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Comments and Suggestions
on the Draft Amendments to the
Judgeship and Prosecutorship Interview Examinations
in the Judicial Reform Strategy 2019 Document
1st Reform Package

Publications and Activities of Better Justice Association



Identifications and Recommendations to Improve the Judiciary System



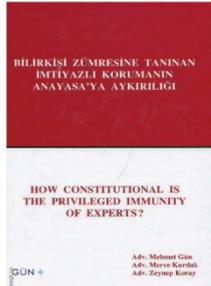
Quality and Aspects of Quality in Judicial Services



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Proclamation

As the members of the Better Justice Association, we hereby declare and undertake that:

We shall work to improve our Judicial System, which is one of the essential pillars of democracy, and is a keystone to lead our country to a better future, as well as to its functioning;

During our activities to that effect, we shall make every effort to embrace all stakeholders in the Judicial System, including related official and private bodies, non-governmental organizations, judges, prosecutors, advocates, other judicial officers, and academicians and representatives from the business world, to have them meet on common ground, as well as to generate innovative, progressive and reformative solutions, through multi-voice thinking and harmonizing different ideas, and to put these theoretical solutions into practice;

We shall contribute to the Constitution and law-making activities by bringing forward proposals aimed to reform the Judicial System;

Within the scope of our activities:

1. We shall abide by the fundamental and universal judicial principles;
2. We shall safeguard our country's greatest interests;
3. The Rule of Law, Honesty, Transparency and Accountability are our highest priority values;
4. We shall take a stand against misconduct in judicial proceedings, and shall make every effort towards honesty, as well as full and frank disclosure of all facts of disputes and evidence;
5. We shall take a conciliatory position in every kind of public dispute;
6. We shall make concerted efforts to ensure that our Association embraces all segments of society;
7. We shall be impartial and treat equally all public, private institutions and organizations, non-governmental organizations and political parties;
8. We fully support the ten fundamental principles addressing matters of Human Rights, Environment, Fight against Corruption and Labour Law, which constitute the basis for the UN Global Compact initiative.



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Comments and Suggestions on the Draft Amendments to the Judgeship and Prosecutorship Interview Examinations in the Judicial Reform Strategy 2019 Document 1st Reform Package

As a non-governmental organization that stands for the idea that it is mandatory to improve the quality of judicial services, the Better Justice Association wishes to contribute to make the interview stage of examinations for the recruitment of judges and prosecutors transparent and accountable, to eliminate the existing public concerns that interviews are subject to political manipulation, and to ensure the highest degree of competence.

Judges and prosecutors who are appointed and authorized to exercise judicial power on behalf of the Turkish Republic, having a population of 82 million, serve a determinative function with the decisions rendered by them, within the following framework:

- i. Ensuring the rule of law;
- ii. Ensuring the use of state power in accordance with the laws, and ensuring accountability of all officers who exercise this power;
- iii. Reinforcing society's faith in justice and institutions;
- iv. Reinforcing the environment of trust in Turkey by protecting individual rights and freedoms, diversity of views, as well as freedom of expression, enhancing citizenship consciousness, innovation ability and capacity and, thereby, accelerating technological development;
- v. Enhancing economic growth through an improvement in Turkey's level of development and by enabling quantitative and qualitative increases in the production of goods/services; and
- vi. Ensuring fair distribution of the achieved prosperity level, as well as the obligations undertaken to reach it.

For this reason, the requirements of entrance to these professions should be determined with the highest degree of sensitivity. In addition to the written examinations given to measure the candidates' general and professional knowledge level, verbal interviews are also conducted for admission to these important professions. The interview process should be designed in a manner consistent with the principles of transparency and accountability, as well as with generally accepted international standards.

In the first judicial reform package submitted to the Turkish Grand National Assembly, regarding the interviews for candidate judges and prosecutors, it was suggested to increase the number of members of the interview committee to seven, by including the General Secretary of the High Council of Judges and Prosecutors, as well as a representative from the Advisory Board of the Justice Academy of Turkey.

The provision that was suggested to be amended, as well as draft amendments, are as follows:

Current text:

Draft amendment to the 1st Judicial Reform Package (written in bold red letters)

Article 9/A – (Annex: 1/12/2007-5720/3)

(Amended paragraph: 20/2/2019-Art. 7165/4)

The Interview Board is made of five members in total: the Deputy Minister to be appointed by the Minister of Justice, who will also chair the Board, Chairman of the Inspection Board, General Managers of Legal and Personnel Affairs..

Article 9/A – (Annex: 1/12/2007-5720/3)

(Amended paragraph: 20/2/2019-Art. 7165/4)

The Interview Board is to be comprised of seven members: The Deputy Minister to be appointed by the Minister of Justice, who will also chair the Board; the Chairman of the Inspection Board; the **General Managers of Legal and Personnel Affairs; and the General Secretary of the High Council of Judges and Prosecutors, as well as a representative from the Advisory Board of the Justice Academy of Turkey.**

Among the members Advisory Board of the Justice Academy of Turkey, a) one member of the Court of Appeal or the State Council, in the event there is more than one member; b) one member of the judges and prosecutors, who hold office in the Advisory Board, in the absence of any member of the Court of Appeal or the State Council, shall be appointed to the Interview Committee for each examination depending on the type of examination, by secret vote of the majority of the Advisory Board.

The Better Justice Association is of the opinion that the draft amendment introduced for the interviews that are conducted following the written examinations for candidate judges and prosecutors, as highlighted in the above-given table, is not sufficient to meet the expectations created by the Judicial Reform Strategy 2019 document, nor to eliminate the concerns and criticisms that have arisen in the public community with regard to the interview stage.

Conducting interviews to be concluded for the appointment of judges and prosecutors by a committee, the majority of which is comprised of administrative officials from the Ministry of Justice, being elements of the executive power, is contrary to the principle that judicial power should be separated from the executive power.

Presently, the main and principal solutions suggested by the Better Justice Association to improve the subject matter draft amendment for the interviews of candidate judges and prosecutors are as follows:

1. The principles of transparency and accountability should prevail at each stage of the interviews:

In the motion granted by the 12th Chamber of the State Council on 16.05.2018 for stay of execution, which was approved by the 26.09.2018 dated and 2018/538 numbered decision rendered by the State Council's Plenary Session of Administrative Law Chambers: Conducting verbal interviews for appointment of municipal police officers was found to be against the law on the grounds that "such interviews will be open to all kinds of subjective evaluation, and these interviews will render the objective conditions of [written] examinations ineffective, even if partially, and it will lead to consequences giving rise to subjective evaluation."

It is imperative to design the interview questions for candidate judges and prosecutors in a manner so as to eliminate any possibility of "subjective evaluation," as worded in the referred to decision and, thus, to enable transparency and accountability. With this aim, the practice of recording interviews, which had been previously implemented, should be reintroduced, and the current lack of record-keeping and accountability should be obviated.

2. The interviews should be conducted by a highly competent committee comprised of members having established trust in society, not executive officials, and members who cannot be subject to undue influence under any circumstances whatsoever.

Independency and impartiality of the committee which plans and conducts the interview process should be guaranteed.

To ensure this, members of the committee may be appointed by lot from a pool of members of the High Council of Judges and Prosecutors, senior judges having the highest conduct grade, and members of the Union of Turkish Bar Associations.

Taking the urgency of the matter into account, at the first stage, it should be considered as a solution to appoint members of the Interview Committee by lot from senior judges having the highest conduct grade.

In this manner, public concerns over interviews that candidates with influence are favoured against the candidates who exhibit the greatest success in the written examinations should be given due consideration and eliminated.

3. The following matters should be primarily resolved by the Planning Committee

- At which stage will the interview be conducted?
- Which candidates will be invited to be interviewed?
- Which objectives are aimed to be achieved through the interview process?

Within this scope, interviews should never be considered as “a security clearance and intelligence verification.” Relevant examinations have already been conducted by separate authorized units of the State. The main principles taken as a basis for the interview process should be objectively established, and these principles should be announced to the public.

- Content of the interviews and the success criteria to be taken as basis for evaluation - how and by whom will the interviews be conducted?

Interview modules should be designed in a manner to serve as merit-based selection of the candidates based on their competence when the candidates' scores are summed up.

A professional human resources evaluation process should be conducted within the scope of which the criteria of competence for judges and prosecutors are objectively determined. Integration of modern evaluation methods employed by competent and professional institutions aimed to objectively ascertain the candidates' IQ and EQ scores, as well as communications skills, into the interview process will minimize the risk of subjective evaluations, and will increase the accuracy of the interview process in respect of measuring professional competence.

Additionally, candidates' extracurricular academic success (participation in moot court hearings, participation in article writing contests and achievements in such contests, graduation from another university, graduating with a master's degree), published works, sports, artistic and intellectual activities, should be separately and objectively scored to constitute a part of the relevant candidates' total scores. It should be determined and announced beforehand which extracurricular achievements will be included in the score.

- **Objection and audit process**

Regarding the results of the entrance to judgeship and prosecution examinations, interested parties should be granted the right to object, and the right to sue its cancellation, and relevant actions should be quickly resolved.

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CONCLUSION:

In Turkey, the main solution that will increase the quality and quantity of human resources in a sustainable manner is to ensure quality and sustainability of the educational system in the long term. Under the general circumstances dominating the current educational system however, redesigning of the entrance examinations to the professions of judgeship and prosecutorship would be the quickest and most sustainable quality-increasing measure to be adopted.

As a part of the admission processes for the profession of judgeship and prosecutorship, interviews that are conducted, in addition to the written admission examinations, should be designed in a manner so that the public is assured that competent candidates are selected, and discrimination or favouritism are never allowed. Interviews and examinations should be conducted in a transparent manner and be open to judicial audit.

Furthermore, all stages that are required to be completed for admission of judges and prosecutors, written examinations and interview processes should be planned with scientific methodology, and by all stakeholders related to the matter.

The Better Justice Association is ready to voluntarily participate in, contribute to the works to be carried out to that effect, and to take responsibility in this context.

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