



**REPUBLIC OF TURKEY
COURT OF CASSATION**

**DRAFT
COURT OF CASSATION
JUDICIAL CODE OF CONDUCT**

**DRAFT CODE OF CONDUCT FOR PUBLIC
PROSECUTORS OF THE COURT OF CASSATION
AND
DRAFT CODE OF CONDUCT FOR STAFF OF THE
COURT OF CASSATION**

17 July 2017

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PREAMBLE

WHEREAS a competent, independent and impartial judiciary is essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law;

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society;

WHEREAS it is essential that Judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system;

WHEREAS the United Nations Universal Declaration of Human Rights proclaimed on 10 December 1948 emphasizes that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law, and is entitled in full equality to a fair and public hearing by an independent and impartial tribunal;

WHEREAS the European Convention for the Protection of Human Rights and Fundamental Freedoms, reaffirming the profound belief of the European countries signatory thereto in the universal and effective protection of the human rights and particularly of the fundamental freedoms declared in the United Nations Universal Declaration of Human Rights, aims to secure the right to a fair trial by affirming that they have a common heritage on respect of freedoms and rule of law;

WHEREAS the Istanbul Declaration on Transparency in the Judicial Process emphasizes that the widest possible dissemination to the public of the judicial code of conduct with which the Judges comply and the fact that the public knows and sees that such code is enforced play a key role in enhancing judicial performance and public confidence in the judiciary;

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary;

WHEREAS the United Nations Economic and Social Council, in Resolution 2006/23 of 27 July 2006, invited Member States, consistent with their domestic legal systems, to encourage their Judiciaries to take the Bangalore Principles of Judicial Conduct into consideration when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary;

THE GRAND GENERAL ASSEMBLY OF THE COURT OF CASSATION upon the proposal of THE BOARD OF PRESIDENTS OF THE COURT OF CASSATION, aiming to provide guidance to the bench members and reporter judges of the Court of Cassation by establishing the standards of ethical behaviour, enable the members of the legislature and executive and lawyers and the public to better understand the judiciary and provide support to the judiciary, define binding professional code of ethics for the Judges without disregarding

the fact that compliance with the code of conduct is the first and foremost responsibility of the Judges, hereby ADOPTS this Code of Conduct.

PART I INTRODUCTION

Title

1. This Code shall be referred to as the Court of Cassation Code of Judicial Conduct.”

Definitions

2. The following definitions shall apply in this Code unless the text warrants otherwise:
“Court of Cassation personnel” includes all the personnel of a court where a Judge serves;
“Fiduciary” includes such relationships as those associated with an executor, administrator, trustee or guardian;
“Judge” includes the First President, Deputy Presidents, Chamber Presidents, Bench Members and reporter judges of the Court of Cassation.

Code

3. The provisions of the Code are as follows:

PART II COURT OF CASSATION JUDICIAL CODE OF CONDUCT

Value 1

INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Rules:

- 1.1 A judge shall reject any attempt to influence his or her decision in any matter before the judge where such attempt arises outside the proper performance of judicial duties.
- 1.2 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 1.3 A judge shall not deviate from the law to appease public clamour, to avoid criticism, or to advance an improper interest.
- 1.4 A judge shall maintain his/her independence in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.5 A judge shall be free from inappropriate connections with, and influence by, the executive and legislative branches of government, and also demonstrate to a reasonable observer to be free there from.
- 1.6 In performing judicial duties a judge shall be independent of judicial colleagues.
- 1.7 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

Value 2

IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision in the appeal process but also to the process by which the decision is made.

Rules:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice, and shall not be influenced by any improper motive or corrupt practice.
- 2.2 A judge shall accord to the parties to a case and their lawyers the right to be heard according to law and equally.
- 2.3 A judge shall, except as authorized by law, not initiate ex parte communications on the merits, or procedures affecting the merits, of a proceeding that is before, or could come before, the judge. A judge may, where allowed by the law, for the cases heard in the capacity of first instance court (except appeal review), with the consent of the parties, confer separately with the parties and their lawyers in an effort to conciliate the parties on a pending matter.
- 2.4 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, members of the judiciary and litigants in the impartiality of the judge and of the judiciary.
- 2.5 A judge shall, so far as is reasonable, so conduct himself or herself, and organize the judge's own and the judge's family's personal and business affairs in such a way as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing, deciding, appeal or otherwise dealing with, cases.
- 2.6 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any public or implicit comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process.
- 2.7 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide or deal with, the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide, or deal with, the matter impartially. Such proceedings include, but are not limited to, instances where
 - 2.7.1 The judge has actual bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings; or
 - 2.7.2 The judge previously served as a lawyer or advisor, or was a material witness, in the matter in controversy; or
 - 2.7.3 The judge, individually or as a fiduciary, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy, or any other interest that could be affected substantially by the outcome of the proceeding;
 - 2.7.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 2.8 A judge shall exercise the judicial function impartially on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the

law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

Value 3

INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Rules:

- 3.1 Considering that justice must not merely be done but must also be seen to be done, the judge shall avoid situations where his or her words and conduct, both personal and professional, may be reproachable or partial in the view of a reasonable observer. The conduct of a judge must reaffirm the people's confidence in the judiciary.
- 3.2 A judge shall, in all activities, exhibit respect for the rule of law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- 3.3 A judge shall not use the judicial office to further his or her financial interests or those of others.
- 3.4 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties, or which might reasonably be perceived as being intended to influence the performance of judicial duties.
- 3.5 A judge shall not knowingly permit judicial personnel or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 3.6 A judge shall not alter the substance of reasons for a decision given orally, or the transcript of evidence, except for the correction of material errors.

Value 4

PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Rules:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. The test for appearance of impropriety is whether the conduct would create in the mind of a reasonable observer a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the courts, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

- 4.4 A judge shall not allow the use of the judge's residence or workplace by a member of the legal profession to receive clients or other members of the legal profession, or use the residence or workplace of another member of the legal profession for such purpose.
- 4.5 A judge shall, in exercising freedom of expression, belief, association and assembly, always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.6 A judge shall avoid taking part publicly in controversial discussions of a partisan political nature.
- 4.7 A judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language.
- 4.8 A judge shall administer his/her or his/her family's assets in a manner not to interfere with the proper performance of judicial duties.
- 4.9 A judge shall refrain from relations involving any relation of interest that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial office, or involve the judge in transactions with lawyers and other persons likely to come before the court in which the judge serves.
- 4.10 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else.
- 4.11 A judge shall not convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.12 A judge shall not use the information acquired by the judge in the judicial capacity for any other purpose not related to the judge's judicial duties.
- 4.13 A judge shall not accept gifts; but may receive a gift, award or similar item which has no substantial value, is symbolic and in the nature of a memento that might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality. The acceptance of a gift as required by international protocol, etiquette, custom or institutional courtesy is excluded. Gifts at a value exceeding the statutory limit shall be kept at the museum of the institution. A judge shall not make gifts which may give the impression of anticipation of a return.
- 4.14 Since the complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial and, indeed, knowledge of the community is essential to the sound administration of justice, a judge may, subject to the proper performance of judicial duties:
- 4.14.1 Write, lecture, teach and participate in activities concerning the law.
- 4.14.2 Meet with public bodies, private organizations on matters relating to the law
- 4.14.3 Serve as a member of an official body, commission, committee or other body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge.
- 4.14.4 Engage in civic activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

Provided that:

- (a) A judge may participate in voluntary fund-raising only if the same does not reflect adversely upon the judge's impartiality and if it does not interfere with the performance of the judge's judicial duties.
 - (b) Where a judge contributes towards or attends such fund-raising, the judge shall not play a central part in its organization unless permitted by the competent authorities.
 - (c) A judge shall not use his or her office to solicit funds for such fund-raising or for any other purpose.
- 4.15 A judge shall not provide advice to the parties to a case even when it is to be provided free of charge.
- 4.16 A judge shall not act as an arbitrator or mediator or perform judicial functions in a private capacity unless expressly authorized by law.
- 4.17 A judge may form or join associations of judges or participate in other organisations representing the interests of judges provided that such act not break the law.
- 4.18 A judge shall primarily speak through his or her judgments. A judge shall not enter into contentious correspondence with litigants and others who may criticise his or her decisions or decisions made by colleagues. A judge shall also refrain from responding to media criticism of his or her decisions, or from making incidental comments about such criticism when sitting on the bench.
- 4.19 A judge shall generally avoid the use of the criminal law and contempt proceedings to restrict legitimate public criticism of judicial performance unless necessary.
- 4.20 A judge shall avoid any speech or behaviour that may be perceived as sexual harassment by a reasonable observer, and not allow persons under his/her supervision to engage in such speech or behaviour.
- 4.21 A judge shall not engage in mobbing against his/her colleagues and personnel, or allow such behaviour.

Value 5

EQUALITY

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Rules:

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources and not grounds for the case such as colour, sex, religion, conscience, belief, culture, dress, language, birth, ethnic or social origin, disability, age, marital status, sexual orientation, social or economic status or other like causes.
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on the said grounds.
- 5.3 A judge shall carry out judicial duties with equal and appropriate consideration for all persons, such as the parties, witnesses, lawyers, court personnel and judicial colleagues.
- 5.4 A judge shall not permit judicial personnel to differentiate between persons concerned, in a matter before the judge.

- 5.5 A judge shall require the parties or their lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on the said grounds to exceed the limits of legal claim and defence.
- 5.6 A judge shall not hold membership in any organization that practises discrimination on the said grounds, and shall not use the benefits or facilities of such an organization.

Value 6

COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Rules:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall particularly observe the working hours, and ensure that the personnel under his/her administration do so.
- 6.4 The judge is responsible for the efficient administration of justice in his or her court. The president of a chamber shall take necessary measures to fairly distribute the case files among bench members or reporter judges.
- 6.5 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties and supervision of the court, taking advantage for this purpose of the training and other facilities which should be made available. Judges with administrative powers shall support, encourage in this respect the judges and personnel administratively subordinate to him or her, and identify the particular ones considering the case load.
- 6.6 A judge shall keep himself or herself informed about relevant developments of international and comparative law, including international conventions and other instruments establishing human rights norms.
- 6.7 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.8 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives and court personnel.
- 6.9 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.
- 6.10 Access to justice being of fundamental importance to the rule of law, a judge shall, within the limits of his or her powers, adopt procedures to facilitate and promote such access.
- 6.11 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.
- 6.12 A judge shall, when performing administrative duties relating to the appointment, promotion, title change and similar personal affairs of judges or personnel, subscribe

first and foremost to competence and merit in a transparent way, and require the same of his or her subordinates.

PART III

JUDICIAL ETHICS ADVISORY COMMITTEE

4.

4.1 A Judicial Ethics Advisory Committee (“Advisory Committee” shall be established to advise judges on the propriety of their contemplated or future conduct.

The Advisory Committee shall consist of 6 bench members, 3 reporter judges, 1 Public Prosecutor of the Court of Cassation and 1 university faculty member who was written scientific works on ethics and served in the ethics committees of universities.

The bench members shall be elected by the Grand General Assembly of the Court of Cassation in the procedure for electing the presidents of chambers of the Court of Cassation. The reporter judges shall be elected by the First Presidency Board from among 20 reporter judges with longest tenure in the Court of Cassation; and the Public Prosecutor shall be assigned by the Chief Public Prosecutor of the Court of Cassation from among 10 Public Prosecutors with longest tenure in the Court of Cassation. The members so elected to the Advisory Committee shall elect, by majority vote, the university faculty member to the Advisory Committee. The secretariat services shall be undertaken by the Deputy Secretary-General of the Court of Cassation as designated by the President of the Court of Cassation.

4.2 The Advisory Committee shall regulate its own procedure.

Opinions of the Advisory Committee

5.

5.1 Judges may request an opinion from the Advisory Committee about the propriety of contemplated or proposed future conduct.

5.2. In furnishing its opinion, the Advisory Committee shall set forth the facts upon which the opinion is based, citing the rules, cases, and other authorities that bear upon the advice rendered, and the applicable principles of judicial conduct.

5.3 The Advisory Committee may issue opinions on its own initiative, on matters of interest to the judiciary.

5.4 The Advisory Committee shall send the original formal opinion to the relevant person requesting the opinion, then prepare aversion that omits the personal information, may send such version to the judiciary, bar associations and law school libraries, and shall post a copy on the website of the Court of Cassation.

5.5 An opinion of the Advisory Committee is not binding, but compliance with such opinion shall be considered to be evidence of good faith.

**REPUBLIC OF TURKEY
COURT OF CASSATION**

**DRAFT CODE OF CONDUCT FOR PUBLIC PROSECUTORS
OF THE COURT OF CASSATION**

17 July 2017

PREAMBLE

WHEREAS the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, and the right to a fair and public hearing before an independent and impartial tribunal;

WHEREAS the organization and administration of justice should be inspired by these principles;

WHEREAS the crucial role that Public Prosecutors play in the criminal justice process places obligations on them to act at all times with respect for and compliance with these principles, and in accordance with the highest ethical standards and in the best interests of justice;

WHEREAS the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders meeting in Havana in 1990 adopted the Guidelines on the Role of Prosecutors;

WHEREAS the Conference of Prosecutors General of Europe, meeting in Budapest in 2005 under the auspices of the Council of Europe, adopted European Guidelines on Ethics and Conduct for Public Prosecutors (“The Budapest Guidelines”);

WHEREAS the Consultative Council of European Judges and the Consultative Council of European Prosecutors jointly adopted, in 2009, the Opinion on the relations between Judges and Prosecutors in a Democratic Society (“the Bordeaux Declaration”);

WHEREAS the United Nations Commission on Crime Prevention and Criminal Justice, in 2008, invited Member States, consistent with their domestic legal systems, to encourage their prosecution services to take into consideration the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors developed by the International Association of Prosecutors when reviewing or developing rules with respect to the professional and ethical conduct of members of prosecution services;

The Presidency of the Court of Cassation and the Chief Public Prosecutor’s Office of the Court of Cassation, having taken into consideration the aforementioned principles, do hereby ESTABLISH the following Code of Conduct for Public Prosecutors of the Court of Cassation.

Title

1. This Code shall be referred to as the “Code of Conduct for Public Prosecutors of the Court of Cassation.”

Applicability

2. This Code shall apply to the Chief Public Prosecutor, Deputy Chief Public Prosecutors of the Court of Cassation, and all Public Prosecutors serving in the Court of Cassation.

Construction

3. This Code shall be construed in accordance with the universal code of judicial conduct.

Judicial Ethics Advisory Committee

4. The provisions of the Court of Cassation Code of Judicial Conduct relating to “JUDICIAL ETHICS ADVISORY COMMITTEE” shall also apply to the Court of Cassation Code of Conduct for Public Prosecutors.

Code

5. The provisions of the Court of Cassation Code of Conduct for Public Prosecutors are as follows

1. PROFESSIONAL CONDUCT

Public Prosecutors of the Court of Cassation shall;

- 1.1 Discharge their duties in accordance with the national and international law,
- 1.2 Maintain the honour and dignity of their profession,
- 1.3 Exercise the highest standards of integrity and care,
- 1.4 Discharge their duties in a fair, impartial, independent and consistent manner and appear so.
- 1.5 Conduct themselves professionally in accordance with the law and the rules and ethics of their profession,
- 1.6 Strive to maintain and enhance their professional knowledge and skills, and keep themselves well-informed and aware of legal developments,
- 1.7 Protect and uphold human dignity and human rights, in full awareness of serving on behalf of the public,
- 1.8 Preserve professional confidentiality,
- 1.9 Respect the right of all people to be held equal before the law, and abstain from discrimination against any person on any ground such as gender, race, colour, language, religion, sect, political or other opinion, sexual orientation, national or social origin, property, prosperity, birth, health, disability or any other status,
- 1.10 Avoid any speech or behaviour that may be perceived as sexual harassment by a reasonable observer, and not allow persons under their supervision to engage in such speech or behaviour,
- 1.11 Perform respectfully and politely the tasks in relation to courts, law enforcement, public entities, personnel, clients and lawyers,
- 1.12 Not engage in mobbing against their colleagues and personnel, or allow such behaviour.

2. INDEPENDENCE

2.1 Public Prosecutors of the Court of Cassation shall discharge their duties in accordance with the law, independently, free of any internal or external influence, on the basis of their assessment of the facts.

3. IMPARTIALITY

Public Prosecutors of the Court of Cassation shall;

- 3.1 Discharge their duties impartially without fear, favour or prejudice.
- 3.2 Not allow their personal or financial interests or their family, social or other relationships, improperly to influence their professional conduct. They shall particularly not act as prosecutors in cases in which they, their family or business associates have a personal, private or financial interest or association.

4. CONDUCT IN CRIMINAL PROCEEDINGS

Public Prosecutors of the Court of Cassation shall;

- 4.1 Discharge their duties fairly, consistently and within reasonable time,
- 4.2 Respect the presumption of innocence and the right of protection against defamation,
- 4.3 Uphold the principle of fair trial as enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and explicitly expressed in the Case-Law of the European Court of Human Rights,
- 4.4 Take care to remain impartial and objective in their relations with the parties,
- 4.5 Strive to make and conclude all necessary and reasonable investigation into the offence,
- 4.6 Exercise their powers objectively, impartially and professionally where they personally conduct or have law enforcement or other officials conduct the criminal investigation,
- 4.7 Ensure, when supervising the criminal investigation, that law enforcement and other officials respect the law and fundamental human rights,
- 4.8 Proceed, in the institution of criminal proceedings, only when a case is well-founded, upon evidence reasonably believed to be reliable and admissible, or otherwise return a decision of non-prosecution,
- 4.9 Ensure that the safety and rights are protected of victims, witnesses and vulnerable groups in need of protection,
- 4.10 Ensure that parties are informed of any alternative dispute resolution options such as mediation and conciliation in the quest for justice,
- 4.11 Safeguard the rights of the suspect and the accused in co-operation with the court and other relevant agencies,
- 4.12 Safeguard the principle of equality of arms, in particular by disclosing information to the suspect and/or accused and his/her attorney in accordance with the law and the principle of fair trial,
- 4.13 Collect all evidence irrespective of whether it is to the advantage or disadvantage of the suspect; examine the evidence to ascertain if it has been lawfully obtained,
- 4.14 Refuse to use evidence obtained through unlawful methods and particularly methods which constitute torture or cruel treatment, against anyone other than those who applied such methods; and ensure that appropriate action is taken against those responsible for using such methods,
- 4.15 Always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness,

4.16 In order to ensure the fairness and effectiveness of investigations and prosecutions;

- (a) Co-operate with law enforcement, courts, parties' attorneys and other government agencies, whether nationally or internationally,
- (b) Render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

5. PERSONAL CONDUCT

Public Prosecutors of the Court of Cassation shall;

5.1 Not compromise the actual or the reasonably perceived integrity, fairness and impartiality of their profession by behaviours and activities in their private lives,

5.2 Respect and obey the law at all times,

5.3 Conduct themselves in such a way as to promote and retain public confidence in their profession,

5.4 Not allow their personal or financial interests or their family, social or other relationships, improperly to influence their professional conduct,

5.5 Not use any information to which they have had access during the course of their work to further their own private interests or those of others,

5.6 Not accept any gifts, prizes, benefits, inducements or hospitality which may be seen to compromise their integrity, fairness and impartiality

5.7 Act, when using the social media, in a manner to protect the honour, independence and impartiality of their profession,

5.8 Not make statements to the public that will compromise the honour, independence and impartiality of their profession.

**REPUBLIC OF TURKEY
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**DRAFT CODE OF CONDUCT FOR STAFF OF THE
COURT OF CASSATION**

17 July 2017

PREAMBLE

WHEREAS modern legal systems recognize as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal established by law in the determination of rights and obligations and of any criminal charge;

WHEREAS competent and impartial judicial staff is essential if the courts are to fulfil their role in upholding this principle;

WHEREAS public confidence in the judicial system is dependent on the perceived integrity of judicial staff who play any role in the administration of justice;

WHEREAS the principal responsibility for court administration, including supervision and disciplinary control of judicial staff, rests with the judiciary;

The “Court of Cassation Code of Conduct for Staff” which has been formulated by the Court of Cassation staff through broad democratic participation in order to set the standards of conduct and service with which the Court of Cassation staff must comply hereby enters into force upon approval by the President of the Court of Cassation. This Code also aims to provide guidance to the presidents, bench members, reporter judges and Public Prosecutors serving in the Court of Cassation and streamline the operation of the judiciary. Its function is to supplement and complement the existing rules without derogating from the other rules of law and conduct which bind such judicial staff.

Title

1. This Code shall be referred to as the “Court of Cassation Code of Conduct for Staff.”

Applicability

2. This Code shall apply to all judicial staff, other than judges, who are in contract or other status, directly or indirectly involved in the operations of the Court of Cassation. All such judicial staff who are no longer employed in the Court of Cassation but who acquired, while still employed, confidential information as defined in Rule 2.5 are subject to Rule 2.4.

Construction

3. All provisions of law, rules and administrative directives governing or regulating the conduct of Court of Cassation staff are deemed to be incorporated into this Code.

Sanctions

4. The breach or violation of any Rule contained in this Code shall constitute misconduct and may attract disciplinary action, but without prejudice to the penalty which may be imposed under any law where the breach is also a criminal offence.

Code

5. The provisions of the Court of Cassation Code of Conduct for Staff are as follows:

Value 1

COMPETENCE AND DILIGENCE

Principle:

The Court of Cassation staff shall discharge their duties with competence and diligence.

Rules:

- 1.1 The Court of Cassation staff at all times perform official duties properly and with diligence, and shall commit themselves exclusively to the business and responsibilities of the office during working hours.
- 1.2 The Court of Cassation staff shall perform the assigned duties expeditiously, efficiently and impeccably within the limits of their authority.
- 1.3 The Court of Cassation staff acting in the capacity of a superior shall, when performing administrative duties relating to the appointment, promotion, title change and similar personal affairs of judges or personnel, subscribe first and foremost to competence and merit in a transparent way, and require the same of their subordinates.
- 1.4 The Court of Cassation staff shall not alter, falsify, destroy or mutilate, or fail to make required entries on, any record within their control. This provision does not prohibit the alteration or expunction of records or documents pursuant to a court order.
- 1.5 The Court of Cassation staff shall not recommend private lawyers to litigants, prospective litigants, or anyone dealing with the judiciary.
- 1.6 The Court of Cassation staff avoid close personal association with lawyers, litigants and other court users, where such association may reasonably give rise to suspicion or appearance of partiality or favouritism.
- 1.7 The Court of Cassation may respond to inquiries concerning court procedures, but they shall not give legal advice, propose to find support or provide insider information and/or introduce themselves in a manner that would create an impression of potentially alter the course of justice.
- 1.8 The Court of Cassation shall not perform any work or duty outside the proper scope of their employment, or request others to do so.

Value 2

EQUALITY

Principle:

The Court of Cassation staff shall observe the principle of equality in all conduct.

Rules:

The Court of Cassation staff shall;

- 2.1 Carry out their responsibilities to the public in a timely, impartial, diligent and courteous manner.
- 2.2 In performing official duties, not discriminate, nor manifest by word or conduct, bias or prejudice based on race, colour, sex, religion, conscience, belief, culture, dress, language, birth, ethnic or social origin, disability, age, marital status, sexual orientation, social or economic status or other like causes.
- 2.3 Not discriminate by dispensing special favours to anyone; nor allow kinship, rank, position or favours from any party or person to influence official acts or duties.
- 2.4 Not engage in mobbing.
- 2.5 Seek to uphold the rights of victims of sexual harassment and mobbing, and comply with confidentiality throughout the grievance process.

2.6 Where in administration capacity, be fair in conduct and distribution of work.

Value 3

CONFIDENTIALITY

Principle:

The Court of Cassation staff shall observe professional confidentiality.

Rules:

The Court of Cassation staff shall;

- 3.1 Not disclose to any unauthorized person any confidential information acquired while employed in the judiciary, whether such information came from authorized or unauthorized sources.
- 3.2 Report confidential information to the appropriate authority when they reasonably believe this information is or may be evidence of a violation of law or of unethical conduct. They shall not be disciplined for disclosing such confidential information to an appropriate authority.
- 3.3 Not disclose confidential information acquired during employment in the Court of Cassation when disclosure by current the Court of Cassation staff of the same information would constitute a breach of confidentiality.
- 3.4 Be aware that confidential information means information that has not been made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers. The notes, drafts, research papers, internal discussions, internal memoranda and similar papers that a judge or a Public Prosecutor uses in preparing a decision or order shall remain confidential even after the decision or order is made public.

Value 4

PROPRIETY

Principle:

The Court of Cassation staff shall act with propriety.

Rules:

- 4.1 The Court of Cassation staff shall avoid conflicts of interest that would compromise integrity in the performance of official duties. The Court of Cassation staff shall also exercise utmost diligence in becoming aware of conflicts of interest, disclosing conflicts to an appropriate authority, and terminating them when they arise.
- 4.2 A conflict of interest shall be deemed to exist in the official duty when:
 - (a) A staff member's objective ability or independence of judgment in performing official duties is impaired or may reasonably appear to be impaired;
 - (b) A staff member derives unfair gains because of his or her official act.
- 4.3 No conflict of interest exists if any benefit accrues to a staff member of the Court of Cassation as a member of a profession, business or organization to the same extent as any other member of such profession, business or organization who does not hold a position within the judiciary.
- 4.4 The Court of Cassation staff shall not;

- (a) Enter into any contract with the judiciary for services, supplies, equipment, or lease or sale of property, apart from the employment contract relating to his or her job position;
 - (b) Use his or her position in the judiciary to assist any member of his or her member's immediate family in securing a contract with the judiciary in a manner not available to any other interested party;
 - (c) Negotiate or recommend the future employment of self or any other person, using his or her position and the name of the institution and promising preferential treatment to third parties in violation of the requirements of his or her office;
 - (d) Solicit or accept any gift, loan, hospitality, advantage, privilege or favour under circumstances from which it is, or could be, reasonably inferred that a major purpose of the donor is to influence the Court of Cassation staff member in performing official duties, nor shall such member permit any member of his or her immediate family to do so.
- 4.5 A staff member of the Court of Cassation who has authority to enter into or approve contracts for the judiciary shall file a financial disclosure statement with the designated authority at the beginning and upon termination of employment, and at times as required by the legislation while so employed. The disclosure shall follow the guidelines established by the designated authority, and include all sources of income, including investments and immovable property, as well as all known income received by the staff member's spouse or dependent children.
- 4.6 The Court of Cassation staff shall not initiate or repeat ex parte communications from litigants, witnesses or attorneys to judges or any other person not compatible with the requirements of his or her official duties.
- 4.7 The Court of Cassation staff shall have careful attire and appearance in accordance with the legislation.
- 4.8 The Court of Cassation staff shall act with propriety in using the social media.
- 4.9 The Court of Cassation staff shall not sexually harass or engage in intolerant conduct, discrimination, psychological pressure against a colleague or a member of the public. Sexual harassment includes, but not limited to:
- (a) Making physical contact that is sexual in nature and exerting pressure;
 - (b) Making gestures, jokes or comments, including innuendoes regarding another person's sexuality.
- 4.10 The Court of Cassation staff shall not use or attempt to use his or her official position to secure unwarranted privileges or exemptions for, or to confer any corrupt or unfair advantage upon, himself or herself or any relation or associate.
- 4.11 The Court of Cassation staff shall not appropriate to himself or disburse by way of loan to himself or herself or any person, court fees, fines or other funds in his custody.
- 4.12 The Court of Cassation staff shall not use, for private purposes, the vehicles and materials entrusted for official duties, nor allow others to use the same.