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# JUDICIAL ETHICS ADVISORY COMMITTEE DECISIONS AND THE RELEVANT LEGISLATION



Ankara  
December, 2023





# **JUDICIAL ETHICS ADVISORY COMMITTEE DECISIONS AND THE RELEVANT LEGISLATION**



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## **“ETHICS, TRANSPARENCY AND TRUST PROJECT OF THE COURT OF CASSATION”**

This book is prepared and published within the scope of the “Ethics, Transparency and Trust Project of the Court of Cassation” which is financed by the Court of Cassation and implemented by the Court of Cassation and UNDP.

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**FIRST CHAPTER:  
JUDICIAL ETHICS ADVISORY COMMITTEE  
DECISIONS**





## **I. A JUDGE TO ACCEPT GIFTS**

### **Abstract:**

- In case the lawyer of a state economic enterprise requests assistance in order to distribute the promotional materials to the Court of Cassation, in accordance with the Art. 3.4 of the Court of Cassation Code of Judicial Conduct, it will be appropriate for the judge to reject this request.

- It is a requirement for the judge to refuse the offer of a gift that is in the nature of promotional materials from a lawyer of a state economic enterprise even if s/he met him/her before being appointed as a judge.



**THE COURT OF CASSATION  
JUDICIAL ETHICS ADVISORY COMMITTEE  
DECISION**

**Application No** : 2018/2

**Decision No** : 2018/1

**Applicant** : ..., Rapporteur Judge

**Application Date** : 21/12/2018

**Decision Date** : 26/12/2018

**Subject of the Application** : A judge to accept gifts on New Year's Day and Bairams.

## **1. Subject and Eligibility of the Application**

1.1. The rapporteur judge at the Court of Cassation named ..., states briefly in his/her application that a schoolmate practising as a lawyer in a state economic enterprise seeks assistance in sending promotional materials such as calendars, planners, ties and scarves both to him and to some of civil chambers of the Court of Cassation and asks for an opinion on how to give a convenient response to such a request.

1.2. The applicant, who is a rapporteur judge at the Court of Cassation, is an eligible applicant since s/he has been serving in the Court of Cassation due to his/her inclusion in the concept of "judge" as specified in the definition article of the Court of Cassation Code of Judicial Conduct.

1.3. This question, which concerns whether a judge's contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

## **2. Ethical Value, Principles and Rules**

2.1. Giving materials such as calendars, planners, ties and scarves free of charge to a judge on the New Year's day and bairams is included in the scope of "gift".

2.2. According to Art. 3.4 of the Court of Cassation Code of Judicial Conduct,

“a judge and members of the judges’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.” This article on absolute (without any exception) prohibition of gift regulates situations that are likely to be associated with any trial (remotely or closely) before, during or after the trial. This includes the parties to the case, their lawyers or the immediate surroundings of these people or the judge, regardless of whether the case has been concluded or not. In case of an absolute prohibition of accepting gifts, it must be rejected in any case, irrespective of the nature, quantity or conditions of the privilege granted or provided (Aydin, İ., Saldirim, M. *The Court of Cassation Code of Judicial Conduct Facilitator Handbook*, 2018, pp. 31-2).

2.3. In cases of absolute prohibition of accepting gifts, the judge must not accept gifts and must take necessary measures to prevent the court staff from accepting gifts. As a matter of fact, according to Art. 3.5 of the Court of Cassation Code of Judicial Conduct “a judge shall not 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”.

2.4. Accepting gifts in cases which are not associated with the trial or where there is no possibility to be associated is regulated in Art. 4.13 of the Court of Cassation Code of Judicial Conduct. According to this article: “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 included. 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”.

### **3. Evaluation of the Application**

3.1. The merits of the application focuses on a lawyer in a state economic enterprise who wants to send promotional materials such as calendars, planners,

ties, scarves to the judges of the Court of Cassation. In the framework of the rules described above, the problem must be handled within the context of the principles regarding judges' accepting gifts.

3.2. From past to present, giving gifts has been seen as a tradition and a culture of giving gifts has emerged in social life. The word 'gift' that is synonymous with the word 'present' is defined as "a thing given to someone to make happy, to please, to honor, to congratulate or in nature of memento" in the Turkish Language Association. Offering gifts has two different purposes: "Volunteering-good will" and "reciprocity-ill will". Gifts given on a voluntary basis may aim to make the person happy and strengthen the relationship. Gifts based on reciprocity, on the other hand, are given for the purposes such as creating a sense of obligation and a sense of expectation in return. In the first one, the presenter has no expectation of benefit, whereas in the second, the person who gives a gift has the intention of getting the service easily and quickly. As a matter of fact, gifts can provide the establishment of a system of chain relations and as a result, it can be perceived as a future investment. A person who presents a gift or provides important services can make implicit claims or move to the upper position by putting the recipient under an obligation.

3.3. On the other hand, the sense of trust arising from the relationship between the judge and the public is the determinant of trust in the system and the institution. Trust has various sources. The first one is personality-based trust. The personality traits, integrity, abilities, professional skills and consistent behaviors of the judge constitute a tendency on people to trust more in developing personality-based trust. The second type of trust can be called "institutional trust". People with institutional trust believe that the work and procedures related to the institution can be performed spontaneously without any need for control or monitoring. Thus, this trust emphasizes the responsibility of the judge to be impartial and to appear impartial. As a matter of fact, in Art. 2.4 and 3.1 of the Court of Cassation Code of Judicial Conduct, the duty of a judge, individually and collectively, to maintain and enhance the confidence of the public in terms of impartiality and integrity has been regulated.

3.4. As the state economic enterprise carries out its activities fully according to the provisions of the private law and as can be clearly understood from the application petition, it has cases pending before the judicial court or the Court of Cassation. Hence, the rule that should be applied in relation to the the present application is the Article 3.4 of the Court of Cassation Code of Judicial Conduct,

as well as the general principles referred to in the above paragraphs. The fact that the lawyer of the state economic enterprise's proposal to supply such materials especially to some civil chambers also shows that the cases that are pending, concluded or are likely to come in the future have been taken into consideration.

3.5. The judiciary should not discriminate between state-owned private law legal entities and other persons. Giving gifts from a state economic enterprise to judges, the judges' using those gifts or the visibility of those gifts at the Court of Cassation may undermine the appearance of integrity in the eyes of other party to the case where the state economic enterprise is a party and of the public.

3.6. It is not proper for the judge who asks for the opinion from our committee to accept the aforementioned materials for the reasons described above. Even if a measure that the judge will not deal with the cases where his or her friend is a party can be taken into consideration, a judge is obliged to avoid behaviors that may cause his/her disqualification. In Art. 2.5 of the Court of Cassation Code of Judicial Conduct, it has been clearly stated that: "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 economic activities 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".

## **4. Decision**

On 26.12.2018, the Committee unanimously decided that:

4.1. In case the lawyer of a state economic enterprise requests assistance in order to distribute the promotional materials to the Court of Cassation, in accordance with the Art. 3.4 of the Court of Cassation Code of Judicial Conduct, it is proper for the judge to reject this request.

4.2. The judge must refuse the offer of a gift that is in the nature of promotional materials from a lawyer of a state economic enterprise even if s/he met him/her before being appointed as a judge,

4.3. The applicant should be notified of the advisory decision,

4.4. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).

## **II. A JUDGE TO WRITE A LETTER OF REFERENCE**

### **Abstract:**

- It is inappropriate for the applicant judge to write a letter of reference.





**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2018/1  
**Decision No** : 2019/1  
**Applicant** : ..., Deputy Secretary General of the Court of Cassation  
**Application Date** : 10/11/2018  
**Decision Date** : 24/01/2019  
**Subject of the Application** : A judge to write a letter of reference.

**1. Subject and Eligibility of the Application**

1.1. A short-term expert working within the scope of the Project under the applicant's responsibility requested a letter of reference from him/her to use in another Project, accordingly the applicant requested to be informed about whether providing such a reference letter is in compliance with the codes of conduct or not.

1.2. The Deputy Secretary General requesting opinion, who is included in the concept of "judge" as specified in the definition article of the Court of Cassation Code of Judicial Conduct, is an eligible applicant.

1.3. This question, which concerns whether a judge's contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

1.4. The requested draft reference letter is in English and since the documents subject to the application have to be translated into Turkish according to Judicial Ethics Advisory Committee Instruction on Filtering, this deficiency was completed by the applicant with the request of the Secretariat.

**2. Definition of the Application**

2.1. In the content of the requested draft reference letter, there is an evaluation regarding X working as an ... expert in ... project as follows:

“To whom it may concern,

This is to certify that Ms./Mr./Mrs. ... has been working as National Communication Consultant for the UNDP funded project “...” since August 2018. His/Her mission started in August 2018 and is forecast for 40 to 48 man-days.

Duties of Ms./Mr./Mrs. ... is including the support to the project for developing the communication strategy and the action plan. Within the communication strategy and the action plan of the Court Cassation, it is aimed to maintain better relations with high courts, Ministry of Justice, Bars Association, universities, NGOs, media and other related stakeholders in Turkey. Thus, it is aimed to create prejudice-free environment, increased trust in public and ownership in respect of judicial activities.

The Republic of Turkey Court of Cassation expresses a high degree of satisfaction for the performance of the expert and as such we are grateful for Ms./Mr./Mrs. ... 's valuable input to the successful implementation of communication activities.

Yours sincerely,

2.2. The statements here are not referring to the personality of the person, but aim to provide an objective assessment of his/her work. More clearly, an evaluation of the activities pursued by the person seeking reference are included in the letter rather than the person himself/herself.

### **3. Relevant Ethical Value, Principles and Rules**

3.1. As it is stated in the last paragraph of the Preamble to the Code of Judicial Conduct that one of the aims of the code of judicial conduct is to complete “binding professional codes”, the judge should be attentive not to act in contradiction with the provisions of the relevant legislation. In this respect, first of all, the contract of service or the provisions regarding the contract of employment should be examined. According to the article 426 of the Turkish Code of Obligations (TCO), “the employer is all the times obliged to provide a certificate of service containing type and term of work upon request of the worker. In case the worker expressly requests, the service document shall also indicate his/her skills, attitudes and behaviors. The new employer who recruits the worker or worker who has been damaged due to the fact that the service document is not provided in due time or that the information in the document is

incorrect may claim compensation from the previous employer”. On the same matter, according to Article 28 of the Labour Law, “the employer must furnish the employee leaving employment with a certificate stating the nature and duration of employment. The employee who suffers a loss or the new employer who has recruited him may claim compensation from the previous employer for the latter’s failure to furnish the certificate on due time or for the incorrect information contained in the certificate. Such certificate is exempt from taxes and fees”. These provisions may be applied if the judge is an employer or represents the employer on behalf of his/her institution. In this case, however, the employer that is the contracting party is UNDP. Therefore, an applicant judge who is not an employer or does not represent an employer is not obliged to submit a letter of reference as required by law.

3.2. According to Article 3.3 under the title of “Value 3- Integrity” of the Court of Cassation Code of Judicial Conduct, “A judge shall not use the judicial office to further his or her interests or those of others”. Therefore, the judge should not allow the person requesting a letter of reference to use the reputation of a judge. This is important in terms of ensuring and enhancing the confidence of public in the impartiality of a judge (The Code of Judicial Conduct, Art. 2.4)

3.3. In Commentary on the Bangalore Principles of Judicial Conduct, as for the letter of references requested from judges, it is stated that:

“There is no objection to a judge providing a letter of reference, but caution should be exercised for a person may seek such a letter not because he or she is well known to the judge, but solely to benefit from the judge’s status. In relation to letters of reference, judicial stationery should generally only be used when the judge has gained personal knowledge of the individual in the course of judicial work. The following guidelines are offered: 1. A judge should not write a letter of reference for a person he or she does not know. 2. A judge may write a letter of reference if it is of a kind that would be written in the ordinary course of business (e.g. a court employee seeking a reference with regard to work history). The letter should include a statement of the source and extent of the judge’s personal knowledge, and should ordinarily be addressed and mailed directly to the person or organization for whose information it is being written. In the case of a personal employee of the judge, such as a law clerk who is seeking other employment, a general letter of reference might be provided and addressed “To whom it may concern”. 3. A judge may write a letter of reference for someone whom the judge knows personally but not professionally, such as a relative or

close friend, if it is of a kind that he or she would normally be requested to write as a result of a personal relationship.” Commentary on the Bangalore Principles of Judicial Conduct (Commentary). (2007). ViennaAustria: UNODC Publication, p.101)

#### **4. Ethical Evaluation**

4.1. Requesting a letter of reference is the most natural right of those working in a place or at a work for a certain period of time (TCO art.426). Working with a judge should not prevent exercising the use of this right. However, in this case, even if the applicant judge has knowledge about the works of the person seeking letter of reference, s/he is not in the position of an employer or an employer’s representative. Hence, the fact that the judge does not give a reference letter does not lead to a violation of the right of an employee to ask for a reference. The reference requestor may use his/her legal right to request reference from UNDP, which is in the position of employer according to the contract.

4.2. In the eyes of a reasonable person, it should be considered that giving a reference letter by the judge may cause a number of different perceptions. However, when the content of the reference letter is written correctly, the risks arising from possible misperceptions are reduced. For this reason, the letter of reference must first be used to express the truth and be limited to the work of the reference requestor. The letter of reference should not provide an unjust benefit to the reference requestor because it is regulated by a mere judge. On the other hand, when writing a letter of reference, a judge must:

a) be consistent with the duty to strengthen the confidence of public in the integrity and impartiality of the judiciary;

b) have observations and experience deriving from working together with the person s/he recommends, to evaluate the work performance in a sufficient measure and time.

c) ensure that the reputation of the judiciary is not used for his or her interests or those of others.

d) not give a letter of reference if it is possible to provide it by another person or by a better evaluator.

e) carefully refrain from using letterhead stationery unless s/he has justified reasons

f) write a statement of the source and extent of his or her personal knowledge

about the person requesting reference.

## **5. Decision**

On 24.01.2018, the Committee unanimously decided that:

5.1. As stated above and in particular, due to the reasons set forth in Art. 4.1 and Art. 4.2-d, it is inappropriate for the applicant judge to write a letter of reference,

5.2. The applicant should be notified of the advisory decision,

5.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).



### **III. A JUDGE TO TAKE PART IN A QUIZ SHOW BROADCAST ON TV**

#### **Abstract:**

- It is inappropriate for the applicant judge to take part in the quiz show titled as “3’te 3 Tarih” (3 out of 3 History) broadcast on TRT-1.





**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2019/1  
**Decision No** : 2019/2  
**Applicant** : ..., Rapporteur Judge  
**Application Date** : 02/01/2019  
**Decision Date** : 24/01/2019

**Subject of the Application** : A judge to take part in a quiz show broadcast on TV.

**1. Subject and Eligibility of the Application**

1.1. The applicant stating his/her wish to take part in a discreet quiz show called “3’tè 3 Tarih” (3 out of 3 History) which is a broadcast on TRT-1 and requested opinion on whether his/her taking part in such a quiz show is in compliance with the codes of judicial conduct or not.

1.2. The rapporteur judge is an eligible applicant due to his/her inclusion in the concept of “judge” as specified in the definition article of the Court of Cassation Code of Judicial Conduct.

1.3. This question, which concerns whether a judge’s contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

**2. Definition of the Application**

2.1. It is understood that the quiz show subject to advice request is prepared and arranged under the supervision of a history professor and the questions are directed to the contestants by the quiz master who runs the program.

2.2. When the questions asked to the contestants are evaluated, it is seen that various questions aiming to measure history knowledge, starting from easy ones, in general, follow an ever-increasing difficult course. It is understood from the internet video recordings of the quiz show that the contestant who knows

all the questions is awarded with 1,000,000 TL, even the eliminated contestants who have been unable to answer all the questions are awarded with prize money to the extent that they answered correctly.

2.3. In the program, some questions are asked to the contestants, including their educational status and professions, also conversational dialogues are held on how to spend the money to be earned. In addition, short notifications prior to each question are made about the prize money to be earned to the contestant and the audience by the quiz master.

2.4. After the application, those who successfully pass through the pre-selection and interview process can be eligible to take part in the award-winning quiz show. Since the number of applicants is too high, it has been understood from the observations that this process sometimes takes a long time.

### **3. Relevant Ethical Value, Principles and Rules**

3.1. The 4th value of the Code of Judicial Conduct is adopted as “Propriety” and the principle stating “Propriety and the appearance of propriety, are essential to the performance of all of the activities of a judge” is included. Therefore, it is an ethical obligation for a judge to act with propriety and to appear with propriety in all activities. In addition to measuring knowledge in this quiz show, “award winning” element comes to the fore. The theme of “prize money” is frequently emphasized in terms of both content and image, especially in the trailers of the quiz show while asking questions and at the dialogues during the quiz show. Hence, even if the primary aim of the quiz show is not to “win the prize money”, this is a prominent characteristic of it that is reflected to the public. According to Art. 4.13 of the Code of Judicial Conduct, “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”. Considering that the prize money is given as an award, it is not possible to accept this award as something that “does not have a substantial value or in the nature of memento”. For the same reason, the award given as a result of the quiz show is not within the scope

of international protocol, etiquette, custom or institutional courtesy.

3.2. A judge must expect to be the subject of constant public scrutiny and comment, and must therefore accept restrictions on his or her activities that might be viewed as burdensome by the ordinary citizen. The judge should do so freely and willingly even when these activities would not be viewed negatively if carried out by other members of the community or of the profession. This applies to both the professional and the personal conduct of a judge. The legality of a judge's conduct, although relevant, is not the full measure of its propriety. (Commentary on the Bangalore Principles of Judicial Conduct (Commentary). (2007). Vienna Austria: UNODC Publication. Para.114). As a matter of fact, also in Art.4.2 of the Court of Cassation Code of Judicial Conduct, this universal principle of judicial conduct is accepted exactly like that: "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 willingly". Personal restrictions not applicable to other public officials or persons involved in judicial activities may, in some cases, apply to the judge. For this reason, some of the activities that may be involved by public officials or other members of the community dealing with judicial activities such as lawyers may be considered improper for judges.

3.3. As stated in the last paragraph of the Preamble to the Court of Cassation Code of Judicial Conduct that one of the aims of the code of judicial conduct is to complete "binding professional codes ", the judge should be attentive not to act in contradiction with the provisions of the relevant legislation. According to Art.48, paragraph 3 of Law on Judges and Prosecutors (LJP) "Judges and prosecutors may deliver lectures and conferences on topics pertaining to their profession and the judiciary in education institutions and at pre-service, in-service and vocational activities with the permission of Minister of Justice. Judges and prosecutors cannot take any official or special duties other than those specified in law or *engage in gainful occupations*. They shall notify the Ministry of Justice in fifteen days in case their spouses or minor or incapacitated children are engaged in continuous income-generating activities." If the judges are allowed to take part in award-winning quiz shows, whether televised or not, to generate income may be opened to debate within the framework of LJP 48/3 and possible complaints about the violation of code of professional conduct may arise. Therefore, it is important for judges to stay away from engagements that may be interpreted as a violation of code of professional conduct in terms of performing judicial duties diligently. A judge shall, when evaluating the

compatibility of his/her action with codes of judicial conduct, take into account other codes of professional conduct and ensure that s/he does not violate these rules.

3.4. A judge may engage in appropriate extra-judicial activities so as not to become isolated from the community. A judge may engage in the arts, sports, other social and recreational activities, if such activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties. Working in a different field offers a judge the opportunity to broaden his or her horizons, and gives the judge an awareness of problems in society which supplements the knowledge acquired from the exercise of duties in the legal profession. However, a reasonable balance needs to be struck between the degree to which judges may be involved in society and the need for them to be, and to be seen to be, independent and impartial in the discharge of their duties (Commentary, para.166, Court of Cassation Code of Judicial Conduct 4.14). In addition, the judge should not neglect the judicial duty due to labour, time and effort devoted to the extra-judicial activities. As a matter of fact, according to Art. 6.1 of the Court of Cassation Code of Judicial Conduct, "the judicial duties of a judge take precedence over all other activities". Hence, a judge shall devote the judge's professional activities to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decision, but also other tasks relevant to the judicial office or the court's operations (Court of Cassation Code of Judicial Conduct Art.6.2). In case of the judge's extra-judicial activity, one of the criteria applied is that the extra-judicial activity of a judge does not make excessive demands on his or her time (Commentary, para.167/b). The fact that extra-judicial activities take place outside working hours does not just mean that the judge does not spend too much on those activities. According to Art 6/3 of the Court of Cassation Code of Judicial Conduct, along with the provision stating that "a judge shall particularly observe the working hours, and ensure that the personnel under his/her administration do so", also inclusion of the provision in Art. 6/1 shows that the judge's observation of working hours and devotion himself or herself to the professional activity and the identification of the judge with his or her profession is accepted as an ethical obligation. This comment is consistent with the Art. 6/11 of the Code of Judicial Conduct stating that "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". The Court of Cassation Code of Judicial Conduct in line with the principles of universally accepted judicial conduct do not just prohibit

judges from conducting an act condemned by the society, further to that, aim for high standards for promoting and enhancing the values of judicial conduct. As a matter of fact, Commentary on the Bangalore Principles of Judicial Conduct includes similar explanations and comments. According to Commentary, “a judge’s primary duty is the due performance of the judicial function, the principal elements of which involve the hearing and determination of cases requiring the interpretation and application of the law. ... A judge should resist any temptation to devote excessive attention to extra-judicial activities if this reduces the judge’s capacity to discharge the judicial office. There is obviously a heightened risk of excessive attention being devoted to such activities if they involve compensation. In such cases, reasonable observers might suspect that the judge has accepted the extra curricular duties in order to enhance his or her official income (Commentary, para.195)”. The same way of thinking is no doubt valid in terms of prize money quiz shows. Applications for these quiz shows, as well as the pre-selection and interview stages, efforts to give more correct answers and hence to earn more money may result in excessive care and time spent on extra-judicial activity. Such a situation leads to decrease in the capacity of the judge to perform his/her judicial duties. As stated in Commentary on the Bangalore Principles of Judicial Conduct, a reasonable observer might suspect that the judge has taken part in a quiz show to enhance his or her income even if s/he does not have such an opinion or behavior. This kind of impression in public is undoubtedly not consistent with the duty that the judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence.

#### **4. Ethical Evaluation**

4.1. “Prize money” cannot be considered as symbolic or in the nature of a memento that has no substantial value. Hence, according to Art.4/13 of the Court of Cassation Code of Judicial Conduct, it is not appropriate for a judge to take part in a quiz show titled as “3’te 3 Tarih” (History in 3 out of 3) (see § 3.1) Even if it is possible to argue that such a restriction might be viewed as burdensome by the ordinary citizen, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so willingly (See § 3.2.).

4.2. According to Commentary on the Bangalore Principles of Judicial Conduct, “Confidence in the judiciary is founded not only on the competence and diligence of its members, but also on their integrity and moral uprightness. A

judge must not only be a “good judge”, but must also be a “good person”, although views about what that means may vary in different quarters of society. From the public’s perspective, a judge has not only pledged to serve the ideals of justice and truth on which the rule of law and the foundations of democracy are built, but also to embody them. Accordingly, the personal qualities, conduct and image that a judge projects affects the judicial system as a whole and, consequently, the confidence that the public places in it” (Commentary, para.109). For this reason, as well as the competence of judges in the judicial functions, the general appearance and impression that s/he projects is also of great importance. When the quiz show as the subject of the application is examined, it can be foreseen that due to the reasons beyond the control of the judge it may create some risks on the appearance of propriety. As explained above, judges are a constant subject of public scrutiny and are exposed to comments about them (§ 3.2). Even if the contestant does not introduce himself as a judge during the program, s/he will be easily identified by his/her colleagues, judicial staff, the parties to cases s/he is handling, the lawyers in his/her work place. This situation can easily spread to a wider circle via means of communication such as social media and internet. Especially untypical situations, comments, dialogues or even the nature of questions that could not be answered during the quiz show may lead to some risks in the appearance of propriety of the judge. As a matter of fact, in one of the episodes of the quiz show, that the question about 30 August Victory Day could not be answered turned out to be a trending topic on websites and social media and it was reported that the quiz master criticized the contestant about it. The judge should take into account the negative impacts of such probabilities on the appearance of propriety when evaluating the compatibility of his/her future conduct with the codes of judicial conduct.

4.3. Ethical principles are built on values. These values can sometimes be protected by criminal law and sometimes by disciplinary law. The fact that the codes of conduct are regulated in the field of law and even the violation of these principles is subject to disciplinary or criminal sanctions does not rule out the professional conduct as an ethical principle. In the last paragraph of the Preamble to the Court of Cassation Code of Judicial Conduct, by clearly stating that the codes of conduct have been regulated “to complete binding professional codes of the judges”, it is clearly emphasized that the disciplinary and criminal provisions will continue to be applied for judges (Aydın, İ.-Saldırım, M.: *The Court of Cassation Code of Judicial Conduct Facilitator Handbook*, Ankara 2019, p.35). In this respect, it should not be overlooked that the possibility of any matter related to codes of judicial conduct may be disciplined or criminally

investigated. The judge should always consider the relationship between codes of judicial conduct and disciplinary or criminal provisions and evaluate the propriety of his/her future conduct. It should be considered in detail whether the Article 48 of LJP on the issue constitutes a disciplinary problem in participating quiz shows or similar extra judicial activities. At first sight, an extra judicial activity that seems unlikely to pose a problem, by the impact of unforeseen circumstances can cause complications in terms of disciplinary responsibility of the judge. It should be considered that such restrictions as envisaged in the codes of conduct, by serving as a shield, shall protect the judge from dealing with disciplinary investigations.

4.4. When the propriety of the judge's extra-judicial activities is evaluated, the nature of the issue to which time and effort devoted is also important in some cases. According to Article 4.11 of the Bangalore Principles of Judicial Conduct, "a judge may, therefore, write, lecture, teach, and speak on non-legal subjects if he/she may subject to the proper performance of judicial duties interfere with the performance of the judge's judicial duties". Similar to this rule, in Art. 4.14.1 and 4.14.2, the judge is provided with such an opportunity. These articles distinguish the activities such as "participating in community and legal education" on the law, legal system and the administration of justice issues from extra-judicial activities. The reason for this is explained in the Commentary on the Bangalore Principles of Judicial Conduct as follows: "a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, both within and outside the judge's jurisdiction. Such contributions may take the form of speaking, writing, teaching or participating in other extra-judicial activities. Provided that this does not detract from the discharge of judicial obligations, and to the extent that time permits, a judge should be encouraged to undertake such activities" (Commentary, para.156). In terms of participation in legal education, such professional activities by judges are in the public interest and are to be encouraged (Commentary para.157). As a matter of fact, The Delaware Judicial Ethics Advisory Committee (Committee) after stating that extra-judicial activities should be assessed according to the nature of each incident, determined that a judge's service as Chair of the Governor's Consortium on Hispanic Issues is not appropriate. The Consortium has not been established for the economic or political advantage of its members, does not reflect adversely upon the impartiality of the judiciary and is not a party to the cases before the court. However, in the decision, it has been concluded that as the Consortium is concerned with issues of fact or policy on matters other than improvement of the law, the legal system or the administration of justice, and



will involve more than historical, educational and cultural activities, the judge should not accept the appointment as Chair of the Governor’s Consortium on Hispanic Affairs (Judicial Ethics Advisory Committee of the State of Delaware, November 28, 2006, JEAC 2006-7). In accordance with this understanding adopted in the Codes of Judicial Conduct, whether the extra-judicial activities of a judge contribute to the improvement of the law, the legal system, and the administration of justice or not is important. When the subject of application is considered in this regard, a quiz show measuring the knowledge of history has no consistency with “the participation in community and legal education”.

## **5. Decision**

On 24.01.2019, the Committee unanimously decided that:

5.1. As stated above, it is inappropriate for the applicant judge to take part in the quiz show titled as “3’te 3 Tarih”(3 out of 3 history) broadcast on TRT-1,

5.2. The applicant should be notified of the advisory decision,

5.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).



## **IV. A PUBLIC PROSECUTOR TO ATTEND SEMINARS**

### **Abstract:**

- It is ethically appropriate for the public prosecutor of the Court of Cassation to attend the vocational contact meeting that is organized by Union of Turkish Bar Associations and the Bars provided that the described principles are observed.



**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2019/2  
**Decision No** : 2019/3  
**Applicant** : ..., Public Prosecutor  
**Application Date** : 06/03/2019  
**Decision Date** : 14/03/2019

**Subject of the Application** : A public prosecutor to attend seminars with regard to the training of lawyers organized in cooperation with Union of Turkish Bar Associations and the Bars.

**1. Subject and Eligibility of the Application**

1.1. The applicant stated that s/he was invited as a speaker to a vocational contact meeting intended to train lawyers at the weekends which was organized in cooperation with Union of Turkish Bar Associations and the Bars and requested recommendation whether his/her participation in such trainings is in compliance with the codes of judicial conduct or not.

1.2. As Article 4 of the Court of Cassation Code of Conduct for Public Prosecutors includes “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”, the public prosecutor is an eligible applicant.

1.3. This advice request, which concerns whether a public prosecutor’s contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

**2. Definition of the Application**

2.1. It was observed and understood that the vocational contact meetings in discussion were organized in cooperation with Union of Turkish Bar Associations and the Bars, the speakers, without payment, shared their vocational knowledge and experiences with the participants and the program ended with question-answer session and presentation of a plaque.

2.2. It was observed that other than judges and public prosecutors, academicians and legists who have vocational knowledge and experiences, especially who are book writers were invited to these trainings and open resources revealed that sometimes the audio videos related to such meetings were also shared through social media.

2.3. It is understood that the public prosecutor was not paid under the name of “conference fee”, “attendance fee” or under a similar name, only transportation and accommodation fees were paid by the organizers. Therefore the contribution of the public prosecutor to the training activities in question does not have a characteristic feature that provides “income” or “financial benefits”.

### **3. Relevant Ethical Value, Principles and Rules**

3.1. According to Art.5/6 of the Court of Cassation Code of Conduct for Public Prosecutors, under the title of “Private Conduct”, public prosecutors of the Court of Cassation shall not accept any gifts, prizes, benefits, inducements or hospitality which may be seen to compromise their integrity, fairness and impartiality. Since there is no clear provision on the gifts and rewards stated in this article that may compromise the integrity and impartiality of public prosecutors, with reference to Art.3 under the title of Construction of the Court of Cassation Code of Conduct for Public Prosecutors, the Court of Cassation Code of Judicial Conduct will be taken into account. The 4th value of the Court of Cassation Code of Judicial Conduct is adopted as “Propriety” and the principle stating “Propriety and the appearance of propriety, are essential to the performance of all of the activities of a judge” is included. Therefore, it is an ethical obligation for a judge and a public prosecutor to act with propriety and to appear with propriety in all activities. According to Art. 4.13 of the Court of Cassation Code of Judicial Conduct: “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.” When these provisions are taken into consideration, it does not constitute a contradiction to the Code of Conduct that a public prosecutor attending a training seminar accepts a *plaque which has no substantial value, is symbolic and in the nature of a memento*. In addition, due to the fact that the training activities were conducted out of town, the transportation, hospitality and accommodation which is limited by the duration of the training and do not exceed the usual and modest limits of

hospitality will be covered by the organizers, it does not violate the Art 5/6 of the Court of Cassation Code of Conduct for Public Prosecutors.

3.2. As stated in the last paragraph of the Preamble to the Court of Cassation Code of Judicial Conduct that one of the aims of the code of judicial conduct is to complete “binding vocational codes”, the judge should be attentive not to act in contradiction with the provisions of the relevant legislation. According to Art.48, paragraph 3 of Law on Judges and Prosecutors (LJP) “Judges and prosecutors may deliver lectures and conferences on topics pertaining to their profession and the judiciary in education institutions and at pre-service, in-service and vocational activities with the permission of Minister of Justice. Except for this provision, it is appropriate for the judges and public prosecutors to review the relevant legislation about attending course, conference or similar activities and to ask for written opinion from the authority about how the legislation is interpreted and applied in order to prevent the risks that may arise from unusual events later.

3.3. According to Art. 5.1 of the Court of Cassation Code of Conduct for Public Prosecutors regulated under the title of “5. Private Conduct”, public prosecutors of the Court of Cassation shall not compromise the actual or the reasonably perceived dignity, integrity and impartiality of their profession by behaviors and activities in their private lives,” Since there is no clear provision on private life stated in this article, considering Art.3 under the title of “Construction” of the Court of Cassation Code of Conduct for Public Prosecutors, the Court of Cassation Code of Judicial Conduct will be taken into account. As stated in Art. §3.4. of decision no 2019/2. dated 24/01/2019 of the Judicial Ethics Advisory Committee decision, “A judge may engage in extra-judicial activities so as not to become isolated from the community. A judge may engage in the arts, sports, other social and recreational activities, if such activities do not detract from the dignity of the judge’s office or interfere with the performance of the judge’s judicial duties. Working in a different field offers a judge the opportunity to broaden his or her horizons, and gives the judge an awareness of problems in society which supplements the knowledge acquired from the exercise of duties in the legal profession. However, a reasonable balance needs to be struck between the degree to which judges may be involved in society and the need for them to be, and to be seen to be, independent and impartial in the discharge of their duties (Commentary, para.166, Court of Cassation Code of Judicial 4.14). Moreover, the judge’s labor, time and effort devoted to his extra judicial activities should not interfere with the performance of the judge’s judicial duties.

Within the context of the explanations above, there is no concrete information or indication that there is a risk that the applicant would neglect his duties due to attending above-mentioned training activities that are carried out at the weekend and out of working hours.

#### **4. Ethical Evaluation**

4.1. The plaque that was given to the applicant at the end of the training should be regarded as a plaque which was given to every speaker, has no substantial value, is symbolic and in the nature of a memento. Therefore, the public prosecutor may receive a plaque within the limitations set out at the end of the vocational contact meeting. The fact that the transportation, hospitality and accommodation which was limited by the duration of the training and do not exceed the usual and modest limits of hospitality was covered by the organizers does not violate the Art. 5/6 of the Court of Cassation Code of Conduct for Public Prosecutors (see §3.1).

4.2. By taking into account that one of the aims of the code of judicial conduct is to complete “binding vocational codes”, in accordance with the relevant legislation or practices, the applicant should examine whether attending in vocational contact meetings is subject to permission of a competent authority or not and if necessary should obtain permission (§3.2). At first glance, an extra-judicial activity that would seem as not posing a problem, with the effect of some previously unpredictable conditions, could lead to complications in terms of disciplinary responsibilities of the applicant. Such restrictions as envisaged in the Code of Conduct should serve as a shield and should protect the applicant from any potential disciplinary proceedings.

4.3. The nature of subject matter that takes time and effort is important in some cases while assessing the appropriateness of the applicant’s extra-judicial activities. According to Art. 4.11 of Bangalore Principles of Judicial Conduct, “subject to the proper performance of judicial duties, a judge may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters. Similar to this rule, the judge is provided with such an opportunity in Art. 4.14 of the Court of Cassation Code of Conduct. In accordance with this provision, “The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial. As knowledge of the community is essential to the sound administration of justice, subject to the proper performance of judicial duties, a judge may: 4.14.1 Write, lecture, teach and participate in activities concerning the law.

4.14.2 Meet with public bodies, private organizations and participate in open sessions on matters relating to the law. These articles distinguish the activities such as “participating in community and legal education” on the law, legal system and the administration of justice issues from extra-judicial activities. The reason for this is explained in the Commentary on the Bangalore Principles of Judicial Conduct as follows: “a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, both within and outside the judge’s jurisdiction. Such contributions may take the form of speaking, writing, teaching or participating in other extra-judicial activities. Provided that this does not detract from the discharge of judicial obligations, and to the extent that time permits, a judge should be encouraged to undertake such activities” (Commentary, para.156). In terms of participation in legal education, such professional activities by judges are in the public interest and are to be encouraged (Commentary para.157). As a matter of fact, The Delaware Judicial Ethics Advisory Committee (Committee) after stating that extra-judicial activities should be assessed according to the nature of each incident, decided that a judge’s service as Chair of the Governor’s Consortium on Hispanic Issues is not appropriate. First of all, the Committee has detected that Consortium in question does not provide an economic or political advantage for its members, does not reflect adversely upon the impartiality of the judiciary and is not a party to the cases before the court. However, in the decision, it has been concluded that as the Consortium is concerned with issues of fact or policy on matters other than improvement of the law, the legal system or the administration of justice, and will involve more than historical, educational and cultural activities, the judge should not accept the appointment as Chair of the Governor’s Consortium on Hispanic Affairs (Judicial Ethics Advisory Committee of the State of Delaware, November 28, 2006, JEAC 2006-7). In accordance with this understanding adopted in the Court of Cassation Codes of Judicial Conduct, whether the extra-judicial activities of a judge contribute to the improvement of the law, the legal system, and the administration of justice or not is also important.

Considering the above-mentioned statements defined in the the decision (§.4.4) dated 24/01/2019 and numbered 2019/2 of the Judicial Ethics Advisory Committee, it is doubtless that these statements made with respect to the judges are also applicable in respect of the public prosecutor as the applicant as a result of the reference in the Art. 3 under the title of Construction of the Court of Cassation Code of Conduct for Public Prosecutors. In this respect, the fact that the applicant shared his/her vocational knowledge and experiences with lawyers in a planned training program is in consistency with the duty to participate in legal education.

4.4. The vocational contact meeting that was attended by the applicant, even with a limited group of lawyers, is open to public access in nature. Especially, it is possible that audio and videos taken during the program can reach a very large audience through social media, such that similar examples were seen in the past. In this respect, taking into account Art.5.8 under the title of “5. Private Conduct” of the Court of Cassation Code of Conduct for Public Prosecutors, the applicant must avoid making statements to the public that will compromise the honour, independence and impartiality of his/her profession. According to Art. 2.5 and 2.6 of the Court of Cassation Code of Conduct, “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 economic activities 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.”(Art.2.5). “A judge shall not knowingly and willingly, while a proceeding is before, or could come before, 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” (Art. 2.6.). The applicant must act in accordance with these provisions in expressing his or her views, either orally or in writing. It is considered inappropriate in comparative law that a judge who has announced a fixed opinion may affect pending and future prosecutions, creating grounds for argument that the judge is fixed-minded (USA, New Mexico Advisory Committee on the Code of Judicial Conduct, 4.6.1991 dated 1991-2 numbered advisory opinion). As such, caution should be exercised in the case of attempts by lawyers to ask questions about pending or future cases. The applicant must avoid announcements suggesting that s/he is swayed by public clamour or fear of public criticism (see. Commentary, para.71). It is doubtless that these statements made with respect to the judges are also applicable in respect of the applicant as the public prosecutor as a result of the reference in the Art. 3 under the title of Construction of the Court of Cassation Code of Conduct for Public Prosecutors.

## **5. Decision**

On 14.03.2019, the Committee unanimously decided that:

5.1. It is appropriate for the applicant to attend the vocational contact meeting that is organized by Union of Turkish Bar Associations and The Bars by observing the principles described above,

5.2. The applicant should be notified of the advisory decision,

5.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).



## **V. APPLICATION OF A LITIGANT TO JUDICIAL ETHICS ADVISORY COMMITTEE**

### **Abstract:**

- Pursuant to the Art. 25/2 of Judicial Ethics Advisory Committee Working Procedures and Principles, the applicant's petition was dismissed on procedural grounds, due to his/her lack of capacity as a judge or a public prosecutor.
- Pursuant to the Art. 26/3 of Judicial Ethics Advisory Committee Working Procedures and Principles, the document can not be sent to another authority or institution.



**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2019/3  
**Decision No** : 2019/4  
**Applicant** : ..., Litigant  
**Application Date** : 6/3/2019  
**Decision Date** : 14/3/2019

**Subject of the Application** : A claim related with a judicial error in the file which was reviewed in the Court of Cassation.

**1. Subject and Eligibility of the Application**

1.1. The applicant is a party to a law file that was reviewed by the Court of Cassation and filed a petition against all the members of the Judicial Ethics Advisory Committee arguing that the decision was wrong.

1.2. According to Part III, Art. V-1 of the Court of Cassation Code of Judicial Conduct, “Judges may request an opinion from the Advisory Committee about the propriety of contemplated or proposed future conduct”. Similar to this provision, according to Art.22, paragraph 1 of the Judicial Ethics Advisory Committee Decision on Working Procedures and Principles dated 24.12.2018, “(1) Judges and the public prosecutors may request opinion from the Committee about the propriety of their contemplated or future conduct with ethical values.”

1.3. According to Art. 7./1-a of Judicial Ethics Advisory Committee Instruction on Filtering: “(1) Secretariat shall make a preliminary examination of the applications in the following headings: a) Capacity: The applicant is primarily examined as to whether s/he is in the capacity of a judge or a public prosecutor of the Court of Cassation...”

As a result of the preliminary examination of the Secretariat, it was found out that the applicant was not in the capacity of a judge or a public prosecutor, and that he had applied to the Committee as a party to a case.

## **2. Decision**

On 14.03.2019, the Committee unanimously decided that:

2.1. According to Art. 25/2 of Judicial Ethics Advisory Committee Decision on Working Procedures and Principles, the applicant's petitions were dismissed in terms of procedure due to his/her lack of capacity as a judge or a public prosecutor.

2.2. According to Art. 26/3 of Judicial Ethics Advisory Committee Decision on Working Procedures and Principles, the document can not be sent to another authority or institution,

2.3. The applicant should be notified of the advisory decision,

2.4. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).

## **VI. A JUDGE TO PARTICIPATE IN THE OPENING OF THE ADVOCATE'S OFFICE**

### **Abstract:**

- It is inappropriate for the judge to attend in the opening of lawyer's office of a retired judge or to send flowers or congratulatory messages via social media.



**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2019/4  
**Decision No** : 2019/5  
**Applicant** : ..., Rapporteur Judge  
**Application Date** : 14/03/2019  
**Decision Date** : 18/04/2019

**Subject of the Application** : A judge to participate in the opening of the advocate's office of a retired judge or to send flowers or congratulatory messages via social media.

### **1. Subject and Eligibility of the Application**

1.1. The applicant stated that s/he had been invited to the opening of a law office of a retired judge, who had started to work as an advocate upon retirement, whom s/he had known for a long time, who is also his/her countryman and with whom s/he has family relations. The applicant asked for advice on whether to participate in the opening with duty of loyalty and respect or sincerity, or to send flowers or to send congratulatory messages via social media is in compliance with the codes of judicial conduct or not.

1.2. The rapporteur judge is an eligible applicant due to his/her inclusion in the concept of "judge" as specified in the definition article of the Court of Cassation Code of Judicial Conduct.

1.3. This advice request, which concerns whether a judge's contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

### **2. Definition of the Application**

2.1. It can be understood from the content of the petition that the opening was arranged because a retired judge had begun to act as an advocate and there is a possibility of taking office as an advocate in the files that come to the chamber where the applicant serves a judge.

2.2. It is known for both Professional and private life experiences that the opening of a law office is an activity that aimed at making the office public that it became operational, for this reason it is a kind of activity in which sincere friends, family members, potential clients, close friends from all sorts of occupations were invited.

2.3. In particular, it is observed from social media and internet research that flowers or wreaths are sent to the office openings, the event is broadcast live or recorded video is shared, the photos of the participants of the events are published. According to the preference of the inviting advocate, the event may be during the day or evening, and it is understood from the information collected from open sources that due to the participant profile, the event can be turned into an event that continues during the day or evening hours by inviting guests in different categories at different times and that the advocates can make speeches, the ribbon is cut with the attendance of guests, the live music performance is made and various delicacies are offered.

2.4. Following all these activities, in some cases, the names of the guests were also uttered, and examples of the thank you messages for the participants were announced through a wide range of media including social media.

### **3. Relevant Ethical Value, Principles and Rules**

3.1. According to Attorneyship Law Art. 55 attorneys are prohibited from engaging in any kind of activity or enterprise which may be regarded as being in the nature of publicity, based on this article, Art.8 (a) of Union of Turkish Bar Associations Regulation on Prohibition of Advertisement states that advocates can announce the opening of advocate offices through print media or other press organs which may not be regarded in the nature of advertisement. Thus, in terms of opening an advocate's office is subject to the principles and rules regulated in Attorneyship Law and Union of Turkish Bar Associations Regulation on Prohibition of Advertisement.

3.2. In most societies, it is normal for judges to attend venues organized by the practising legal profession and to mix with advocates on a social basis (Commentary on the Bangalore Principles of Judicial Conduct, para.118, last sentence). However, the rules governing such social contacts are also regulated in detail and the judge is not given full freedom and discretion. On the contrary, it is recommended that a judge should act on the basis of common sense and exercise caution (Commentary, para.119). A significant part of codes of conduct



that a judge has to comply with regarding his/her private life are arranged under the value of propriety. According to Art. 4.1 of Bangalore Principles of Judicial Conduct, “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.” Similarly to this article, and more broadly in Art. 4.1 of the Court of Cassation Codes of Judicial Conduct,” it is stated that 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”. Concerning the aforementioned article in the Commentary on the Bangalore Principles of Judicial Conduct, the judge must be sensitive to the need to avoid contacts that may lead people to speculate that there is a special relationship between him or her and someone whom the judge may be tempted to favour in some way. For example, a judge must ordinarily avoid being transported by police officers or lawyers and, when using public transport, must avoid sitting next to a litigant or witness (Commentary, para.113). In this respect, it is recognized that a judge’s being transported by lawyers have a negative effect on his/her impartiality.

3.3. A judge should be more careful in his/her contact with lawyers due to the cases appearing before him/her. According to Art. 4.3 of Bangalore Principles of Judicial Conduct, “A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge’s court, avoid situations that might reasonably give rise to the suspicion or appearance of favouritism or partiality”. In Commentary on the Bangalore Principles of Judicial Conduct it is explained like that: “Having a social relationship with a lawyer who regularly appears before a judge is fraught with danger and entails a balancing process. On the one hand, the judge should not be discouraged from having social or extra-judicial relationships. On the other hand, the obvious problem of the appearance of bias and favouritism exists when a friend or associate appears before the judge. The judge is the ultimate arbiter of whether he or she has an excessively close or personal relationship with a lawyer, or has created that appearance. The judge will have to decide where to draw the line. The test is whether the social relationship interferes with the discharge of judicial responsibilities, and whether a disinterested observer, fully informed of the nature of the social relationship, might reasonably entertain significant doubt that justice will be done. The judge must also be mindful of the enhanced danger of inadvertently being exposed to extrajudicial information concerning a case that the judge is hearing or one with which the judge may become

involved. A judge would therefore be wise to avoid recurrent contacts with a lawyer appearing before him or her in the course of a particular case, if this could lead to a reasonable perception that the judge and the lawyer have a close personal relationship (Commentary, para.120)". Having a social relationship with a lawyer who are likely to appear before the judge is also emphasized in the Court of Cassation Codes of Judicial Conduct, according to Art. 4.9 "a judge shall refrain from relations involving any interests 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". It is also natural for a judge to be subject to some limitations in terms of social life in relation to other people, according to Art.4.2 of the Court of Cassation Codes of Judicial Conduct, "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 willingly". As is stated in (§3.2) of the Court of Cassation Judicial Ethics Advisory Committee Decision no.2019/1 dated 24/01/2019, "... personal restrictions not applicable to other public officials or persons involved in judicial activities may, in some cases, apply to the judge. For this reason, some of the activities that may be involved by public officials or other members of the community dealing with judicial activities such as lawyers may be considered improper for judges". In addition, Art. 4.3 of the Court of Cassation Codes of Judicial Conduct should also be taken into account. Under this article, "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". Therefore, it is of great importance to appear impartial and honest as well as being so. It is appropriate for the judge to exercise caution about not giving any special interest to anyone. According to Art. 4.10 of the Court of Cassation Codes of Judicial Conduct, "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. In accordance with this article, as is explained in (§ 3.2, 4.2) of the Court of Cassation Judicial Ethics Advisory Committee Decision no.2018/1 dated 24/01/2019, a judge should not allow the prestige of the judicial office to be used by others.

3.4. It is also inappropriate for the judge to discriminate between the lawyers among his/her immediate vicinity or family members and other lawyers. This issue is regulated in Art. 4.5 of the Bangalore Principles of Judicial Conduct and Art.4.4. of the Court of Cassation Codes of Judicial Conduct. According to this

article, “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 use the residence or workplace of another member of the legal profession for such purpose”. In *Commentary on Bangalore Principles of Judicial Conduct*, it is explained that “it is inappropriate for a judge to permit a lawyer to use his or her residence to meet clients or lawyer’s legal practice. If the judge’s spouse or other member of the judge’s family is a lawyer, the judge should not share a home telephone line with that person’s legal practice since to do so could lead to the perception that the judge is also practising law, and potentially to inadvertent ex parte communications or the appearance or suspicion of such communications (*Commentary*, para.133)”.

3.5. As it is stated in the last paragraph of the Court of Cassation Codes of Judicial Conduct that one of the aims of the codes of conduct is to complete “binding professional code of ethics” for the judges, the applicant should also be careful not to act in contradiction with the provisions of the relevant legislation. In this respect, the relationship between judges and lawyers is of great importance in terms of the right to a fair trial and it is appropriate to make an assessment within the scope of “impartial court” concept in the context of Article 6 of the European Convention on Human Rights. In the European Court of Human Rights, the question of whether a tribunal is impartial is analysed by applying two tests: “a subjective test seeking to determine the personal conviction and behaviour of a particular judge; and an objective test seeking to ascertain whether the tribunal itself offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. In the first test, the impartiality of a judge or a tribunal must be presumed until there is proof to the contrary. Under the second test, it must be determined whether there are ascertainable facts which may raise doubts as to impartiality of a judge. In deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified” (*Upīte/Latvia*, Application No. 7636/08, 1.9.2016, p.30). In terms of the relations between the judges and lawyers, the ECtHR decision is as follows: “As to the objective test, the Court notes at the outset that the proper administration of justice requires that the relationship between judges and lawyers is based on common ethical values. Judges and lawyers must communicate in a manner which does not raise doubts about their abilities to exercise their duties independently from each other. Be it otherwise, the public confidence in the judiciary would be undermined and the efficiency

of the judicial system would be weakened”(Upīte/Latvia, Application No. 7636/08, 1.9.2016, p.33). “The independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level” (Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, art.7). Paragraph 7 of the Opinion no. (2013) 16 on the relations between judges and lawyers, adopted by the Consultative Council of European Judges (CCJE) on 1315 November 2013, provides that judges and lawyers must be independent in the exercise of their duties, and must also be, and be seen to be, independent from each other, while paragraph 22 states that public confidence in the judiciary and respect for it are the guarantees of the effectiveness of the judicial system: the conduct of judges in their professional activities is understandably seen by members of the public as essential to the credibility of the courts (Upīte/Latvia, Application No. 7636/08, 1.9.2016, p.22).

3.6. In Art. 4.7 of the Court of Cassation Codes of Judicial Conduct, certain areas of risks that do not comply with the judiciary’s independence, impartiality, and the obligation to act equally in the use of social media are specified and the judge is also required to refrain from expressing opinions by conducting self-control in such areas of risk. According to this article “a judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language”. The judge’s self-control when using social media is linked to the statement that compliance with the codes of conduct as highlighted in the Preamble of the Court of Cassation Codes of Conduct is a fundamental responsibility of judges. Undoubtedly, this article should be evaluated and interpreted in conjunction with the other articles of the Court of Cassation Codes of Conduct. However, the use of social media by judges is a complex problem in our country as well as in the whole world. For this reason, consultations have been initiated at international level in order to place a provision in the Bangalore Principles of Judicial Conduct, the process has been going on for more than a year. UNODC has issued reminder in Draft on Non-binding Guidelines on the Use of Social Media by Judges as follows: “Existing principles relating to the dignity of the courts, judicial impartiality and fairness apply equally to communications on social media. (Art.14). Judges

should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, impartiality, or public confidence in the judiciary (Art.15)<sup>1</sup>”. Therefore, the judge’s use of social media is within the public’s legitimate interest and observation area.

3.7. In terms of impartiality, the judge’s other obligation is to minimize the reasons for withdrawal from the case under reasonable grounds. According to Art. 2.5 of the Court of Cassation Codes of Judicial Conduct, “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 economic activities in such a way as to minimise occasions on which it will be necessary for the judge to be disqualified from hearing, deciding, appeal or otherwise dealing with cases.”. A similar regulation is included in the Art. 2.3 of Bangalore Principles of Judicial Conduct. It is explained in the Commentary on Bangalore Principles of Judicial Conduct as follows: “ A judge must be available to decide the matters that come before the court. However, to protect the rights of litigants and preserve public confidence in the integrity of the judiciary, there will be occasions when disqualification is necessary. On the other hand, frequent disqualification may bring public disfavour to the bench and to the judge personally, and impose unreasonable burdens upon the judge’s colleagues. Litigants may get the impression that they can pick and choose which judge will decide their case, and this would be undesirable. A judge should, therefore, organize his or her personal and business affairs in a way that minimizes the potential for conflict with judicial duties” (Commentary, para.66).

3.8. The fact that the inviting lawyer who is a former colleague or a senior judge is not a special case that requires deviation from the application of the codes of judicial conduct. The judge should also remain impartial in their relations with his/her former colleagues. According to an unethical model called “revolving door”, retired or no longer employed judges and public prosecutors may be in the expectation to obtain preferential or privileged treatment by using their positions or their relations with their colleagues. In this way, “unfair and unethical effects may arise which may violate the judge’s discretion” (Aydn, İ./Saldırım, M. : The Court of Cassation Codes of Judicial Conduct Facilitator Manual, Ankara 2019, The Court of Cassation Publication, p.17).

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1 [https://www.unodc.org/documents/ji/social\\_media/Draft\\_Non-binding\\_Guidelines\\_on\\_the\\_Use\\_of\\_Social\\_Media\\_by\\_Judges\\_-\\_for\\_circulation.pdf](https://www.unodc.org/documents/ji/social_media/Draft_Non-binding_Guidelines_on_the_Use_of_Social_Media_by_Judges_-_for_circulation.pdf)

## 4. Ethical Evaluation

4.1. It is a professional obligation to adhere to the prohibition of advertisement in the context of professional rules and ethical rules. In addition, the judge should also be careful not to be in an activity that exceeds the scope of this prohibition. Otherwise, the judge, by getting involved in an unethical activity of the lawyer, may take a role in an act that is contrary to the prohibition of advertising. In this respect, as a general principle, the judge must ensure that his/her social contacts with the lawyers do not in any way violate the prohibition of advertising. This is a principle that should be considered not only for the opening of a law office but also for social contacts with lawyer's offices and all lawyers (See §2.3, 3.1).

4.2. There is no obstacle for the judge to meet and contact socially with lawyers and other legists in some activities. However, in addition to other codes of conduct, these issues are regulated in detail under "impartiality" and "propriety". A judge should act on the basis of common sense and exercise caution and avoid behaviors that create a negative perception about his/her integrity, impartiality and competence in the eyes of a reasonable person. It is mandatory for the judge to avoid social relations that may lead people to speculate that there is a special relationship between him or her and someone whom the judge may be tempted to favour in some way. For example, in Commentary on Bangalore Principles of Judicial Conduct, it is recognized that a judge's being transported by lawyers would have a negative effect on his/her impartiality (§3.2).

4.3. It is recognized that it is risky for a judge to have social contact with lawyers due to the cases appearing before him/her and it entails a balancing process. Such social relationships may cause suspicions in the eyes of a reasonable observer that the judge favours in some way or will behave biased as well as creating allegations of prejudice and bias against the lawyer before the judge (§3.3). It is also possible that social contacts in question could damage the image of "impartial court" which is a necessary element of the right to a fair trial. As a matter of fact, after the publication of a book, which includes phone calls between judges in different courts, members of high courts and a lawyer in a well-known law firm in Latvia, there has been serious debate in media and public regarding the integrity and impartiality of judges and the fact that they do not act in accordance with codes of conduct and laws. A commission consisting of five judges in the high court was formed to investigate the propriety of the high court judges' behaviors, who were involved in scandal, in terms of codes of ethics and the laws. After this incident, 2 of the 15 high judges who had been investigated on the grounds that they had consulted the law office were



informed about violation and the Court disqualified all the high judges who contacted with the law firm from the cases that were followed up by this law firm. The findings and assessments of the case which the European Court of Human Rights had examined on the merits, is a very concrete and vivid example demonstrating that a judge's social relations with lawyers due to the cases before him/her may violate the principle of "impartial court" (§3.5). For this reason, there is a possibility that the judge's social contact with lawyers will not be limited only to violation of codes of ethics, but may also lead to disciplinary liability due to the violation of a professional code of conduct.

4.4. In addition to other principles and rules of judicial ethics regarding the use of social media, it is of great importance that the judge acts in accordance with the principles of "impartiality" and "propriety". In real world, actions that cannot be considered as ethical behaviors may not be enough to justify these actions ethically when doing them in virtual world through social media. The judge should always be aware of the fact that, in social media, the principles of codes of conduct are applicable to social media (§3.6).

4.5. The other duty of the judge is to minimize the reasons for withdrawal from the case under reasonable grounds (§3.7). The fact that the judge has social relations with the lawyers who are likely to appear before him is not consistent with this duty. In addition, the judge must be sensitive and cautious against the unethical model called as "revolving door" (§3.8). For this reason, the judge's attendance to office openings of former colleagues may create the expectation of special treatment and privilege on the inviting lawyer by using the relationship or position with former colleagues. The impression that the inviting lawyer will be treated differently from other lawyers due to his/her previous duty may be created especially in the eyes of other judges, lawyers, potential parties to the cases and reasonable observer.

## **5. Decision**

On 18.04.2019, the Committee unanimously decided that:

5.1. It is not appropriate for the applicant to attend in the opening of lawyer's office or to send flowers or congratulatory messages via social media,

5.2. The applicant should be notified of the advisory decision,

5.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).





## **VII. A RAPPORTEUR JUDGE TO RECOMMEND A LAWYER**

### **Abstract:**

- It is inappropriate for the applicant to recommend a lawyer to one of the parties to the case with whom s/he is a close friend, and it is not important whether the recommended lawyer is a familiar person to the judge in this regard.



**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2019/5  
**Decision No** : 2019/6  
**Applicant** : ..., Rapporteur Judge  
**Application Date** : 14/05/2019  
**Decision Date** : 28/05/2019

**Subject of the Application** : A rapporteur judge to recommend a lawyer upon the request of his/her acquaintances.

**1. Subject and Eligibility of the Application**

1.1. The applicant stated that a close acquaintance requested him/her to recommend a lawyer regarding a case and asked whether to recommend a lawyer upon a request is in compliance with the codes of conduct or not.

1.2. The rapporteur judge is an eligible applicant due to his/her inclusion in the concept of “judge” as specified in the definition article of the Court of Cassation Code of Judicial Conduct.

1.3. This request, which concerns whether a rapporteur judge’s contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

**2. Definition of the Application**

2.1. The request concerns the fact that the judges may know the best lawyers, thus asking the applicant to recommend a lawyer for a case of his/her close friend, and it is also asked whether the recommendation affects the outcome if the recommended lawyer is not a person who the applicant personally does not know.

2.2. The applicant, who is a rapporteur judge of the Court of Cassation, lives in Ankara and it is understood from the content of the petition that the lawyer who is the subject of the recommendation is requested to be among the lawyers working in Ankara.

2.3. Recommendation is used in the meaning of “advice, guidance”, “to tell the person concerned that a person or a thing is a good, useful” or “reference”. Therefore, a judge’s recommendation of a lawyer means that the recommended lawyer is good, useful or s/he is given reference.

### **3. Relevant Ethical Value, Principles and Rules**

3.1. A significant part of the codes of conduct that a judge has to comply with regarding his/her private life is regulated under the “propriety” principle. According to Art. 4.1. of Bangalore Principles of Judicial Conduct, “a judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities”. Similar to this article and more broadly than that, Art. 4.1. of the Court of Cassation Codes of Judicial Conduct states that: “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”. In Commentary on the Bangalore Principles of Judicial Conduct, with regard to the aforementioned article, it is stated that “The judge must be sensitive to the need to avoid contacts that may lead people to speculate that there is a special relationship between him or her and someone whom the judge may be tempted to favour in some way” (Commentar, para.113).

3.2. According to Art. 4.9. of the Court of Cassation Codes of Conduct, “a judge shall refrain from relations involving any interests 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”. The fact that the judge recommends a lawyer may give the impression to the other party and the public that there is a special relationship between the judge and the lawyer. It may also give rise to a desire or expectation on the recommended lawyer to have a special contact with the judge.

3.3. According to Art.1.6 under Competence and Diligence principle of the Court of Cassation Codes of Conduct for Staff, the Court of Cassation staff shall “not recommend private lawyers to litigants, prospective litigants, or anyone dealing with the judiciary”. Considering that the Court of Cassation Codes of Conduct aims to develop a common understanding of ethics throughout the Court of Cassation, the Codes of Conduct for Staff should not be ignored in the ethical debates regarding judges.

3.4. Art. 4.10 of the Court of Cassation Codes of Conduct states that “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”. It should be noted that advising a lawyer may also mean giving reference to a lawyer, or at least may be perceived so in the eyes of those seeking advice or recommended lawyers and the public (§2.3.). In this regard, considering the findings of the Court of Cassation Judicial Ethics Advisory Committee Decision on a judge’s providing reference (24.01.2019 T, 2019/1 K.), the reputation of the judiciary should not be made available to anyone, even to a lawyer.

3.5. According to Art. 4.15 of the Court of Cassation Codes of Conduct, the judge does not advise to the parties to the case, even if there is no benefit. There is no clear provision that the consultation is only limited to giving legal advice. In this respect, apart from giving legal opinion to one of the parties regarding the dispute resolution, recommendation of a lawyer may be considered in this regard.

3.6. In Opinion J-11, dated 05.12.1984, the Kansas Judicial Ethics Advisory Board (United States) decided that “it is appropriate for the lawyer upon being elected as District Magistrate Judge to advise those persons to whom s/he has provided legal services that s/he will no longer be available, but it is not appropriate for him/her to suggest or recommend the services of any particular lawyer”.

#### **4. Ethical Evaluation**

4.1. It is clear that the judge’s recommendation of a lawyer to one of the parties to the dispute will create doubts about his/her integrity, impartiality and competence. The advice may also be interpreted as a special relationship between the judge and the recommended lawyer. In addition, in the case of a positive or negative outcome of the case, it should be taken into consideration that how the accuracy or impropriety of the judge’s recommendation can be interpreted and perceived by the parties to the case, the public, the recommended lawyer and the other party’s representative. Therefore, the judge’s recommendation of a lawyer, in any case, will cause problems in the integrity and impartiality of the judge in terms of propriety.

4.2. As regards comparative law, as noted above (§3.6), in accordance with Art. 2 of the Kansas Judicial Ethics Advisory Board, after the appointment of a lawyer as a judge, it is not appropriate for him/her to recommend a specific

lawyer to his/her clients about the pending files. Art. 2, on which the Kansas Judicial Ethics Board is based, contains the provision that “a judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities” in a manner similar to Art. 4.1. of the Court of Cassation Codes of Judicial Conduct and the Bangalore Principles of Judicial Conduct. Under this principle, the impartiality and integrity of a judge, and the judge’s duty of promoting public confidence in the judiciary, as well as the fact that s/he does not use the prestige of the judiciary in his or her own interests is included (§3.1, §3.2, §3.4).

4.3. According to Art. 1.6 under Competence and Diligence principle of the Court of Cassation Codes of Conduct for Staff, the Court of Cassation Staff shall “not recommend private lawyers to litigants, prospective litigants, or anyone dealing with the judiciary”. That kind of a provision which has been set for the staff and aims to protect the values such as “impartiality”, “integrity” and not using the reputation of the judiciary for providing unfair gains to someone else applies to judges as well. Therefore, when interpreting the codes of conduct for judges, there is no justification for reaching a conclusion contrary to this clear rule envisaged for the Staff. On the other hand, explicitly permitting the conduct of a strictly prohibited behavior by the judges cannot be regarded as consistent with the collective ethical consciousness that is intended to be established in the Court of Cassation, nor does it comply with the systematic principles of the Codes of Conduct. Considering the interpretation rule in Art. 3 of the Court of Cassation Code of Conduct for Public Prosecutors and Staff, it is a necessity to observe these codes of conduct when interpreting the codes of conduct for judges.

4.4. Considering the principles set out for the judges regarding providing reference in the above-mentioned decision by Judicial Ethics Advisory Committee (§3.4), the judge has no obligation to recommend the lawyer in question. In addition, if it is possible to be given advice by someone else, the advice to be given may mean that the reputation of the judiciary is used for personal benefits or for the benefits of someone else.

4.5. A judge shall not provide advice to the parties to a case even when it is to be provided free of charge (Art. 4.15). This consultation is not limited to legal matters, but also includes recommendation of a lawyer to one of the parties to follow the case. The judge should avoid behaviors that may be affected by the success or failure of the lawyer s/he has recommended, or that may be perceived in this way by the parties or the public. In this respect, it does not matter whether or not s/he personally knows the recommended lawyer.

## **5. Decision**

On 28.05.2019, the Committee unanimously decided that:

5.1. It is not appropriate for the applicant to recommend a lawyer to one of the parties to the case with whom s/he is a close friend, and whether the recommended lawyer is a familiar person to the judge is not relevant in this regard,

5.2. The applicant should be notified of the advisory decision,

5.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).





## **VIII. A JUDGE TO CONGRATULATE A MAYOR OR MEMBER OF PARLIAMENT FOR BEING ELECTED**

### **Abstract:**

- It is inappropriate in terms of codes of conduct for the judge to congratulate his/her close friends on social media or to visit him/her in his/her office due to their election as mayor or member of the parliament.



**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2019/6  
**Decision No** : 2019/7  
**Applicant** : ..., Rapporteur Judge  
**Application Date** : 28/05/2019  
**Decision Date** : 27/06/2019

**Subject of the Application** : A judge to visit his/her friend who has been elected as mayor or member of parliament or to congratulate him/her on social media.

### **1. Subject and Eligibility of the Application**

1.1. The applicant stated that two of his/her friends has been elected as mayor and member of parliament and asked for advice on whether to congratulate them on social media or to visit them in their offices is in compliance with the codes of judicial conduct or not.

1.2. The rapporteur judge is an eligible applicant due to his/her inclusion in the concept of “judge” as specified in the definition article of the Court of Cassation Code of Judicial Conduct.

1.3. This question, which concerns whether a judge’s contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

### **2. Definition of the Application**

2.1. One of the advices at issue for a judge is that whether to congratulate his/her friend due to his/her election as the mayor and the member of parliament on social media complies with the codes of judicial conduct or not. Social media networks include facebook, twitter and instagram. Some of these virtual platforms are closed to outside groups, while others are accessible to all social media users. It is understood from the open sources that it is a common practice for policymakers such as members of parliament and mayors to make their

social media accounts accessible to everyone because they aim to reach the widest public sphere.

2.2. The other advice at issue for the judge is that whether to visit his/her friend who has been elected as mayor or member of parliament in his/her office to congratulate his/her new position is in compliance with the codes of conduct or not. It has been observed that photographs and other images of his/her visit may be shared publicly on social media or website in some cases.

2.3. Sending congratulatory messages through social media or visiting offices is an indication of a close friendship with those elected to these positions. In particular, the visits made to the office of the newly appointed persons can be perceived as there is a close relationship between the judge and his/her friend.

### **3. Relevant Ethical Value, Principles and Rules**

3.1. Independence, which is one of the foundations of judicial ethics, is at the top of the Court of Cassation Codes of Judicial Conduct. According to art. 1.5 of these principles, “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 therefrom.”

3.2. According to Art. 3.1 of the Court of Cassation Codes of Judicial Conduct, “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 profesional, may be reproachable or partial in the view of a reasonable observer and conduct which may undermine public confidence in the judiciary”. This is article is a provision that the judge should also pay attention in terms of personal relations. According to Art. 3.2 under the integrity value of the Court of Cassation Codes of Conduct , “ 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. An important part of the codes of conduct that a judge must comply with regarding his/her private life is regulated under the propriety value. According to Art. 4.7 of the Court of Cassation Codes of Judicial Conduct, “a judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language.” Due to the lack of social media use at the time of its formation, the Bangalore Principles of Judicial Conduct do not provide a clear provision on this issue so is the case in the Commentary on

the Bangalore Principles of Judicial Conduct. On the other hand, according to Art. 4.2. of the Court of Cassation Codes of Judicial Conduct, “as a subject of public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so willingly”. Therefore, by posting social media messages or paying personal visits to offices with the purpose of congratulations, a judge should be aware that this will be known and assessed by the public. Art. 4.2 and 4.7 of the Court of Cassation Codes of Judicial Conduct should be considered within the framework of ethical obligations that are foreseen in Art.4.1.and 4.3. of the same codes of conduct.

3.4. According to Commentary on the Bangalore Principles of Judicial Conduct, “the judge serves all people, regardless of politics or social viewpoints. That is why the judge must endeavour to maintain the trust and confidence of all people, so far as that is reasonably possible.”(Commentary, para.65). In the training book on Bangalore Principles of Judicial Conduct regarding this issue, it is stated that “a judge must be careful to avoid, as far as possible, entanglements in controversies that may reasonably be seen as politically partisan” (Judicial Conduct and Ethics, Self Directed Course, United Nations, Vienna, 2019, p.36). In the same book, it is also stated that if judges use social media, they shouldn’t post anything that would damage public confidence in the impartiality of the judiciary, e.g. political views, matters of public debate.” According to Practical Guide to Judicial Ethics and Deontology for the Romanian Magistrates, “in case of a friendship and relationship with any politician, the magistrate ensures that this person will not in any way use this relationship for political purposes”(Judicial Council of Magistracy – Romania Practical Guide to Judicial Ethics and Deontology for the Romanian Magistrates, s.20). Florida Supreme Court Judicial Ethics Advisory Committee in its opinion No.87/22 dated December 22, 1987 concluded that a judge whose spouse is running for mayorship can not have supporters meet at his/her house, serve as hostess, pouring coffee, serving cake and greeting guests provided that s/he does not solicit the supporters’ vote or support. In another Opinion, the same Committee concluded that the judge, whose spouse was a candidate for a political office, should not put a political sign in the garden of their house or on their vehicles owned by the judge, nor should s/he authorize or encourage anyone in this issue (9.5.2006 dated, dec.no.2006/1). In Opinion 2007/13 dated 14.09.2007, Florida Supreme Court Judicial Ethics Advisory Committee concluded that a judge, whose spouse plans to run for election to a nonpartisan public office, should not attend the spouse’s nonpartisan “meet and greet” campaign gatherings at the judge’s home and at the homes of friends and neighbors. In the same Opinion,

it is stated that the judge may appear as the candidate's spouse in a family photograph to be used in the spouse's campaign but precautions can be taken by the judge to assure that a family photograph is not used in a way that becomes a violation of Canon 7 which is intended to disentangle judges and judicial candidates from inappropriate political activity, including partisan activities and endorsing other candidates. The Committee cautioned that the judge's office should not be mentioned and that no explicit endorsement should be featured. This Committee cannot anticipate all the possible campaign uses of a family photograph. Therefore, the Inquiring Judge must be vigilant to insure that the family photograph is not used in a way that violates Canon.

#### **4. Ethical Evaluation**

4.1. It is clear that if the judge congratulates the newly elected mayor or member of parliament on social media, it is clear that this may be known and seen by everyone (§2.1.). Art.4.7.of the Court of Cassation Codes of Judicial Conduct states that a judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language. In this respect, sending a congratulatory message to a member of parliament or mayor is included within the context of prohibition of sending congratulatory message on social media in Art. 4.7. In that sense, to congratulate a newly elected member of parliament or mayor through social media, even if s/he is the judge's close friend, does not comply with the codes of judicial conduct. The same interpretation applies to the Bangalore Principles of Judicial Conduct as well (§3.4.).

4.2. Virtual situation described in the paragraph above, which is similar to the real-life image of "congratulations on your new job" visit, can not be considered consistent with the duty of the judge to be free from inappropriate connections with, and influence by, the executive and legislative branches of government, and also the duty to "demonstrate to a reasonable observer to be free therefrom" (§3.1.). On the other hand, the judge has the duty to increase public confidence in his/her independence. Considering the presence of a large number of people in the office during the visit, the possibility of making the photographs and other images available to public is high, the perception that may occur in the public is not compatible with the duty to act in a manner to increase public confidence in his/her independence (§3.2.). Another provision that should be taken into consideration in this regard is Art. 4.6. of the Court of Cassation Codes of Judicial Conduct, according to which "a judge shall avoid

taking part publicly in controversial discussions of a partisan political nature”. The speeches and debates made during the election can sometimes be quite arduous and there may be serious tensions between political party members or other party supporters. In this case, consideration should be given to how the visit, shared on social media and made public, will be interpreted by the supporters of the other party who have not won the election and the public. In particular, it should be noted that such manners of the judges in discussions of political nature may result in a position in which they may seem as if they have embraced or agreed with the views of one of the parties. In some cases, it should not be underestimated that risks of trials may arise due to the speeches and debates during the election process which may come up after the election.

4.3. When the issue is evaluated in terms of comparative judicial ethics practices, it is generally accepted that judges should remain as distant as possible in their relations with politicians. It is an ethical responsibility for the judge to maintain public confidence as reasonable and practical as possible, regardless of political and social viewpoints. Therefore, it is considered obligatory in terms of Bangalore Principles of Judicial Conduct that a judge must be careful to avoid, as far as possible, entanglements in current controversies that may reasonably be seen as politically partisan. The judge serves all people, regardless of politics or social viewpoints. That is why the judge must endeavour to maintain the trust and confidence of all people, so far as that is reasonably possible. It is acknowledged that the judge should endeavor and be cautious in this regard to avoid the appearance of confirming a politician’s views or his/her candidacy for a political office, with or without action, even when the politician is his/her spouse (§3.4.).

4.4. The fact that a judge congratulating the election of a close friend as a mayor or a member of parliament through social media or visiting his/her office is the violation of codes of judicial conduct does not mean that s/he should cut all personal relations with these persons. The judge can make a phone call with his/her close friend, send private message, and maintain humanistic and social relations with his/her childhood friends, close friends, with whom the relations started before being appointed as a judge. However, in such behaviors, it is obligatory to act in accordance with the codes of judicial conduct which are explained in detail above. The thing that should be considered is that 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 (Court of Cassation Codes of Judicial Conduct Art.4.10). With the publicity provided

by the use of social media or the congratulations visit, the judge should always consider how the message conveyed to the society can create a perception in other political parties, party supporters, judges, lawyers, judicial staff and in society.

## **5. Decision**

On 27.06.2019, the Committee unanimously decided that:

5.1. It is not appropriate in terms of codes of judicial conduct for the applicant to congratulate his/her close friends on social media or to visit him/her in his/her office,

5.2. The applicant should be notified of the advisory decision,

5.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).



## **IX. A JUDGE'S PERSONAL REQUEST FOR LEGAL OPINION ABOUT A LEGAL MATTER FROM THE FACULTY MEMBERS**

### **Absract:**

- It is inappropriate for the applicant to obtain legal opinion in case files that have come to the chamber to be examined on appeal or that have to be reviewed as the first instance court in order to resolve the dispute legally and fairly by contacting face to face or via other means of communication (such as telephone, e-mail) with the faculty members, whose knowledge s/he trusted, is not in accordance with the code of judicial conduct.



**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2019/7  
**Decision No** : 2019/8  
**Applicant** : President of the...Chamber  
**Application date** : 18/7/2019  
**Decision date** : 24/10/2019

**Subject of the application** : On a judge's personal request for legal opinion about a legal matter from the faculty members s/he trusts regarding the case pending before him/her.

### **1. Subject and Eligibility of the Application**

1.1. The applicant requested advice on whether obtaining legal opinion in cases that have come to the chamber to be examined on appeal or that have to be reviewed as the first instance court is in accordance with the principles of judicial conduct in order to resolve the dispute legally and fairly by contacting face to face or via other means of communication (such as telephone, e-mail) with the faculty members, whose knowledge s/he trusted.

1.2. The president of a chamber is an eligible applicant due to his/her inclusion in the concept of "judge" as specified in the definition article of the Court of Cassation Code of Judicial Conduct.

1.3. The advice request, which concerns whether a judge's contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

### **2. Definition of the Application**

2.1. The subject of advice is about a judge's requesting legal opinion from the faculty members, whom s/he has known for various reasons, in order to make a more accurate decision regarding a case file. It is included in the advice request that there is a possibility of making the said legal opinion request face to face as well as by various communication tools (such as telephone, message, e-mail).

2.2. As it is known, judges and faculty members can come together for scientific meetings such as symposiums, conferences and seminars. Apart from the acquaintances formed on this occasion, it is a natural consequence of social life that judges and faculty members become friends or establish personal communication for school, internship or various reasons.

2.3. It can be observed that some of the faculty members working in the law faculties of universities establish law offices or work there, write expert opinions, provide oral or written consultancy, and earn personal income apart from their official salaries due to these extra works. Also it is understood from the information compiled from open sources that even on rare occasions, faculty members also appear on TV about their field of expertise and sometimes participate in discussions with a political dimension in front of the public.

### **3. Relevant Ethical Value, Principles and Rules**

3.1. It is desirable for the judge to develop knowledge, skills and personal qualities that s/he may need for the judicial activity. This issue has been regulated under the value of “Competence and Diligence”. According to provision 6.5. of these principles, “A judge shall take reasonable measures 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 the judges and court staff administratively subordinate to him or her in this respect, and when necessary, determine the case load considering this situation”. In Commentary on the Bangalore Principles of Judicial Conduct, with an emphasis on the knowledge of the judge, the value of competence and diligence and the value of independence are related as follows: “The independence of the judiciary confers rights on a judge, but also imposes ethical duties, including the duty to perform judicial work professionally and diligently. This implies that a judge should have substantial professional ability and that this ability should be acquired, maintained and regularly enhanced through further training opportunities, which the judge has a duty, as well as a right, to take. It is highly desirable, if not essential, for a judge to receive detailed, in-depth, diverse training appropriate to the judge’s professional experience upon first

appointment so that he or she is able to perform the judicial duties satisfactorily. The knowledge that is required may include not only aspects of substantive and procedural law, but also the impact of the law and the courts on real life (Commentary, para.199)". In comparative law, it is accepted that there is a direct relationship between the development of professional skills of a judge and the independence of the judiciary. For example, in Canada, the independence of the judiciary is evaluated under two main headings as individual and institutional independence, and due to its great importance, "the judge's continuing education" and thus self-development are considered among the basic elements of individual independence such as ethics, accountability, and the security of tenure<sup>2</sup>.

3.2. In accordance with the code of conduct mentioned above (§3.1), it is perfectly natural for judges to benefit from scientific studies in order to increase their knowledge, skills and personal qualities, and it is also important in terms of protecting the principle of independence. The judge's use of scientific opinions is also a fundamental principle of law and is regulated as an obligation for the judge in the Turkish Civil Code (TCC). According to Art. 1/3 of the TCC, "the judge shall benefit from established doctrine and case law while rendering a decision".

3.3. There is no hesitation that the judge should benefit from scientific opinions. However, it is necessary to clarify the scope, nature and method of forming the scientific opinions subject to the request for advice. When the subject is examined in terms of comparative law, it is seen that a regulation similar to the Art. 1/3 of TCC is included in the Swiss Civil Code (SCC). In the German text of the Art. 1/3 of SCC, the judge is prescribed to follow established doctrine. In the French text, it is not explicitly stated that the doctrine has been tested or confirmed. However, in Swiss and Turkish law, it is sought that the "doctrine to be taken into account" should be tried, confirmed, verified and adopted based on the German and Italian text (Edis, p.223; Oğuzman, Barlas, p.13, İmre, p. 213). While evaluating this subject, it is necessary to look at whether a particular view has established itself in the doctrine and whether it has gained a real authority. A minority's opinion does not replace a doctrine, on the other hand, the private opinion of a scholar may have gained many supporters

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2 Why is Judicial Independence Important to You, Canadian Judicial Council, May, 2016, p.10,17-[https://www.bccourts.ca/documents/Why\\_is\\_Judicial\\_Independence\\_Important\\_to\\_You.pdf](https://www.bccourts.ca/documents/Why_is_Judicial_Independence_Important_to_You.pdf)-Accessed: 24.10.2019

(İmre, p.214). If there is a weighted opinion or unanimity on a certain view in the doctrine, it is accepted that there is an indication that these views have been confirmed. In such a case, the court does not need to further investigate whether these views have been tried<sup>3</sup>.

3.4. Since the doctrine of law is a science, the scientific independence of the authors is of great importance for a scientific opinion to be qualified as “utilized doctrine”. According to Peter Gauch, a well-known Swiss writer, “publications by non-independent authors that take into account the interests of certain sponsors, economic circles or other power centers cannot be accepted as legal doctrine. Similarly, the published version of the parties’ opinions, which has no other purpose than to serve the interests of the parties, is also included in the same group” (Kırca, slide 25).

3.5. In accordance with the ethical principles and rules stated above (§3.1, 3.2.) regarding the judge’s need to have the necessary legal knowledge about the file pending before him/her, it is stated in Art. 266 of the Code of Civil Procedure (CCP) that the judge should have the necessary expertise in legal matters. According to this article, “The court decides to obtain the expert’s vote and opinion upon the request of one of the parties, or spontaneously, in cases where the solution requires special or technical information other than law. However, it cannot be applied to the expert on issues that can be resolved with general knowledge or experience or with the legal knowledge required by the profession of a judge. Persons who have studied law cannot be appointed as experts unless they certify that they have a different specialty outside of the legal field”. The rationale for the amendment made in Art. 49 of Law on Experts no.6754 and Art. 266 of CCP is explained as follows: “... A judge is the most competent person in legal matters, and it is a requirement of the profession of judge to search and find the rules of law on his/her own motion and apply them to the concrete case. In our legislation, the judge is obliged to research, find and apply the Turkish law himself/herself, and it is stipulated that it is not possible to apply to an expert in matters that can be resolved with the general life experience and legal knowledge required by the profession of judge (Turkish Constitution, Art. 138/1, Code of Civil Procedure, Art.33; Code of Criminal Procedure, Art. 63; International Private and Procedure Law, Art.2). Despite the prohibitive provisions in the legislation, it is seen that expert assistance is sought in legal matters due to the workload and the case law of the Court of Cassation

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3 For explanations and doctrinal views on this subject, see Kırca, Çiğdem: Yargı Öğreti İlişkisi Konferansı, Yargıtay Konferans Salonu, 26 April 2016, slides 23-24, (<http://www.yargitaydergisi.gov.tr/sayfa/yar-gi-ve-ogreti-iliskisi-Konferansi/documents/ Sunum.pdf>- Erişim tarihi:17.9.2019).

in practice. With the draft...it is aimed to solve the problems experienced in practice in the field of expertise". The same amendment was made in the Article 63/1 of the Criminal Procedure Code, which regulates expertise. As can be seen, in the justification of the law amendment, the duty and responsibility of the judge to research and find the applicable law on his/her own motion and apply it to the concrete case is explained by associating it with the "independence of the judiciary", which is stated in Article 138/1 of the Constitution and which is also an ethical value.

3.6. According to Art. 6.9. of the Court of Cassation Code of Judicial Conduct, "A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties". Art. 6.11 of the same codes of conduct, "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". Pursuant to these articles, the judge's application of new procedures on his/her own initiative, without the knowledge of the parties and the public, by going beyond the methods prescribed by the legal order, may mean a violation of diligence, and cannot be considered consistent with the duty of exhibiting high standards in a way that will increase the public confidence in the judiciary and promoting these standards. In addition, according to Art.2.4. of the Court of Cassation Code of Judicial Conduct, "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 the judiciary". The negative effects that may be created by a judge's obtaining legal opinion from a faculty member whose impartiality is not guaranteed as determined by the procedures stipulated in the law, without the knowledge or supervision of the parties to the case, first and foremost in the eyes of parties and then in the eyes of the public, lawyers, members of the judiciary and judicial staff, in terms of public confidence in the judiciary, which is a fundamental element of protection of independence, should also be taken into account.

#### **4. Ethical Evaluation**

4.1. There is no doubt that the ideal of justice will be approached more if the interaction of judicial practice and teaching can be increased and presented to the society as a pleasant symphony of law, judiciary and doctrine. For a well-

functioning legal system, the doctrine is as important as the legislature and the judiciary. Prof. Dr. Ernest Hirsch defined the concept of law as "...a work created by the cooperation of legislation, doctrine and judiciary" (Hirsch, Ernest: *Yasama ile Öğreti ve Yargı Arasındaki Karşılıklı Bağlılık*, İstanbul Üniversitesi Hukuk Fakültesinin 50'nci Yıl Armağanı, "Cumhuriyet Döneminde Hukuk", pp.173-189). For this reason, it is an understanding that the judge should benefit from scientific views, which has its roots in Roman law and is also generally accepted in comparative law. Due to the great importance of the doctrinal view, this basic principle of law was regulated in the TCC, similar to the SCC, and some criteria were adopted to determine what kind of views would be a "scientific opinion" that the judge could benefit from (§3.2,3.3).

4.2. The scientific opinion that the judge can benefit from must first be prepared and published in accordance with the procedures of scientific studies. In addition, in Swiss and Turkish law, based on the German and Italian texts of Art. 1/3 of SCC, it is also foreseen that the doctrine to be taken into account by the judge should be tried, confirmed, verified and adopted (§3.3).

4.3. While benefitting from the scientific opinion, the judge should also consider whether the author or faculty member who wrote the scientific opinion in question has scientific independence. The judge should be careful and alert to publications that take into account the interests of certain sponsors, economic circles or other power groups. Being influenced by the views put forward in such publications may lead to the danger of violating other values of judicial conduct, especially independence and impartiality (§3.3.,3.4).

4.4. A judge is obliged to render decisions honestly and independently on the basis of law and evidence, without any external pressure or influence and without fear of interference from anyone (Commentary, para. 22; see also the Court of Cassation Code of Judicial Conduct, Art. 1.8). It is also difficult for a judge who lack sufficient knowledge and skills to perform the judicial duty. The knowledge and skill of the judge must be sufficient so that the judiciary should be perceived as independent and that the test for independence should include that perception (Commentary, para. 37). Developing knowledge, skills and personal qualities that s/he will need for the judicial activity is a fundamental element of both the ethical obligation and individual independence of the judge (§3.1.). This ethical obligation requires the judge to learn the scientific opinion, the qualifications, scope and content of which mentioned above, to the extent that it is associated with his/her judicial duty. The fact that the judge's not obtaining



this legal information that should be acquired but trying to obtain from faculty members by means of personal relations means a violation of the mentioned ethical obligation.

4.5. The ethical obligation specified in the above paragraph (§4.4.) is further embodied as a provision of law in Art. 266/1 of Code of Civil Procedure and Art. 63/1 of Code of Criminal Procedure. In the rationale of the aforementioned articles, it is emphasized that the most competent person in legal matters is the judge, and it is stated that it should be accepted as a requirement of the profession of judge to search and find the legal rules on his/her own motion and apply them to the concrete case. In addition, this issue has been evaluated as a problem associated with the principle of “independence of the judiciary” (§3.5.). In this case, while even the “method of obtaining an opinion from a legal expert”, in which the parties to the case have the right to object to the person or opinions of the expert, is prohibited by law, it is not generally acceptable for the judge to obtain an external legal opinion on the file pending before him/her, without the knowledge and supervision of the parties, through unofficial means. As a matter of fact, according to the provisions of Art. 6.9. and 6.11 of the Court of Cassation Code of Judicial Conduct, it is stipulated that the judge shall not engage in conduct incompatible with the diligent discharge of judicial duties and that a judge shall exhibit and promote high standards of judicial conduct (§3.6.).

4.6. When the course of conduct that is the subject of the application is examined, it is observed that the judge’s asking for an opinion by relying on the knowledge of any faculty member regarding the case file pending before him/her may pose serious risks in terms of compliance with the principles of judicial ethics, in particular the principle of independence and impartiality, due to the income-generating private works and other activities of faculty members outside the university. Undoubtedly, such a situation negatively affects the “public confidence in the judiciary”, which is a fundamental element of the protection of independence of the judiciary, first and foremost in the eyes of parties to the case and then in the eyes of the public, lawyers, members of the judiciary and judicial staff (§3.6.). In addition, apart from the fact that the opinion received personally and informally is not the product of a study carried out according to scientific methods, there is no doubt that it is quite far from being a scientific opinion, the qualities, scope and content of which are described in detail above (§3.3.,3.4.).

## **5. Decision**

On 24/10/2019, the Committee unanimously decided that:

5.1. The applicant's obtaining legal opinion in case files that have come to the chamber to be examined on appeal or that have to be reviewed as the first instance court in order to resolve the dispute legally and fairly by contacting face to face or via other means of communication (such as telephone, e-mail) with the faculty members, whose knowledge s/he trusted, is not in accordance with the code of judicial conduct.

5.2. The applicant should be notified of the advisory decision,

5.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).

## **X. A JUDGE TO TAKE PART IN PUBLIC DISCUSSIONS ON MATTERS OF PUBLIC INTEREST**

### **Abstract:**

- It is not in accordance with the principles of judicial conduct for the applicant to take part in public discussions on issues that are closely related to the community, such as “Canal Istanbul” or “the earthquake expected to happen in Istanbul”, or to publicly express an opinion through social media or other communication channels.



**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2020/1, Decision No: 2020/1

**Applicant** : ... Rapporteur Judge

**Application Date** : 16/1/2020

**Decision Date** : 20/1/2020

**Subject of the Application** : On a judge's taking part in public discussions on matters of public interest, such as "Canal Istanbul" or "the earthquake expected to happen in Istanbul", and expressing opinions publicly or on social media.

### **1. Subject and Eligibility of the Application**

1.1. The applicant requested advice on whether it is in accordance with the codes of conduct to take part in public discussions such as "Canal Istanbul" or "the earthquake expected to happen in Istanbul", which are closely related to the community, or to publicly express an opinion on these issues through social media or other communication channels.

1.2. The rapporteur judge is an eligible applicant due to his/her inclusion in the concept of "judge" as specified in the definition article of the Court of Cassation Code of Judicial Conduct.

1.3. This advice request, which concerns whether a judge's contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

### **2. Definition of the Application**

2.1. The subject of advice is about whether a judge can take part in public discussions on issues that are closely related to the community, such as "Canal Istanbul" or "the earthquake expected to happen in Istanbul". There are various discussions on this subject on television, radio, internet and social media.

2.2. It is understood from the data compiled from open sources that the

above-mentioned discussions sometimes take on a political content, that they are discussed by the representatives of various levels of political parties on different platforms, including Turkish Grand National Assembly, and that some prominent figures in the society also participate in television programs on this subject.

2.3. Especially recently, due to earthquakes of different intensity in different geographical regions of Turkey, such issues have gained currency and have created an intense political agenda as well as social, economic and scientific discussions.

### **3. Relevant Ethical Value, Principles and Rules**

**3.1.** The subject of application is related to an extra-judicial activity, and it should first be considered within the scope of “Propriety” value of the Court of Cassation Codes of Conduct. According to Art. 4.5. of the Court of Cassation Codes of Judicial Conduct, “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”. With regard to issues with political aspects, it is envisaged in Art. 4.6. of the same codes of judicial conduct that “a judge shall avoid taking part publicly in political or controversial discussions and expressing an opinion”. Regulations regarding the judge’s relations with the society s/he lives in and his/her activities within this scope are included in Art. 4.14 of the Court of Cassation Codes of Judicial Conduct. According to this article, “the complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial. As understanding the community is essential to the sound administration of justice, provided that s/he does not adversely affect his/her judicial duties, a judge may:

4.14.1. Write, lecture and teach or participate in other activities concerning the law.

4.14.2. Meet with public bodies, private organizations and participate in open sessions on matters relating to the law.

4.14.3. Serve as a member of an official body, commission, committee or other body, on condition that the judge does not contradict with impartiality and political neutrality and give such an impression.

4.14.4. Engage in civic activities, on condition that such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

According to Principle 4.11.1 of the Bangalore Principles of Judicial Conduct corresponding to this article, “subject to the proper performance of judicial duties, a judge may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters.”

3.2. Although the subject of the application is related to an extra-judicial activity, it should also be considered in terms of the value of “independence” since it is also on the agenda of current political discussions in some cases. According to Art.1.5 of the Court of Cassation Codes of Judicial Conduct, “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 therefrom.”

3.3. In terms of the value of impartiality, one of the obligations of the judge is to minimize the reasons that may cause his/her to recuse from the case, within reasonable limits. According to Art.2.5 of the Court of Cassation Codes of Judicial Conduct, “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 economic activities in such a way as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing, deciding, appeal or otherwise dealing with cases”. There is a similar regulation in Art. 2.3. of the Bangalore Principles of Judicial Conduct. This issue is explained in paragraph 66 of the Commentary on the Bangalore Principles of Judicial Conduct as follows: “A judge must be available to decide the matters that come before the court. However, to protect the rights of litigants and preserve public confidence in the integrity of the judiciary, there will be occasions when disqualification is necessary. On the other hand, frequent disqualification may bring public disfavor to the bench and to the judge personally, and impose unreasonable burdens upon the judge’s colleagues. Litigants may get the impression that they can pick and choose which judge will decide their case, and this would be undesirable. A judge should, therefore, organize his or her personal and business affairs in a way that minimizes the potential for conflict with judicial duties”.

3.3. One of the most basic functions of judicial conduct is to protect and glorify the public’s trust in the integrity and independence of the judiciary.

According to Art. 3.1. of the Court of Cassation Codes of Judicial Conduct, “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 and conduct which may undermine public confidence in the judiciary”. It is clearly understood from Art. 3.2. of the Court of Cassation Codes of Judicial Conduct that this responsibility is not limited to judicial duties. According to this article, “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”.

3.4. As stated in the Judicial Ethics Advisory Committee Decision no.2019/5 dated 18.4.2019 (§3.6), in Art. 4.7. of the Court of Cassation Codes of Judicial Conduct, certain areas of risks that do not comply with the judiciary’s independence, impartiality, and the obligation to act equally in the use of social media are specified and the judge is also required to refrain from expressing opinions by conducting self-control in such areas of risk. According to this article, “a judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language”. The judge’s self-control when using social media is linked to the statement that compliance with the codes of conduct as highlighted in the Preamble of the Court of Cassation Codes of Conduct is a fundamental responsibility of judges. Undoubtedly, this article should be evaluated and interpreted in conjunction with the other articles of the Court of Cassation Codes of Judicial Conduct. However, the use of social media by judges is a complex problem in our country as well as in the whole world. For this reason, consultations have been initiated at international level in order to place a provision in the Bangalore Principles of Judicial Conduct, the process has been going on for more than a year. UNODC has issued reminder in Draft on Non-binding Guidelines on the Use of Social Media by Judges as follows: “Existing principles relating to the dignity of the courts, judicial impartiality and fairness apply equally to communications on social media (Art.14). Judges should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, impartiality, or public confidence in the judiciary (Art.15)<sup>4</sup>”. Therefore, the judge’s use of social media is within the public’s legitimate interest and observation area.

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4 [https://www.unodc.org/documents/ji/social\\_media/Draft\\_Nonbinding\\_Guidelines\\_on\\_the\\_Use\\_of\\_Social\\_Media\\_by\\_Judges\\_-\\_for\\_circulation.pdf](https://www.unodc.org/documents/ji/social_media/Draft_Nonbinding_Guidelines_on_the_Use_of_Social_Media_by_Judges_-_for_circulation.pdf)



## 4. Ethical Evaluation

**4.1.** The following statements are included in the Commentary on the Bangalore Principles of Judicial Conduct regarding Art. 4.6 of the Bangalore Principles of Judicial Conduct, which corresponds to Art. 4.5. of the Court of Cassation Codes of Judicial Conduct: “A judge, on appointment, does not surrender the rights to freedom of expression, association and assembly enjoyed by other members in the community, nor does the judge abandon any former political beliefs and cease having any interest in political issues. However, restraint is necessary to maintain public confidence in the impartiality and independence of the judiciary. In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge’s involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attacks or be inconsistent with the dignity of judicial office. If either is the case, the judge should avoid such involvement” (Commentary, para. 134). A judge’s taking part in discussions on issues such as “Canal Istanbul” or “the earthquake expected to happen in Istanbul” may pose a risk to his/her impartiality if these issues are brought into action in the future. On the other hand, due to the wide interest in both issues and their political aspects (§2.1, 2.2, 2.3), it is clear that the judge who publicly expresses his/her opinion on these issues will be exposed to political attacks that are incompatible with the reputation of the judicial authority. Therefore, despite having common rights with other citizens, it is not appropriate for a judge to publicly share his/her views on these issues using various communication channels in terms of both factors explained in the Commentary.

**4.2.** In Art. 4.6 of the Court of Cassation Codes of Judicial Conduct, it is stated that a judge must avoid taking part publicly in political or controversial discussions and expressing an opinion. Especially when it comes to public discussions, the duty of a judge to protect the independence and impartiality of the judiciary with dignity of his/her judicial duty comes first. The Commentary contains the following statements regarding the judge’s taking part in public discussions: “A judge should not involve himself or herself inappropriately in public controversies. The reason is obvious. The very essence of being a judge is the ability to view the subjects of disputes in an objective and judicial manner. It is equally important for the judge to be seen by the public as exhibiting that detached, unbiased, unprejudiced, impartial, open-minded, and even-handed

approach which is the hallmark of a judge. If a judge enters the political arena and participates in public debates - either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the government – he or she will not be seen to be acting judicially when presiding as a judge in court. The judge will also not be seen as impartial when deciding disputes that touch on the subjects about which the judge has expressed public opinions; nor will he or she be seen as impartial when public figures or government departments that the judge has previously criticized publicly appear as parties, litigants or even witnesses in cases that he or she must adjudicate” (Commentary, para.136).

4.3. As stated in the Judicial Ethics Advisory Committee Decision no. 2019/2 dated 24/1/2019 (§3.4) and Decision no. 2019/3 dated 14/3/2019 (§3.3), “A judge may engage in appropriate extra-judicial activities so as not to become isolated from the community. A judge may, therefore, write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such activities do not detract from the dignity of the judge’s office or interfere with the performance of the judge’s judicial duties. Indeed, working in a different field offers a judge the opportunity to broaden his or her horizons and gives the judge an awareness of problems in society which supplements the knowledge acquired from the exercise of duties in the legal profession. However, a reasonable balance needs to be struck between the degree to which judges may be involved in society and the need for them to be, and to be seen to be, independent and impartial in the discharge of their duties” (Commentary, para.166; the Court of Cassation Codes of Judicial Conduct, 4.14). In addition, the judge should not neglect the judicial duty due to labor, time and effort devoted to the extra-judicial activities.

4.4. When the propriety of the applicant’s extra-judicial activities is evaluated, the nature of the issue to which time and effort devoted is also important in some cases. As stated in the Judicial Ethics Advisory Committee Decision no. 2019/3 dated 14/3/2019 (§3.3.), Art. 4.11 of the Bangalore Principles of Judicial Conduct and Art. 4.14.1 and 4.14.2 of the Court of Cassation Codes of Judicial Conduct provide some opportunities to a judge. These articles distinguish the activities such as “participating in community and legal education” on the law, legal system and the administration of justice issues from extra-judicial activities. The reason for this is explained in the Commentary on the Bangalore Principles of Judicial Conduct as follows: “a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration

of justice, both within and outside the judge's jurisdiction. Such contributions may take the form of speaking, writing, teaching or participating in other extra-judicial activities. Provided that this does not detract from the discharge of judicial obligations, and to the extent that time permits, a judge should be encouraged to undertake such activities" (Commentary, para.156). In terms of participation in legal education, such professional activities by judges are in the public interest and are to be encouraged (Commentary, para.157). As a matter of fact, The Delaware Judicial Ethics Advisory Committee (Committee) after stating that extra-judicial activities should be assessed according to the nature of each incident, determined that a judge's service as Chair of the Governor's Consortium on Hispanic Issues is not appropriate. The Consortium has not been established for the economic or political advantage of its members, does not reflect adversely upon the impartiality of the judiciary and is not a party to the cases before the court. However, in the decision, it has been concluded that as the Consortium is concerned with issues of fact or policy on matters other than improvement of the law, the legal system or the administration of justice, and will involve more than historical, educational and cultural activities, the judge should not accept the appointment as Chair of the Governor's Consortium on Hispanic Affairs (Judicial Ethics Advisory Committee of the State of Delaware, November 28, 2006, JEAC 2006-7). In accordance with this understanding adopted in the Court of Cassation Codes of Judicial Conduct, whether the extra-judicial activities of a judge contribute to the improvement of the law, the legal system, and the administration of justice or not may be important. In terms of the subject of the application, it is clear that a judge's taking part in public discussions such as "Canal Istanbul" or "the earthquake expected to happen in Istanbul" does not contribute to the improvement of legal system and the administration of justice.

4.5. Another risk that may arise in terms of the participation of the judge in the political discussions is the possibility of undermining the independence of the judiciary. According to Art. 1.5 of the Court of Cassation Codes of Judicial Conduct, 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 therefrom. If a judge takes part in public discussions of a political nature, supports one of the political views or becomes a person who criticizes these views, it can be considered as being in an inappropriate relationship with the legislative or executive powers from the point of view of a reasonable person, or attempting to gain a political interest in the future.

4.6. According the Art. 4.2. of the Court of Cassation Codes of Judicial Conduct, “a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so-willingly”. As stated in the Judicial Ethics Advisory Committee Decision no. 2019/2 dated 24/1/2019 (§3.2) “...Personal restrictions not applicable to other public officials or persons involved in judicial activities may, in some cases, apply to the judge. For this reason, some of the activities that may be involved by public officials or other members of the community dealing with judicial activities such as lawyers may be considered improper for judges. In particular, the possibility that the subject of the application may come before the judge in various forms should not be excluded. In all his/her activities, the judge should take care to protect and promote the public’s trust in the independence, impartiality and integrity of the judiciary (§3.4). The judicial duties of a judge take precedence over all other activities (Court of Cassation Codes of Judicial Conduct, Art. 6.1). In this respect, the participation of a judge in public discussions with political aspects or expressing publicly his/her opinion on these issues by using various communication tools is incompatible with the duty of protecting and promoting the public’s trust in the judiciary and does not overlap with the ethical rule that the judicial duty of a judge must take precedence over all other activities.

4.7. Another duty of a judge is to reasonably minimize the reasons that may cause his/her to recuse from the case (§3.3). It cannot be considered with this duty of the judge to share his/her views with the public beforehand regarding the possible disputes that may come before him. It is of great importance for the judge to act in accordance with the principles of “impartiality” and “propriety”, as well as other principles and rules of judicial conduct, regarding the use of social media. Performing actions that cannot be considered as an ethical behavior in real life through social media in the virtual world may not be enough to legitimize the said actions ethically (§3.5.). Being aware of this fact, the judge should always take into account that the principles of judicial conduct are valid in social media as a rule and that they should display high ethical standards.

## **5. Decision**

On 20/1/2020, the Committee unanimously decided that:

5.1. It is not in accordance with the principles of judicial conduct for the applicant to take part in public discussions on issues that are closely related to the community, such as “Canal Istanbul” or “the earthquake expected to happen

in Istanbul”, or to publicly express an opinion through social media or other communication channels,

5.2. The applicant should be notified of the advisory decision,

5.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).



## **XI. A BENCH MEMBER TO ENGAGE IN ELECTION ACTIVITIES BY FORMING A GROUP COMPOSED OF BENCH MEMBERS OR JOINING IN A GROUP THAT IS THOUGHT TO EXIST IN ORDER TO BE SUCCESSFUL**

### **Abstract:**

- It is not in accordance with the Court of Cassation Code of Judicial Conduct to engage in activities by forming a group composed of bench members of the Court of Cassation who vote in the elections or joining in a group that is thought to exist in order to be successful in the first vice presidency election, considering the propaganda prohibition stipulated in Art. 38 of the Law on the Court of Cassation.





**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2020/2  
**Decision No** : 2020/2  
**Applicant** : ...Bench Member  
**Application Date** : 21/10/2020  
**Decision Date** : 26/11/2020

**Subject of the Application** : On whether it is in accordance with the Court of Cassation Code of Judicial Conduct to engage in activities by forming a group composed of bench members of the Court of Cassation who vote in the elections or joining in a group that is thought to exist in order to be successful in the first vice presidency election, considering the propaganda prohibition stipulated in Art. 38 of the Law on the Court of Cassation.

**1. Subject and Eligibility of the Application**

1.1. The applicant stated that on 01.01.2021 First Vice President of the Court of Cassation would retire due to the age limit, and that s/he entered into the process of election as s/he planned to be a candidate for this post, which will be vacant as of the beginning of the year. In this context, in order to be successful, s/he wanted to engage in activities by forming a group of bench members of the Court of Cassation who vote in the elections or joining in a group that s/he thought it already existed, but considering the propaganda prohibition stipulated in Art. 38 of the Law on the Court of Cassation, s/he requested an advice whether it is in accordance with the Court of Cassation Code of Judicial Conduct or not.

1.2. The bench member is an eligible applicant due to his/her inclusion in the concept of “judge” as specified in the definition article of the Court of Cassation Code of Judicial Conduct)

1.3. The advice request, which concerns whether a judge’s contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

## **2. Definition of the Application**

2.1. Elections held at the Court of Cassation attract the attention of the public not only inside but also outside the institution. In some cases, the processes related to the election and the election results can be followed with interest by judges outside the Court of Cassation, lawyers, other legal professionals and the society. This interest is a basic indicator of the place and importance of the Court of Cassation in the life of the State and society.

2.2. The subject of advice is whether a bench member of the Court of Cassation can form a group to support him/her at the Court of Cassation if s/he is a candidate in the elections to be held for a vacant position or whether s/he can join a group s/he thinks it already exists.

2.3. Considering that there is no clear statement in the petition regarding the nature of the group in question, the possibility of the closed or open groups to be formed in real or virtual environments (such as WhatsApp, Facebook) should not be overlooked.

## **3. Relevant Ethical Value, Principles and Rules**

3.1. Although there is no clarity as to the nature of the group that the applicant plans to form or join, it is not advisable for judges to be members of closed societies. According to the Commentary on the Bangalore Principles of Judicial Conduct, which includes explanations regarding the social relations of judges (Commentary, para.127), “it is not advisable for a judge to belong to a secret society where lawyers who appear before him or her are also members, since it may be inferred that favors might be extended to those particular lawyers as part of the brotherhood code”.

3.2. According to Art. 5.3 of the Court of Cassation Code of Judicial Conduct, “a judge shall carry out judicial duties by displaying sensitivity equally for all persons, such as the parties, witnesses, lawyers, court staff, and judicial colleagues”. A similar regulation is included in the provision 5.3 of the Bangalore Principles as follows: “A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and *judicial colleagues*, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties”.

3.3. Pursuant to Art. 1.6 of the Court of Cassation Code of Judicial Conduct, “in performing judicial duties, a judge shall be independent of other judicial

colleagues”. According to the Art. 1.4. of the Bangalore Principles of Judicial Conduct, “in performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently”. In the Commentary on the Bangalore Principles of Judicial Conduct, this issue is regulated as follows: “The task of judging implies a measure of autonomy which involves the judge’s conscience alone. Therefore, judicial independence requires not only the independence of the judiciary as an institution from the other branches of government; it also requires judges being independent from each other. In other words, judicial independence depends not only on freedom from undue external influence, but also freedom from undue influence that might come from the actions or attitudes of other judges. Although a judge may sometimes find it helpful to “pick the brain” of a colleague on a hypothetical basis, judicial decision-making is the responsibility of the individual judge, including each judge sitting in a collegiate appellate court” (Commentary, para. 39). “In the performance of his or her functions, a judge is no one’s employee. He or she is a servant of, and answerable only to, the law and to his or her conscience which the judge is obliged to constantly examine. It is axiomatic that, apart from any system of appeal, a judge deciding a case does not act on any order or instruction of a third party inside or outside the judiciary. Any hierarchical organization of the judiciary and any difference in grade or rank shall, in no way, interfere with the right of a judge to pronounce the judgment freely, uninfluenced by extrinsic considerations or influences” (Commentary, para. 40).

3.4. Pursuant to Art. 1.7 of the Court of Cassation Code of Judicial Conduct and in Art. 1.5. of the Bangalore Principles of Judicial Conduct, “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”. In the Commentary on the Bangalore Principles of Judicial Conduct, this issue is explained as follows: “A judge should be vigilant with respect to any attempts to undermine his or her institutional or operational independence. While care must be taken not to risk trivializing judicial independence by invoking it indiscriminately in opposition to every proposed change in the institutional arrangements affecting the judiciary, a judge should be a staunch defender of his or her own independence” (Commentary, para. 43).

3.5. Pursuant to Art. 2.4. of the Court of Cassation Code of Judicial Conduct, “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”. According to the provision 1.6. of the Bangalore Principles of Judicial Conduct, “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”. In the Commentary on the Bangalore Principles of Judicial Conduct, this issue is explained as follows: “Public acceptance of, and support for, court decisions depends upon public confidence in the integrity and independence of the judge. This, in turn, depends upon the judge upholding a high standard of conduct in court. The judge should, therefore, demonstrate and promote a high standard of judicial conduct as one element of assuring the independence of the judiciary” (Commentary, para. 45).

3.6. As explained in the Judicial Ethics Advisory Committee Decision no. 2019/5 dated 18/04/2019 (§3.6) and re-explained in Decision no. 2020/1 dated 20/01/2020 (§3.5), in Art. 4.7 of the Court of Cassation Codes of Judicial Conduct, certain areas of risks that do not comply with the judiciary’s independence, impartiality, and the obligation to act equally in the use of social media are specified and the judge is also required to refrain from expressing opinions by conducting self-control in such areas of risk. The judge’s self-control when using social media is linked to the statement that compliance with the codes of conduct as highlighted in the Preamble of the Court of Cassation Codes of Judicial Conduct is a fundamental responsibility of judges. Undoubtedly, this article should be evaluated and interpreted in conjunction with the other articles of the Court of Cassation Codes of Judicial Conduct. UNODC has issued reminders in Draft on Non-binding Guidelines on the Use of Social Media by Judges as follows: “Existing principles relating to the dignity of the courts, judicial impartiality and fairness apply equally to communications on social media (Art.14). Judges should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, impartiality, or public confidence in the judiciary”(Art.15)<sup>5</sup>. According to paragraph 23 of this Guidelines, “a judge may use social media platforms to follow topics of interest. It may be worth following a diverse range of topics and commentators to avoid creating their own “echo chambers”<sup>6</sup>. However, a judge should be wary of following or liking particular advocacy groups, campaigns, or commentators where association with them could damage public confidence in the judge’s

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5 [https://www.unodc.org/res/ji/import/international\\_standards/social\\_media\\_guidelines/Social\\_Media\\_2020.pdf](https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/Social_Media_2020.pdf)

6 Echo chamber effect: As the general norm, thinking that closed groups are talking only among themselves, the more they hear conversations, the more they trust what they say and talk more. Conversations create more conversations and considering the portrait consisting only of conversations that is far from reality as real.

impartiality or the impartiality of the judiciary in general”.

#### **4. Relevant Constitution, Law and Legislative Provisions**

4.1. Considering that one of the aims of the Code of Judicial Conduct is to complete “binding professional codes”, the applicant should be attentive to act in compliance with the provisions of the relevant legislation (see Judicial Ethics Advisory Committee Decision no 2019/2 dated 14/3/2019, §3.2.). Also, as a general principle, the judge should act in accordance with the law. In the Commentary on the Bangalore Principles of Judicial Conduct, this issue is explained as follows: “When a judge transgresses the law, the judge may bring the judicial office into disrepute, encourage disrespect for the law, and impair public confidence in the integrity of the judiciary itself... A judge is obliged to uphold the law. What in others may be seen as a relatively minor transgression may well attract publicity, bringing the judge into disrepute, and raising questions regarding the integrity of the judge and of the judiciary (see Commentary, para. 108). In addition, violation of the law can cause problems in terms of disciplinary responsibility. It should be considered that such restrictions as envisaged in the codes of conduct, by serving as a shield, shall protect the judge from dealing with disciplinary investigations. For this reason, the applicant should also pay attention to the relevant provisions of the Constitution, laws and legislation.

4.2. According to Art. 154/3 of the Constitution, “The First President, First Vice Presidents and Presidents of Chambers shall be elected by the General Assembly of the Court of Cassation from among its own members, for a term of four years, by secret ballot and by an absolute majority of the total number of members; they may be re-elected at the end of their term of office”. Therefore, the election of the First Vice President of the Court of Cassation, for which the applicant considers to be a candidate, will be made by the General Assembly of the Court of Cassation consisting of all the members of the Court of Cassation, in accordance with the Constitution. More clearly, all members of the Court of Cassation will be able to vote in this election.

4.3. In accordance with Art. 154/3 of the Constitution, Art. 30 of the Law on the Court of Cassation states the qualifications of the candidates for the

First Vice President of the Court of Cassation to participate in the elections. In Art. 31 of the same Law, the election procedure is explained as follows: “The General Assembly of the Court of Cassation elects the First President, First Vice Presidents and Presidents of Chambers from among its own members, with the absolute majority of the total number of bench members and by secret ballot. -If there is no result in the first three ballots, the election is held between the two candidates who received the most votes in the third ballot. -Those who receive equal number of votes as the candidates who will participate in the fourth ballot also participate in the election. -If an absolute majority is not achieved in the fourth and fifth ballots, the election is repeated with those who apply for candidacy again. -The absolute majority of the total number of members must be present in these elections. -It is obligatory that one of the to-be-elected first vice president should be the president or a member of the civil chambers or criminal chambers. -The election of the president of chamber is made separately for each vacant chamber presidency. –*Those who want to be elected as the First President, First Vice President or President of the Chamber shall be appointed to the First Presidency in writing before the election day or they can apply or submit their candidacy verbally before voting starts on the first election day. The names and surnames of the candidates are announced to the bench members by the First Presidency before the voting begins.* - Elections are held on the day and time determined by the First Presidency and continue until the end of the working hour. If the election is not concluded in one day, voting continues among the candidates until the result is received in the following working days...”. Pursuant to Art. 55/1 of the Internal Regulation of the Court of Cassation titled “Security of Elections”, “the First President takes all necessary measures to ensure that the elections are conducted in an orderly manner, that the votes are cast secretly and that the counting is open. Elections are held on the day, place and time determined by the First President. *The place, day and time of the election shall be notified to the bench members in writing at least seven days in advance.* The names and surnames of the candidates are immediately announced to the bench members. The election continues uninterruptedly until the end of the working hour.

4.4. Another important regulation in the Court of Cassation regarding elections is Art. 38 of the Law on the Court of Cassation regarding the prohibition of propaganda that the applicant stated in his/her petition. According to this article, titled “Prohibition of propaganda”, “In all elections held at the Court of Cassation, it is not allowed to engage in acts that constitute propaganda regarding the elections, inside and outside the Court of Cassation”. This provision entered into the Law on the Court of Cassation for the first time with the Court of

Cassation Law no.1730 dated 16/5/1973 (RG, 26.05.1973, No:14546, Kanunlar Dergisi, Cilt: 56) and was exactly adopted in the Court of Cassation Law no. 2797, which is still in effect, while it was being prepared (see Adalet Komisyonu Raporu, 2.2.1983 T, Esas No:1/363, Karar No:95, S. Sayısı 394'e 1'inci Ek). This provision, which was not included in the draft Court of Cassation Law no. 1730 was added to Art. 34 by the Justice Commission during the works carried out in the Grand National Assembly of Türkiye and its reason is explained as follows: *“This article was put into the draft by our commission. In order to ensure that the elections to be held at the Court of Cassation can be held in accordance with the structure of the Court of Cassation and the personality of its members, election propaganda, inside and outside, is prevented unconditionally.”*

## 5. Ethical Evaluation

The fact that employees at all levels are in harmony with each other, avoiding prejudice, behaving tolerantly, respecting effort and merit, developing a sense of cooperation and solidarity, and rules of etiquette characterize the culture of the Court of Cassation. Corporate culture with these features, at the same time, raises democratic values such as sincerity, respect and tolerance and forms the basis of a well-functioning democratic management approach within the institution (The Court of Cassation Strategic Plan 2019-2023, p.16). In order to be elected to important management and representation offices such as the President of the Court of Cassation, the First Vice President of the Court of Cassation, the President of the Chamber, more than half of the votes of the General Assembly of the Court of Cassation must be obtained (Constitution Article 154/4, 5, See §3.6). In addition, the boards such as the Board of Presidents, the Board of First Presidency, the Board of Management and Judicial Ethics Advisory Committee, whose members are elected and serve as management and advisory functions, ensure the effective participation of the members of the Court of Cassation in decision-making processes. For this reason, internal democracy, transparency and participatory management are among the basic elements that characterize the culture of the Court of Cassation (The Court of Cassation Strategic Plan 2019-2023, p. 17). As stated in the petition, forming open or closed groups in real or virtual environments may pose a risk of violation of the rule on differentiation on any irrelevant ground (§3.2) as specified in Art. 5.3. of the Court of Cassation Code of Judicial Conduct and Art. 5.3. of the Bangalore Principles of Judicial Conduct including “judicial colleagues”.

### 5.1. The independence of judges also includes independence of other judicial



colleagues (§3.3). The internal solidarity or rules in the group, which is thought to be formed in order to be successful in the elections, may pose a risk of violation of the rule stipulated in Art. 1.6. of the Court of Cassation Code of Judicial Conduct stating that the judge must be independent of other judicial colleagues. Due to group rules and conventions, group members may feel bound by the decisions taken in the group, or at least it may appear that members refrain from voting independently in elections, inside or outside the institution. Such an appearance, which is likely to occur, cannot be considered consistent with Art. 1.7. of the Court of Cassation Code of Judicial Conduct which stipulates that “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” (§3.4). For the same reason, Art. 2.4. of the Court of Cassation Code of Judicial Conduct stipulating that “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” (§3.5).

5.2. In paragraph 23 of the Draft on Non-binding Guidelines on the Use of Social Media by Judges prepared by UN Office on Drugs and Crime (UNODC) it is recommended that judges should avoid creating their own echo chambers in the use of social media. It should be noted that there is a risk that the group in question, which is thought to be formed to carry out election activities, may evolve into an echo chamber (§3.6).

5.3. Another issue that should be emphasized regarding the subject of the application is the prohibition of propaganda stipulated in Art. 38. of the Law on the Court of Cassation, as stated in the petition (§4.4). According to Turkish Language Association, “propaganda” is a word of Italian origin, and it is defined as “a work carried out by means of speech or writing in order to promote, impress and disseminate a teaching, thought or belief upon others”. Therefore, in order to be successful in the election and to be elected as the First Vice President of the Court of Cassation, any activity to be carried out by the applicant to promote, impress and disseminate his/her thoughts, belief or doctrine by means of speech, writing etc. can be considered within the scope of propaganda. As emphasized in various decisions (§4.1) of the Judicial Ethics Advisory Committee, it is also an ethical obligation for the judge to comply with the professional codes. As a matter of fact, it is stated in the Commentary on the Bangalore Principles of Judicial Conduct that a judge is obliged to uphold the law (§4.1). Such restrictions as envisaged in the Code of Conduct should



serve as a shield and should protect the applicant from any potential disciplinary proceedings. Art. 31 of the Law on the Court of Cassation and Art. 55. of the Internal Regulation of the Court of Cassation clearly stipulates that the names and surnames of the candidates will be announced to the members by the First Presidency of the Court of Cassation. Therefore, the members, who will vote, are allowed to know the names of all candidates before voting and make the necessary evaluations in this way (§4.3.).

## **6. Decision**

On 26/11/2019, the Committee decided by majority of votes that:

6.1. It is not in accordance with the Court of Cassation Code of Judicial Conduct to carry out activities in real or virtual environments (WhatsApp, Facebook, etc.) by forming a group composed of bench members of the Court of Cassation who vote in the elections or joining in a group that is thought to exist in order to be successful in the first vice-presidency election,

6.2. The applicant should be notified of the advisory decision,

6.3. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).

## **DISSENTING OPINION**

The applicant stated that on 01.01.2021 First Vice President of the Court of Cassation would retire due to the age limit, and that s/he entered into the process of election as s/he planned to be a candidate for this post, which will be vacant as of the beginning of the year. In this context, in order to be successful, s/he wanted to engage in activities by forming a group of bench members of the Court of Cassation who vote in the elections or joining in a group that s/he thought it already existed, but considering the propaganda prohibition stipulated in Art. 38 of the Law on the Court of Cassation, s/he requested an advice whether it is in accordance with the Court of Cassation Code of Judicial Conduct or not.

According to second paragraph of Art. 22 of Decision on Judicial Ethics Advisory Committee Working Procedures and Principles, “The applicant shall make his/her application by submitting his/her full name, address, and

contact details, concise and signed petitions *containing details of the subject* for which s/he requests an opinion together with, if any, the relevant documents to the Secretariat”. Similar to this provision, pursuant to subparagraph (a) of paragraph 1 of Article 23 of the same Decision, titled “Instances where opinion shall not be requested”, it is stated that opinion shall not be requested from the Committee in “abstract, general, outdated past events and issues related to conduct of someone other than the person who asks the question”. Another similar regulation is included in the second paragraph of Art. 4 of the Judicial Ethics Advisory Committee Instruction on Preliminary Review. Considering these provisions regulating the application conditions, it should be noted that the subject and especially the statements regarding the said group in the petition do not contain sufficient detail for the Judicial Ethics Advisory Committee. For this reason, the fact that giving an advice regarding the possibility that the said group may be formed in a closed or open way in real or virtual environment, and on the possibilities that “it is not in accordance with the principles of codes of judicial conduct to carry out election activities by forming a group or joining a group that is thought to exist” will be of general and abstract nature.

The elections to be held at the Court of Cassation are also regulated in the Law on the Court of Cassation and the Internal Regulation of the Court of Cassation. Members who meet the conditions for being elected according to the nature of the election have the right to be a candidate, and each bench member of the Court of Cassation has the duty to participate in the elections and vote. In this respect, the activity of each candidate to introduce himself/herself in accordance with the structure of the Court of Cassation and the personality of its members is also by the nature of the election.

After considering the nature of the group in the environment where the applicant is located and the criteria that is taken into account while forming it, defining whether it is closed or open and whether it is ethical to join or not to join in such a group, assessing the existence and necessity of the group, a decision needs to be made as to whether the propaganda activity within such a group is ethical.

As the decision, which is made without qualifying the group, will not constitute a concrete decision of advice regarding the event that is the subject of the application, I do not agree the opinion of the esteemed majority. 26.11.2020.

## **XII. A JUDGE TO HOLD SHARES OF PUBLICLY TRADED COMPANIES ON THE ISTANBUL STOCK EXCHANGE OR TO TRADE THE SHARES OF SUCH COMPANIES**

### **Abstract:**

- It is ethically appropriate for the applicant to hold shares of publicly traded companies on the Istanbul Stock Exchange.
- It is not ethically appropriate for the applicant to trade the shares of publicly traded companies on the Istanbul Stock Exchange, either frequently or on a continuous basis, which would imply trading and profitable activities.



**THE COURT OF CASSATION**  
**JUDICIAL ETHICS ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2021/2  
**Decision No** : 2022/1  
**Applicant** : ... Rapporteur Judge  
**Application Date** : 1/10/2021  
**Decision Date** : 19/1/2022

**Subject of the Application** : On whether it is appropriate for a judge “to hold shares of publicly traded companies on the Istanbul Stock Exchange or to trade the shares of such companies”

**1. Subject and Eligibility of the Application**

1.1. The applicant requested advice on whether it is appropriate to own or trade shares of publicly traded companies on the Istanbul Stock Exchange.

1.2. The rapporteur judge is an eligible applicant due to his/her inclusion in the concept of “judge” as specified in the definition article of the Court of Cassation Code of Judicial Conduct.

1.3. The advice request, which concerns whether a judge’s contemplated conduct is in compliance with codes of conduct falls within the authority of the Committee as of the subject and time.

**2. Definition of the Application**

2.1. The subject of advice is whether it is appropriate for a judge to own or trade shares of publicly traded companies on the Istanbul Stock Exchange.

2.2. Although the application is single, it contains two subjects. The first is that the judge owns shares of publicly traded companies in the Istanbul Stock Exchange, and the second is that the said shares are traded.

2.3. Companies can buy shares, bonds, bills, etc. and benefit from the opportunities offered by the capital market by offering capital market instruments

to the public or by issuing them to qualified investors without public offering. It is clear that the main motivation for buying and selling the shares of publicly traded companies on the Istanbul Stock Exchange is to “make financial gain”. According to subparagraph 17 of Article 75 of the Income Tax Law, “incomes from all kinds of capital market instruments issued in accordance with the provisions of the Capital Market Law” are taxed.

2.4. Securities markets are technical markets that require a certain knowledge due to their nature and developments in this market should be closely monitored. Naturally, it is difficult for individuals to make such a follow-up regularly and to predict the effects of developments in these markets on the prices of securities and take a timely approach accordingly<sup>7</sup>. Therefore, it is essential to actively monitor the markets in order to profit from trading securities.

2.5. Savers can evaluate their savings by purchasing securities from issuer companies, intermediary institutions or stock exchanges. However, investing in securities requires knowledge and expertise<sup>8</sup>.

An investor may lose money if it is unpredictable how the value of a security may change in the future, both before and after purchase. For this, the stock market should be closely monitored and in addition to the characteristics of the current investment instrument, the conditions that may be affected should be taken into account. It is also important that natural, social, economic and political events and important decisions regarding the economy are followed and interpreted in a timely manner. In particular, economic fluctuations or crises may require urgent buying or selling for stock holders. It should be taken into account that all these activities require a significant amount of knowledge as well as a great deal of time and effort.

### **3. Relevant Ethical Value, Principles and Rules**

3.1. The 4th value of the Court of Cassation Codes of Conduct is “Propriety” which states that propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge”. For this reason, it is an ethical obligation that the judge behaves in accordance with propriety and appear so.

3.2. A judge will be subject to constant public scrutiny and commentary on

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7 Securities Investment Funds: Promotional Guide, Capital Markets Board, <https://www.spk.gov.tr/Sayfa/AltSayfa/253> Accessed: 28.12.2021

8 <https://www.spk.gov.tr/Sayfa/AltSayfa/253> Accessed: 28.12.2021

him. Therefore, s/he must accept certain restrictions that the ordinary citizen views as a burden. According to Art. 4.2. of the Court of Cassation Codes of Conduct, “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-willingly”.

3.3. Since it is stated in the last paragraph of the Preamble of the Court of Cassation Codes of Conduct that one of the aims of the ethical rules is to “complete binding rules of professional conduct”, the judge should also take care not to act contrary to the provisions of the relevant legislation. The main purpose of trading the shares of publicly traded companies in the Istanbul Stock Exchange is to generate income (§ 2.3.). According to Art. 48, paragraph 3 of Law on Judges and Prosecutors (LJP), “...Judges and prosecutors *cannot* take any official or special duties other than those specified in law or *engage in gainful occupations*. They shall notify the Ministry of Justice in fifteen days in case their spouses or minor or incapacitated children are engaged in continuous income-generating activities”. This provision of law is a more comprehensive and special provision when compared to the “prohibition of engaging in trade and profitable activities” stipulated in Art. 28 of the Civil Servants Law (CSL). Art. 48, paragraph 3 of LJP does not foresee a restriction on merchants, artisans or certain names or certain company partnerships, as in Art. 28 of CSL, and introduces a general prohibition. For this reason, the judges’ generating income by trading in securities may be open to debate within the framework of LJP 48/3 and possible complaints about the violation of code of professional conduct may arise. Therefore, it would be prudent for the judges to stay away from engagements that may be interpreted as a violation of code of professional conduct. A judge shall, when evaluating the compatibility of his/her action with codes of judicial conduct, take into account other codes of professional conduct and ensure that s/he does not violate these rules.

#### **4. Ethical Evaluation**

4.1. The judge should do so freely and willingly even when some activities would not be viewed negatively if carried out by other members of the community or of the profession. This applies to both the professional and the personal conduct of a judge. The legality of a judge’s conduct, although relevant, is not

the full measure of its propriety (Commentary on the Bangalore Principles of Judicial Conduct, §114). Personal restrictions that do not apply to other public officials or persons involved in judicial activities may be applied to the judge in some cases. For this reason, some activities that public officials and even other members of the society who take part in judicial activities such as lawyers can do may be deemed inappropriate for judges. As a matter of fact, the Judicial Ethics Advisory Committee relied on this reason, among others, in its decision that a judge was not eligible to participate in a televised quiz show with money prize (24.1.2019 T, 2019/2 K, §3.2, §4.1.).

4.2. The judge should not neglect the judicial duty due to labour, time and effort devoted to the extra-judicial activities. As a matter of fact, according to Art. 6.1. of the Court of Cassation Code of Judicial Conduct, “the judicial duties of a judge take precedence over all other activities”. Hence, a judge shall devote the judge’s professional activities to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decision, but also other tasks relevant to the judicial office or the court’s operations (Court of Cassation Code of Judicial Conduct Art. 6.2). In case of the judge’s extra-judicial activity, one of the criteria applied is that the extra-judicial activity of a judge does not make excessive demands on his or her time (Commentary, §166, 167/b, Judicial Ethics Advisory Committee, dated 24.1.2019, 2019/2 Dec. §3.4, Judicial Ethics Advisory Committee of the State of Delaware, November 28, 2006, JEAC 2006-7). The fact that extra-judicial activities take place outside working hours does not just mean that the judge does not spend too much time on those activities. According to Art. 6.3. of the Court of Cassation Code of Judicial Conduct, along with the provision stating that “a judge shall particularly observe the working hours, and ensure that the personnel under his/her administration do so”, also inclusion of the provision in Art. 6.1. shows that the judge’s observation of working hours and devotion himself or herself to the professional activity and the identification of the judge with his or her profession is accepted as an ethical obligation. This comment is consistent with the Art. 6.11. of the Code of Judicial Conduct stating that “a judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamentally to the maintenance of judicial independence”.

4.3. The Court of Cassation Code of Judicial Conduct in line with the principles of universally accepted judicial conduct do not just prohibit judges from conducting an act condemned by the society, further to that, aim for high



standards for promoting and enhancing the values of judicial conduct. As a matter of fact, Commentary on the Bangalore Principles of Judicial Conduct includes similar explanations and comments. According to Commentary, “a judge’s primary duty is the due performance of the judicial function, the principal elements of which involve the hearing and determination of cases requiring the interpretation and application of the law. ... A judge should resist any temptation to devote excessive attention to extra-judicial activities if this reduces the judge’s capacity to discharge the judicial office. In such cases, reasonable observers might suspect that the judge has accepted the extra curricular duties in order to enhance his or her official income” (Commentary, §195). The time and effort spent trading securities, as well as the effort to earn more, may pose a risk of disproportionate attention and time wasted in extra-judicial activity. Such a situation leads to a decrease in the capacity of the judge to fulfill his/her judicial duties.

4.4. As stated above (§4.3.), a reasonable observer would justifiably consider that the judge trades securities for the purpose of earning additional income beyond his salary. This kind of impression in public is undoubtedly not consistent with the duty that the judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence.

4.5. This issue can also be addressed within the scope of the prohibition of judges to engage in profitable activities, which is regulated in Art. 48, paragraph 3 of LJP (§3.3.). As a matter of fact, the Judicial Ethics Advisory Committee stated in its decision which deems inappropriate for a judge to participate in a quiz show with money prize that at first sight, an extra-judicial activity that seems unlikely to pose a problem, by the impact of unforeseen circumstances can cause complications in terms of disciplinary responsibility of the judge. It should be considered that such restrictions as envisaged in the codes of conduct, by serving as a shield, shall protect the judge from dealing with disciplinary investigations (dated 24.1.2019, 2019/2 Dec., §4.3.).

4.6. In paragraph 169 of the Commentary on the Bangalore Principles of Judicial Conduct, the following explanation is given under the heading “Financial Activities”: “A judge has the same rights as an ordinary citizen with respect to his or her private financial affairs, except for any limitations required to safeguard the proper performance of the judge’s duties. A judge may hold and manage investments, including real estate, and engage in other remunerative activity...” Therefore, as a general principle, there is no ethical objection for the

judge to own shares of publicly traded companies in the Istanbul Stock Exchange through various means such as inheritance, purchase, donation. However, in the case of a continuous or frequent activity related to the buying and selling of the said shares, the judge should be aware of the restrictions that ensure the proper performance of his/her duties, as explained above (§4.1, §4.2, §4.3, §4.4, §4.5). As a matter of fact, in the same paragraph, even if it is a family business, if it “occupies the judge too much”, it is not considered appropriate to carry out the financial activity in question.

## **5. Decision**

On 19.1.2022, the Committee decided by majority of votes that:

5.1. It is ethically appropriate for the applicant to hold shares of publicly traded companies on the Istanbul Stock Exchange,

5.2. It is not ethically appropriate for the applicant to trade the shares of publicly traded companies on the Istanbul Stock Exchange, either frequently or on a continuous basis, which would imply trading and profitable activities,

5.3. The applicant should be notified of the advisory decision,

5.4. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet).

## **DISSENTING OPINION IN TERMS OF DECISION NO. 5.2**

We do not agree with the majority opinion of the Court of Cassation Judicial Ethics Advisory Committee dated 19/1/2022 and numbered 2022/1 for the following reasons:

**Reasons:** First of all, it is important to explain the concept of ethics. Ethics is the principles and rules based on universal values that are used to evaluate what behavior is right or good. It is possible to define the Codes of Conduct of the Court of Cassation as guiding principles and rules that will enable us to be more sensitive in our behaviors as people who practise the profession of judge and public prosecutor, to have less hesitation about what is right or good, and to defend our behaviors more confidently before our colleagues and society.

Ethical principles are based on universal values. Values are judgments that

guide our conduct and are not easy to change. Principles are needed to make the connection between these general values and current events. The Court of Cassation Codes of Judicial Conduct was adopted in order to establish the necessary link between universal values and current events and behaviors, and how the Presidents of Chambers of the Court of Cassation, Bench Members, Rapporteur Judges and Public Prosecutors should behave.

In line with these universal values and ethical principles, the Court of Cassation Judicial Ethics Advisory Committee was established as the advisory authority regarding the problems that the Presidents of the Chambers of the Court of Cassation, Bench Members, Rapporteur Judges and Public Prosecutors will face in their constantly changing and developing human relations.

After this explanation, there are two issues that the judge who applied to the Judicial Ethics Advisory Committee of the Court of Cassation was asked for a brief opinion. The first is whether it is appropriate for a judge to own the shares of publicly traded companies in the Istanbul Stock Exchange, and the second is whether it is appropriate to trade the shares of publicly traded companies in the Istanbul Stock Exchange in terms of codes of judicial conduct.

The opinion of the Court of Cassation Judicial Ethics Advisory Committee that it is appropriate for a judge to own the shares of publicly traded companies in the Istanbul Stock Exchange in terms of codes of judicial conduct is also accepted by us. However, the opinion shared by the most of the esteemed members of the Judicial Ethics Advisory Committee that it is inappropriate for a judge to trade the shares of publicly traded companies in the Istanbul Stock Exchange with frequency or continuity that means trading and profitable activities in terms of ethics is not agreed.

First of all, the issue that needs to be explained about the subject is to put forward the Court of Cassation Codes of Judicial Conduct regarding this current issue for which the opinion of the honorable committee is needed. It is determined that the principle of propriety, one of the basic principles of the Court of Cassation Codes of Judicial Conduct, is an indispensable element for the performance of all of the activities of a judge. In Art. 4.1. of the Court of Cassation Codes of Judicial Conduct, it is regulated that a judge shall avoid impropriety and the appearance of impropriety in all of his/her activities. Here, the criterion is whether the conduct would create in the mind of a reasonable observer a positive or negative perception about integrity, impartiality and competence of the judge.

In Art. 4.14 of the Court of Cassation Codes of Judicial Conduct, it is stated that the complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial. Here, as a criterion, it is stipulated that s/he does not adversely affect his/her judicial duties.

In addition to these, lastly, Art. 4.8 of the Court of Cassation Codes of Judicial Conduct is closely related to the request for opinion. In this article, it is regulated that 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.

**Result:** In the light of all these explanations, when the issue that creates a disagreement with the majority of the Court of Cassation Judicial Ethics Advisory Committee is evaluated; we have found the decision inappropriate stating that it is inappropriate for a judge to trade shares of publicly traded companies on the Istanbul Stock Exchange, either frequently or on a continuous basis, which would imply trading and profitable activities, in terms of codes of judicial conduct because the concept of “buying and selling with frequency and continuity that implies trade and profitable activity” is required to be explained separately and its boundaries to be determined, and it has been found out that its intellectual and purposeful connection with the Court of Cassation Codes of Judicial Conduct has not been sufficiently established.

We do not agree with the decision of the majority in paragraph 5.2. because of the following reasons:

Instead of the decision accepted by the majority of the esteemed members of the Court of Cassation Judicial Ethics Advisory Committee stating that “it is not ethically appropriate for the applicant to trade the shares of publicly traded companies in the Istanbul Stock Exchange frequently or continuously, which would imply trading and profitable activities”, based on the “Propriety” value of the Court of Cassation Codes of Judicial Conduct, as stated in Art.4.1 and Art. 4.8., the decision should be regulated as “it is appropriate for a judge to trade the shares of publicly traded companies in the Istanbul Stock Exchange, provided that it does not create in the mind of a reasonable observer a negative perception about integrity, impartiality and competence of the judge and does not adversely affect his/her judicial duties”.

Considering the activity of the Judicial Ethics Advisory Committee that has taken decision unanimously, that the restriction of the behaviors that are generally accepted by the majority of the society in the ordinary course of life due to the profession of judge should not be interpreted as preventing the development of social and economic life. 25/11/2022.

### **XIII. APPLICATION OF A LITIGANT TO JUDICIAL ETHICS ADVISORY COMMITTEE**

#### **Abstract:**

- Pursuant to the Art. 25.2. of Judicial Ethics Advisory Committee Working Procedures and Principles, the applicant's petition was dismissed on procedural grounds, due to his/her lack of capacity as a judge or a public prosecutor.
- Pursuant to the Art. 26.3. of Judicial Ethics Advisory Committee Working Procedures and Principles, the document can not be sent to another authority or institution.



**THE COURT OF CASSATION**  
**JUDICIAL ADVISORY COMMITTEE**  
**DECISION**

**Application No** : 2022/1  
**Decision No** : 2022/2  
**Applicant** : ...Litigant  
**Application Date** : 4/3/2022  
**Decision Date** : 14/11/2022

**Subject of the Application** : Allegation of the unlawfulness of the interim injunction given by the judge of the Istanbul 13th Civil Court of First Instance during the negative declaratory action.

**1. Subject and Eligibility of the Application**

1.1. The applicant applied to the Judicial ethics Advisory Committee with the allegation that the decision of the judge of the Istanbul 13th Civil Court of First Instance regarding the interim injunction during negative declaratory action was contrary to Article 5 of the Court of Cassation Codes of Conduct

1.2. According to Part III, Art.V-1 of the Court of Cassation Codes of Conduct, “ Judges may request an opinion from the Advisory Committee about the propriety of contemplated or proposed future conduct”. Similar to this provision, according to Art. 22, paragraph 1 of the Judicial Ethics Advisory Committee Working Procedures and Principles dated 24.12.2018, “Judges and the public prosecutors may request opinion from the Committee about the propriety of their contemplated or future conduct with ethical values”. As can be clearly understood from the aforementioned provisions, those who do not have the title of judge or public prosecutor do not have the right to apply to the Committee.

1.3. Actions to be taken upon the applications of persons other than judges and public prosecutors are determined in Art. 7/1-a of the Judicial Ethics Advisory Committee Instruction on Preliminary Review as follows: (1) The Secretariat conducts a preliminary review of applications in the order of following headings: a) Capacity: The applicant is primarily examined as to whether he is in the

capacity of a judge or a public prosecutor of the Court of Cassation...”

1.4. As a result of the preliminary review made by the Secretariat, it was found out that the applicant was not in the capacity of a judge or a public prosecutor and that s/he applied to the Committee as a party to a case.

## **2. Decision**

On 14.11.2022, the Committee unanimously decided that:

2.1. Pursuant to the Art. 25.2. of Judicial Ethics Advisory Committee Working Procedures and Principles, the applicant’s petition was dismissed on procedural grounds, due to his/her lack of capacity as a judge or a public prosecutor,

2.2. Pursuant to the Art. 26.3. of Judicial Ethics Advisory Committee Working Procedures and Principles, the document can not be sent to another authority or institution,

2.3. The applicant should be notified of the advisory decision

2.4. The copy of the decision that omits the personal information should be published on the internal network of the Court of Cassation (intranet)



## **SECOND CHAPTER: THE RELEVANT LEGISLATION**

**Translated by: Nihal Eriş,** *Translator, The Judicial Reform  
Department of the Court of Cassation*



## **1. JUDICIAL ETHICS ADVISORY COMMITTEE DECISION ON WORKING PROCEDURES AND PRINCIPLES**



## **SECTION ONE: The Objective, Scope, Basis and Definitions**

### **The objective**

**ARTICLE 1-** (1) The objective of the Decision is to determine working procedures and principles of the Committee established with the aim of giving advices on propriety of contemplated and proposed future conduct of judges and public prosecutors of the Court of Cassation with the ethical values.

### **The scope**

**ARTICLE 2-** (1) This Decision comprises of the structure of the Committee, qualification of its members, their duties and responsibilities, working methods, evaluation of the applications made by judges and public prosecutors of the Court of Cassation and the nature of the decision to be given in this regard. This decision shall not apply to the staff of the Court of Cassation, candidate public prosecutors and candidate judges.

### **The basis**

**ARTICLE 3-** (1) This Decision was prepared on the basis of the 2nd paragraph of the article titled as “SECTION III”, “IV. Judicial Ethics Advisory Committee” which was unanimously approved by Grand Plenary Assembly of the Court of Cassation on the date of 8.12.2017.

(2) In accordance with the last paragraph of the 90th article of the Constitution, international conventions that Turkey is a party to and universal principles regarding human rights also form a basis for the works of the Committee.

### **Definitions**

**ARTICLE 4- (1)** In this decision;

- a) “Judge” shall mean First President of the Court of Cassation, vice presidents, presidents of chambers, members and rapporteur judges,
- b) “Public prosecutor” of the Court of Cassation” shall mean Chief Public Prosecutor of the Court of Cassation, Deputy Chief Public Prosecutor of the Court of Cassation and public prosecutors of the Court of Cassation,
- c) “Committee” shall mean Judicial Ethics Advisory Committee,

- d) “Chair” shall mean Chair of the Judicial Ethics Advisory Committee,
- e) “Deputy Chair shall mean Deputy Chair of the Judicial Ethics Advisory Committee,
- f) “Member” shall mean Member of the Judicial Ethics Advisory Committee,
- g) “Secretariat” shall mean Secretariat of the Judicial Ethics Advisory Committee.

## **SECTION TWO: Structure of the Committee, Qualifications, Election, Term of Office and Independence of the Members**

### **Structure of the Committee**

**ARTICLE 5-** (1) The Committee shall consist of seven bench members of the Court of Cassation, two rapporteur judges, a Public prosecutor of the Court of Cassation and a university faculty member.

(2) The President is the most senior bench member of the Court of Cassation. The most senior member of the Court of Cassation in the Committee shall serve as the chair in case that one of the members is the president of chamber. In case there is more than one president of chamber, the Committee shall be chaired by the most senior president of chamber. Seniority system applied in the Court of Cassation is used in designating the seniority.

(3) Deputy chair shall be served by the most senior president of chamber after the President, but in the non-existence of the president of chamber, it shall be served by the most senior bench member of the Court of Cassation.

(4) The duty of the Secretariat is fulfilled by the Deputy Secretary General of the Court of Cassation.

### **Qualifications of member judges and public prosecutor**

**ARTICLE 6-** (1) It is obligatory that at least two of seven bench members of the Court of Cassation who are assigned to the Committee shall be women. Also presidents of the chambers may be selected as member of the Committee from the quota of the bench member of the Court of Cassation.

(2) Rapporteur judges shall be elected from among twenty rapporteur judges with the longest tenure in the Court of Cassation.

(3) The public prosecutor shall be elected from among ten public prosecutors with the longest tenure in the Chief Public Prosecutor's Office of the Court of Cassation.

### **The qualifications of the university faculty member to be elected to the Committee**

**ARTICLE 7-** (1) The university faculty member to be elected to the Committee must have written a scientific work on ethics and have already served in ethics committees of the universities. Those who do not serve as university faculty member in any higher education institution may not be a candidate for the Committee membership.

(2) The scientific works include doctoral thesis, refereed article published in international and national indexed journals, scientific books and books with similar academic features. Works such as other articles, letter to the editor, book reviews, essays, stories, memoirs, novels, blog posts on the internet shall not be considered as "scientific works on ethics".

(3) Scientific works on ethics written by university faculty member and documents indicating that s/he previously worked in ethics committees shall be archived by the Secretariat.

### **The election of member judges and public prosecutor**

**ARTICLE 8-** (1) Bench members shall be elected by the Grand Plenary Assembly of the Court of Cassation according to the procedure for electing the presidents of chambers of the Court of Cassation.

(2) Rapporteur judges shall be elected by the Board of First Presidency from among twenty rapporteur judges with longest tenure in the Court of Cassation.

(3) Public prosecutor shall be elected by the Chief Public Prosecutor of the Court of Cassation from among ten public prosecutors with longest tenure in the Chief Public Prosecutor's Office of the Court of Cassation.

(4) Documents of the member judges and public prosecutor indicating that

they possess the qualifications required for membership shall be archived by the Secretariat.

(5) Those who are elected even though they do not possess the required qualifications for the membership shall be notified to the election authority by the Committee. The member who is notified shall not participate in the meeting.

### **The election of the university faculty member**

**ARTICLE 9-** (1) It is essential that the election is made in accordance with the principles of merit, transparency and accountability to society.

(2) One month before the due date of university faculty member's tenure, the election process of university faculty member is initiated by the Secretariat.

(3) Resumes and the documents for the membership requirements are announced on the official website of the Court of Cassation for candidates to submit the documents to the Secretariat. A sample of the announcement is sent to the university rectorates and deaneries of law schools at least thirty days prior to the election. The announcement text may also be posted in other places where it is considered to be useful for the election to be announced in a wider sphere.

(4) Resumes of the candidates and the submitted documents with qualifications required for the membership shall be presented to the members by the Secretariat one week before the meeting.

(5) At the first meeting of the Committee, Secretariat makes presentations about all the candidates. First of all, a decision is rendered on those who do not possess qualifications required for membership. Candidates, who possess necessary qualifications, shall be voted by taking into account of their works, projects in which they are assigned, institutions they work, their ability to reach the works written in English and other contributions they provide for the Committee works. After the negotiations about the candidates are completed, members shall determine the university faculty member by open ballot and majority vote. Where the first round of voting fails to elect the person, the second round of voting shall be held for the two candidates having the highest number of votes in the first round. In case of a tie, the candidate receiving the Chair's vote shall be elected.

(6) The decision of the Committee regarding the election shall be notified



to the elected university faculty member and also given information to the related department of the university that s/he works. The decision regarding the election of the university faculty member shall be written as a justified decision and published on the page regarding ethics under the website of the Court of Cassation. Candidates having applied for membership shall be informed about the election results.

(7) Other matters regarding the election of the university faculty members shall be regulated in the Instruction on the Election of the University Faculty Member which is to be prepared by the Committee.

### **The term of office of the members**

**ARTICLE 10-** (1) The term of office of the members shall be two years. Expiring members may not be re-elected even though their post and title has changed.

(2) The term of office of the members shall start with the election of the university faculty member on the date of the establishment of the Committee.

(3) One month before the due date of the members, related committees and authorities shall be notified about the election of new members by the Chair.

(4) The previous Committee members shall continue on their duties until the newly elected Committee members take up the position.

### **Expiration of the term of office of the members**

**ARTICLE 11-** (1) Term of office of the members shall be terminated in the cases that:

(a) Upon the expiration of term of office of the members, the newly elected members take up the position,

b) The qualifications required for being elected as a member is lost,

c) The member resigns.

(2) Where the seat is vacated in the committee, the situation is immediately notified to the committee or the authority that elects the replaced member. The replacing member elected by the method in which the replaced member is elected shall complete the term of office of the replaced member.

### **Independence of the members**

**ARTICLE 12-** (1) Members shall perform their duties independently from the committee or authority that elects them.

### **The Secretariat**

**ARTICLE 13-** (1) The secretariat services shall be undertaken by the Deputy Secretary General of the Court of Cassation who is designated by the President of the Court of Cassation. During the designation, the principle of merit is observed by taking into consideration the importance and nature of the duty of the Committee. This duty may not be designated to other judges or staff even if it is under the supervision of the deputy secretary general of the Court of Cassation.

(2) In case that the designated Deputy Secretary General has a legal excuse such as temporary duty, annual or medical leave, the Deputy Secretary General of the Court of Cassation, who carries out his/her duties on behalf of him/her according to the division of labour, temporarily performs his/her duty.

## **SECTION THREE: Duties, Authority and Responsibilities of the Committee**

### **The duty of the Committee**

**ARTICLE 14-** (1) The duty of the Committee is to decide on the propriety of contemplated or future conduct of judges and public prosecutors with ethical values.

### **The authority of the Committee**

**ARTICLE 15-** (1) The Committee may exchange correspondence with relevant institutions, request for information and documents and be involved in other activities in order to perform its duty effectively and efficiently.

(2) The Committee may invite any person to the meeting with intent to benefit from his/her knowledge or experience, when needed.

## **Responsibilities of the Committee and members**

**ARTICLE 16-** (1) The Committee shall be independent in its works and shall carry out its activities in accordance with the principles of internal and external transparency and accountability to society.

(2) The principle of confidentiality shall be complied in the works of the Committee.

(3) Any statement and information about the matters reviewed in the Committee shall not be shared on mass media and social media.

(4) The members shall not participate in the meetings in the cases foreseen in Article 2.7 of the Court of Cassation Code of Judicial Conduct and Article 3.2 of Court of Cassation Code of Conduct for Public Prosecutors regarding the matters submitted to the Committee.

## **SECTION FOUR: Duties of the Chair, Deputy Chair, Members and Secretariat and Working Method of the Committee**

### **The duty of the Chair**

**ARTICLE 17-** (1) The Chair shall:

- a) Represent the Committee,
- b) Preside over the meeting of the Committee,
- c) Sign correspondences related to the Committee,
- d) Determine the meeting agenda,
- e) Assign members, where necessary, to work as a commission,
- f) Review and conclude amendment proposals regarding the drafts of the Committee decisions,
- g) Take necessary measures to ensure the Committee work regularly and efficiently.

### **The duty of the Deputy Chair**

**ARTICLE 18-** (1) The Deputy Chair shall fulfil the duties of the Chair in

case s/he may not fulfil his/her duties partially or completely due to his/her legal excuse.

### **The duty of the member**

**ARTICLE 19-** (1) The member shall:

- a) Participate in the Committee meetings,
- b) Do the works within the duty, authority and responsibilities of the Committee,
- c) Assist the Chair in ensuring the coherent, efficient and regular functioning of the Committee and in the works to be reviewed and resolved without delay.

### **The duty of the Secretariat**

**ARTICLE 20-** (1) The Secretariat shall:

- a) Hand in the agenda to the members before meeting,
- b) Prepare the drafts of the Committee decisions,
- c) Meet the demands of research, review and other demands of similar nature,
- d) Ensure that the correspondences of the Committee is exchanged regularly,
- e) Take the required measures to keep the Committee's archive in order,
- f) Perform the duties assigned by the Chair.

### **Working method of the Committee**

**ARTICLE 21-** (1) It is essential that the Committee shall convene and function by full participation of all members but also it may convene by participation of at least seven members.

(2) In the meeting, the matters in the predetermined agenda shall be discussed in order. However, before the matters in the agenda are commenced to be discussed, adding new articles to the agenda upon the proposal of one of the members or changing the order of the articles to be discussed may be decided by the absolute majority of the participants.

(3) Where necessary, the members may work by forming one or more commissions by the assignment of the Chair. However all decisions are rendered by the Committee.

(4) The Committee shall convene at least once a month except for judicial holiday. It may convene without any delay, upon the invitation of the Chair or a demand from absolute majority of the members.

## **SECTION FIVE: Application, Evaluation of the Application and Decision**

### **Application of judges and public prosecutors to the Committee**

**ARTICLE 22-** (1) Judges and the public prosecutors may request opinion from the Committee about the propriety of their contemplated or future conduct with ethical values.

(2) The applicant shall make his/her application by submitting his/her full name, address, and contact details, concise and signed petitions containing details of the subject for which s/he requests an opinion together with, if any, the relevant documents to the Secretariat. Application date is the date when petition reaches to the Secretariat.

### **Instances where opinion shall not be requested**

**ARTICLE 23-** (1) Opinion shall not be requested from the Committee in the following instances:

- a) Abstract, general, outdated past events and issues related to conduct of someone other than the person who asks the question,
- b) Conducts or proceedings out of the objective or scope of the judicial ethics,
- c) Conducts or proceedings in which the criminal or disciplinary investigation has been carried out or is being carried out,
- d) Interpretation of the proceedings based on the norms such as the Constitution, laws, statutes or regulations which are not related to the judicial conducts,
- e) Conducts or proceedings before the date of 8 December 2017 when The Grand Plenary Assembly of the Court of Cassation adopted the Court of Cassation Code of Judicial Conduct.

### **Review of the applications**

**ARTICLE 24-** (1) Applications shall be subject to a preliminary review by

the Secretariat. The issues related to filing and reviewing the applications as well as the procedures and principles of the preliminary review shall be regulated in the Instruction on Preliminary Review to be prepared by the Committee.

(2) At least three days before the meeting, a list containing full name of the applicant and the subject of the application together with the agenda shall be handed into the members.

(3) Members, when needed, may request all kind of documents regarding the application from the Secretariat.

### **Negotiation of the applications**

**ARTICLE 25-** (1) Applications shall be submitted to the Committee by the Secretariat. The Chair may assign a member, where necessary, to make a presentation.

(2) The applications shall be primarily reviewed in terms of procedure and then of principle.

(3) Results of the applications shall be written in the related column of the list and signed by the Chair and the Secretariat.

### **Rendering decision on the application and the nature of application**

**ARTICLE 26-** (1) Decisions shall be rendered by absolute majority of all the members of the Committee.

(2) Justified decision regarding the rejection of demands on the subjects which are not included in the duty of the Committee shall be notified to the relevant person. The Committee, where appropriate, may render a decision of refusal by the list procedure.

(3) In cases where it is under the authority of another institution or authority, the document shall not be sent to the relevant authority, only the decision of refusal shall be written.

(4) The Committee shall render a decision within a reasonable time according to the features of the application. In the event that this period exceeds two months from the date of the application, the applicant shall be notified of the issues leading to the delay of the evaluation.

(5) Opinion of the Committee is not binding; it is in the nature of recommendation.

### **Writing the Committee decision**

**ARTICLE 27-** (1) Draft of the Committee decision shall be prepared by the Secretariat. Where necessary, the Chair may assign this duty to one of the members.

(2) In the decisions taken on the merits of the application:

- a) Concrete cases,
- b) Rules and case laws forming the basis of the decision,
- c) The Court of Cassation Codes of Judicial Conduct, the Bangalore Principles of Judicial Conduct, Budapest Principles,
- d) Codes of conduct, opinions and decisions of other institutions,
- e) Rules, views and standards of the United Nations and Council of Europe,
- f) Other codes of conducts, rules and case laws and views in comparative law shall be taken into consideration.

(3) The decision shall be written in one month at the latest from the date of issue.

(4) The decision shall be notified to the applicant in written by one of the communication instruments which is deemed appropriate by the Committee.

### **Publishing the Committee decision**

**ARTICLE 28-** (1) A copy of the Committee decision, which omits the personal information, shall be published on the internal network (intranet) of the Court of Cassation.

(2) The Committee shall publish annual report related to its works and statistical information regarding decisions on the website of the Court of Cassation.

## **SECTION SIX: Enforcement and Execution**

### **Enforcement**

**ARTICLE 29-** (1) The decision shall be applied as of 24/12/2018.

### **Execution**

**ARTICLE 30-** (1) The decision shall be enforced by the Committee.



**II. JUDICIAL ETHICS ADVISORY COMMITTEE  
INSTRUCTION ON PRELIMINARY REVIEW**



## **SECTION ONE: The Objective, Scope, Basis**

### **The Objective**

**Article 1-**(1) The objective of this instruction is to determine the procedures and principles for conducting a preliminary review of the applications made by judges and public prosecutors of the Court of Cassation regarding the propriety of their contemplated or future conduct with ethical values by the Secretariat.

### **The Scope**

**Article 2-**(1) This instruction comprises of the preliminary review of the Secretariat for the applications to the Committee.

### **The Basis**

**Article 3-** (1) This instruction was prepared on the basis of the provisions of the Art. 24.1. of the Judicial Ethics Advisory Committee Decision on Working Procedures and Principles dated 24.12.2018.

## **SECTION TWO: Application**

### **Application of Judges and Public Prosecutors to the Committee**

**Article 4-** (1) Judges and public prosecutors may request opinion from the Committee about the propriety of their contemplated or future conduct with ethical values.

(2) The applicant, in accordance with the sample given in Annex-1, shall make his/her application by submitting his/her full name, address, and contact details, concise and signed petitions containing details of the subject for which s/he request an opinion, if any, together with the relevant documents to the Secretariat. Application date is the date when petition reaches to the Secretariat.

(3) Applications and their annexes must be in Turkish. In case of deficiency, the applications are not rejected but the Secretariat make them completed in a suitable period. This period may be extended upon request.

(4) The Secretariat shall issue a document containing the application date and number and submit it to the applicant. If application is made by means of communication, the written document is sent by an appropriate means of communication.

(5) If possible, the procedures related to the applications can also be carried out through UYAP (National Judiciary Informatics System).

### **Instances where opinions shall not be requested**

**Article 5-** (1) Opinion shall not be requested from the Committee in the following instances:

- a) Abstract, general, outdated past events and issues related to conduct of someone other than the person who asks the question,
- b) Conducts or proceedings out of the objective or scope of the judicial ethics,
- c) Conducts or proceedings in which the criminal or disciplinary investigation has been carried out or is being carried out,
- d) Interpretation of the proceedings based on the norms such as the Constitution, laws, statutes or regulations which are not related to the judicial conducts,
- e) Conducts or proceedings before the date of 8 December 2017 when The Grand Plenary Assembly of the Court of Cassation adopted the Court of Cassation Code of Judicial Conduct.

(2) The applicant agrees and undertakes that the information ~~contained~~ in his/her request is correct and that if there is a change in the issues s/he declare, s/he will inform the Committee without delay.

## **SECTION THREE: Reports and Preliminary Review of the Applications**

### **Reports**

**Article 6-** (1) The Secretariat keeps a Judicial Ethics Advisory Committee Application Book (ANNEX-2) that contains the application number and date, the name and surname of the applicant, the subject matter of the application and the date and number of the decision.

(2) Judicial Ethics Advisory Committee Application Book can be kept physically or electronically and, if possible, in UYAP. If the book is kept in UYAP, the members are authorized to access the book.

### **Preliminary Review of the applications**

**Article 7-** (1) The Secretariat conducts a preliminary review of applications in the order of following headings:

**Capacity:** The applicant is primarily examined as to whether s/he is in the capacity of a judge or a public prosecutor of the Court of Cassation. Applications made on the behavior of another person other than the person asking the question and non-individual applications are also considered within this scope.

**Time:** Conducts or proceedings that are before 8 December 2017 or outdated are examined in terms of time.

**Subject:** The subject matter is examined in the following cases:

Conducts or proceedings in which the criminal or disciplinary investigation has been carried out or is being carried out,

Conducts or proceedings out of the objective or scope of the judicial ethics,

Interpretation of the proceedings based on the norms such as the Constitution, laws, statutes or regulations which are not related to the judicial conducts,

(2) In accordance with the review above, if the application is considered not to be in the responsibility of the Committee, the application, without examining other aspects, shall be submitted to the Chair for consideration. The Chair primarily puts these applications on the agenda of the Committee.

## **SECTION FOUR: Enforcement and Execution**

### **Enforcement**

**Article 8-** (1) The instruction shall be applied as of 26/12/2018.

### **Execution**

**Article 9-** (1) The instruction shall be enforced by the Committee.

**ANNEX 1: PETITION SAMPLE REGARDING THE APPLICATIONS  
TO THE JUDICIAL ETHICS ADVISORY COMMITTEE**

**PETITION TO JUDICIAL ETHICS ADVISORY COMMITTEE**

A friend of mine, whom I have known from law school, works as a lawyer in a state economic enterprise and expressed his/her will that s/he wanted to send materials such as organizers, calendars, pens, ties, scarves, that are prepared by the state economic enterprise that s/he worked for, both to me and to some of the civil chambers of the Court of Cassation on New Year's day and bairams. As it operates under the provisions of private law, a state economic enterprise can have disputes that fall within the responsibility of the judiciary. Some of these can, even rarely, be referred to various chambers of the Court of Cassation. In that case;

Can I accept the materials prepared in the form of organizers, calendars, pens, ties or scarves on behalf of myself during the New Year's day or bairams?

How would it be appropriate for me to respond or act against the request of my lawyer friend regarding the distribution of the above mentioned materials to some of the civil chambers of the Court of Cassation?

I respectfully submit your opinion on the above-mentioned issues. 21.12.2018

**Signature**  
**Name-Surname**  
**Title and Unit**

**Phone number:**

**E-mail:**

**ANNEX 2: JUDICIAL ETHICS ADVISORY COMMITTEE  
APPLICATION BOOK**

Application No.	Application Date	Applicant's Name and Surname	Demand	Decision date	Decision no.

