

# Türkiye's economic woes reflect defects in rule of law and judiciary

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A better judiciary is essential to improving the business environment, to ensure predictability, to prepare suitable conditions for businesses to flourish and thrive, and to increase cooperation among the economic actors.

On one hand the accelerating race for the local elections on March 31st seems more like a competition to get a share of the corrupt municipal pie than to serve the public. On the other, judicial authorities, not to mention the government, refuse to comply with a judicial decision just as the Court of Cassation did not comply with the decisions of the Constitutional Court regarding Can Atalay. While some decisions of the European Court of Human Rights are not complied with, now the executive is unhappy with and debating whether to comply with the Council of State's decision that cancels the dismissal of about 390 of the approximately 4,000 judges dismissed by a decree during the state of emergency or not.

Additionally, a significant portion of society is sceptical about propaganda for a new and civil constitution which government circles say they will push for after the elections; they fear Türkiye will regress even further from an elective autocracy.

Mired so, no one can see ahead or make long-term plans, and economic problems mount. Resurgent high inflation is making the salaried and retired classes a little poorer each day, crushing them. Exporters are complaining that "foreign exchange rate changes aren't increasing enough to make up for inflation"

while the Central Bank, hesitant to quickly reduce inflation – to not affect the ruling party in the elections – is suppressing exchange rates by squandering borrowed (swap) foreign exchange reserves.

The coincidence of economic woes and judicial problems reveal that they are two sides of the same coin. Lack of confidence in the sustainability and quality of governance, transparency, and accountability of the ruling elite are due to weaknesses of the judiciary and the rule of law, manifesting in economic problems such as inflation, currency pressure, and the impoverishment of the public.

## **The judiciary is unable to function properly**

When the judiciary is autonomous and has the capacity and ability to apply legal rules, it has a positive effect on the behaviour of economic actors, and consequently on the performance of the economy; when it is not, it prevents the country from realizing its true economic potential.

Unfortunately, the judiciary is unable to perform one of its most important duties: to supervise and hold accountable economic policy and decision-makers and their actions. Unable to check arbitrariness and neglect of duty, poor governance results. The judiciary's inability to sustain rule-based and predictable economic management, also leads to the unreliability of information provided by public institutions like the Turkish Statistical Institute (TÜİK), eroding confidence among the economy's actors.

## **Economic woes are rooted in the weak rule of law**

Economists discussing economic governance emphasize the importance of sustainability but omit examination of structural problems disrupting sustainability. Attempts to delineate the negative economic effects of these issues such as the unaccountability of the ruling class, disruptions in the rule of law, the judiciary's inability to perform its duties and natural functions, poor governance, etc. are insufficient.

For example, it is said that the data provided by TÜİK cannot be trusted and that this has negative effects on the economy, but there is little discussion about the legal problems that allow such a strategically important public institution and its public officials to publish untrustworthy data, or what their solutions might be.

The independence of the Central Bank of the Republic of Türkiye (TCMB) is in a similar situation. While the hazards of the loss of its independence are extensively discussed, the illegality of the move by Binali Yıldırım's government that paved the way for the removal of TCMB's governors before their term is not.

Worse still, neither political parties, nor the business world nor civil society organizations seek legal remedies to correct these legal violations.

Consequently, confidence in TÜİK's statistical data is seriously damaged, and economic decisions are being made without reliable information. The TCMB's management, heeding President Recep Tayyip Erdoğan's remarks, catapulted inflation from 19 percent in September 2021 to 80 percent, reducing the base rate to 8.5 percent instead of raising it to maintain price stability, and exhausted foreign exchange reserves in a futile attempt to suppress exchange rates. Mehmet Şimşek, the Minister of Treasury and Finance, and the new management of TCMB has officially stated that solving these problems will take years.

# Restrictions on the judiciary pave the way for corruption

According to Articles 105 and 106 of the Constitution, the votes of 301 members of parliament are required to propose an investigation into the President and ministers, and the vote of 360 members is needed to decide to pursue an investigation. Due to these very high barriers to investigation, the President and ministers are effectively immune from offences of abuse of office. This allows politicians in power to act arbitrarily and corruptly as no investigation can be opened against them. The absence of any investigation of Ruhsar Pekcan, who was dismissed due to corruption, is a terrible example of this.

On the other hand, the investigation of offences of abuse of office by senior public officials, such as those in TÜİK and in the TCMB is subject and conditional upon the president or ministers giving permission. They can confer and withdraw immunity to senior public officials under their command by refusing permission for investigation and they are able to drag the innocent through the judicial system by granting permission for wrongful investigation.

Therefore the judiciary is unable to freely investigate the neglect and violation of duty by the president, ministers, and senior public officials. This is the main cause for unsustainability in state and economic governance. It leads to an unspoken coalition between political powers and senior bureaucrats that protects the criminal. The lack of accountability and impunities the ruling class enjoys create a perfect environment for corruption and bribery. Corruption fundamentally underpins the regression of democracy and its institutions as well devastating the economy for the sake of illicitly enriching a small parasitic segment of the population.

## A leader in corruption

Unaccountability of the ruling class along with Türkiye's insufficient and weak institutions to combat corruption entice and promote corruption in all circles of political, business and other circles of the society. This is the main reason for Türkiye's significant backwardness in global indices in the prevention of corruption.

Türkiye ranks behind Ethiopia at 120th among 193 countries in the World Bank's International Corruption Perceptions Index and at 107th behind Panama, Peru, and Serbia among 177 countries in the International Transparency Organization's Corruption Perceptions Index.

Türkiye is on the grey list of the Financial Action Task Force (FATF) of the Organization for Economic Cooperation and Development (OECD), of which we are a member, alongside underdeveloped countries that we certainly do not deserve to be amidst. And the Minister of Treasury and Finance, Mehmet Şimşek, is trying to get Türkiye off this list!

The Group of States against Corruption (GRECO) of the Council of Europe, of which Türkiye is an official member, stated in its "interim compliance report" dated March 22, 2019, that there has been no concrete progress in Türkiye regarding the implementation of the recommendations for deputies, judges, and prosecutors made in 2017, and in its "fourth round evaluation report" dated June 9, 2023, that Türkiye's compliance with its recommendations is globally unsatisfactory.

# Corruption can bring down both the state and the economy

A legal climate so extremely conducive to corruption and bribery in public administration, erodes the trust and confidence in and amongst economic actors, governance and institutions. Further to this, it creates a vicious cycle which continually worsens the country's administration from which there is no easy escape.

Indeed, the Group of States Against Corruption (GRECO) says: "Since ancient times, corruption has been one of the most widespread and insidious of social evils. When public officials and elected representatives are involved in corruption, public administration suffers devastating damage. [...] Corruption is also a major threat in the private sector, undermining the faith and confidence necessary for the maintenance and development of sustainable economic and social relations."

Meritocracy and justice vanish in an economy where corruption and bribery exist, and social consensus, cooperation, and solidarity are disrupted. Wherever corruption is found, state governance deteriorates, institutionalism disappears, production decreases, the fair distribution of wealth and social justice are disrupted, and the state and economic actors rapidly move away from the rule of law and the independent judiciary that could ensure it.

## Türkiye's two fundamental problems: the rule of law and sustainable governance

The two most fundamental problems that beset the economy and the welfare of the Turkish population are: (i) deficiencies of the rule of law and judiciary and (ii) the unsustainable governance they result in.

Sustainability in governance can only be achieved if the legislative, executive, and judicial powers perform their ordinary functions separately and independently but in harmony with each other. Because the basic function of the judiciary is to monitor the executive, to ensure the rule of law in governance and accountability, the judiciary is the most critical state power.

Therefore, the functional and organic independence of the judiciary is the fundamental condition for establishing predictability and sustainability in state governance. Sustainability in governance does not mean the invariability of governments or individuals ruling it but the consistency and predictability of fundamental policies and administrative decisions that are achieved by adherence to the rule of law.

The inadequacy or restrictions of the independence of the judiciary is the main cause of the fluctuations and fractures of governance we've experienced. For example, if we had established a Constitutional Court when transitioning to a multiparty system in 1946, there might not have been a coup in 1960, our democracy might have developed more stably, and Türkiye might have developed similarly to South Korea. Today, if an independent judiciary could enforce the rule of law, directly holding accountable the ruling class and checking the executive, then we would not be subject to such arbitrary and erroneous decisions.

# The judiciary is handicapped, and the rule of law scorned

The **judiciary** and hence the rule of law is Türkiye's most neglected issue. Of all public services like education, security, health and others, judicial services are in the worst state.

The serious problem remains unsolved because a clique that concertedly agrees on the misuse of strategic state power does not want it to be solved. This clique consists of politicians, senior public officials in coalition with them, possessing legal and de facto privileges such as immunity from liability and impunity. For instance, the law to combat corruption and bribery applies only to junior officials, while the judiciary hamstrung in holding senior officials to account.

On the other hand, non-compliance with the decisions of the Constitutional Court, the Council of State, and the European Court of Human Rights, among many other issues, erodes even the belief that legal protection exists in the country and suppresses freedom of expression, other fundamental human rights, and even property rights.

This situation, which holds our country back in international indices tracking the rule of law and corruption, is devastating for the country's economy. Borrowing conditions become more stringent, the desire for long-term investments in the country disappears, and actors turn to seizing short-term opportunities, leading even the locals to invest abroad.

## Economic success requires a better judiciary and the rule of law

A poor judiciary causes poor governance, and middle democracy and income traps. Escaping these traps is possible only with a better judiciary. The solution to economic problems depends on sustainable governance, and that starts with the solving of the judiciary problem.

In order for Türkiye to escape the middle-income trap, it needs to strengthen businesses and increase their international competitiveness so that it can increase its share in world trade.

A better judiciary is essential to improving the business environment, to ensure predictability, to prepare suitable conditions for businesses to flourish and thrive, and to increase cooperation among the economic actors.

However, to be able to achieve all these the judiciary needs to be efficient, transparent, accountable, fully independent and free from influence from other circles, internally and externally, and it should be structured to best support development, empowered by modern dispute management processes.

Translation: Charles Ediz Gün