form opinions;
- Liberate scientific thought and idea generation; develop innovation and invention in all fields, including social sciences; ensure that decisions taken on behalf of the state are accurate and predictable while encouraging differing, critical, protest and divergent thinking and criticizing managers and the business world's ability to reveal the mistakes that harm its own interests without hesitation.

This, in turn, will turn the country's potential into opportunities and prosperity by providing long-term investment and high value-added production, and welfare will increase rapidly.

If our innovative proposals are implemented, our country's score in the rule of law indices will rise from 0.20 to 0.80 in a short time, and our per capita national income will exceed the middle income level and reach the level of developed countries in a similarly short time.



A judiciary providing high-quality services deserves full independence from politics

The judiciary is designed to provide high-quality services to society and to fulfill its duty fully, and at the same time to account for the extent and quality of its fulfillment of this duty.

Therefore, it is envisaged that the judiciary will deserve full independence and will be able to defend itself by fulfilling its duties in the best way possible, in a transparent and accountable manner. It is envisaged that each judicial element providing the service – judicial bodies, professional organizations, courts and judges, prosecutors and attorneys – can together defend the independence of the judiciary.

The independence of the judiciary has been removed from being a political issue and has become the most important quality condition of high-quality judicial services. Judicial power is taken out of political control by reducing the weight of politics and transforming it into a qualitative contribution, in the form of the central regulatory board. This board coordinates and regulates these matters in such a way as to provide a high-quality service to the center of the judiciary, which consists of dozens of separate organs, each of which is independent on its own and can maintain its independence.

- The **judiciary** is given the capacity to fulfill its duties, focuses on providing high-quality public services, works efficiently and is made to deserve and maintain full independence through transparency and full accountability.

- **The judicial services' production function, distributed between the Presidency, the Ministry of Justice and the Council of Judges and Prosecutors (CoJP),** is differentiated from the function of the CoJP as the professional body of judges and prosecutors; the CoJP is being transformed into the **Supreme Authority of Justice** responsible for the production of high-quality judicial services; the full separation of the Supreme Authority of Justice from other state powers is ensured, and its independence is strengthened so that no individual, group or coalition can influence it.
- The **Permanent Law Council** will ensure that the representatives of the institutions for which it is responsible in the provision of services to society and other judicial stakeholders come together institutionally, evaluate the problems and opportunities, and ensure that the judiciary is up-to-date on the needs and developments of society.

First and foremost, the judiciary, politicians and public officials must abide by the rule of law

All proceedings and decisions of an administrative nature regarding the judiciary become subject to judicial review; thus, it is ensured that the judiciary itself, with all its organs and elements, is unconditionally subject to the rule of law. It is envisaged that all kinds of actions and decisions regarding the judicial organization and inspection, interview, admission to the profession, appointment, assignment, promotion, performance evaluation, discipline and other decisions can be transparently and subject to judicial review by any person.

The service capacity of the Constitutional Court is increased, and the influence of political motivation in appointments is minimized and merit is maximized by ensuring the participation of the public in the candidate for nomination, nomination and appointment processes of the members of this Court.

- **All kinds of administrative actions and decisions regarding the judiciary are open to judicial review,** and for this purpose, it is envisaged that a Supreme Court of Justice be established.
- The Chief Public Prosecutor's Office is regulated independently, separating the functions of the Chief Public Prosecutor's Office of the Court of Cassation to protect the Constitution and constitutional order; in relation to crimes committed by public officials, the permission of the administrative chief to investigate is revoked and instead they are tried in the Supreme Court of Justice; and it is strengthened by foreseeing that parliamentary immunity will be lifted by this court instead of the political decision of the Turkish Grand National Assembly.

Efficient legal experts and fully independent professional organizations are the guarantee of justice

Our proposals pay particular attention to training human resources competent to provide high-quality services appropriate to the needs of the judiciary. It is envisaged that the professions of judge, prosecutor and attorney, which are the essential elements of the judicial service, should be developed subject to a uniform career plan and easy transition between professions when necessary.

- The professions of judges, prosecutors, attorneys and notary publics are being brought into **fully independent professional organizations; the independence of the judiciary is spread over a very wide surface.**
- **A uniform career plan for legal professionals inspired by the culture of the Ahi community** is envisaged, in order to train human resources in line with the needs of the judiciary, and to develop and evaluate human resources more effectively.

It is envisaged that those who are accepted to the judiciary professions should be mature in age, accepted to the profession after gaining sufficient competence and experience by working in positions such as intern, supervisor and assistant, and that judges, prosecutors and attorneys should be in a position to perform their duties in the best and highest-quality manner once they are accepted into the profession. It is envisaged that to completely eliminate criticisms such as that a candidate is too young, which is not suitable for members of the judiciary, there should be a career development plan similar to that of Germany. In addition, professional interaction and leadership practices inspired by the occupational levels in Ahi, in-service training and yolatağı – that is, mentoring – are envisaged.

Judicial professional organizations are regulated in the Constitution separately from other professional organizations within the judicial division; thus, it is envisaged that their administration would consist entirely of their own members, beyond the recommendations of the Venice Commission. Judicial professional organizations are equipped with duties and powers that they can use to defend their independence and that of their members and the entire judiciary, and therefore protect the most important element of quality.

Cases can be resolved in three to four months, in a single session; the judiciary can be the engine of development

It is no longer the destiny of Turkey to take 5–15 years for cases that could be resolved in three or four months with high-quality preparation and trial, rather than for long years. Dealing with cases for years, the judiciary itself producing injustice, the issue of settlement of disputes

is approached from a holistic, innovative and farsighted perspective; instead of dispute resolution, the concept of management of disputes in the country is created.

Management of disputes envisages a need to be informed beforehand about the disputes in the country, to take preventive and conciliatory measures at an early stage, to predict which cases may go to the courts, to prepare the case files well, and to ensure that the cases are resolved in a single session.

- With modern conflict management, the climate of peace and reconciliation is strengthened; by developing the preparatory phase, it is foreseen that **complex cases will be resolved in three to four months at the most and with a single trial.**
- It is foreseen that **the courts will be distributed optimally to 26 development regions**, while the specialties will be concentrated in the center. **The service will be brought to the people's feet** and the number of courts, which is currently more than 7000, will be reduced to around 3000.

The optimum distribution of courts is envisaged, based on development regions in accordance with the country's development plans, the concentration of expertise in the centers of development regions, bringing the service to the public, establishing judicial preparatory courts to assist citizens and lawyers in all kinds of preparatory procedures, and supervision of these courts by more experienced and specialized courts.

These regulations will, on the one hand, reduce court inflation and reduce the number of courts from more than 7000 to around ,000; on the other hand, they will distribute the workload in the judiciary effectively and fairly among human resources, and will rapidly increase the quality of judicial services in a short time.

An image of Turkey: producing solutions to international problems

We believe that the solutions that we have produced, and that we have opened for discussion in the international arena in order to allow for the development of criticism, will increase the international reputation of our country, and will not be criticized, but will produce solutions and allow us to lead.

The initial reactions we have already received demonstrate that, if implemented, our proposals have the capacity to strengthen the legitimacy of the judiciary, take the principle of separation of powers to the next level and make a significant contribution to social life, not only in Turkey but all over the world.

Our call to opinion leaders, NGOs and decision-makers

We invite all non-governmental organizations, opinion leaders and academia to review and discuss our draft solution proposals. We will present the proposals live at webinar conferences at our association's website, www.dahaiyyargi.org/adan-zye-turk-yargi-reformu, broadcast as of 2 September 2021, and we invite feedback, criticism and suggestions to contribute to their development. Please email us at info@dahaiyyargi.org.

Our Association will evaluate the feedback, discuss it with experts in the subject through workshops, conferences, webinars and similar events, finalize the proposals, republish the final version and present it to the decision-makers.