

27 April 2023

**TO THE PRESIDENTIAL CANDIDATES  
& POLITICAL PARTY LEADERS**

**CALL FOR JUDICIAL REFORM**

We, the Better Justice Association, are a politically neutral think-tank that has been working on a voluntary basis for over 10 years to develop solutions to the judiciary's problems.

We call on you, the presidential candidates and political party leaders, to pledge to the public prior to 14 May 2023 elections that you will solve the judiciary's problems, that are the root of all of Türkiye's problems, and to make judicial reform the very first matter you attend to after assuming Office.

**The Judiciary's Fundamental Problems**

We would like to begin by emphasising that independence is the first and foremost condition for the provision of quality judicial services. And yet the judiciary in Türkiye is not independent! The judiciary is de jure dependent on the legislature and executive and de facto bound to the Ministry of Justice. A judiciary cannot be impartial if it is not also independent. Democracy and the people's welfare regress when the judiciary is not independent.

The rule of law is seriously neglected within the judiciary itself. All the Council of Judges and Prosecutors' (HSK) decisions except for removal from office are beyond judicial review. Offences committed by judges and prosecutors can only be prosecuted if the HSK allows it while the offences of members of the Court of Cassation and State Council can only be prosecuted if the respective organisations and their colleagues consent to the prosecution. Their refusals to consent are final, cannot be appealed, and are without any legal remedy or scrutiny.

Public officials are exempt from The Constitution's foundational principles of "equality before the law" and the "rule of law". They have become a privileged group that is immune from responsibility and untouchable by the judiciary. The judiciary's hands are bound against offences committed by public officials. The judiciary's ability to



enforce the law against offending public officials is entirely contingent on the precondition of permission by the officials' superiors:

- a) Prosecuting the offences committed by the president or ministers are as difficult as amending the Constitution. 301 MPs' votes are needed to propose their prosecution, and 360 are required to proceed with the prosecution.
- b) As was the case with the Pamukova train and Soma mine disasters, offending high-ranking public officials cannot be prosecuted unless the president and relevant ministers grant the judiciary permission to do so.
- c) In addition, the prosecution of other public officials requires the permission of their superiors.

This situation whereby culpable individuals can gain de facto immunity by the decision of their superior or relevant institution and innocents may be unjustly indicted and tried has forced the judiciary and civil service into absolute subordination to politicians, removing them from their roles as guardians of the rule of law and guarantors of stable governance, respectively.

MPs' immunity needs to be strengthened and developed in a manner that prevents its abuse. MPs' immunity may be revoked for ulterior political motives, while also being abused by some politicians to avoid prosecution for committed offences.

The judicial system is inefficient and unable to resolve the millions of disputes it handles with reasonable quality, within a reasonable length of time and at reasonable cost. It fails to provide quality judicial services and facilitate societal reconciliation, establish peace in society, and strengthen trust in justice.

### **The flaws' diseconomies and the solutions' benefits**

Türkiye is struggling to solve its social, political, and economic problems and realise its rich potential because of judicial issues in dire need of solution. Our country is unable to surpass the middle income, mediocre education, and middle-democracy traps and it has regressed into a hybrid regime. Income inequality is growing, and societal peace and calm is being eroded.

Türkiye can effectively combat corruption and attract investment by providing stability and predictability through the strengthening of the rule of law by a proficient and efficient, high-quality, accountable, independent and impartial judiciary. Creating a climate of freedom which upholds the rule of law can reverse brain drain, foster invention

and innovation, and increase the production and export of high value-added products. This could turn the current account deficit into a surplus and quickly quadruple or quintuple our GDP per capita to around \$30,000.

### **The first steps towards a solution**

The judiciary must be made independent of the executive and legislature, and of any other political concerns. It must be made productive, efficient, truly accountable, and completely autonomous in its functioning. To achieve this, it is vital that our country prioritise the fundamental reforms listed below:

1. A Supreme Authority of Justice (the Council) responsible for regulating and administrating judicial services must be established. Powers relating to judicial services currently held by the HSK and Ministry of Justice must be transferred to the Council. Every section of society and members of the professions must be represented on the Council, and the composition of its membership must preclude the disproportionate influence of any one person or group of individuals.

All members of the profession must administratively be bound solely to the Council.

The institution should be supported by a Permanent Law Council, which consists of judicial service institutions and service recipients, to consult on the adequacy of judicial services and develop recommendations accordingly.

2. All decisions relating to the administration of the judiciary must be opened to judicial review and anyone wishing should be entitled to commence judicial review. A specialised Supreme Court of Justice with expedited trial procedures must be established to adjudicate such cases.
3. The Constitutional Court's capacity must be increased, and its politicisation must be ended. Anyone must be able to apply for the invalidation of any unconstitutional laws, presidential decrees, including state of emergency decrees, decisions and transactions, and all claims concerning the same subject matter must be adjudicated in a single lawsuit.
4. Judges and prosecutors must be allowed to form their own completely independent professional associations managed entirely by members of each profession, respectively.

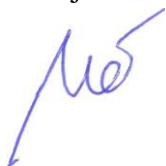


5. Appointment to the Supreme Authority of Justice, Court of Justice, Supreme Court, Court of Cassation, and Council of State must be made completely transparent and the public must be involved in the appointment procedure. Candidates must be put forward and elected through justified and open ballots, and the entirety of the procedure from announcement of candidacies to election and appointment must be made open to judicial review.
6. Criteria for admission into the legal profession must be brought up to standard with developed nations and a uniform path of career progression must be established across the profession to establish equivalency between the various careers within it. The members of the profession must be made equally proficient in theory and in practice and promotions must be made subject to professional and academic excellence and the ability to provide high-quality service. A transparent and fair system of competition between members of the profession must be established. The election and appointment of judges, prosecutors, and notaries must be effected through open competition between equals. Their independence and impartiality must be strengthened with guarantees of tenure and efficient accountability.

The quality of legal education must be raised and the capacity to provide it determined according to the country's needs and objectives without compromising its quality.

7. Courts should be organised into 26 official development zones, specialised tribunal courts should be centralised, and others in convenient locations allowing easy access for the public. The number of courts should be reduced from the current approximately 7 thousand to around 2 thousand.
8. A National Disputes Database must be established to help predict judicial workloads. The judicial resources must be proactively planned. Courts and members of the profession must be made to specialise. Specialised courts must be established with the purpose of facilitating developmental purposes and priorities.

Pre-trial full and frank disclosure of facts and evidence must be instituted to ensure the parties engage in responsible communication encouraging parties to reach amicable settlements instead of resorting to trial. The judicial preparatory courts must supervise the full and frank disclosure and proper preparation of case dossiers, ensure preservation of the disputed interests, and prevent abuses of the process. Cases which now take four to five years to conclude, should be adjudicated in three to four months with expedient and high-quality trials.



A “Judicial Procedural and Adjudication Assistance System” should be developed supported by an ethical artificial intelligence utilising the data and experience accumulated in the National Judicial Informatics Network (UYAP).

9. All pre-permission conditions and requirements for prosecution must be abolished. The High Court of Justice must be given exclusive competence to adjudicate the prosecution of offences committed by the president, ministers of state, members of parliament, and other public officials that occupy high office or critical roles within the state.


The Better Justice Association has developed an “A to Z of Turkish Judicial Reform” proposing innovative solutions and put forward for debate in the domestic and international public sphere. These proposals that we have expounded in commercial, legal, academic, and political spheres have been accepted and supported in full without amendment.

We call on the presidential candidates and all political party leaders to pledge to the public that they will institute comprehensive judicial reforms as the first order of business following the upcoming elections.

We are ready to participate in and support all work to be done with respect to this aim.

**On behalf of the members of the Better Justice Association**

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