

Politics must hear this growing call for better justice

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The Better Justice Association wants its judicial reform proposal announced before the opening of the Judicial Year to be discussed widely, especially in political circles as well as legal circles.

Atty. Mehmet Gün, president of the Better Justice Association, believes that Turkey has a window of opportunity to create a judiciary that can indeed dispense justice. At a press conference held online yesterday, he attributed this opportunity to current discussions about revising or replacing the Constitution.

The press conference coincided with the opening of the Judicial Year on 1 September. The underlying purpose of this timing was to not only raise criticisms concerning the problems of the judiciary but also put forward comprehensive proposals for a fair judicial order before the opening of the Judicial Year. It was also a response to the rhetoric of “You always criticize: come to us with suggestions,” which is often heard from the government as a way to counter the criticisms.

The reform proposals were prepared by eight members of the legal profession and of the Better Justice Association — including Gün — and collected in a 558-page study titled *Turkish Judicial Reform from A to Z*. The study contains remarkable, self-critical determinations for the judiciary as well as critical determinations for politics. For instance:

- The judiciary has lost the trust of society by not producing sufficient and high-quality services: this is the main reason that society not only doesn't defend the judiciary but also allows it to be a target for attack by politicians.
- When leaders further restrict the functioning of the judiciary at the request of the people, this creates a vicious circle that results in the judiciary's services deteriorating even more and drags democracy into the swamp of autocracy.
- This vicious circle can be reversed by making the judiciary efficient and fully independent, but highly transparent and accountable at the same time.

The restriction of executive power by law

Society empowers politicians, who it can hold accountable and change in elections, over the judiciary power, which it cannot hold accountable or change. Politicians use their control of the judiciary to strengthen their power, and limiting the power of the executive by law is getting harder and harder over time.

With the politicized judiciary rapidly losing its neutrality, the rule of law is weakening in every field.

The solution to today's problems of democracy and the rule of law depends on the elimination of these root causes in the form of failures of service production and accountability in the judiciary.

At the center of its proposals, the Better Justice Association puts the creation of a new institution "regulating the production of judicial services:" the Supreme Authority of Justice.

Supreme Authority of Justice and Constitutional Court

It is envisaged that this 90-member institution would include the existing Council of Judges and Prosecutors. It would include not only members of the legal profession but also representatives from the Turkish Grand National Assembly, universities and the business world. The proposals suggest that the Supreme Authority of Justice should be both authoritative and fully open to judicial review in all matters, from the budget needs of the judiciary to the professional performance of judiciary members and their appointment, promotion and dismissal. Within this framework, the Supreme Authority of Justice would also "enhance the constitutional protection function" of the Constitutional Court, according to the Better Justice Association.

Strengthening the Constitutional Court also features prominently role in *Turkish Judicial Reform from A to Z*. The proposals envisage increasing the number of members of the Constitutional Court from 15 to 30 with the addition of another chamber that would deal only with individual applications. This would "weaken the political motivation in the appointment of members." The members of the new Constitutional Court would be pre-selected by the Supreme Authority of Justice.

To protect and strengthen the Constitution, it is proposed that the Chief Public Prosecutor's Office should be separated from the Court of Cassation Prosecutor's Office, and that the Chief Public Prosecutor's Office should investigate only the legislative immunities among members of the Constitutional Court, senior public officials, the president and ministers, and political parties.

Politics and government should pay attention

Atty. Mehmet Gün stated that the Better Justice Association would convey its proposals not only to the legal profession but also to politicians, especially lawmakers, and to

universities, business circles and civil society. However, here we arrive at the other side of the coin. Gün complains that the Better Justice Association has put forward other proposals on very concrete issues, but sometimes there has been no response, especially from the state and political authorities, or even an acknowledgment that they have received the proposals.

Gün sees the preparations for the new Constitution as an opportunity to take positive action on the judiciary, but unless this opportunity is grasped by politicians, there is a chance that another well-intentioned attempt will be wasted.

Opposition parties can, at this stage, discuss these comprehensive proposals to better ground their criticism and force the power bloc to engage with them.

In this context, a responsibility falls on the Turkish Grand National Assembly and its speaker, Mustafa Şentop, who is from a legal background.

However, the faction with the greatest responsibility for considering and at least working on this study is the power bloc, i.e. the Ministry of Justice, the AK Party and its partner the MHP. At least at the moment, these parties do not seem to be open to discussing key issues such as the Constitution and electoral law debates with the opposition. It is known that the real debate is going on – behind the scenes – between the AK Party and the MHP.

The government – just as much as the law, university and business worlds and civil society – should listen to the growing call for reform and the sum of these proposals put forward in the name of building a better judiciary.

Fair jurisdiction is what we all need.