



REPUBLIC OF TURKEY
COURT OF CASSATION



COURT OF CASSATION CODE OF JUDICIAL CONDUCT TRAINING PARTICIPANT'S HANDBOOK



Prof. Dr. İneyet AYDIN

Dr. Mustafa SALDIRIM



Ankara
February 2019



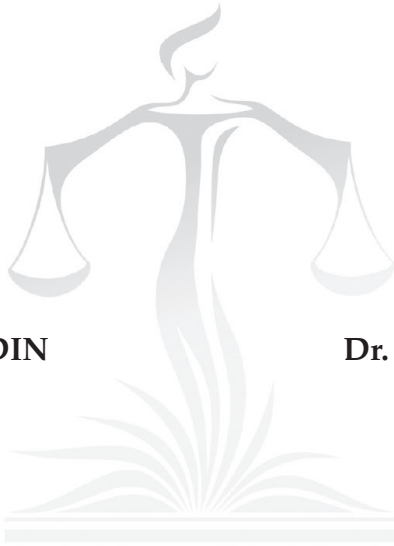
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COURT OF CASSATION

150th
2018 Year

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ETHICS, TRANSPARENCY, AND TRUST PROJECT OF THE COURT OF CASSATION

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ABBREVIATIONS

ECHR	: European Court of Human Rights
CoE	: Council of Europe
A.U.	: Ankara University
CCJE	: Consultative Council of European Judges
CCPE	: Consultative Council of European Prosecutors
min.	: Minute
A	: Activity (as in A1: Activity 1)
art.	: Article
para.	: paragraph
p.	: page
pp.	: pages
UNODC	: United Nations Office on Drugs and Crime

INTRODUCTION

As it is known, historically and institutionally, high courts have two main functions, which are to ensure that law is implemented equally all over the country and to exercise legal review. However, legal systems that have developed within the historical process impose additional roles on high courts. Therefore, the Court of Cassation has made reforms for “a judicial system that is ethical, transparent, and able to give account to the public” recently, which has had positive consequences inside and outside the country.

Today, high courts also have such responsibilities as to make active contribution to establish justice policies and to build public trust in the judiciary. Success of a judicial system is measured mainly by the public trust in judges. In order to ensure such trust, both judges should be aware of the codes of conduct with which they should comply, and the public should be familiar with these rules of conduct. The Court of Cassation has made valuable contributions to the justice policies in Turkey through appropriate means so far. Determining and implementing the codes of conduct and making them recognisable and visible to the public constitute a best example of our contributions in recent years to the justice system.

After the Court of Cassation Codes of Conduct were adopted in the last quarter of 2017, it became a real necessity to give codes of conduct training to the chamber presidents and bench members, rapporteur judges, public prosecutors and staff of the Court of Cassation through methods and techniques in accordance with the requirements of the time. The knowledge that has been created and the quality of the training will make important contributions to further strengthening of the Court of Cassation culture with ethical values without doubt. I would like to present my thanks to Dear Prof. Dr. İnayet Aydın and to Dear Dr. Mustafa Saldırım for preparing this work which has been written with great devotion and attention, and which sets a concrete example of the high standards of the code of conduct studies carried out by the Court of Cassation has reached.

İsmail Rüştü CİRİT
President of the Court of Cassation

PREFACE

Implementing the Court of Cassation Codes of Conduct which were adopted unanimously by the Grand General Assembly of the Court of Cassation on 8 December 2017 depends, doubtlessly, on the proper understanding of the knowledge and ideas which underlie these codes by the people who work at the Court of Cassation and the public. Therefore, it is essential to carry out necessary studies in order to raise the awareness of both members of the profession and the public about the judicial conduct. Because collective design of the codes of conduct is of high importance, that issue is stated briefly in the last paragraph of the Preamble of the Court of Cassation Code of Judicial Conduct¹.

Insufficient amount of experience and scientific works on judicial conduct in our country is one of the most serious deficiencies that makes it difficult to develop models for the codes of conduct and to make discussions regarding the code of judicial conduct based on knowledge. Considering that the studies and studies and practices that were carried out began at least a half century ago in comparative law with this aim, we can assess the distance that should be covered in our country about the codes of judicial conduct more accurately.

The necessity of determining the rules of professional conduct for justice professionals is a highly important and multi-dimensional subject. This necessity is explained by a judge as the following:

"...We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgement. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations..."²

¹ In the last paragraph of the Preamble of the Court of Cassation Code of Judicial Conduct, the objective of the codes of conduct is stated as "To provide guidance to the bench members and rapporteur judges of the Court of Cassation by establishing the standards of ethical behaviour, enable the members of the legislature, the executive, the lawyers and the public to better understand the judiciary and provide support to the judiciary..."

² Thomas. J.B. (1988). Judicial Ethics in Australia. Sydney. Law Book Company, p.7.

The main objective of this book is to fulfil the necessity of a source book for the staff who will be involved in the Court of Cassation Code of Conduct training as facilitators. Furthermore, we hope that this book will also contribute to making the judicial conduct discussions in our country in a way that is based on knowledge and enable the Court of Cassation Code of Conduct to be better understood both by the Court of Cassation and the public.

Prof. Dr. İnayet Aydın - Dr. Mustafa Saldırım
Ankara,
February 2019

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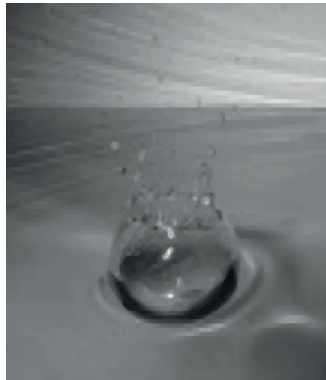
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Ethical values and principles are not for “bad” people. They are for guiding the people who want to behave ethically in ambiguous situations.

No individual raindrop ever considers itself responsible for the flood.

John Ruskin



CHAPTER 1: OBJECTIVES AND PRINCIPLES OF THE COURT OF CASSATION CODE OF JUDICIAL CONDUCT TRAINING

1.1. OBJECTIVES OF THE CODES OF CONDUCT TRAINING AND THE COURT OF CASSATION CODE OF JUDICIAL CONDUCT TRAINING

1.1.1. Objectives of the Codes of Conduct Training

The codes of conduct training tries to help individuals develop the necessary knowledge, skills, and attitudes in order to implement the professional values, principles, rules and standards. Detailed objectives of the codes of conduct training are as the following:

To enable professionals;

- a) To develop advanced skills in recognizing and analyzing ethical problems,
- b) To strengthen the feelings of ethical liability and personal responsibility,
- c) To develop a stronger and a more courageous attitude towards resisting the pressure and demands in the cases of ethical dilemma and uncertainty,
- d) To increase awareness about how unethical behaviours are justified,
- e) To inform the participants on the process of ethical decision-making.

1.1.2. Objectives of the Court of Cassation Code of Judicial Conduct Training

The main objective of the Court of Cassation Code of Judicial Conduct Training is to develop a common understanding of judicial conduct in public and among the jurists, and to disseminate the codes of conduct. The public belief in that everyone complies with the codes of conduct is one of the most important factors in increasing the trust in the judiciary. A judicial system, which is based on the universal principles of ethics increases international respect and trust. If the public does not trust in the judiciary as desired, there is no independent judiciary in that case.

The public trust in the judiciary is the most important assurance of an independent judiciary. Therefore, in addition to the general objectives of the codes of conduct training, the special objectives of the Court of Cassation Code of Judicial Conduct training can be listed as the following:

- a) Enhancing public trust in the Court of Cassation by creating collective ethical awareness at the Court of Cassation,
- b) Assessing the meaning and contents of the codes of conduct which complete the codes of professional conduct binding on the bench members and rapporteur judges of the Court of Cassation,
- c) Increasing the awareness about the individual and collective behaviours of the bench members and rapporteur judges of the Court of Cassation in order for the codes of conduct to be better understood by the legislation, the execution, lawyers and the public and introducing the behavioral models for making them publicly visible,
- d) Assisting in preserving the right to fair trial, which is foreseen in the Article 6 of the European Convention on Human Rights (ECHR) through the models for the codes of conduct,
- e) Sharing “ethical information” about the objectives, features, and benefits of the codes of conduct,
- f) Enabling to make an assessment about whether the possible behaviours of the members and rapporteur judges of the Court of Cassation are appropriate to the codes of conduct,
- g) Raising awareness about the functions of the Court of Cassation Code of Judicial Conduct.

1.2. MAIN PRINCIPLES OF THE PROFESSIONAL ETHICS AND THE COURT OF CASSATION CODE OF JUDICIAL CONDUCT TRAINING

1.2.1. Main Principles to Be Adopted in the Professional Ethics Training Studies

- a) Explaining the contents of the professional codes of conduct, and sharing the accepted codes of conduct for the professional field with the participants,
- b) Demonstrating how the professional codes of conduct are dealt with in daily professional practices,
- c) Analyzing the solutions of ethical problems which have been encountered in professional practices through appropriate case studies,

d) Creating a link between the codes of conduct training and professional life,

e) Providing the participants with the opportunities of questioning the circumstances and incidents instead of imposing the truths in order to increase ethical sensitivity and ethical awareness during the codes of conduct training,

f) Comparing the events, which the participants encountered while they are doing their jobs with the codes of conduct, and enabling them to make appropriate decisions,

g) Providing the participants with the skill of good judgement and the efficiency of questioning over the ethical issues by using the values, principles, rules, and standards,

h) Strengthening the attitudes of the participants in preferring and doing what is true,

i) Emphasizing the importance of complying with the ethical decisions which have been rendered, and demonstrating the individual, professional, and social consequences of being persistent in ethical behaviours,

j) Creating sensitivity in reasoning unethical behaviors.

1.2.2. Main Principles to Be Adopted in the Court of Cassation Code of Judicial Conduct Training

a) Preserving, implementing, upholding and strengthening the values in the Court of Cassation Code of Judicial Conduct,

b) Analyzing how to benefit from the Court of Cassation Code of Judicial Conduct when carrying out judicial duties or in private life,

c) Being aware of the differences between the concepts of crime, disciplinary offence and contrariety to ethics, and giving information on this when necessary,

d) Emphasizing the universality of the codes of judicial conduct and the importance of their practical binding consequences,

e) Providing “judicial conduct knowledge” in order to establish and implement the codes of judicial conduct and make contribution to the justice policies about ethics.

CHAPTER 2: INTRODUCTION OF THE TRAINING PROGRAMME

PROGRAMME SCHEDULE OF THE FIRST DAY

9:30-9:45	Opening of the Programme / Introduction of the Programme	
9:45-10:00	A1: Introducing Each Other Activity A2: Information Box	
10:00-10:15	PRESENTATION 1: The Concept of Ethics, Public Ethics	
10:15-10:30	A3: The Intention-Action-Result Study	
10:30-10:45	BREAK	
10:45-11:00	PRESENTATION 1: Professional Ethics and Judicial Conduct	PRESENTATION 1: Continue
11:00-11:30	A4. Station Study	
11:30-11:45	BREAK	
11:45-12:00	PRESENTATION 2: Judicial Conduct	1 st Value: Independence
12:00-12:15	A5: The Value of Independence Scenario Activity	
12:15-12:30	A6: The Value of Independence Decision Card Study	
12:30-13:30	LUNCH	
13:30-13:45	PRESENTATION 2: Judicial Conduct	2 nd Value: Impartiality
13:45-14:00	A7: The Value of Impartiality Scenario Activity	
14:00- 14:15	A8: The Value of Impartiality Decision Card Study	
14:15-14:30	BREAK	
14:30-14:45	PRESENTATION 2. Judicial Conduct	3 rd Value: Integrity
14:45-15:00	A9: The Value of Integrity Scenario Activity	
15:00-15:15	A10: The Value of Integrity Decision Card Study	
15:15-15:30	BREAK	
15:30-15:45	PRESENTATION 2: Judicial Conduct	4 th Value: Propriety
15:45- 16:00	Opening and Closure of the Information Box	

PROGRAMME SCHEDULE OF THE SECOND DAY

9:45-10:00	A11: The Value of Propriety Scenario Activity	
10:00-10:15	A12: The Value of Propriety Decision Card Study	
10:15-10:30	A13: Mobbing Scenario Analysis	
10:30-10:45	BREAK	
10:45-11:00	PRESENTATION 2: Judicial Conduct	5 th Value: Equality
11:00-11:15	A14: The Value of Equality Scenario Activity	
11:15-11:30	A15: The Value of Equality Decision Card Study	
11:30-11:45	PRESENTATION 2: Judicial Conduct	6 th Value: Competence and Diligence
11:45-12:00	BREAK	
12:00-12:15	A16: The Value of Competence and Diligence Scenario Activity	
12:15- 12:30	A17: The Value of Competence and Diligence Decision Card Study	
12:30-13:30	LUNCH	
13:30-13:45	A18: The Activity of Gift	
13:45-14:00	A19: Ethical Concept Crossword Puzzle	
14:00-14:45	PRESENTATION 3: Ethical Dilemmas in the Judiciary and Ethical Decision-Making	
14:45- 15:00	BREAK	
15:00- 15:15	A20: Memory Array	
15:15- 15:30	A21: Decision-Making Case Study	
15:30- 15:45	A22: Rulman	
15:45- 16:00	A23: Conversation Circle	
16:00	Closure	

CHAPTER 3: MAIN CONCEPTS IN JUDICIAL CONDUCT

3.1. INDEPENDENCE

3.1.1. Independence in General

Independence is doing all assessments freely and independently, with one's own authority and will, and without being affected by anybody, anything or any external influence.

In that sense, independence is closely related to be free and autonomous. Independence includes being independent, being unaffected by external factors, being unrestricted, and not being forced to do something. Deciding independently is the freedom of making decisions and choosing the way to act in a way that is independent from any external factor and that is based on one's own will.³

In accordance with the value of independence, all kinds of assessments should only be made in the light of scientific data. Decision-makers should exclude any pressure coming from people or institutions, and if they recognize that independence is at stake, they should reverse that decision. Personal independence requires that a person's actions should not be restricted by the other and that the person should not be forced to take an action or to make a decision.

In order to be independent, freedom of will, freedom of thought, and freedom of action should be preserved. Freedom of will is not restricting one's demands, or not forcing somebody to want something. Freedom of thought is an individual's opportunity of thinking however he or she wants, and more importantly, being able to express them publicly and without hesitation in front of others and being able to decide. Freedom of action is the right and the power of an individual to act, however; he or she wants without being restricted by others.⁴

3.1.2. Independence in terms of Judicial Conduct

While a judge tries to protect his or her independence against professional, personal, and family factors, he or she is also liable to protect

³ Akarsu, B. (1998). *Felsefe Terimleri Sözlüğü*. İstanbul: İnkılâp Kitabevi. p.146.

⁴ Akarsu, 1998, p.146.

his or her independence against other judges' opinions and advice, and to decide objectively. In that sense, a judge carries the responsibility of being independent from the executive body and its representatives, political mechanisms, media and public opinion, domestic and social environment, senior colleagues and managers.

In fact, the principle of separation of powers, foresees the protection of judicial independence against the pressure coming from the legislation and the execution. "Judicial independence" is a basic principle that appears in all modern constitutions and laws⁵, and also exists in the national and international codes of conduct as the first value as well.⁶ The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governments and other institutions to respect and observe the independence of the judiciary.⁷ The adoption of constitutional proclamations of judicial independence do not automatically create or maintain an independent judiciary. Judicial independence must be recognized and respected by all three branches of government. The judiciary, in particular, must recognize that judges are not beholden to the Government of the day.⁸ ECtHR decided that the interference by the executive in the ongoing judicial proceedings or trials can undermine the respect for the judiciary which in turn would weaken the guarantees of fair trial.⁹

Independence should be ensured individually and institutionally. Therefore, judges have a collective responsibility in preserving judicial independence. While being unaffected by the external factors and restrictions is called external independence, being unaffected by threats, pressure, or manipulations is called independence within the judiciary. A judge is servant of, and answerable only to law. It is axiomatic that a judge deciding a case does not act on any order or instruction of a third party inside or outside the judiciary.¹⁰ The hierarchy within the judiciary may pose a threat to the judicial independence. However, making decisions in

⁵According to the European (Region) Human Rights System, sufficient constitutional and legal guarantees of judicial independence is the prerequisite for judicial independence.

See The Rule of Law Checklist. (2016). Venice Commission of the Council of Europe. Strasbourg, p.33.

⁶See Bangalore Principles of Judicial Conduct, Value 1; Ethical Principles of the European Court of Human Rights art.1, The Court of Cassation Codes of Conduct art.1.

⁷Commentary on the Bangalore Principles of Judicial Conduct (Commentary). (2007). Vienna Austria: UNODC Publication. p.21.; The United Nations Basic Principles on the Independence of the Judiciary, art.1.

⁸Commentary, (2007), para.25.

⁹Saldırım, M. (2018). A Review of Current Issues of Judicial Power in the Framework of the Court of Cassation Judicial Code of Conduct and İstanbul Declaration on Transparency in the Judicial Process (European Court of Human Rights Seminar Opening of Judicial Year 2018 Presentation by the Turkish Court of Cassation) p.6.

¹⁰CCJE (2001) OP N°1, Strasbourg, 23 November 2001, art.64.

accordance with the precedent high court case-laws will not weaken the judicial independence.¹¹

A judge should not also be influenced by the public opinion. While he was responding responding to a claim that South African society did not regard the death sentence for extreme cases of murder as a cruel, inhuman or degrading form of punishment, the president of the Constitutional Court of South Africa said “The question before us, however, is not what the majority of South Africans believe a proper sentence should be. It is whether the Constitution allows the sentence. Public opinion may have some relevance to the inquiry, but in itself, it is no substitute for the duty vested in the courts to interpret the Constitution and to uphold its provisions without fear or favour. If public opinion were to be decisive, there would be no need for constitutional adjudication... The Court cannot allow itself to be diverted from its duty to act as the independent arbiter of the Constitution by making choices on the basis that they will find favour with the public...” (President of the Constitutional Court of South Africa, 1995).¹²

3.2. IMPARTIALITY

3.2.1. Impartiality in General

Impartiality defines the state of being independent from all subjective influences and elements, and being objective. Subjectivity includes a formation, which is created by a person’s own judgements, which changes from person to person, to which a person adds his or her own prejudice, perception, and assumptions. Impartiality requires being indifferent, reflecting the truth, and acting according to experiment, observation, evidence and concrete data.¹³ Impartiality is one of the most fundamental ethical principles in judicial conduct. Guarantee of preserving the impartiality is to implement the ethical values, principles, rules, and standards. Legal and scientific standards constitute the basic criteria of impartiality because they have been accepted, approved, and defined as the standards while making comparisons.

Professionals should protect themselves from being affected by their emotions while carrying out their duties. It cannot be possible for the people who have the feelings of mercy, hatred, hostility, and anger while discharging their duties to be impartial. Treating the parties of an investigation or a

¹¹ CCJE (2001) OP N°1, Strasbourg, 23 November 2001, art.66.

¹² Commentary, (2007), para.27.

¹³ Aydın, İ. (2010). İnsan Kaynakları Yönetiminde Etik. A. Yelboğa (Ed.). *Yönetimde İnsan kaynakları çalışmaları* (pp. 16-50.). Ankara: Turhan Kitabevi.

case with positive or negative feelings means that judicial conduct is violated. Bias or prejudice, has been defined as a leaning, inclination, bent or predisposition towards one side or another of a particular argument. It represents a predisposition to decide an issue or cause in a way that does not leave the judicial mind perfectly open to conviction.¹⁴

3.2.2. Impartiality in terms of Judicial Conduct

Judges may need to work under very intense emotional states and sensitivities. It is one of the most fundamental ethical principles to make decisions without being influenced by such factors as religion, language, race, skin color, ethnic origin, and personal judgements while rendering decisions and conducting trials about individuals. On the other hand, one of the most fundamental requirements of impartiality is not to be prejudiced and partial against any person or group. Biases may lead to misbehave towards people and groups. In that case, the ethical principles have been violated.

There are some obvious factors which lead to the violation of a judge's impartiality. If a judge has expressed his or her opinion to one party beforehand, or has told them what to do, impartiality disappears. Also, if there is a relationship by affinity between the judge and the people concerned, whether close or distant, impartiality is damaged. If the judge has a feeling of personal enmity towards the conflicting parties, or, if there are some factors which cause suspicion about the impartiality of the judge, the value of impartiality becomes violated. If the judge shows his or her worldview or beliefs as an evidence to the decision, and if there are some factors unrelated to the case in the decision, the principle of impartiality is violated.¹⁵

Judges should protect their impartiality in the relationship with their ex-colleagues. In the unethical model which is called "revolving door", the people who are not judges or public prosecutors any more, or who are retired may have the expectations of special and privileged treatment by taking advantage of their relationships with their ex-colleagues or their positions. Therefore, , "unjustified and unethical influence which has the qualification of violating a judge's freedom of conscience" may arise intentionally or unintentionally.

Impartiality forms a base to carry out judicial duties properly. This principle applies not only for decisions, but also for the process in which

¹⁴ Commentary, (2007), para.57.

¹⁵ Commentary, (2007), para.89, 90.

these decisions are made. An independent judge may be partial. However, a judge who is not independent cannot be impartial. Thus, independence is the pre-requisite for impartiality. Bias and partiality may show themselves in different ways. Epithets, slurs, demeaning nicknames, negative stereotyping, attempted humour based on stereotypes violate the principle of impartiality.

Another important factor, which affects impartiality is the stereotypes which are used in the society deliberately or indeliberately. These stereotypes may reflect such biases like gender discrimination, racism, regionalism, seniority (Art. 1.9). Judges should have a balanced relationship with the lawyers they have encountered and with the executive body and law-enforcement officers. It may violate the principle of impartiality especially if such an impression is created that the external information about the subject matter has been obtained from these people.

3.3. INTEGRITY

3.3.1. Integrity in General

Integrity is to show fair and honest behaviours which do not include cheating or defraud. As a value, integrity is people's honesty about their words and actions, their loyal faithfulness to truth and their modesty. Lying, breaking one's words, showing dishonest behaviours, fraud, cheating, betrayal, and unfaithfulness are inconsistent with integrity.¹⁶ An ethical conduct require honesty and sincerity in social relationships with others. The people who do not behave honestly and sincerely make an end to the relationships with their own hands and the atmosphere of convenience disappears. In fact, trust is the main factor in relationships. Integrity is an essential value in terms of the relations with family and friends and the relations at work. Decisions and behaviours which are dishonest damage the mutual confidence between the parties. Nobody can trust one another until sincerity and honesty in the behaviours are seen and until they are implemented.¹⁷

It is possible for a person to be influenced by many external factors, which impair integrity. However, truthfulness is involved at that point. Truthfulness occurs when people show loyalty to their principles in spite of all discouraging factors.¹⁸ An honest behaviour requires consistency and determination after all. Truthfulness is building the whole life and actions

¹⁶ Aydın, İ. (2016a) *Akademik Etik*. Ankara: PEGEM-A Yayıncılık. p. 80.

¹⁷ Aydın, İ. (2016c). *Yönetişel, Mesleki ve Örgütsel Etik*. (8th Edition). Ankara: PEGEM-A Yayıncılık. p.49.

¹⁸ Cited from Forrest, 1995 by Aydın, İ. (2016a), p.80.

on reality. Distorting the facts for the sake of one's own emotions, thoughts, beliefs, and benefits invalidate the truthfulness of the next actions and processes.¹⁹

The concept of lie which is inconsistent with integrity and truthfulness, is a statement which is said to deceive a person. Lie is mostly caused by distrustfulness and fear. This leads to deceive the other party. Lie has always been regarded as unethical, and trustfulness has been considered as one of the fundamental principles of ethical behaviour.²⁰

3.3.2. Integrity in terms of Judicial Conduct

One of the primary ethical responsibilities of judges is to state the truth regarding the file they are reviewing. Speaking the truths requires being truthful and taking truthfulness into the center of decisions and studies.²¹ One of the most important factors of a fair trial is to reveal the facts as they are in a trustful and correct way. The people who hide or distort the facts carry a heavy responsibility for misleading the judiciary.

The society expects judges to be not only good judges but also good people. A judge shall not compromise the actual or the reasonably perceived dignity, integrity, and impartiality of their profession by behaviours and activities in their private lives. Therefore, integrity is a fundamental value which applies not only to the studies within the court, but also to the behaviours outside the court. There are no degrees of integrity. Integrity is absolute. In the judiciary, integrity is more than a virtue, it is a necessity.²² Behaving honestly is not sufficient on its own, appearing to be honest is also a factor which increases the public trust in the judiciary.

3.4. PROPRIETY

In the most general sense, propriety is, , behaviours and speeches of members of a profession in accordance with what the profession requires. Propriety requires adopting different standards of behaviours, which the society finds acceptable and appropriate. Members of the judiciary are also the people whom the society consider as role models. Being a role model gives the responsibility of being a person whose speeches and behaviours the others pay attention and respect to.²³

¹⁹ Aydın, İ. (2016c), p.49

²⁰ Aydın, İ. (2016c), p.49.

²¹ Tanrıver, S. (2001). Bilirkişinin etik, hukuki ve cezai açılardan sorumluluğu. Bilirkişilik Sempozyumu. Samsun. Türkiye Barolar Birliği, p.9-10.

²² Commentary (2007), para.101.

²³ Aydın,İ. (2016c), p.43.

Appropriate professional conduct requires to consider the statements below:

- a) To be careful with the people they visit, live and communicate,
- b) To consider how people perceive their behaviours and act accordingly,
- c) To behave politely and respectfully in social relations,
- d) To behave in an honest, confidence-arousing and principled way,
- e) To maintain impartiality in the social media or in other communication platforms,
- f) To preserve their professional identities in social life and in the places they attend.

Propriety and the appearance of propriety, both professional and personal, are essential elements of a judge's life. What matters more not what a judge does or does not do, but what others think the judge has done or might do.²⁴ 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. (Court of Cassation Code of Judicial Conduct Article 4.1).

Âşık Çelebi, who gives information about the Ottoman poets, states in the section on Pârepârezade Ahmet Çelebi who is also a kadi that he is an exemplary kadi as the following:

"He used to serve as a kadi in Silivri for a long time. Everbody agreed upon the fact that no kadi like him had ever come to Anatolia and he was unique among all the other kadis. He used to wear clothes which were called *ak sade* *in summer, *gök kapama** with *Selanik çukası* (*Salonika broadcloth*)* on it and a hat called *Donuzlu* (*Denizli*) *çalması** on his head in winter. He did not have any horses or servants. It was only a mat he used to sit on at the court. He used to rent a horse when he was going to work, put a prayer rug on its packsaddle and get onto the horse. He sold his book for the travel expenses when he was relieved of duty, he worked as a clerk for a living in İstanbul. There was no specific payment for the court expenses. He used to take one or two coins in exchange for registry and court degree, he didn't use to say this is not enough or this is too much, he would accept whatever he was given. However, he looked, with the light of acting righteously and with the

²⁴ Commentary, (2007), para. 111.

*Ak sade, gök kapama, Selanik Çukası and Donuzlu çalması are traditional Ottoman clothes which are simple, unpretending, and modest.

luck bestowed by truthfulness, so noble and self-confident that governors and voivodes could not help but submit to his commands, their value was less than a green leaf when compared to him.”²⁵

As in the example above, the image of being a judge constitutes a unity with the behaviors shown during the trial and during the private life. The society is closely interested in how judges behave even in their private life. 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 (Court of Cassation Code of Judicial Conduct, Article 4.2).

3.5. EQUALITY

3.5.1. Equality in General

In the most general sense, the concept of equality means, that individuals in a society have the same rights and liabilities.²⁶ Similarly, the concept of equality is defined as the equality of each citizen in terms of rights and liabilities provided by the law.²⁷

There are basically two approaches of equality. First approach for equality is based on “similarity”, the second is based on “differences”. Absolute equality is giving equal rights, and sharing equally among the individuals without any discrimination. This kind of equality means treating everybody equitably, if each individual starts the race from the same point, and if they have the same necessities. If everybody does not have the same features and conditions, treating everybody equitably does not provide equality. In this kind of equality, which is called relative or partial equity, the conditions under which the people live are taken into consideration. In that case, individuals are treated according to their special conditions and needs, in that way equality is provided.²⁸

In an institution a) Basic individual equality b) Partial equality c) Equality of the blocks should be ensured. There is only one group in the understanding of basic individual equality. For example, each citizen in a society has the right to vote only once. This kind of equality means treating each equal equally.²⁹

²⁵Gökyay, Orhan Şaik. “Âşık Çelebi Tezkiresi” (Tarih Dergisi, Issue 30, p. 39-48). p. 44-45 (Kılınç, A.(2016). Osmanlı Devletinde Kadının Uyması Gereken Etik İlkeler. (It was directly quoted from the p. 35 and , pp. 121-187 of the International Symposium on Judicial Conduct.)

²⁶Timuçin, A. (2000). Felsefe Sözlüğü. İstanbul: Bulut Yayınları. p.137.

²⁷ Akarsu, 1998, p.73.

²⁸ Aydın, İ. (2016a), p.179.

²⁹ Aydın, İ. (2016c), p.48.

Partial equality includes treating different groups specially in a society in order to provide equality. In other words, making disadvantageous groups equal depends on different practices and regulations. Partial equality can be named as constructed or systematic inequality. Here, the groups are made unequal for equality. The privileges provided to the disabled in institutions and lower food prices for the personnel whose salary is lower can be shown as examples to this kind of equality. The obligation of employing the ex-convicts and disabled people are also practices of partial equality.³⁰

Block equality aims at providing equality between different groups. For example, men are expected to treat equally for women's equality. Requests for child rights and patient rights can also be accepted as examples within this context.³¹

One of the most fundamental unethical practices is discrimination. In the most general sense, discrimination is, a behaviour, which is shown towards individuals or groups intentionally or unintentionally, although it is not based on qualification, talent, or previous performance, and which is contradictory to equality.³² Discrimination can be divided as individual or institutional, direct or indirect³³ in general:

a) Direct discrimination occurs when one person treats people from a social group with which he or she disagrees or opposes in terms of gender, marital status, faith, etc. differently in the negative sense from the people in a group, which he or she belongs to. Treating the people who do not share their political or religious opinions differently from the ones whom the person regards the same as himself or herself or feels closer to can be shown as an example to this kind of discrimination.

b) Indirect discrimination occurs when something is implemented unequally and in a way that will cause harm to some particular groups although it should be implemented equally to anybody without considering intention. For example, when a rule or a standard is implemented to some people whereas it is not applied to the others, this is the kind of discrimination aforementioned.

c) The third type of discrimination is called institutional discrimination. This kind of discrimination occurs at institutional level and means that institutional structure, rules, and processes are implemented differently for

³⁰ Aydın, İ. (2016c), p.48.

³¹ Aydın, İ. (2016c), p.49.

³² Jackson, C.C. (1995). Discrimination. Rorth, JK. (Ed.). International encyclopedia of ethics. London: Salem Press.

³³ Aydın, İ. (2016a), pp. 181-182.

different people or groups. In the institutional discrimination, the target is not the individuals themselves, but all the people who have specific features as a group.

3.5.2. Equality in terms of Judicial Conduct

A judge has a role to play in ensuring that the court offers equal access to men and women. This obligation applies to a judge's own relationships with parties, lawyers and court staff, as well as to the relationship of court staff and lawyers with others. Speech, gestures or other conduct such as "sweetie", "honey", "little girl", "little sister", or commenting on their physical appearance or dress may be perceived as sexual harassment.³⁴

It is the duty of a judge not only to recognize and be familiar with cultural, racial and religious diversity in society, but also to be free of bias or prejudice on any irrelevant grounds. A judge should attempt, by appropriate means, to remain informed about changing attitudes and values in society.³⁵

A judge should abstain from making disparaging comments. A judge's disparaging comments about ethnic origins, including their own, are also undignified and discourteous. A judge should be particularly careful to ensure that his or her remarks do not have a racist overtone and that they do not, even unintentionally, offend minority groups in the community.³⁶

3.6. COMPETENCE AND DILIGENCE

3.6.1. Competence and Diligence in General

Competence means having the professional efficiency to be able to do a job successfully and proficiently. Competence also requires that a person has received the necessary professional education and has the necessary knowledge, skills, and attitudes. Professional competence of a person defines his or her ability to do the job as a whole and the efficiency he or she has. When a person carry out his or her duties in accordance with the accepted standards, and in an efficient and skillful way, this shows that the person is competent. It is necessary for maintaining professional competence to take advantage of all kinds of educational opportunities and reading all the time in order to improve oneself.³⁷

³⁴ Commentary, (2007), para.185.

³⁵ Commentary, (2007), para.186.

³⁶ Commentary, (2007), para.185.

³⁷ Aydın, İ. (2016a), p. 98.

Diligence is to show permanent effort, sedulity, attention, and interest while working. It is the expression of diligence when people carry out their duties with utmost interest and caution without being subjected to claims of negligence while carrying out their duties.³⁸ Professional diligence contains, at the same time, applying the procedures and standards within the professional field completely and in due time. Considering duty as the first responsibility, observing the working time (working hours), and not allowing errors and carelessness to happen are of much importance for a judicial member to work. Negligence and carelessness means violating the codes of conduct because they will cause waste of time and loss of right.

3.6.2. Competence and Diligence in terms of Judicial Conduct

Judicial processes should be conducted with great care and accuracy. The decisions, files, or studies which have been rendered, prepared or carried out carelessly and thoughtlessly cause delay the judicial process and also violate the most fundamental ethical principle “first do no harm”, and therefore they give harm to the parties.

Competence and diligence are prerequisites to the due performance of judicial office. Competence in the performance of judicial duties requires legal knowledge, skill, thoroughness and preparation. A judge’s professional competence should be evident in the discharge of his or her duties. Incompetence may be a product of drug or alcohol addiction, inadequate experience, problems of personality and temperament.³⁹

To consider soberly, to decide impartially and to act expeditiously are all aspects of judicial diligence. Diligence also includes striving for the impartial and even-handed application of the law and the prevention of the abuse of process.⁴⁰ Being late for hearings, deliberations and general assembly meetings, getting the clerk to write the decisions, asking the clerk to fill in the warrant after signing a blank paper, leaving the e-signature to the secretariat and its use by the secretariat, not writing the reasoned decisions within the duration provided by law or by the determined standards, not sending the decisions of conviction or arrest warrants to the Public Prosecutor’s Office or execution units for enforcement may be considered as the examples of lack of diligence.⁴¹

³⁸ Aydın, İ. (2016a), p. 208.

³⁹ Commentary, (2007), para.192.

⁴⁰ Commentary, (2007), para.193.

⁴¹ Saldırım, M. (2018). Hacettepe Hukuk Fakültesi Mesleki Deontoloji Ders Notları. Ankara. p.37.

3.7. TRUST

3.7.1. Trust in General

Trust can be defined as the feeling of believing and commitment without fear, hesitation, and doubt. Trust is a concept which nothing can take its place in human relations. It is a more important ethical principle especially in professional relations.

Institutional and professional trust is created when a person believes that the other person with whom he or she has a professional relation will behave fairly, predictably, and in consistent with the codes of conduct. One of the most important factors here is a citizen's feelings of trust and undoubtfulness in a public official's words, behaviours, and decisions in their relations.

There are at least three conditions to fulfill for a professional to be trusted:⁴²

a) Professionals should act with complete commitment to the ethical values, principles, and standards. This situation requires public officials to preserve their professional autonomies.

b) Members of the profession should carry out their professional actions and duties with a complete qualification and efficiency. The society should believe that these professionals have profound knowledge.

c) Professionals should act with special care and attention to other people while carrying out their duties. They should not abuse their trust.

On the other hand, the trust relationship resulting from the communication between the public officer and the public becomes the determiner of the trust in the system and in the institution. A service which is provided by the professionals voluntarily and which does not cause any doubt about getting damaged becomes a guarantee for the public trust. There are many sources of trust. First of them is **"trust based on personality."** Personal traits, integrity, skills, and professional abilities, and consistent behaviours of a member of the profession create a tendency towards being more trusted by the other people. Second type of trust can be called as **"institutional trust"**. In institutional trust, people believe that institutional duties and processes will be carried out automatically and without the need for control or observation.⁴³

⁴² Pellegrino, E.D. (2001). Trust and Distrust in Professional Ethics. Teays, W., Purdy, L. (Ed.). Bioethics, Justice & Healthcare. USA: Wadsworth Thomson Learning. p.24.

⁴³ Schoorman, F.D. & Mayer, R. & Davis, J. (2007). "An Integrative Model of Organizational Trust: Past, Present and Future", Academy of Management Review. 32:2, p. 344-354.

3.7.2. Trust in terms of Judicial Conduct

Institutional culture is one of the most important factors in building institutional trust. When trust and respect dominate the institutional culture, public trust and respect for the institution and members of the profession also increase.

The prerequisite of the public trust is to introduce the codes of conduct to the public and make them believe that they are observed. Especially the judicial institutions are expected to be one of the most reliable institutions in democratic and modern societies. One of the most effective ways of fulfilling this rightful expectation of the public is to make the ethical values and principles an important part of the institutional culture.⁴⁴

Trust is a very important value in the judiciary. High quality in the judicial service will be insufficient in creating the aimed effect when public trust or the feeling of trust has not been provided as an institution even if a perfect judicial system has been constructed. Thus, it is necessary to carry out duties and responsibilities properly at first, and then announce it to the public accurately. As stated briefly in the expression “Either seem as you are or be as you seem.”, an institution should try to ensure trust in the first place, and then inform the public about this issue and increase awareness.⁴⁵

In the Foreword of the Court of Cassation Codes of Conduct, the relationship between the ethics and trust in the judiciary is explained as the following:

“The success of our judicial system may, to a large extent, be measured by the public trust in judges, public prosecutors and judicial staff. In order to ensure such trust, judicial personnel should comply with the codes of professional conduct and the public should also be aware of such codes... Determining and implementing the codes of conduct specific to bench members, rapporteur judges, public prosecutors and staff of the Court of Cassation, and making them recognisable and visible to the public constitute a best example of our contributions in recent years to the justice system.”

Public trust in the judicial system is emphasized in the two different paragraphs in the Preamble of the Court of Cassation Code of Judicial Conduct:

“WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in

⁴⁴ Saldırım, M. (2017). Yargıtay ve Etik. (Yargıtay Etik Şeffaflık ve Güven Projesi Etik İlkeler Çalıştayı, Antalya 12-16 Mayıs 2017, Editors: Mustafa Saldırım, Gözde Hülagü p.134-138.) p. 136.

⁴⁵ Tepe, H. (2017). Kurum Kültürü ile Etik İlişkisi (Court of Cassation Ethics, Transparency and Trust Project Codes of Conduct Workshop, Antalya 12-16 May 2017, Editors: Mustafa Saldırım, Gözde Hülagü: Yargıtay yayını pp. 102-115). p.102.

a modern democratic society; - WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system;”

Thereby, one of the most important consequences of the implementation of the codes of conduct is that judges and judicial personnel ensure public trust individually, and the Court of Cassation and judicial institutions ensure such trust institutionally. If the public believes in the delivery of justice, trust will increase. In order to assure that belief, it is a prerequisite that first of all judges, public prosecutors, and the staff to behave ethically and make ethical decisions.⁴⁶ Implementation of the codes of conduct means reviewing and reconstructing a track and control mechanism that is related to each chain of the workflow and that will lead us to a much better justice system. The aim is to strengthen the democratic and innovative culture in the Court of Cassation with the codes of conduct.⁴⁷

3.8. TRANSPARENCY AND ACCOUNTABILITY TO PUBLIC

3.8.1. The Concept of Transparency

Transparency is “the principle of making decisions in accordance with the rules and arrangements, providing access to the information for the ones who will be affected by this information, and making this information accessible, intelligible, and concrete”.⁴⁸

In a general sense, “transparency” defines openness, communication, and accountability. Public officials should be clear as much as possible about all the decisions and processes for the public services. Public services require a high degree of transparency in order to protect public interests. Therefore, all public officials are liable to explain the reasons of their decisions and the decision-making process. All documents that have formed the decisions are explained to the public and archived. In that sense, the level of transparency determines, in fact, the level of accountability. Being able to prove the mechanisms and reasons through which the decisions are made with information and documents is the indicator of both transparency and accountability.⁴⁹

⁴⁶ Tepe H. (2017), p.117.

⁴⁷ Saldırım, M. (2017). Yargıtay Etik Şeffaflık ve Güven Projesi’nin Tanıtımı. (Yargıtay Etik Şeffaflık ve Güven Projesi Açılış Sempozyumu, Ankara, 13-14 Nisan 2017, Editor: Mustafa Saldırım, Gözde Hülagü, 14-20: Yargıtay Yayını). p.14.

⁴⁸ Accessed from <http://www.seffalik.org/yolsuzluk/seffalik-nedir/> on 1 August 2019.

⁴⁹ Aydın, İ. (2016a), p. 186.

3.8.2. Accountability to the Public

When public officials are appointed, they are expected to have made a commitment to do their best while they are carrying out the tasks and duties that their position requires. In a sense, they have undertaken a duty and responsibility of accountability about whether they have fulfilled the requirements of that duty or not. In that sense, accountability, , is to explain why we have or have not been successful in doing an important job or performance which has a value.

In the most general sense ,accountability, , is “the appointed or elected public official’s ability to show that they use the authority they have been vested in a correct way and they have carried out their duties which they have undertaken successfully. In other words, accountability is the obligation of explaining the usage of sources and how the duty has been carried out and to what extent to the ones who have entrusted the sources used by public or private institutions in order to do a job or carry out a duty”.⁵⁰

In that sense, all administrators and employers who work in public institutions have the liability of giving account about to what extent they have been successful in carrying out their duties and the reasons for this. The most important aspects of accountability are that all public officers are responsible for the consequences of their actions, and that they are willing to make an explanation and to be open to the criticisms about these actions and decisions. In that context, the situation in which employees in an institution are able to give information to the related people about the use of authority and taking responsibility, the obligation of behaving in accordance with the criticisms against themselves and the demands, and undertaking the responsibility in a case of failure, inefficiency, or corruption are called accountability.⁵¹

3.8.3. The Relation between the Code of Judicial Conduct and Transparency and Accountability to the Public

As it is clearly stated in the Foreword of the Court of Cassation Codes of Conduct, the basis of the Court of Cassation’s communication strategy is premised on “discussing the issues of justice in transparent and unbiased

⁵⁰Baş, H. (2005). Hesap verme sorumluluğu ve Kamu Mali Yönetimi ve Kontrol Kanunu. 20.*Türkiye Maliye Sempozyumu Türkiye’de Yeniden Mali Yapılanma*. Pamukkale Üniversitesi İktisadi ve İdari Bilimler Fakültesi Maliye Bölümü, 23-27 Mayıs 2005. p.402.

⁵¹ UNDP accountability system accountability framework and oversight policy. Second regular session 2008 8 to 12 September 2008, New York Item 10 of the provisional agenda Internal audit and oversight, p.3.

milieus". Therefore, the "Court of Cassation Code of Judicial Conduct", the "Court of Cassation Code of Conduct for Public Prosecutors", and the "Court of Cassation Code of Conduct for Staff" were prepared through broad democratic participation and observing internal and external transparency. The Court of Cassation Codes of Conduct are the most important one of the reforms undertaken by the Court of Cassation in celebrating its 150th anniversary in the march towards 'a transparent judiciary accountable to the society'. Hence, one of the primary objectives to formulate codes of conduct is to head towards a judicial system which is transparent and able to give account to the public.⁵²

In the Preamble of the Court of Cassation Code of Judicial Conduct, it is expressed that "WHEREAS the İstanbul Declaration on Transparency in the Judicial Process emphasizes that the widest possible dissemination to the public of the judicial codes of conduct with which the judges comply and the fact that the public knows and sees that such codes are enforced play a key role in enhancing judicial performance and public confidence in the judiciary.". Therefore, the Court of Cassation codes of conduct, and particularly the İstanbul Declaration and Measures for the Effective Implementation of the İstanbul Declaration aim at reaching the highest standards of a transparent judiciary which is able to give accounts.

Moreover, the organ responsible for that issue is expressed as the following: "WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary..." Thus, judicial body is the organ which is primarily responsible for the quality of judicial services, and which is obliged to give accounts on that issue.

3.9. GIFT

3.9.1. General Information

According to the Dictionary of the Turkish Language Association, gift means the transfer of a specific physical asset to another willingly, and without expecting anything in exchange. In accordance with the Article 15 of the Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials, any type of goods or benefits directly or indirectly accepted, whether it has an economic value or not, affecting or has the possibility to affect the impartiality, performance of the public official or fulfillment of his or her duty may be referred to as gifts.

⁵² Cirit, İ. (2018). Court of Cassation Codes of Conduct. Foreword. Ankara. (Edited by: Dr. Mustafa Saldırım, Gözde Hülügü). p.5.

A public official needs to ask this question to himself or herself: “If I were not in that position or if I were not in charge of this duty, would this gift be given to me?” If the answer is “NO”, the gift should be discussed ethically. In the table below, the gifts which are, or not, within the scope of ban in accordance with the Article 15 of the Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials are stated. The conditions in which it is allowed to give and accept gifts in the Court of Cassation codes of conduct are more limited and narrower-scoped.

Gifts which are not within the scope of prohibition on accepting gifts	Gifts which are within the scope of prohibition on accepting gifts
a. The gifts which are meant to contribute to the institution in which a person works, which will not affect the functioning of institutional services in accordance with the law, which are accepted on the condition that they will be allocated to the public service, registered in the list of fixtures and which will be publicly announced (excluding the official vehicles and other gifts accepted for allocation to the use of a certain public official) and donations made to the institutions and organizations,	a. Gifts received for greetings, farewell and celebration and as grants, travel, free accommodation and gift checks from those having a relationship based on business, service or interest with the institution in which a person works,
b. Books, magazines, articles, tapes, calendars, CDs and similar items,	b. Transactions made over unreasonable prices, when compared with the general market price, during the purchase, sale or rent of movable or immovable commodities or services,
c. Prizes or gifts given in competitions, campaigns or activities open to public,	c. All types of gifts given by the receivers of services such as commodities, clothes, jewellery or foods,
d. Gifts given as souvenirs of conferences, symposiums, forums, panel discussions, dinners, receptions or similar activities open to public.	d. Loans and credits received from those having a business or service relationship with the institution in which a person works.

3.9.2. Gift in terms of Judicial Conduct

It creates a problematic area when public officials and especially judges accept gifts. Therefore, there have been many strict rules on the prohibition of

accepting gifts from the ancient times. For example, in Hittites, impartiality and integrity of judges were of great importance, and even bread and beer which were the most innocent gifts of the time were prohibited to be accepted by the courts (judges and court personnel).⁵³

During the Ottoman Empire period, there were many strict and restricting arrangements for the kadis about receiving gifts. In the Article 1796 of Mecelle (Ottoman Code of Civil Law), the prohibition on accepting gift is expressed as the following: "The judge may not accept a gift from either of the parties." In fact, gift giving is a form of relationship that is recommended in Fiqh. Even, it is known that gift giving is a Sunnah. However, gift giving is not considered appropriate for the officers, especially for the judges. Because if a judge accepts gifts, he or she may sympathize with the party giving the gift.⁵⁴

It is also completely forbidden in the Islamic law for public officials and judges to accept gifts. There are many examples in the hadiths the second major source of Islamic law, that the civil servant should not receive gifts: "Receiving gifts by public officer is betrayal.", "How can a public officer appointed by me say that this is yours and this is given to me as a gift! He must have considered whether it would have been given to him as a gift, if he had lived at his father's or mother's house!", "Receiving gifts by administrators is equal to stealing the state property."⁵⁵

A gift, bequest, loan or favour to a member of the judge's family or other persons residing in the judge's household might be, or appear to be, intended to influence the judge. Accordingly, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage the family members from violating them.⁵⁶

It is possible to manipulate the members of the judiciary for doing or not doing a job not only through gift and money, but also providing different opportunities. It became clear during the "clean hands" interrogation in Italy that some judges and their spouses were invited by a Sicilian politician who was involved in corruption to give lectures in some private schools and to provide consultation to the important law specialists, and that newly appointed judges to the region have been provided assistance to find accommodation through a politician who had relations with mafia.⁵⁷

⁵³ Doğan, E. (2012). *Hitit Hukuku*, İstanbul: Fam Yayınevi. p.79.

⁵⁴ Kılınç, A. (2016). p.150.

⁵⁵ Kılınç, A. (2016). p.151,152.

⁵⁶ Commentary, (2007), para.177.

⁵⁷ Inceoğlu, S. (2008). *Yargıcın Davranış İlkeleri*, İstanbul: Beta Yayınevi. p.99.

Ordinary social hospitalities can also be assessed under the title of gift. One question that should be asked is whether acceptance of such hospitality would adversely affect the judge's independence, integrity, obligation to respect the law, impartiality or dignity or the timely performance of judicial duties, or appear to involve infractions of any of these. Other questions that should be considered are: Is the person initiating the social contact an old friend or recent acquaintance? Does the person have an unfavourable reputation in the community? Is the gathering large or intimate? Is it spontaneous or has it been arranged? Does anyone attending have a case pending before the judge? Is the judge receiving a benefit not offered to others that will reasonably excite suspicion or criticism?⁵⁸

The Court of Cassation Code of Judicial Conduct include the foregoing examples and the regulations in line with the Bangalore Principles of Judicial Conduct. First are the conditions on which accepting a present is absolutely (without exception) prohibited (Court of Cassation Code of Judicial Conduct, Article 3.4; 3.5). The characteristic feature of the conditions on which gift is absolutely prohibited are the conditions which have the possibility of being related to the proceeding (distant or close) before, during, and after trial. This applies to parties of the case, lawyers or relatives of these people or of a judge. Under the conditions on which accepting a gift is absolutely prohibited, the gift should be rejected no matter what happens without regard to the qualities or quantities of the gift offered or the opportunity provided.

The second are the conditions on which accepting a gift is partially prohibited (Court of Cassation Code of Judicial Conduct Art. 4.13). Gifts can be accepted under the exceptional conditions stated in the Article. Because rejecting a gift is a rule and accepting it is an exception, there is no possibility of expanding its scope. Therefore, exceptional conditions on which gifts are allowed to be accepted cannot be expanded through interpretation, on the contrary, exceptions should be interpreted in a narrow sense in case of a doubt. However, in addition to the conditions mentioned above, getting privileges and benefits as a judicial staff is also within the scope of the prohibition.

Consequently, it is prohibited for judges to accept gifts with strict and clear rules, apart from some exceptional conditions, in all civilizations and at all times throughout history, therefore the prohibition of receiving a gift is a universal rule. It was even regarded in the Ottoman Empire period as a rule that kadis can accept gifts only from the authority which have assigned

⁵⁸ Commentary, (2007), para.180.

them, or their colleagues and relatives (provided that these are not related to any case and the value of the gifts do not exceed the ones which the kadis got before they were appointed), and that they could never accept presents except the situation in which they were offered by the people mentioned above.⁵⁹

3.10. CONFLICT OF INTEREST

3.10.1. Conflict of Interest in General

Conflict of interest is the situation in which “personal interests” of a person prevent him or her from carrying out the official duties as required. The personal interest here includes the protection of economic or other kinds of interest of one’s own and their relatives, or their friends. Conflict of interest occurs when a person neglects or fails to carry out professional responsibilities in a way that provides benefit for oneself and their relatives. Especially in public services, it is obligatory to consider public interests above all, and to abstain from having benefit for oneself.⁶⁰

Conflict of interest occurs when public officials have personal interests, which prevent or seem to prevent them from carrying out their duties impartially and objectively. The personal interests of public officials include all kinds of benefits provided to themselves, their families, close relatives, colleagues, and people or institutions with which they have professional or political relationship. In addition to this, it contains all kinds of obligations, including financial obligations.

Because a public official is the only person who knows the possibility of the conflict of interests, he or she has responsibility for the following subjects:

- a) To be on alert about the potential or real conflict of interest,
- b) To take the necessary steps to abstain from such kind of conflict,
- c) To inform the superiors as soon as he or she realizes such kind of conflict,
- d) To withdraw from such situation,
- e) To accept the final decision to be rendered in order to isolate themselves from any benefits arising from the conflict of interest.

⁵⁹ Kılınç, A. (2016), p.152.

⁶⁰ Aydın, İ. (2016a), p.63.

3.10.2. Conflict of Interest in terms of Judicial Conduct

We may encounter conflict of interest during both judicial duties and justice management, and this undermines the appearance of integrity and equality during the performance of public duties. For example, a judge shall disqualify himself or herself from participating in any proceedings where the judge has any interest that could be affected substantially by the outcome of the proceeding (Court of Cassation Code of Judicial Conduct Art. 2.7.2, 2.7.3). Because conflict of interest is a situation, which is recognised primarily by the related person, the responsibility of giving a high degree of importance belongs to the judge. Thus, the first thing to do is to inform the related authority about the issue, and to terminate the legal relation.

When an unfair advantage is gained thanks to the official duty, or when a judge or his or her family sign a service or sales contract with the Court of Cassation, this is regarded as conflict of interest. In the cases of conflict of interest, the impartiality of the public service is violated or seems to be weakened in the eye of a reasonable person (Court of Cassation Code of Conduct for Staff, Article 4.1, 4.2). There are also regulations including the conflict of interest in the Articles 3.2 and 5.4 of the Court of Cassation Code of Conduct for Public Prosecutors.

CHAPTER 4: THE RELATIONSHIP BETWEEN THE COURT OF CASSATION CODES OF CONDUCT AND CRIMINAL LAWS, DISCIPLINARY RULES, AND OTHER CODES OF CONDUCT

4.1. GENERAL INFORMATION

In the 3rd paragraph of Article 1 of the Law related to the Establishment of Council of Ethics for Public Service and Making Modifications on Some Laws no 5176 which determines the establishment, duty and working procedures and fundamentals of the Council of Ethics for Public Service as to adopt and observe the implementation of ethical attitude principles such as transparency, impartiality, honesty, accountability, that should be abided by the public officials, it is stated that the provisions of this Law does not apply to “members of judiciary”. Therefore, chamber presidents and bench members, rapporteur judges and public prosecutors of the Court of Cassation are outside the scope of the Law. To make it more clear, the Law no 5176 is not applied to judges and public prosecutors. Only the Court of Cassation staff are within the scope of the law. Hence, it is foreseen that a judicial body determines its own codes of conduct. On the other hand, it is not acceptable in terms of international standards that the codes of conduct of an independent judicial body will be determined by a body or institution except the judiciary. Moreover, codes of conduct existed in a few countries such as Italy, Canada, and America before the adoption of the Bangalore Principles of Judicial Conduct. The number of countries, which adopt the codes of judicial conduct has increased drastically after the Bangalore Principles of Judicial Conduct were adopted.⁶¹

4.2. THE RELATIONSHIP BETWEEN THE COURT OF CASSATION CODE OF JUDICIAL CONDUCT AND THE DISCIPLINARY AND CRIMINAL PROVISIONS

As it is known, “ethics” is a philosophical and thematically rich concept, which requires a multidimensional and holistic point of view. “Judicial conduct” is a sensitive and special field, which should be dealt within the universally determined framework, and it has basic principles unique to itself.

⁶¹ For the ethical principles of these countries see Hukukta Yargı Etiği İlkeleri.(2017) (Editor: Mustafa Saldırım), Ankara: Yargıtay Yayını.

First of all, it is not appropriate to impose sanctions on the bench members of the Court of Cassation, rapporteur judges, and public prosecutors because of ethical violation in terms of the content of the Court of Cassation Codes of Conduct. Because sanction requires the intervention of the Grand National Assembly of Turkey. However, there is an understanding of “each person who works at the Court of Cassation determines their own rules and abide by them” on the basis of the institutional ethics strategy of the Court of Cassation. In the last paragraph of the preamble of the Court of Cassation Code of Judicial Conduct, providing guidance to judges by establishing the standards of professional conduct is regarded as one of the main objectives, and it is accepted that the codes of conduct are instructive and guiding.⁶²

The codes of conduct are based on values. These values may be preserved sometimes with the criminal law, sometimes with the disciplinary law. The fact that the codes of conduct are regulated in the field of law, and even that violation of these principles are subject to disciplinary or penal sanctions do not exclude a code or a rule of professional conduct from being a code of conduct. In the last paragraph of the Preamble of the Court of Cassation Code of Judicial Conduct, it is stated clearly that the codes of conduct are established “to define binding professional code of ethics for the judges...”, and it is emphasized that disciplinary and criminal provisions will continue to be implemented on judges and therefore on public prosecutors of the Court of Cassation.

As a matter of fact, according to the “Ethics and Responsibility” Chapter of the Article 18 of the Opinion of the Consultative Council of European Judges (CCJE) (2010) No 3 “Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training.” On the other hand, the standards for the codes of professional conduct are different from laws and disciplinary rules. These standards emphasize the ability of fulfilling their function in accordance with the expectations of the public proportionately with the powers entrusted with a profession. These are self-regulating standards, which enable to recognize that implementation of law is not a mechanical action and that it requires a real power of discretion, and which place the judges into a responsible position for themselves and for the other people.⁶³

⁶² In spite of this, the codes of conduct can be coincide, agree or disagree with the subjects regulated in disciplinary rules or criminal laws under some circumstances. This is a different issue. See. Şahbaz, İ./Saldırım, M.(2017). Yargıtay Yargı Etiği İlkeleri Taslağına İlişkin Görüşlerin Değerlendirilmesi ve Birleşmiş Milletler Yargı Etiği Standartları ile Karşılaştırılması. Yargıtay yayını: Ankara, p.13.

⁶³CCJE (2002) Op. N° 3, 19.11.2002, Strasbourg, art. 45.

An important part of the Bangalore Principles of Judicial Conduct has the qualification that will be included in the fields of disciplinary law and criminal law in many countries. For example, there is a rule in the Article 4.12 of the Bangalore Principles of Judicial Conduct “A judge shall not practice law while the holder of judicial office”. In the case of violating such a rule, a modern justice system in which a judge is not punished according to the criminal law cannot be imagined. It would not be right to limit the scope of an ethics rule only with the type of sanction to which it is related. Ethical rules sometimes coincide with each other. But sometimes law may be contrary to a code of conduct.⁶⁴ The thing that should be done in that case is to try to make the law compatible with the codes of conduct or interpret them. Judges should be guided in their activities by ethical principles professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.⁶⁵

The above-mentioned principles also apply for the Court of Cassation staff. The relationship between the codes of conduct and criminal and disciplinary provisions are regulated in the Article 4 entitled “Sanctions” in the Court of Cassation Code of Conduct for Staff. According to the Article, the breach or violation of any Rule contained in this Code shall constitute misconduct and may attract disciplinary action. For example, falsification or destruction of records, which are stated in 1.5 may constitute the crime of forgery of official documents, or it may constitute a disciplinary crime for which one can be dismissed from the civil service. To make it more clear, the fact that an act is included in the ethical rules does not remove the act from a disciplinary offence or crime in the judicial sense.

⁶⁴ Şahbaz./Saldırım (2017). p.13.

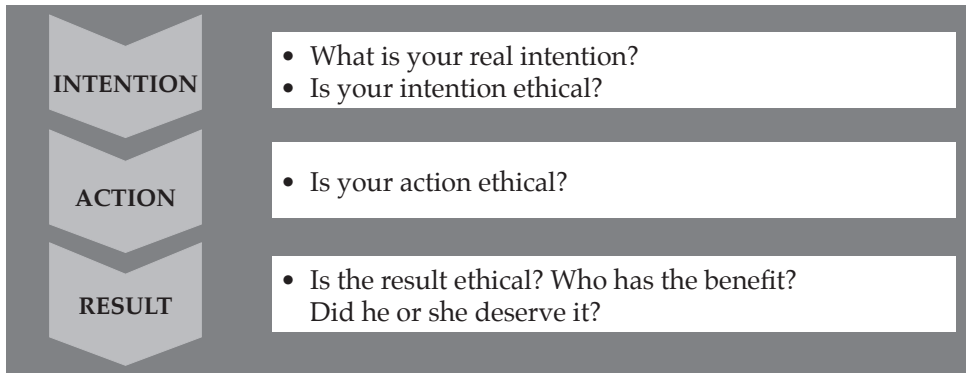
⁶⁵Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States On Judges: Independence, Efficiency and Responsibilities, art.72.

CHAPTER 5: THE CONCEPT OF ETHICS, AND FUNCTIONS OF PUBLIC ETHICS, PROFESSIONAL ETHICS AND JUDICIAL CONDUCT

5.1. THE CONCEPT OF ETHICS

5.1.1. General Information

In the most general sense, ethics is, the whole of values, codes, rules, and standards that are regarded as a guide in order to assess human attitudes and behaviours in terms of good-bad, right-wrong. All employees should question intentions, actions, and results before they act or decide.⁶⁶



Actions of a person is his or her conscious behaviour, which depends on a value, principle or rule. A person acts by finding or not finding something valuable and by making evaluations according to “good”, “bad”, “right” or “wrong” criteria depending on attention and concern which also give attention to others.⁶⁷

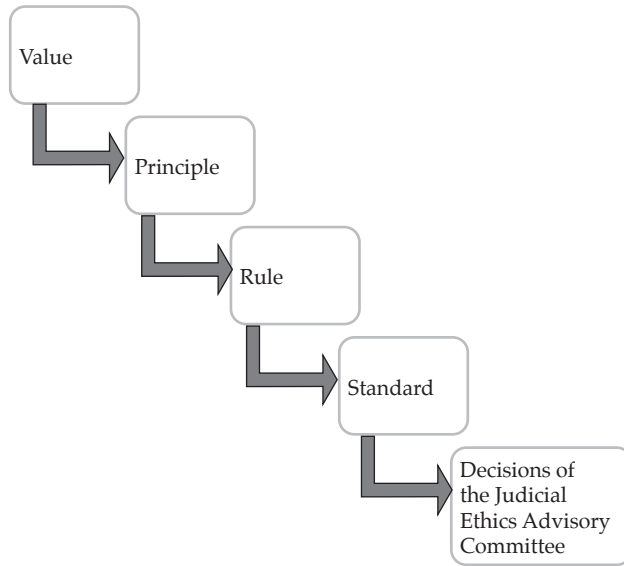
Ethics guide us for making judgements and decisions about relative factors such as good-bad, right-wrong in all kinds of decisions and actions. Ethical problems are problems of value that people encounter in the relations between themselves and others while making decisions or performing actions.⁶⁸

⁶⁶ Aydın, İ. (2016a). p.47.

⁶⁷ Özlem, D. (2010). Etik: Ahlak felsefesi. İstanbul: Say Yayınları. p.15.

⁶⁸ Kuçuradi, I. (2007). Etiğe Yaklaşımlar, Etikte Yaklaşımlar ve Bir Evrensel Etik Düşüncesi. II. Ulusal Uygulamalı Etik Kongresi Bildiriler Kitabı, Ankara ODTÜ Felsefe Bölümü. p.32.

Ethics is a source of evaluation, which assists and guides an individual while answering complicated questions. In that sense, ethics includes making an evaluation of human behaviours and determining which alternative is the best and the most suitable, reasoning why he or she has chosen to act in a particular way, and making “ethical judgements” while doing all these.



5.1.2. Value

Values are preferences, which manipulate all decisions and actions of a person, and explain why he or she gives importance to something. While doing ethical assessments, values and value system become effective. Values demonstrate what people give importance to among the variety of alternatives for what kind of life they will live. Values are created by setting values. Giving importance or a specific meaning to some particular objects or concepts among the others makes them value. People set value to the surrounding objects, attitudes-behaviours or concepts. Each value that exists is the consequence of setting a value. Setting a value on something is to choose or prefer the particular ones among the others.⁶⁹

The principles that are preserved in the Court of Cassation Code of Judicial Conduct are as the following:

a) Independence

⁶⁹ Aydın, İ. (2014) Değer Kavramı ve Değer Yükleme. Prof. Dr. Haydar Taymaz Armağan Kitabı, İnayet Aydın, Kürşad Yılmaz (Ed.). Ankara: Pegem Akademi, p.46.

- b) Impartiality
- c) Integrity
- d) Propriety
- e) Equality
- f) Competence and Diligence

5.1.3. Principle

Principles are the basic thoughts, which manage actions. Principles are the basic norms which assist when deciding whether or not different actions of a person, a group, or a society are acceptable or favourable. Principles are the thoughts, which help us recognize rights and wrongs which affect our actions and which form the basis of our behaviours.⁷⁰

Principles provide support for finding a behaviour fair/true in terms of ethics. Therefore, they enable us to find an answer why we are in search of a true, good and appropriate decision, also they guide and lead us for our behaviours.⁷¹

Principles form a basis for assessing the ethical problems that have been encountered and reduce uncertainties about how these problems will be solved within the ethical context. Therefore, principles provide decision-makers with consistent standards in universalizing their actions. Universalising actions through principles is important. In that way, social consistency is provided among actions.⁷² Ethical principles are divided into two groups as “instructive” and “regulatory”.

a) Instructive Principles: They aim at inspiring the members of the profession for ethical behaviours

b) Regulatory Principles: They aim at determining how to behave in specific situations and which behaviours will be regarded as violation in terms of ethics.

The Court of Cassation Code of Judicial Conduct is the example of both instructive and regulatory principles.

The principles that are stated clearly in the Court of Cassation Code of Judicial Conduct are enlisted as the following:

⁷⁰ Aydın, İ. (2016a), p.53.

⁷¹ Aydın, E. (2001). Tıp etiğine giriş. Ankara: PEGEM A Yayıncılık. p27.

⁷² Aydın, İ. (2016a). p.53.

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

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

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

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

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

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

5.1.4. Rule

Rules are ways of actions in accordance with the codes. Rules are more detailed, narrow and concrete than principles. They are not the guidelines that show abstract generalizations, but they are the guidelines that show how to behave in specific situations. Rules begin to operate against the abstract nature of the principles, and concrete ways of behaviour which create do-do not framework emerge. The rules have three features:⁷³

a) Rules reduce uncertainties and provide predictability and stability. For example, according to the Article 3.4 of the Court of Cassation Code of Judicial Conduct, a judge shall not accept gifts from the parties of the case in all conditions even if the trial is concluded regardless of the quality or quantity of the gift. This rule removes all kinds of uncertainties because it states certainly that any gift given by the parties of the case, or in the name of them, cannot be accepted.

b) Rules bring control and restriction to human behaviours. As understood from the example above, there is a control and restriction in terms of both the person who gives the gift and the one who accepts the gift.

c) Rules make an individual free. It creates a shield effect against inappropriate demands and expectations. For example, when a judge is offered a gift or a privilege by the parties of the case or by the others on behalf of them, he or she could easily reject the gift by putting forward the codes of conduct regardless of however, it comes or whoever brings it.

⁷³ Aydın, İ. (2016c). p.15.

When people began to live within communities, it came as a necessity to live in accordance with rules. Rules include restriction of human behaviours and some particular prohibitions in order to protect the order in a group for a particular aim. Another feature of rules is that they provide clear and transparent expectations for anybody. Rules of Professional Ethics:⁷⁴

- a) Advise and manage.
- b) Guide implementers of the profession for their behaviours.
- c) State how to behave in specific situations.
- d) Put forward the characteristics which the members of the profession should have.
- e) Enable to protect the unity, honor, and respectability of the profession.
- f) Provide legitimacy to the profession.

As a matter of fact, according to the Article 14/1 of the Measures for the Effective Implementation of the İstanbul Declaration, “the judiciary should develop rules and standards of professional and ethical conduct for the members of the judiciary, taking into consideration the Bangalore Principles of Judicial Conduct”.⁷⁵

5.1.5. Standard

Standards are systems, which provide guidance for showing expected behaviours and abstaining from unexpected behaviours. At the same time, they are the ways, which are accepted and can be repeated to do something. Standards are criteria, which enable to perform a task or service effectively and trustfully, therefore they make life easier. Especially in professional ethics, it is very important to know and implement the standards to provide ethical behaviours.⁷⁶

Standards elaborate the rules and provide equality, predictability and legal assurance by creating a common sense about the rules. For example, according to the Article 2.7.4. of the Court of Cassation Code of Judicial Conduct, “an instance where a member of the judge’s family represents a litigant or is associated in any manner with the case”, is a reason for recusal from the case. In this example, the expression “member of the judge’s family” may cause different interpretations about what can be understood from the expression. Therefore, the family members can be stated one by

⁷⁴ Aydın, İ. (2016b). *Eğitim ve Öğretimde Etik*. (8th Edition). Ankara: PEGEM –A Yayın-cılık. p.26.

⁷⁵ İstanbul Declaration and Draft Implementation Measures of the İstanbul Declaration.(2018). Anka-ra: Yargıtay yayını (Editors: Dr. Mustafa Saldırım, Gözde Hülalü, Gözde Ata, Nazlı Ersoy).

⁷⁶ Aydın, İ. (2016c).p.15.

one, and uncertain and different interpretations may be removed in that way.

5.1.6. The Court of Cassation Judicial Ethics Advisory Committee Decisions

There is an official or unofficial body or mechanism which can provide guidance to judges about the propriety of their possible behaviours in terms of the codes of conduct and this sets a minimum standard which is involved in the comparative law and foreseen in the documents of the Council of Europe and the United Nations. The aim of this is to create and strengthen a common ethical understanding in the society through providing guidance to the public and judges for how to implement values, principles, rules, and standards in real cases. When the comparative law is examined, it is understood that such a necessity exists and some arrangements have been made in order to fulfill this necessity.

5.1.6.1. England and Scotland

According to the Article 1.4. of the Supreme Court of the United Kingdom Guide to Judicial Conduct "... The interests of justice must always be the overriding factor. There is also a range of reasonably held opinions on some points. In cases of doubt, a Justice should seek the advice of the President or Deputy President of the Court".⁷⁷ The authority which should be consulted about the propriety of possible behaviours of judges to the codes of conduct is determined as the president or deputy president of the Supreme Court.

According to the Article 5.1 of the Scotland Codes of Ethics, "If a judge is in doubt about the appropriateness of involvement in any particular extrajudicial activity, it may be prudent to consult the Head of the Judiciary".⁷⁸

5.1.6.2. Canada

In the Purpose chapter of the Canadian Ethical Principles for Judges, the expression below is used for the advisory committee:

"A document of this nature (ethical principles) can never be viewed as the "final word" on such an important and complex subject. Publication of these Statements, Principles and Commentaries coincides with the establishment of an Advisory Committee of Judges to which specific questions may be

⁷⁷ Karşılaştırmalı Etik İlkeler Kitabı p.8.

⁷⁸ Karşılaştırmalı Etik İlkeler Kitabı p.25.

submitted by judges and which will respond with advisory opinions. This process will contribute to ongoing review and elaboration of the subjects dealt with in the Principles as well as introduce new issues that they do not address. More importantly, the Advisory Committee will ensure that help is readily available to judges looking for guidance”.⁷⁹

The ethics advisory committee in Canada is appointed by the president of the court.

5.1.6.3. The United States of America (The State of Virginia, The State of New York, The State of Delaware)

The foundation of ethics commissions in the United States of America dates back to 1960's. Commissions for ethical principles have been established in each state in order to restore and maintain public trust in integrity, independence, and impartiality of the judiciary. In 1960, first commission for ethical principles were established under the name of the Commission on Judicial Performance for investigating complaints of judicial misconduct and for disciplining judges.⁸⁰

The State of Virginia

Judicial Ethics Advisory Committee was founded with the order of the Supreme Court of Virginia on 5 January 1999. Even if the order was nullified afterwards, the Committee was refounded with the order dated 20 October 2015. The basic rules regarding the committee are enlisted below:

1. The committee is established in order to give advisory opinions on codes of conduct. There are eleven members who are appointed by and work under the supervision of the president of the Supreme Court. Six of the members are from the judges who are still working or retired. The others are not judges.

2. The members of the Judicial Investigation and Examination Commission cannot participate in the Committee simultaneously.

3. The Committee cannot issue an advisory opinion, which interprets constitutional provision, regulation, law or legislation which are unrelated to the codes of judicial conduct.

4. General Secretariat of the court carries out the secretarial duties of the Committee.

⁷⁹ Karşılaştırmalı Etik İlkeler Kitabı p.67.

⁸⁰ State of California Commission on Judicial Performance. Accessed from <https://cjp.ca.gov/> on 1 August 2018.

In a case, the Committee recommends that a judge should not should not reply a letter of a legislative who expects the case will be concluded quickly and the conclusion will be fair regarding to a case before him or her, or recommends another official to remind to the member of the legislative on behalf of the judge that the codes of conduct for judges judges forbid them to take into account and reply such a letter. According to the Committee, the questions of the member of legislative about the regarding the process and conclusion time of the case before the judge should be assessed within the same framework. Because building a relationship with a legislative officer may create the impression that the person in question have the opportunity of accelerating the case and therefore concluding the case in favor of one party of the case or influencing the judge.⁸¹

The State of New York

In New York “Advisory Committee on Judicial Ethics” was also established especially for enabling the ethical behaviours to be adopted into the judicial system and for giving advisory opinions.

The State of Delaware

The Delaware Judicial Ethics Advisory Committee concluded the request of opinion about the propriety of appointing a judge to a Board which deals with the Hispanic population’s interests to the ethics rules in its decision dated 28 November 2006.

After stating that the studies of the Board (in which the judge wanted to participate) is important and useful, the Advisory Committee did not find it appropriate for the judge to take part in such a Board in accordance with the Article 5 of the Codes of Conduct. According to the Article 5 of the Codes of Conduct, judges can only undertake additional charges, which will make a contribution to the development of law, law system and justice management. Because the Board in which the judge wanted to take part deals mainly with cultural, educational and historical studies, it was not find appropriate for the judge to serve in such a Board, and the Committee expressed its opinion accordingly.

5.1.6.4. The Council of Europe

The Consultative Council of European Judges (CCJE) encourages the

⁸¹ See Commonwealth of Virginia Judicial Ethics Advisory Committee, Opinion 2000- 7, 11.09.2000, http://www.courts.state.va.us/agencies/jirc/opinions/2000/00_7.html (access:17.12.2017).

establishment within the judiciary of one or more bodies or persons having a consultative and advisory role and available to judges whenever they have some uncertainty as to whether a given activity in the private sphere is compatible with their status of judge. Therefore, a judge will have the opportunity to have an opinion about which behaviour is appropriate and which is inappropriate with the position he or she holds. CCJE does not just emphasize that it is a primary necessity for such institutions not to be related with the execution and the legislation, and it also advises judges to be independent from the boards and people that deal with such issues as discipline, promotion, and inspection for judges.⁸²

5.1.6.5. The United Nations

In the Implementation Guide and Evaluation System⁸³ regarding the Article 11 of the United Nations Convention against Corruption⁸⁴ of the United Nations Office on Drugs and Crime, the standard such as “Is there a mechanism or procedure, formal or informal, to advise members of the judiciary on the propriety of proposed conduct?” is included. Doubtlessly, the answer “yes” is expected for such a question.

5.1.6.6. The Court of Cassation Judicial Ethics Advisory Committee

“The Court of Cassation Judicial Ethics Advisory Committee” has no power to deal with complaints or to give a decision of violation because the Court of Cassation Code of Judicial Conduct does not include any regulation such as sanction or rendering a decision of violation in a case of contriety to the codes of conduct. It is possible to say that there are three main reasons for this.

First of all, there is a highly-restricting disciplinary legislation for justices in the current practices when the comparative law is considered. Going beyond this may cause an unproportionate pressure over judges and they may isolate themselves from the society. The social self-isolation of judges who are a part of the society is an unwanted situation in terms of ethical understanding. When the current culture of the Court of Cassation

⁸² Opinion No.3 (2002) of the Consultative Council of European Judges (CCJE) to the Attention of the Committee of Ministers of the Council of Europe on the Principles and Rules Governing Judges' Professional Conduct in Particular Ethics, Incompatible Behaviour and Impartiality), 19 Nov. 2002, para.29. Accessed from [http:// www.coe.int/t/dghl/ cooperation/ccje/textes/Avis_en.asp](http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp). on 1 August 2018.

⁸³ The Convention was adopted by the Turkish Grand National Assembly with the Law No 5506 dated 18.05.2006.

⁸⁴ Cited from the pp 17-18 of The United Nations Convention against Corruption, Implementation Guide an Evaluate Framework for Article 11.(2015). New York.: UNODC Publication, cited from p.17-18.

is considered, the sanction system for unethical behaviours is regarded as inappropriate.

Secondly, ethical rules should be established by the related members of the profession. High attention is given to this while preparing the Court of Cassation Code of Judicial Conduct. Hence, the sanction system is only enacted by law because it is related to judgeship affairs. This can mean that the legislative body intervenes in judges' will to determine their own professional rules, which would not be in compatible with the idea which underlies the ethical understanding desired to be created at the Court of Cassation.

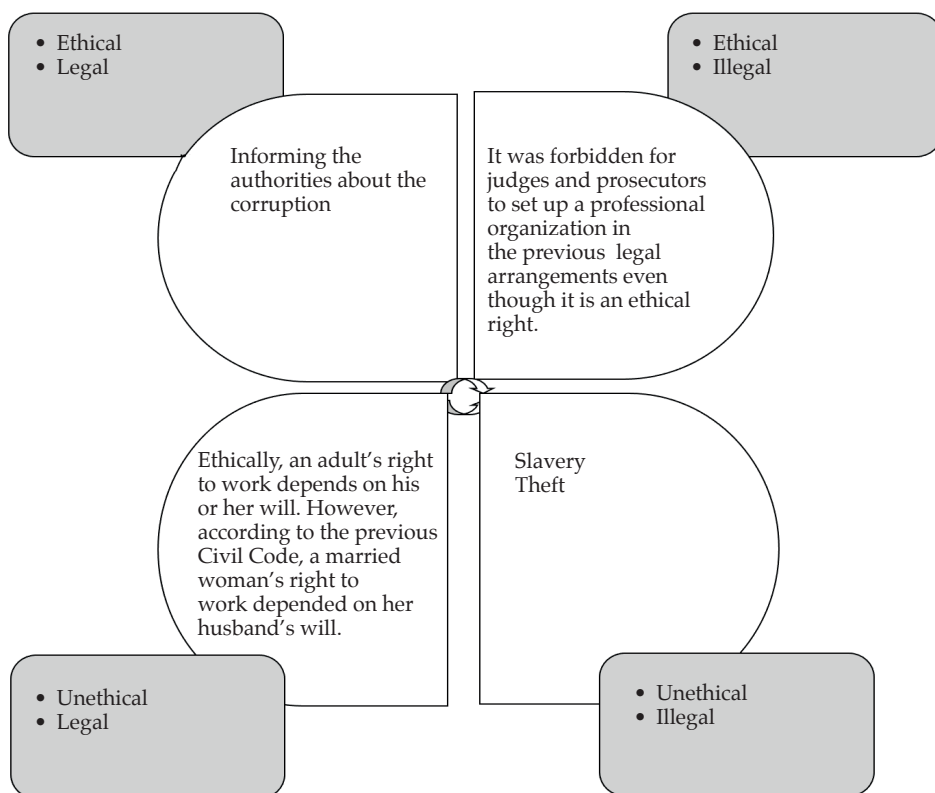
Thirdly, the Court of Cassation Code of Judicial Conduct aims at reaching the highest standards of justice, not minimum standards, regarding the codes of conduct. In order to impose a sanction on a public officer, or especially on a judge, he or she must have violated at least one professional rule, or, to make it clear, he or she must have behave in a way that should be condemned. However, the Court of Cassation Code of Judicial Conduct include standards which are above the minimum rules of behaviour which judges should abide by, and are designed to guide judges for implementing the highest standards of justice by glorifying, strengthening, and supporting the ethical values. So, imposing a sanction in a case of contrariety to the codes of conduct result in lowering the aimed higher standards of behaviour. Doubtlessly, regulating a professional conduct with the codes of conduct does not exclude the action from being a disciplinary action or crime and the codes of conduct cannot be interpreted in that way. Therefore, the codes of conduct have a supplementary characteristic for the other rules of professional codes of conduct.

Although the Court of Cassation Judicial Ethics Advisory Committee decisions are not binding, they are advisory because knowing and implementing the codes of judicial conduct is a main responsibility assigned primarily to judges. However, it is hard to suggest that a judge who abides by the advice of the Court of Cassation Judicial Ethics Advisory Committee behaves unethically and to deplore him or her because of that. Hence, the decision has the function of protecting judges against the claims of unethical behaviours.

5.1.7. The Relationship Between Ethics and Law

Both ethics and laws aim at reaching the most beneficial for both human and humanity with an idealistic point of view. However, ethics and laws do not always coincide with each other. Earl Warren, Chief Justice of the Supreme Court of the United States, defines the relationship between law

and ethics as the following: **“In civilized life, law floats in a sea of ethics. Each is indispensable to civilization. Without law, we should be at the mercy of the least scrupulous; without ethics, law could not exist”**. Below are the examples from these four fields.⁸⁵



5.2. PUBLIC ETHICS

5.2.1. Public Ethics in General

Ethics in the public is necessary, and even compulsory in order to enable the state to carry out its functions effectively and efficiently, to strengthen public trust in the state, and to promote sustainable development by using the public sources efficiently and economically.

Public services are carried out by public officials. Therefore, public officials encounter some situations through which their personal and

⁸⁵ Aydın, İ. (2016c), p.154-156.

professional integrity and virtue are tested. Unethical conduct such as favoritism, extravagance and abuse of authority are not tolerable in governing the state, the equivalence of that is an inefficient and unqualified service. Therefore, every public official should reject unethical conduct.⁸⁶

5.2.2. Public Service Is Entrusted

Public service is entrusted by the public. Therefore:

- a) It is carried out for the public interest.
- b) It is carried out with the public authority.
- c) Public sources are used.
- d) It is based on public trust.

5.2.3. Principles of Ethical Behavior of the Public Officials

2004 is a turning point in establishing a new system based on ethics in our country. The Council of Ethics for Public Service has been established with the "Law No 5176 Related to the Establishment of a Council of Ethics for Public Service and Making Modifications on Some Laws" on that date. In 2005, the "Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials" prepared by the Council of Ethics for Public Service was published. According to the Regulation, the Principles of Ethical Behavior for the Turkish Public Officials are as the followings:

- a) Consciousness of public service in performance of a duty
- b) Consciousness of serving the public
- c) Compliance with the service standards
- d) Commitment to the objective and mission
- e) Integrity and Impartiality
- f) Respectability and confidence
- g) Decency and respect
- h) Notification to the competent authorities
- ı) Avoiding conflict of interest
- j) Not using the duty and powers to get benefits

⁸⁶Steinberg, Sheldon S., David T. Austern. (1996). Hükümet, Ahlak ve Yöneticiler. (Translated by: Turgay Ergun). Ankara: Türkiye ve Ortadoğu Amme İdaresi Yayınları. p.5-6.

- k) Prohibition of receiving gifts and getting benefits
- l) Making use of public goods and sources
- m) Avoiding extravagance
- n) Binding explanations and unreal statement
- o) Notification, transparency and participation
- p) Managers' liability to give account
- q) Relations with the former public officials
- r) Declaring property

5.3. PROFESSIONAL ETHICS

Professional ethics is a whole of principles and rules established and protected by a particular group of profession , give orders to the members of the profession, force them to behave in a particular way, restrict their professional tendencies, exclude insufficient and unprincipled members, regulate the competition within the profession and aim to protect service ideals.⁸⁷

The functions of professional ethics are as the following:

- a) In terms of public: It provides professional dignity and institutional trust. Public trust in fair and transparent service increases.
- b) In terms of profession: Dignity and value of the profession are protected.
- c) In terms of co-workers: It creates standards of professionalism in the relationship among co-workers.
- d) In terms of institution: Public trust and belief in the institution increases.

External professional ethics, values, and beliefs enable people to criticize their internal ethics, reassess themselves and take action to develop themselves. Internal ethics guide the members of the profession for a countless number of incidents and conflicts of duties, which are stated in the ethics documents.

⁸⁷ Altun, A. (1995). *Türkiye’de Gazetecilik ve Gazeteciler*. Ankara: Çağdaş Gazeteciler Derneği Yayınları, No:15. p. 126.

5.4. FUNCTIONS OF JUDICIAL CONDUCT⁸⁸

5.4.1. General Information

The last paragraph of the Preamble of the Court of Cassation Code of Judicial Conduct guides us about the functions of the codes of judicial conduct. According to the paragraph, “aiming to provide guidance to the bench members and rapporteur judges of the Court of Cassation by establishing the standards of ethical behaviour, enable the members of the legislature, the executive, the lawyers and the public to better understand the judiciary and provide support to the judiciary, define binding professional code of ethics for the judges without disregarding the fact that compliance with the code of conduct is the first and foremost responsibility of the judges, hereby ADOPTS this Code of Conduct.”. Therefore, it is possible to review the functions of judicial conduct under the articles below.

5.4.2. Providing Guidance by Establishing Standards of Behaviour

Codes of conduct have the characteristic of providing guidance (leading). Some daily incidents may be highly complicated in some cases, so members of the judiciary and judicial staff may find themselves in a dilemma about how they should behave while they are carrying out their duties. At this point, codes of conduct, rules, and standards guide them.

5.4.3. Enabling the Members of the Executive and the Legislation, Lawyers and the Public to Better Understand the Judiciary

The codes of conduct do not only guide members of the judiciary and judicial staff. They also inform and raise awareness of the people who work in the legislative and the executive body, lawyers, and the public about the standards of behaviour for the members of the judiciary and therefore make them understand the judiciary better and support it. For example, the legislative body should have a high level of awareness about “independence” which is an ethical value in order not to enact in a way that will violate the assurance of judicial office. A society, which has a high level of awareness about judicial conduct is able to assess the standards of behavior of the members of the judiciary. The prerequisite of a legitimate (rightful) public expectation is the ethical awareness and information provided to the public.

⁸⁸This chapter is cited from “Saldırım, M. (2018). Hacettepe Hukuk Fakültesi Mesleki Deontoloji Ders Notları. Ankara.”

The potential of judges to fulfill some of their ethical responsibilities may depend on the attention of the legislative and the executive bodies to the codes of conduct. Therefore, training of the executive and the legislative about judicial conduct is quite useful for the development of judicial conduct culture.

5.4.4. Emphasizing the Individual and Collective Responsibility of Members of the Judiciary for Complying with the Codes of Conduct

Complying with the codes of conduct regardless of whether there is any written rule about the judicial conduct or not is a primary responsibility of the members of the judiciary. Even if there is no written rule, members of the judiciary have the responsibility of assessing whether a behaviour is ethical or not. However, it is quite useful to have written codes of judicial conduct in terms of guidance and familiarity. Also, all activities for establishing and strengthening the judicial conduct culture in a society such as determining, promoting, protecting, and generalizing the codes of conduct are the responsibility of the judiciary.

5.4.5. Completing the Professional Rules of Behaviour Binding on Judges

The codes of conduct do not eliminate the responsibilities arising from the binding professional rules on judges. Judges are subject to penal codes, disciplinary rules, and the general liabilities for public officials (such as observing the working hours). Therefore, the codes of conduct are not the alternatives for the binding codes of professional conduct.

While the principles of judicial conduct are designed to bind judges, they do not intend for every alleged transgression to result in disciplinary action. Not every failure of a judge to conform to the principles amounts to misconduct (or misbehaviour). Whether disciplinary action is appropriate or not may depend on other factors, such as the seriousness of the transgression, whether or not there is a pattern of improper activity and the effect of the improper activity on others and on the judicial system as a whole.⁸⁹

5.4.6. Strengthening the Institutional Culture

Every institution is founded for a specific aim. The codes of conduct improve and consolidate the institutional culture. They enable to increase the level of satisfaction of court users and legal experts by enhancing the

⁸⁹ Commentary, (2007), para.19.

quality of the service provided by the Court of Cassation. Institutional culture is the whole of the values on which an institution is based and its appearance. On the basis of all kinds of attitudes and behaviours related to the proceeding such as all activities of the institution, the way the staff behaves, the way it works, and the habits, there are “values”. Like other institutions, the Court of Cassation also has values which compose the culture of the Court of Cassation and which are unique to itself. These are written on the 2015-2019 Strategic Plan of the Court of Cassation, apart from the fact that they are not limited with the ones enlisted in the plan.⁹⁰

5.4.7. Protection of Human Rights

There is a close relationship between the codes of judicial conduct and protection of human rights. Protection of human rights is possible only with a judiciary, which has internalized the values of independence and impartiality, and virtue.

⁹⁰Saldırım, M. (2017). Yargıtay ve Etik. p.134

CHAPTER 6: TRAINING ACTIVITIES OF THE FIRST DAY⁹¹

PROGRAMME SCHEDULE OF THE FIRST DAY

9:30-9:45	Opening the Programme/Introduction of the Programme	
9:45-10:00	A1: Introducing Each Other Activity A2: Information Box	
10:00-10:15	PRESENTATION 1: The Concept of Ethics, Public Ethics	
10:15-10:30	A3: Intention-Action-Result Study	
10:30-10:45	BREAK	
10:45-11:00	PRESENTATION 1: Professional Ethics and Judicial Conduct	PRESENTATION 1: Continue
11:00-11:30	A4: Station Study	
11:30-11:45	BREAK	
11:45-12:00	PRESENTATION 2: Judicial Conduct	1 st Value: Independence
12:00-12:15	A5: The Value of Independence Scenario Activity	
12:15-12:30	A6: The Value of Independence Decision Card Study	
12:30-13:30	LUNCH	
13:30-13:45	PRESENTATION 2: Judicial Conduct	2 nd Value: Impartiality
13:45-14:00	A7: The Value of Impartiality Scenario Activity	
14:00- 14:15	A8: The Value of Impartiality Decision Card Study	
14:15-14:30	BREAK	
14:30-14:45	PRESENTATION 2: Judicial Conduct	3 rd Value: Integrity
14:45-15:00	A9: The Value of Integrity Scenario Activity	
15:00-15:15	A10: The Value of Integrity Decision Card Study	
15:15 -15:30	BREAK	
15:30- 15:45	PRESENTATION 2: Judicial Conduct	4 th Value: Propriety
15:45-16:00	Opening and Closure of the Information Box	

⁹¹ All activities in this book are developed by Prof. Dr. İlayet Aydın. They cannot be used without permission apart from the aim of this project.

6.1. ACTIVITY 1: INTRODUCING EACH OTHER ACTIVITY

Objective: To make a good start for the participants in a warm environment, and to enable them to communicate with each other.

Instruction: Please write the information about the person sitting next to you on the A1 form below (included in your handbooks). Give the necessary information about yourself in order to enable the person sitting next to you to introduce you. When it is your turn, introduce the person sitting next to you.

Duration: 15 min.

QUESTION FORM FOR THE INTRODUCING EACH OTHER ACTIVITY

1. Name and surname of my colleague:
2. His/Her professional seniority:
3. His/Her expectations from the training:
-
-
-

6.2. ACTIVITY 2: INFORMATION BOX

Objective: To draw the participants' attention to the information that will be learned throughout the day, and to increase their motivation for taking notes of the information, which is new to them.

Instruction:

1. Write on the papers that was distributed by the facilitator at the beginning of the day the information, opinion, idea, and implementations that are new to you.
2. Put these notes into the box the facilitator has shown or give them to him or her.
3. At the end of the day, follow the participant while reading these notes one by one, and review what you have learned during the day.

Duration: During the day










6.3. ACTIVITY 3: INTENTION-ACTION-RESULT STUDY

Objective: To enable the participants to form opinions about the intention-action-result relations in decisions and actions.

Instruction:

1. Write examples about judicial conduct with your fellow group member in accordance with the situations below.
2. Ensure that the example situations that you have written to be explained by your group representative in the general session.

Duration: 15 min.

Intention (+)	Action (+)	Result (-)
		
Intention (-)	Action (+)	Result (-)
		
Intention (+)	Action (-)	Result (-)
		

6.4. ACTIVITY 4: STATION STUDY

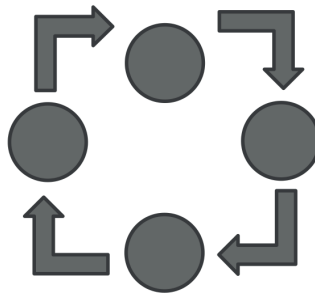
Objective: To enable the participants to carry out detailed studies about the codes of conduct by writing scenarios which include 4 mistakes in terms of the Court of Cassation Code of Judicial Conduct in different stations.

Instruction:

1. Participate in the group formed by the facilitator.

2. Go to the table on which your group will work.
3. Write a brief scenario with your friends in which there are four mistakes, which are contrary the Court of Cassation Code of Judicial Conduct within 10 minutes.
4. After you have written the scenarios with your group, replace the tables according to the instruction of the facilitator, examine the scenarios written by the other groups in order, find the four mistakes in the scenario and write the correct behaviours instead of the incorrect ones on a different paper.
5. Finish the station study after all groups have finished with studying all of the scenarios.

Duration: 30 min.



6.5. ACTIVITY 5: THE VALUE OF INDEPENDENCE SCENARIO ACTIVITY

Objective: To enable the participants to determine which rule regarding the value of independence is violated in the scenario by examining the principles and rules regarding the value of independence.

Instruction: Participate in the group formed by the facilitator. Examine the scenario below with your fellow group members determine which of the rules regarding the value of independence are violated in the scenario by making comparisons with the codes and rules regarding the value of independence, and give answers to the questions below. Then, explain the answers given by the small groups to the big group through your representative. Compare the answers coming from the groups with the related articles of the Court of Cassation Code of Judicial Conduct.

Duration: 15 min.

SCENARIO:

The Chamber President of the Court of Cassation “B” has recently retired, and sets up a company in order to provide consultancy services to companies. Because “B” has a strong relationship with the Court of Cassation, he or she has given support to “Y” to be elected as president of the chamber. Therefore, “Y” has positive emotions for “B”. “B” learns that there is a file in the Court of Cassation regarding the application, which has been done to the consulting company. He or she would be able to prepare a report about the case which is the subject matter of consultancy if he or she could access to the information in the report. That is why, “B” decides to connect with “Y” and demand an interview when he or she learns that the file has come to the chamber of “Y”.

- a) What is the fundamental ethical problem in this scenario? Which codes of conduct are violated?
- b) Who are the affected parties? What kind of damage do they have?
- c) How would you behave in order to be ethical in that situation?
- d) With which articles of the Court of Cassation Code of Judicial Conduct could you defend that your behaviour is ethical?

6.6. ACTIVITY 6: THE VALUE OF INDEPENDENCE DECISION CARD STUDY

Objective: To enable the participants to give decisions about the situations they encounter regarding the value of independence by assessing the principles, rules, and standards of judicial conduct.

Instruction: Divide the participants into groups and guide them for their studies regarding the value of independence decision cards as stated below.

1. Pair off with the participant sitting next to you in a group of two.
2. Open the page of your participant’s handbook on which there are decision cards regarding the value of independence.
3. Read the decision cards regarding the value of independence on your own at first, and decide which of the boxes of “in any circumstances”, “in some circumstances”, “in many circumstances”, “in all circumstances” you want to put your decision cards into.
4. After deciding which statement in each decision card is suitable to which box, write the number of the decision card in the related box.

5. After you have completed your studies, compare with the participant sitting next to you which decision cards you put into which boxes.

6. Determine the statements, which are similar and the ones, which are different.

7. Review the numbers of the decision cards, which you have put into different boxes, and discuss briefly about why you have made such a decision.

8. Determine whether there are any decisions that you have changed.

Duration: 15 min.

THE VALUE OF INDEPENDENCE DECISION CARDS STUDY

Decision Card: 1	Decision Card: 2
A judge gives decision in accordance with the advice of his or her colleagues.	A judge arrests unfairly in order to abstain from the intense social pressure.
Decision Card: 3	Decision Card: 4
A judge abides by the instructions coming from the members of political parties.	A judge asks for opinions and advice from their senior colleagues regarding the file before them.
Decision Card: 5	Decision Card: 6
A judge says that they will do their best to the member of the legislative body who wants the file to be concluded fairly and quickly.	A judge has an interview related to the elections with the representatives of political parties in person (privately) in electoral period.
Decision Card: 7	Decision Card: 8
A judge concludes the case under the effect of the opinions and pressure coming from other colleagues.	A judge has dinner with the representative (provincial head or district president) of the ruling party.
Decision Card: 9	Decision Card: 10
A judge accepts the dinner invitation coming from the rich people (notables) of the city even if it is rare.	A judge is in an effort to affect their colleagues about the cases before him or her.

	Not Wrong In Any Circumstances	Wrong In Some Circumstances	Wrong In Many Circumstances	Wrong In All Circumstances
Decision Card: 1				
Decision Card: 2				
Decision Card: 3				
Decision Card: 4				
Decision Card: 5				
Decision Card: 6				
Decision Card: 7				
Decision Card: 8				
Decision Card: 9				
Decision Card:10				

6.7. ACTIVITY 7: THE VALUE OF IMPARIALITY SCENARIO ACTIVITY

Objective: To enable the participants to determine which rule regarding the value of impartiality is violated in the scenario by examining the principles and rules regarding the value of impartiality.

Instruction: Participate in the group formed by the facilitator. Examine the scenario below with your fellow group members, determine which of the rules regarding the value of impartiality are violated in the scenario by making comparisons with the codes and rules regarding the value of impartiality, and give answers to the questions below. Then, explain the answers given by the small groups to the big group through your representative. Compare the answers coming from the groups with the related articles of the Court of Cassation Code of Judicial Conduct.

Duration: 15 min.

SCENARIO:

Rapporteur judge “R” has a friendship with the lawyer “L” which dates back to their university life. During their conversation, “L” states that the case which he or she deals with is very meaningful for the office where “L” works in, that he could be dismissed from the office if the decision will be conducted in favour of them, that his or her client is a very powerful person, and that he or she is under stress. After a while, the decision rendered by

a court is appealed and submitted to the chamber where “R” works in and coincidentally the file is issued to “R”. When “R” sees the name of his or her colleague who is a lawyer, he or she remembers the stressful mood of his or her colleague. However, “R” examines the file objectively by taking into consideration the requirements of his or her job, and submits it to the board.

- a) What is the fundamental ethical problem in this scenario? Which codes of conduct are violated?
- b) Who are the affected parties? What kind of damage do they have?
- c) How would you behave in order to be ethical in that situation?
- d) With which articles of the Court of Cassation Code of Judicial Conduct could you defend that your behaviour is ethical?

6.8. ACTIVITY 8: THE VALUE OF IMPARTIALITY DECISION CARD STUDY

Objective: To enable the participants to give decisions about the situations they encounter regarding the value of impartiality by assessing the principles, rules, and standards of judicial conduct.

Instruction:

1. Pair off with the participant sitting next to you in a group of two.
2. Open the page of your participant’s handbook in which there are decision cards regarding the value of impartiality.
3. Read the decision cards regarding the value of impartiality on your own at first, and decide which of the boxes of “in any circumstances”, “in some circumstances”, “in many circumstances”, “in all circumstances” you want to put your decision cards into.
4. After deciding which statement in each decision card is suitable to which box, write the number of the decision card in the related box.
5. After you have completed your studies, compare with the participant sitting next to you which decision cards you put into which boxes.
6. Determine the statements, which are similar and the ones, which are different.
7. Review the numbers of the decision cards, which you have put into different boxes, and discuss briefly about why you have made such a decision.
8. Determine whether there are any decisions that you have changed.

Duration: 15 min.

THE VALUE OF IMPARTIALITY DECISION CARDS STUDY

Decision Card: 1	Decision Card: 2
A judge does not give the right to speak to the parties of the case equally.	A judge begins to talk with one of the parties about a deficiency in the file.
Decision Card: 3	Decision Card: 4
A judge deals with a case of the company where they once worked as a lawyer.	A judge participates in the trial process of the lawyer with whom his or her son works in the same office.
Decision Card: 5	Decision Card: 6
A judge tells his or her opinions about the ongoing cases.	A judge goes to the office of his or her senior who works as a lawyer.
Decision Card: 7	Decision Card: 8
A judge deals with the case of the bank in which his or her spouse works as a chief legal advisor.	A judge goes to the law office of his or her spouse and has lunch.
Decision Card: 9	Decision Card: 10
A judge collaborates with lawyers and experts in social environments.	A judge deals with a case to which his or her ex-fiancée/ fiancé is a party.

	Not Wrong In Any Circumstances	Wrong In Some Circumstances	Wrong In Many Circumstances	Wrong In All Circumstances
Decision Card: 1				
Decision Card: 2				
Decision Card: 3				
Decision Card: 4				
Decision Card: 5				
Decision Card: 6				
Decision Card: 7				
Decision Card: 8				
Decision Card: 9				
Decision Card: 10				

6.9. ACTIVITY 9: THE VALUE OF INTEGRITY SCENARIO ACTIVITY

Objective: To enable the participants to determine which rule regarding the value of integrity is violated in the scenario by examining the principles and rules regarding the value of integrity.

Instruction: Participate in the group formed by the facilitator. Examine the scenario below with your fellow group members, determine which of the rules regarding the value of integrity are violated in the scenario by making comparisons with the codes and rules regarding the value of integrity, and give answers to the questions below. Then, explain the answers given by the small groups to the big group through your representative. Compare the answers coming from the groups with the related articles of the Court of Cassation Code of Judicial Conduct.

Duration: 15 min.

SCENARIO:

(X) who is retired from the Court of Cassation after working as a president of chamber, starts to work as a legal advisor for a famous company following the retirement. An important file of the company comes to the related chamber of the Court of Cassation from which (X) is retired for appellate review. Then, (X) goes to (Y) whom he or she knows well and keep the friendship and makes an appointment in order to talk about the file.

- a) What is the fundamental ethical problem in this scenario? Which codes of conduct are violated?
- b) Who are the affected parties? What kind of damage do they have?
- c) How would you act in order to be ethical in that situation?
- d) With which articles of the Court of Cassation Code of Judicial Conduct could you defend that your behaviour is ethical?

6.10. ACTIVITY 10: THE VALUE OF INTEGRITY DECISION CARD STUDY

Objective: To enable the participants to give decisions about the situations they encounter regarding the value of integrity by assessing the principles, rules, and standards of judicial conduct.

1. Pair off with the participant sitting next to you in a group of two.
2. Open the page of your participant's handbook in which there are decision cards regarding the value of integrity.

3. Read the decision cards regarding the value of integrity on your own at first, and decide which of the boxes of “in any circumstances”, “in some circumstances”, “in many circumstances”, “in all circumstances” you want to put your decision cards into.

4. After deciding which statement in each decision card is suitable to which box, write the number of the decision card in the related box.

5. After you have completed your studies, compare with the participant sitting next to you which decision cards you put into which boxes.

6. Determine the statements, which are similar and the ones, which are different.

7. Review the numbers of the decision cards, which you have put into different boxes, and discuss briefly about why you have made such a decision.

8. Determine whether there are any decisions that you have changed.

Duration: 15 min.

THE VALUE OF INTEGRITY DECISION CARDS STUDY

Decision Card: 1	Decision Card: 2
A judge accepts gifts from the people, institutions, and companies whose case is before him or her or will be potentially before him or her	A judge overlooks when the staff of the secretariat accept gifts from the parties of the case.
Decision Card: 3	Decision Card: 4
A judge participates in open sessions about current legal issues.	A judge accepts the book of the professor whose case he or she deals with as a gift after the final decision is rendered.
Decision Card: 5	Decision Card: 6
A judge do shopping from the workplace of one of the parties whose case he or she deal with by paying the price.	A judge demands and accepts scriptwriter, equipment etc. for the court registry from the expert who is appointed for the case.
Decision Card: 7	Decision Card: 8
A judge has an interview with the parties of the case privately (externally).	A judge treats with bias based on sect or ethnic origin.
Decision Card: 9	Decision Card: 10
A judge accepts reduction in food or accommodation prices from the hotel of the company about which he or she has made a decision.	A judge allows his or her family to buy something from the gallery-owner who is a part of the case he or she deals with.

	Not Wrong In Any Circumstances	Wrong In Some Circumstances	Wrong In Many Circumstances	Wrong In All Circumstances
Decision Card: 1				
Decision Card: 2				
Decision Card: 3				
Decision Card: 4				
Decision Card: 5				
Decision Card: 6				
Decision Card: 7				
Decision Card: 8				
Decision Card: 9				
Decision Card:10				

6.11. ACTIVITY 2 CONTINUE: OPENING THE INFORMATION BOX

Objective: To review the new information and implementations which the participants have learned throughout the day. To get feedback about the day and make assessments.

Instruction: Take the post-its on which the new information is written by the participants out of the box and read them one by one. Then, finish the first day of the seminar by making an assessment about the day.

Duration: 10 min.

END OF THE FIRST DAY

CHAPTER 7: TRAINING ACTIVITIES OF THE SECOND DAY

PROGRAMME SCHEDULE OF THE SECOND DAY

9:45-10:00	A11: The Value of Propriety Scenario Activity	
10:00-10:15	A12: The Value of Propriety Decision Card Study	
10:15-10:30	A13: Mobbing Scenario Analysis	
10:30-10:45	BREAK	
10:45-11:00	PRESENTATION 2: Judicial Conduct	5 th Value: Equality
11:00- 11:15	A14: The Value of Equality Scenario Activity	
11:15-11:30	A15: The Value of Equality Decision Card Study	
11:30-11:45	PRESENTATION 2: Judicial Conduct	6 th Value: Competence and Diligence
11:45- 12:00	BREAK	
12:00-12:15	A16: The Value of Competence and Diligence Scenario Activity	
12:15-12:30	A17: The Value of Competence and Diligence Decision Card Study	
12:30-13:30	LUNCH	
13:30-13:45	A18: The Activity of Gift	
13:45-14:00	A19: Ethical Concept Crossword Puzzle	
14:00-14:45	PRESENTATION 3: Ethical Dilemmas in the Judiciary And Ethical Decision- Making	
14:45-15:00	BREAK	
15:00-15:15	A20: Memory Array	
15:15-15:30	A21: Decision-Making Case Study	
15:30-15:45	A22: Rulman	
15:45-16:00	A23: Conversation Circle	
16:00	Closure	

7.1. ACTIVITY 11: THE VALUE OF PROPRIETY SCENARIO ACTIVITY

Objective: To enable the participants to determine which rule regarding the value of propriety is violated by examining the principles and rules regarding the value of propriety.

Instruction: Participate in the group formed by the facilitator. Examine the scenario below with your fellow group members, determine which of the rules regarding the value of propriety are violated in the scenario by making comparisons with the codes and rules regarding the value of propriety, and give answers to the questions below. Then, explain the answers given by the small groups to the big group through your representative. Compare the answers coming from the groups with the related articles of the Court of Cassation Code of Judicial Conduct.

Duration: 15 min.

SCENARIO:

Rapporteur judge of the Court of Cassation (X) wants to participate in “Who Wants To Be A Millionaire?” quiz show. However, the rapporteur judge thinks that his or her profession prevents him or her from participating. The rapporteur judge (X) shares this with rapporteur judge (Y). The rapporteur judge (Y) attends to the ethical training programme for the rapporteur judges of the Court of Cassation. (Y) states that he or she could convey (X)’s demand to the Court of Cassation Judicial Ethics Advisory Committee to get information about whether the demand is ethical or not. Then (X) asks for advice about whether or not participating in the programme would be ethical by applying to the Advisory Committee.

- a) What is the fundamental ethical problem in this scenario? Which codes of conduct are violated?
- b) Who are the affected parties? What kind of damage do they get?
- c) How would you act in order to be ethical in that situation?
- d) With which articles of the Court of Cassation Code of Judicial Conduct could you defend that your behaviour is ethical?

7.2. ACTIVITY 12: THE VALUE OF PROPRIETY DECISION CARD STUDY

Objective: To enable the participants to give decisions about the situations they encounter regarding the value of propriety by making assessments in terms of the principles, rules, and standards of judicial conduct.

Instruction:

1. Pair off with the participant sitting next to you in a group of two.
2. Open the page of your participants' handbook on which there are decision cards regarding the value of propriety.
3. Read the decision cards regarding the value of impartiality on your own at first, and decide which of the boxes of "in any circumstances", "in some circumstances", "in many circumstances", "in all circumstances" you want to put your decision cards into.
4. After deciding which statement in each decision card is suitable to which box, write the number of the decision card in the related box.
5. After you have completed your studies, compare with the participant sitting next to you which decision cards you put into which boxes.
6. Determine the statements, which are similar and the ones, which are different.
7. Review the numbers of the decision cards, which you have put into different boxes, and discuss briefly about why you have made such a decision.
8. Determine whether there are any decisions that you have changed.

Duration: 15 min.

THE VALUE OF PROPRIETY DECISION CARDS STUDY

Decision Card: 1	Decision Card: 2
Using cell-phones during the deliberations in the Court of Cassation.	A judge goes to the company to which his or her son has made a job application together with him.
Decision Card: 3	Decision Card: 4
A judge attends to a hearing without robe.	A judge makes the staff of the secretariat pay his bills.
Decision Card: 5	Decision Card: 6
A judge shows ID in order not to be searched in the places such as shopping malls.	A judge sells the product, which he or she has collected from the apple garden inherited from his or her father.
Decision Card: 7	Decision Card: 8
A judge participates in open-sessions about environmental pollution and protection of the environment.	A judge participates in demonstrations for improving judgeship affairs.
Decision Card: 9	Decision Card: 10
A judge of the Court of Cassation gives concerts in choirs as a solist or plays an instrument.	A judge hangs out the flag of the team, which he or she supports.

	Not Wrong In Any Circumstances	Wrong In Some Circumstances	Wrong In Many Circumstances	Wrong In All Circumstances
Decision Card: 1				
Decision Card: 2				
Decision Card: 3				
Decision Card: 4				
Decision Card: 5				
Decision Card: 6				
Decision Card: 7				
Decision Card: 8				
Decision Card: 9				
Decision Card:10				

7.3. ACTIVITY 13: MOBBING SCENARIO ANALYSIS

Objective: Examining the subject of “mobbing” which is an important problem and unethical implementation and enable the participants to be aware of the signs of mobbing, types of mobbing, and what should be done in a case of mobbing.

Instruction: Participate in the group formed by the facilitator. After you have read the scenario below, discuss the questions below the scenario in a small group and answer them. Then, discuss each question in a joint session with the members of the group.

Duration: 30 min.

SCENARIO:

Nazım Bey has just completed five years in his working life. He is a clerk who does his job very well, and even perfectly, whose working principles and values are strong, who is honest and trustable and loyal to his institution, who has more information than his co-workers, who can use information technology at a high level and who has some more abilities.

However, the behaviours of Murat Bey who has just been appointed to the institution as a chief clerk towards Nazım Bey begins to be different and unbearable. When he enters into his room one day, he sees that his computer has disappeared. He asks what happened to his computer and his co-worker answers “It broke down and they took it to repair.” in a mocking tone. In spite of all Nazım Bey’s efforts, he is not given the computer he has used, but he is given a computer with an old technology. It is not possible for Nazım Bey to do his job with this computer. All his applications for having a newer and more developed computer is ignored and rejected.

Nazım Bey begins to realize that when he enters into the manager’s room because of the issues related to work, the conversations stop, the subject is changed, and he is not informed about important developments and news about the job. In addition to this, he hears that rumours are spread behind him, and that whispers spread about his weight, appearance, the way he dresses and his private life. His way of walking and talking are imitated behind him and even the shirt he dresses and the color and pattern of his tie became a matter of fun.

Nazım Bey is given duties which are much below his capacity by the manager. He had the impression that his every action is followed and that

he was under a strict control because when he comes and leaves, his phone calls, the time he spends on coffee-break are inspected in detail. He is not given information about the phone calls when he is not in the secretariat, and the messages of managers are hidden. He is always criticized by his colleagues and superiors, his little mistakes are turned into serious problems and belittled, and he is subject to humiliating words and scoldings. Nazım Bey is not invited to the dinners eaten outside and he is excluded from business and social activities.

The increasing discouragement and psychological abuses begin to make negative effects on Nazım Bey's health. He begins to think that the managers create a tense environment by showing strict behaviours, scolding and threatening, and that they sabotage his job performance in order to send him away from the institution, therefore they believe that they will increase the standards in the work environment by getting rid of him. However, the point he does not understand is that why his colleagues, except Murat Bey, watch this discouragement process silently and sometimes become a part of it.

After assessing how he could deal with this problem for a long time, Nazım Bey makes an appointment with the Head of Department Aydın Bey and tells him what happened in all details. He states that he will make a complaint about the situation created by his manager and he will claim his rights legally but first he wants to inform Aydın Bey about that issue and he requests help from him as a senior manager. After listening to all these in amazement, he says to Nazım Bey that he could leave the room.

1. What are the signs that show there is mobbing in the workplace?
2. What kind of mobbing is there in this case study according to you? Why?
3. What kind of thing/things should Nazım Bey do in such a situation?
4. What should Aydın Bey do in that situation? Why?
5. What could be done in order to prevent mobbing in the workplace?

7.4. ACTIVITY 14: THE VALUE OF EQUALITY SCENARIO ACTIVITY

Objective: To enable the participants to determine which rule regarding the value of equality is violated in the scenario by examining the principles and rules regarding the value of equality.

Instruction: Participate in the group formed by the facilitator. Examine the scenario below with your fellow group members, determine which of the rules regarding the value of equality are violated in the scenario by making comparisons with the codes and rules regarding the value of equality, and give answers to the questions below. Then, explain the answers given by the small groups to the big group through your representative. Compare the answers coming from the groups with the related articles of the Court of Cassation Code of Judicial Conduct.

Duration: 15 min.

SCENARIO:

A case regarding smuggling of substantial amount of cigarette and alcohol comes before the rapporteur judge F. The judge F has bias against the people of the region. While examining the case, the judge thinks that there are no sufficient evidence for penalty within the scope of the file about the defendants named (S) and (A), and that there is a possibility of acquittal in accordance with the principle of “defendants benefit from doubts”. While examining the case, the judge also realizes that the defendant named (A) has a criminal record from aiding the terrorist organization. He or she reads the file with this point of view, takes notes, and explains them without emphasizing the evidences that may justify the defendants’ demand of acquittal. He or she especially emphasizes the ethnic origin of the defendants, and the province and the town which they are registered. He or she does not explain the points regarding the existence of doubt in detail, mentions them quickly and without giving much importance. The member of the Court of Cassation (K) is influenced by what the rapporteur judge (F) states and by the fact that one of the defendants has a criminal record, he or she also tries to influence the delegation and gives his or her opinions in favor of the approval of the defendants’ conviction.

a) What is the fundamental ethical problem in this scenario? Which codes of conduct are violated?

b) Who are the affected parties? What kind of damage do they have?

c) How would you act in order to be ethical in that situation?

d) With which articles of the Court of Cassation Code of Judicial Conduct could you defend that your behaviour is ethical?

7.5. ACTIVITY 15: THE VALUE OF EQUALITY DECISION CARD STUDY

Objective: To enable the participants to give decisions about the situations they encounter regarding the value of equality by making assessments in terms of the principles, rules, and standards of judicial conduct.

Instruction:

1. Pair off with the participant sitting next to you in a group of two.
2. Open the page of your participants' handbook on which there are decision cards regarding the value of equality.
3. Read the decision cards regarding the value of equality on your own at first, and decide which of the boxes of "in any circumstances", "in some circumstances", "in many circumstances", "in all circumstances" you want to put your decision cards into.
4. After deciding which statement in each decision card is suitable to which box, write the number of the decision card in the related box.
5. After you have completed your studies, compare with the participant sitting next to you which decision cards you put into which boxes.
6. Determine the statements, which are similar and the ones which are different.
7. Review the numbers of the decision cards, which you have put into different boxes, and discuss briefly about why you have made such a decision.
8. Determine whether there are any decisions that you have changed.

Duration: 15 min.

THE VALUE OF EQUALITY DECISION CARD STUDY

Decision Card: 1	Decision Card: 2
A judge ignores the situation in which a file is put forward by the court registry.	A judge makes discrimination based on gender.
Decision Card: 3	Decision Card: 4
A judge concludes the case under the influence of his or her own political opinions.	A judge allows the interview between the judicial personnel and the parties of the case about the content of the file.
Decision Card: 5	Decision Card: 6
A judge accepts the offers of outside interviews that may be requested by the parties.	A judge does not allow the representatives of the parties to talk equally during the hearing.
Decision Card: 7	Decision Card: 8
A judge provides guidance to the parties for legal issues.	A judge addresses the parties according to their socioeconomic status and way of dressing.
Decision Card: 9	Decision Card: 10
A judge drinks tea with a lawyer who is now retired but worked as a judge or public prosecutor previously.	A judge deals with the file whose representative is a lawyer with whom he or she worked in the past.

	Not Wrong In Any Circumstances	Wrong In Some Circumstances	Wrong In Many Circumstances	Wrong In All Circumstances
Decision Card: 1				
Decision Card: 2				
Decision Card: 3				
Decision Card: 4				
Decision Card: 5				
Decision Card: 6				
Decision Card: 7				
Decision Card: 8				
Decision Card: 9				
Decision Card: 10				

7.6. ACTIVITY 11: THE VALUE OF COMPETENCE AND DILIGENCE SCENARIO ACTIVITY

Objective: To enable the participants to determine which rule regarding the value of competence and diligence is violated in the scenario by examining the principles and rules regarding the value of competence and diligence.

Instruction: Participate in the group formed by the facilitator. Examine the scenario below with your fellow group members, determine which of the rules regarding the value of competence and diligence are violated in the scenario by making comparisons with the codes and rules regarding the value of competence and diligence, and give answers to the questions below. Then, explain the answers given by the small groups to the big group through your representative. Compare the answers coming from the groups with the related articles of the Court of Cassation Code of Judicial Conduct.

Duration: 15 min.

SCENARIO:

The rapporteur judge A shares one room with 5 people because the physical conditions are insufficient. On Wednesdays, the files which have been distributed are submitted. The judge A realizes that the files which are distributed to him or her are more complicated than the ones submitted to his or her other colleagues. The judge thinks about and assesses the situation for a while, makes an appointment with the head of the department and explains the situation. He or she tells that distribution of files should be bound to more objective rules. The head of department gets angry when he or she hears it and sends the judge away from the room. Being so sad, the Judge A goes to his or her room, wants to work, but he or she cannot. The next day he or she comes to the workplace, and while he or she was working on his or her files the director of the department calls him. He or she says that he or she is assigned to X chamber and requests him or her to break off and to submit the files. The judge A says that there are 20 prepared files and that he or she wants to present them. The director talks with the head of the department and says that the files should be submitted. The judge A submits the files to the secretariat and empties the room with disappointment without saying goodbye to his or her colleagues and leaves the place off.

a) What is the fundamental ethical problem in this scenario? Which codes of conduct are violated?

- b) Who are the affected parties? What kind of damage do they have?
- c) How would you act in order to be ethical in that situation?
- d) With which articles of the Court of Cassation Code of Judicial Conduct could you defend that your behaviour is ethical?

7.7. ACTIVITY 17: THE VALUE OF COMPETENCE AND DILIGENCE DECISION CARD STUDY

Objective: To enable the participants to give decisions about the situations they encounter regarding the value of competence and diligence by assessing the principles, rules, and standards of judicial conduct.

Instruction:

1. Pair off with the participant sitting next to you in a group of two.
2. Open the page of your participants' handbook on which there are decision cards regarding the value of competence and diligence.
3. Read the decision cards regarding the value of competence and diligence on your own at first, and decide which of the boxes of "in any circumstances", "in some circumstances", "in many circumstances", "in all circumstances" you want to put your decision cards into.
4. After deciding which statement in each decision card is suitable to which box, write the number of the decision card in the related box.
5. After you have completed your studies, compare with the participant sitting next to you which decision cards you put into which boxes.
6. Determine the statements, which are similar and the ones which are different.
7. Review the numbers of the decision cards, which you have put into different boxes, and discuss briefly about why you have made such a decision.
8. Determine whether there are any decisions that you have changed.

Duration: 15 min.

THE VALUE OF COMPETENCE AND DILIGENCE DECISION CARDS STUDY

Decision Card: 1	Decision Card: 2
A judge gives his or her e-signature to the secretariat together with the password.	A judge goes outside the boundaries of their workplace (provincial boundaries) during their shifts.
Decision Card: 3	Decision Card: 4
A judge is overloaded with the number of files more than he or she can read diligently and meticulously.	A judge who does not feel well go on a vacation by receiving medical report.
Decision Card: 5	Decision Card: 6
A rapporteur judge who is possibly thought to reduce their leisure time are given more files.	A judge goes to work late and leaves early.
Decision Card: 7	Decision Card: 8
A judge behaves beyond the boundaries of respect to the parties during the trial.	A judge does not write justified decisions and makes somebody write these decisions.
Decision Card: 9	Decision Card: 10
A judge does not follow the current legislation.	A judge behaves or gives statements, which can mean comments reflecting bias.

	Not Wrong In Any Circumstances	Wrong In Some Circumstances	Wrong In Many Circumstances	Wrong In All Circumstances
Decision Card: 1				
Decision Card: 2				
Decision Card: 3				
Decision Card: 4				
Decision Card: 5				
Decision Card: 6				
Decision Card: 7				
Decision Card: 8				
Decision Card: 9				
Decision Card: 10				

7.8. ACTIVITY 18: THE ACTIVITY OF GIFT

Objective: To develop the participants' awareness about what kind of gifts are acceptable, and which ones are unacceptable.

Instruction: Assess the acceptability of the gifts that are stated in the list below and in the light of the codes of conduct and mark your decision in the related box. Make discussions which are conducted by the facilitator about which code of conduct you have taken into consideration while making your decision.

Duration: 20 min.

Number	Type of Gift	Acceptable	Unacceptable
1	A plaque given at the end of a seminar		
2	A gold necklace which is given by the person about whom there is a case file		
3	Pencils and notebooks given at the ethics conference		
4	Computer donation taken for allocating to a particular director or chief		
5	A situation in which a chief clerk hires a public facility for his or her daughter's wedding by paying the half of the normal price		
6	A book presented as a gift by an academician who gives a seminar		
7	A holiday at a low cost in the hotel whose file is examined by a chamber of the Court of Cassation		
8	Taking a low-interest credit from the bank with which there is a business relation		
9	A situation in which the staff of a chamber presents a carpet as a gift to the president who has just began to work		
10	A situation in which the staff presents a suit as a gift to a director who are retired		

7.9. ACTIVITY 19: ETHICAL CONCEPT CROSSWORD PUZZLE

Objective: To enable the participants to remember and reinforce the main concepts that they have learned about the ethics.

Instruction: Write the answers of the questions, which are asked from top to down and left to right in the related boxes.

Duration: 30 min.

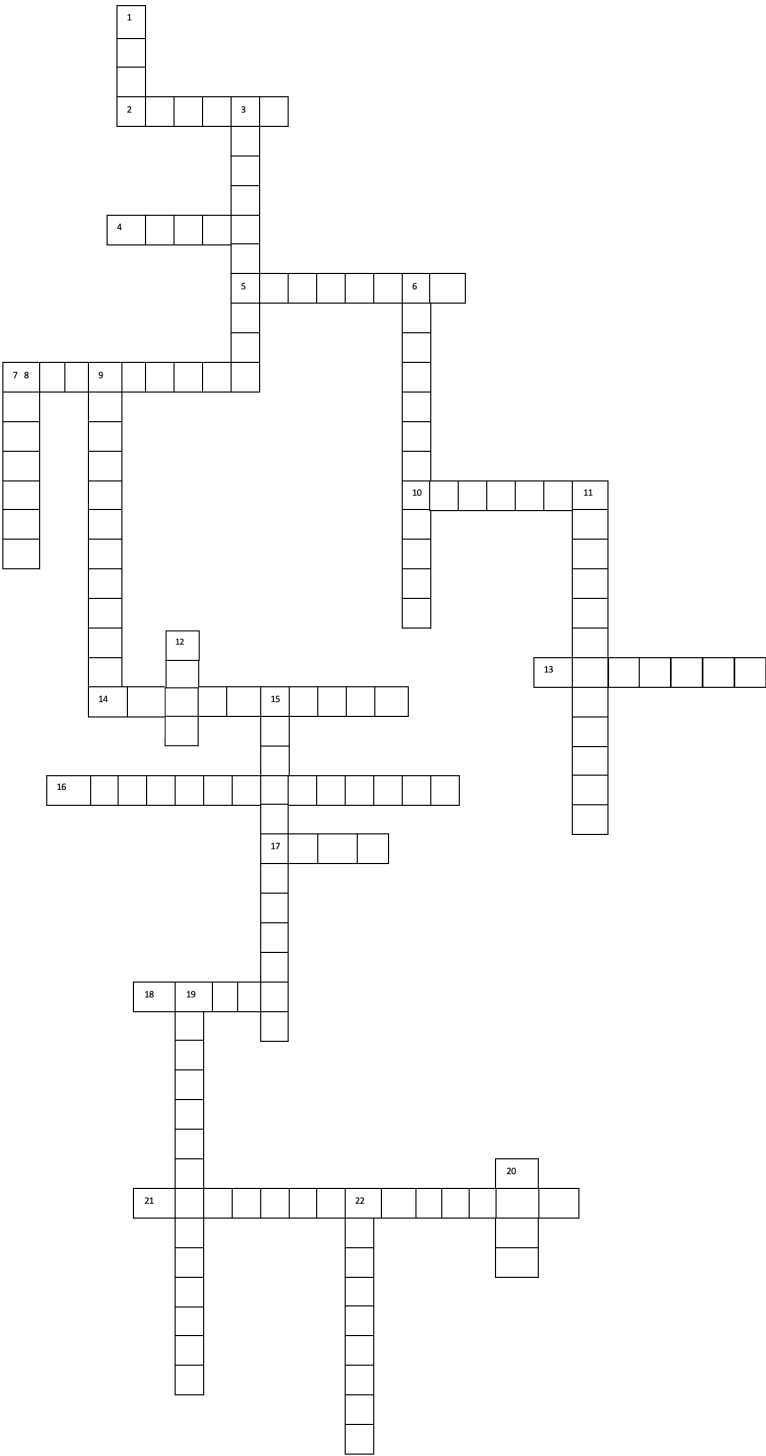
Left To Right

2. A whole of principles regarded as a guide for judging human attitudes and behaviours in terms of good, bad, appropriate, and inappropriate.
4. Assessment of a thing in terms of good and bad or a thing which is formed by setting value. The preferences which direct all decisions and actions of an individual and which explain to what they give importance and why.
5. The situation in which there is no discrimination among citizens before the law in terms of political and social rights.
8. Showing a permanent effort, hard work, attention and care in a study.
10. Appreciating a person unprecedentedly and take him or her into consideration.
13. Treating people as they deserve.
14. A person's appropriateness and propriety to a job.
16. To be given value, to be respected. To be appreciated and admired.
17. A feeling of responsibility which consists of liabilities and prohibitions coming mostly from inside.
18. The feeling of faith and commitment without fear, hesitation, or doubt. Believing in the expected quality of something and acting accordingly.
21. Behaviour which is contrary to equality shown to individuals and groups intentionally or unintentionally even if it is not based on competence, ability or past performance.

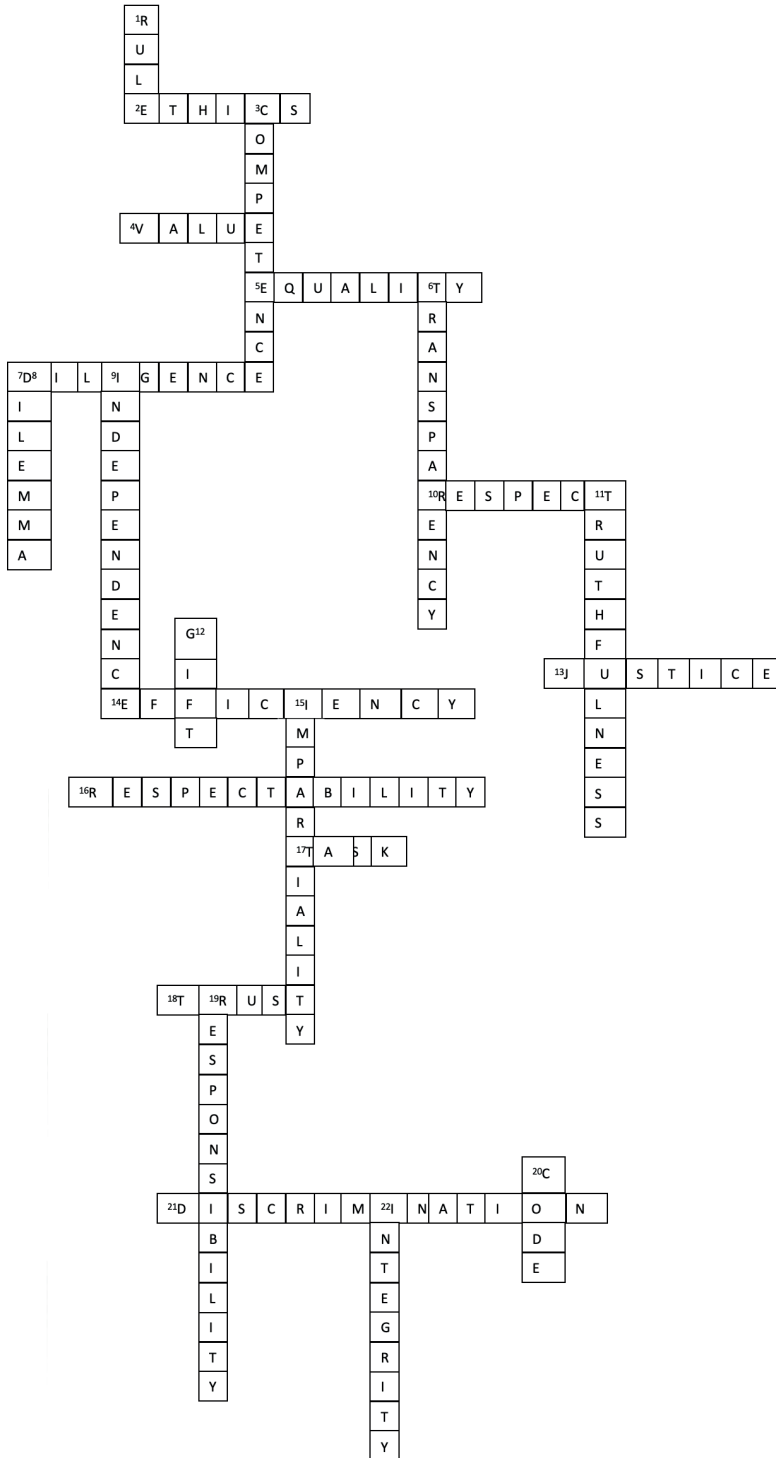
Top To Down

1. Ways of action in accordance with the codes.
3. Having the professional efficiency to do a job successfully and proficiently.
6. It is the principle of taking and implementing decisions in accordance with rules and arrangements, providing the ones who will be affected by the decisions taken with access to information which is obtainable, understandable and concrete.
7. A situation in which two or more competing values are in a state of conflict.
9. Being able to arrange decisions, behaviours, attitudes and initiatives without being affected by any power. Being free from other people's control and pressure and deciding on one's own will.
11. Remaining impartial, reflecting the truth, acting based on experiment, observation, evidence, and concrete data.
12. Transferring a specific physical asset by an individual or an institution to somebody voluntarily and without expecting benefit.
19. To do a job with desired quality and quantity.
20. Main opinions which direct actions.
22. Showing fair and trustful behaviours which do not include any cheating or trick

7.10. ETHICAL CONCEPT CROSSWORD PUZZLE AND ANSWER KEY



Answer Key of the Ethical Concept Crossword Puzzle



CHAPTER 8: ETHICAL DILEMMAS IN THE JUDICIARY AND WAYS OF JUSTIFYING UNETHICAL BEHAVIOURS⁹²

8.1. ETHICAL DILEMMA

To express quite simply, making a decision is a situation in which an individual, an administrator, or an institution chooses one alternative among the others. All judgements, which affect an action have the characteristic of decision. Individuals need to make some choices while they are deciding. In this process of choosing, they sometimes fall into undecisiveness and dilemma about what will be the best decision. They sometimes put forward illogical reasons not in order to choose what is correct, but, in order to choose the one, which will provide benefit for them.

Ethical dilemma is the situation in which two or more competing values are in conflict. Generally, it is possible to encounter three types of ethical dilemmas:

- a) Choosing one of the two positive situations.
- b) Choosing one of the two negative situations.
- c) Choosing one of the options whose effect will be different on different parties.

In order to manage the ethical dilemmas successfully, the best guides are the values, codes, rules, and standards of professional ethics.

8.2. WAYS OF JUSTIFYING UNETHICAL BEHAVIOURS

Ethical reasoning is the situation in which one person tries to justify his or her decisions, actions, and behaviours. People use various ways in order to justify their decisions, actions, and behaviours. The most important way is the excuses, which are made up for justifying unethical behaviours. The common reasonings, which are used for justifying unethical behaviours are below.

⁹² NOTE: The information in this chapter is cited from the resources below:

Aydın, İ. (2016). Eğitim ve Öğretimde Etik. (8th Edition). Ankara: PEGEM - A Yayıncılık.

Aydın, İ. (2016). Yönetişel, Mesleki ve Örgütsel Etik. (8th Edition). Ankara: PEGEM - A Yayıncılık.

8.2.1. If It Is Necessary, It Is Ethical (Unreal Necessities Trap)

Believing that it is possible to choose the ways of behaviour, which are within the legal and ethical limits and which seem relieving and appropriate in order to get over particular situations is one of the ways in justifying unethical behaviours. It is based on a wrong assumption that the situation of necessity is sufficient for being regarded as appropriate. This situation leads to such a reasoning that aim confirms the ways because of various obligations in carrying out unethical aims and duties. For example: a situation in which a rapporteur judge gives his or her e-signature to the secretariat with the password. In this example, it is possible to suggest (unreal) reason about the propriety of giving the e-signature to the secretariat in terms of ethics. Indeed, it is not possible to defend putting a real (wet) signature for someone else due to workload, and it is not defensible to put an electronic signature for someone else, either.

8.2.2. Everybody Will Have Benefit in the End

The people who feel uncomfortable about justifying unethical behaviours seek for a noble cause. The reasoning "Everybody will have benefit" is an attempting approach for conflicts of interest, favouritism, and violating existing rules and processes.

8.2.3. The Idea of Ignoring Some Standards and Procedures in order to Accelerate the Processes for the Public Interest

Standards are accepted ways of doing something, which can be repeated. Standards are the criteria, which enable to do a work or service effectively and trustfully and therefore make life easier. It is very important for people to know and implement these standards in order to provide ethical behaviours especially in professional ethics. For example, not making announcements for goods or services or employing staff in order not to cause waste of time or unreasonably keeping the duration very short is contrary to ethics. Additionally, such a reasoning that even if the standards, which are included in the legislation were implemented, the qualifications of the goods, services or employed personnel would not change cannot be defended in terms of ethics.

8.2.4. The Belief That Nobody Will Realize the Situation

Another way of justifying unethical behaviours is the belief that nobody will realize what one is doing. However, the belief that people will not realize the small objects that are stolen will be replaced by serious crimes

and robberies in time. However, according to the aquarium theory, what everybody is doing is clearly seen as the fishes in the aquarium.

8.2.5. The Belief That My Institution Will Support Me If I Am Caught

It may lead to justify unethical behaviours when some public officials are caught because of their behaviours, which provide benefits to the institution but violate the codes of conduct and they believe that the institution or managers will back up or support them. For example, not complying with working hours or not coming to work in workdays, not attending to the meetings of the general assembly, using official vehicles or materials that belong to the institution for private purposes may be because of the belief that administrative or disciplinary bodies of the institution will not impose any sanctions on such behaviours. The fact that the administrative or disciplinary bodies of the institution do not take action against the unethical behaviours does not make these behaviours legitimate, and disciplinary actions may be imposed because of the administrative and supervisory officials' change of attitude or due to the change of these officials themselves.

8.2.6. Comparing Yourself with Others

It is the situation in which the people try to underestimate their unethical behaviours by giving unethical behaviours of others as example. Such reasonings like everybody accepts gifts and everybody goes to work late are not sufficient for justifying unethical behaviours.

8.2.7. Noble Cause Corruption

Some members of the profession may carry out unethical implementations by hiding behind such noble causes such as "for the interest of the state and the nation", "supporting the victim" and "protecting the colleague" or for the sake of the ideal, which they consider true. This situation is called "noble cause corruption". For example, it is not ethically appropriate to demand secretarial expenses or the expenses of the materials from the parties with the aim of saving the government budget.

8.2.8. Hiding the Colleagues' Offences

People who have the same profession may prefer to keep quiet (code of silence) when their colleagues are accused of something. Even if the thoughts "I am helping only one colleague.", "I do not have any benefit from this situation." can be put forward as reasons, these opinions cannot

be defended in terms of ethics. An unethical behaviour of a public official may cause loss of confidence as a whole institution in the eye of the public. Therefore, it is wrong to hide a colleague's offence. On the contrary, the people who show such behaviours should be warned or should be reported to the related authorities according to the qualification of the offence in a case of contrariety to ethics.

8.2.9. Nobody Will Have Damage

It is a kind of wrong justification to believe that if nobody has damage, the codes of conduct can be violated explicitly. This kind of justification is made especially in such issues as favoring a family member, explaining the secret information that will provide benefit for somebody, and using your position for personal benefits.

8.2.10. Everbody Does the Same

Does the fact that everybody does wrong make the wrong true? Of course not.

8.2.11. It Is Appropriate If I Do Not Have Personal Benefit

The thought "I do not have personal benefit, what is important is to do the job, so there is no inconvenience in bending the rules a little bit" is a type of justification mostly used by the public officers. It is wrong to assume that the situation in which one person does not have a personal benefit from the things that are done for the benefit of others is regarded as the only measurement for propriety of behaviours.

8.2.12. I Cannot Get What I Deserve

The thought "My superiors do not appreciate my value and I am exploited, so I need to consider my own benefits." can be suggested as a reason for the violation of ethics. It is a kind of reasoning to which the people apply for accepting various services which causes favour apart from the price which the service requires or getting tips. This understanding is mostly seen in such situations as misusing medical leave, insurance statements, overworking, using official telephone for personal conversations or using the sources of the institution for one's own benefit.

8.2.13. I Can Still Be Impartial

If you lost your impartiality, you cannot realize that you lost your impartiality. Gratefulness, friendship or benefits that will be earned in the

future are sensitive issues that affect our judgements. Does a person who provide you benefit believe that this benefit will not affect you anyway? If you were not in the position who can help him or her, would he or she still continue to provide you benefit?

8.2.14. The Thought that It Will Not Be My Judgement

Abstaining from the responsibility with the thought that “He or she should be punished actually, but it will not be me who will impose the punishment.” is a type of thought which is commonly seen.

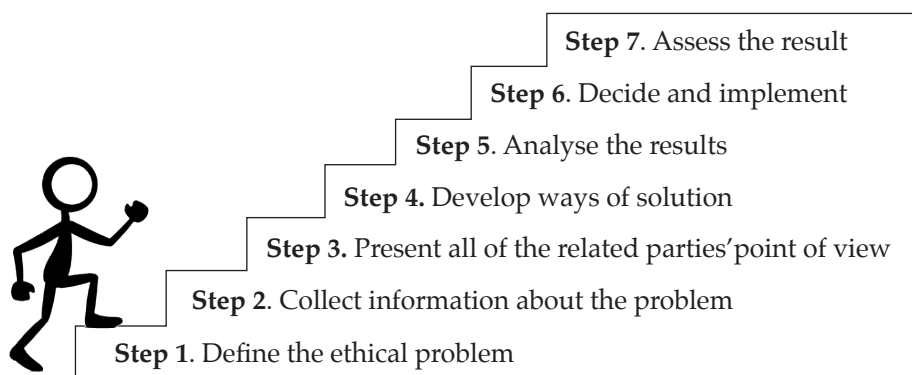
8.2.15. The Thought that There Is No Problem If It Is Legal

Some behaviours which are allowed by law may be ethically problematic. For example, there is no legal problem in using circus animals for fun. However, a serious ethical discussion about these issues began after the improvement of animal rights movement. Training circus animals with torture, beating, and hunger; forcing dolphins to roll over for a piece of fish after they are caught traumatically, and the fact that they become ill in the concrete pools, and that their life-span become shorter are regarded as unethical implementations. However, there is no legal barrier for opening both circuses or dolphin parks for now.

CHAPTER 9: STAGES OF ETHICAL DECISION-MAKING AND JUDGING A BEHAVIOUR IN TERMS OF ETHICS

9.1. STAGES OF ETHICAL DECISION-MAKING

In order to make decisions, which can be defended in terms of ethics, is important to follow the process of ethical decision-making. The schemes related to it are below.



9.1.1. Stage 1: Defining the Ethical Problem

Determine the ethical dilemma and ethical problem regarding the situation you have encountered. Define which codes of conduct or rules are violated. Determine what should be done according to the codes of conduct and rules. What should happen?

For example, a judge should exercise care in going to clubs and other social facilities. For example, he or she should be cautious about attending venues run by or for members of the police force, the anti-corruption agency and the customs and excise department, whose members are likely to appear frequently before the courts. While there is no objection to a judge accepting an occasional invitation to dine at a police mess, it is undesirable for the judge to frequent or become a member of such clubs, or to be a regular user of such facilities.⁹³

⁹³ Commentary, (2007), para.118.

9.1.2. Stage 2: What Do the Truths Say?

What are the truths that we know about the subject? What are the truths that we do not know about the subject? Could I have more information about the situation? Do I have sufficient knowledge to make a decision? Should I collect more information?

9.1.3. Stage 3: Understand All Parties' Points of View

In an ethical situation, the parties mean the people who are affected by the decisions to be made. It is necessary to analyse the parties of an incident one by one, and to make assessment in terms of getting a benefit and harm, and deserving it.

9.1.4. Stage 4: What Kind of Alternatives Can Be Developed?

Possible actions, strategies, alternatives and options should be determined. Positive and negative aspects of all options should be reviewed in terms of the codes of conduct. The criteria below can be used in assessing the options:

- Which option will be the most beneficial and the least damaging? (Pragmatist Approach)
- Which option is more respectful to the rights of all parties? (Rights Approach)
- Which option can offer equal and fair treatment toward people? (Justice Approach)
- Which option will be the most beneficial for the whole of the public? (Common Benefit Approach)
- Which option leads me to behave like the people I want to be? (Virtue Approach)

9.1.5. Stage 5: What Should I Do?

It is necessary to determine the main option in accordance with the basic values, collecting more information about the choice, making a decision, and assessing the results and responsibility of the decision.

9.1.6. Stage 6: How Can You Justify Your Choice?

State the reasons, which will support your choice. How do you feel when you explain your choice to the public? What would you think if you were in that situation and this decision was implemented on you?

9.1.7. Stage 7: What Are the Results of Your Decision?

What kind of results arise from the implementation of the decision or choice you have made? What should be done in order not to cause such an ethical problem once again, what needs to change?

9.2. JUDGING THE BEHAVIOUR IN TERMS OF ETHICS

A person should give answers to the eight questions below before making a decision about a particular subject:

1. **Is it right?** Is it in line with the ethical values, principles, rules, and standards?
2. **Is it fair?** Would you find it fair if it was done to you?
3. **If it was published in a newspaper, how would you feel?** If your decision or action was published in newspapers and became public knowledge, would you feel uncomfortable?
4. **If one gets harm, who is he or she?** Does he or she deserve it? Do you provide benefit for someone in an unfair way?
5. **Would you tell it to your family, child, or relatives?**
6. **If everybody behaved like you, what would happen?**
7. **If an investigation is opened, can you defend yourself?**
8. **How does the incident smell?** What do your feelings say about the decision or action?

CHAPTER 10: ACTIVITIES FOR REINFORCING ETHICAL KNOWLEDGE

10.1. ACTIVITY 20: JUDICIAL CONDUCT MEMORY ARRAY

Objective: To develop the participants' ability of making connections between the rules of judicial conduct and the related principle.

Instruction: Read the array below carefully, determine which rules are related to which code, and write the numbers which represent the rules in the Codes of Conduct Booklet in the box of the related code.

Duration: 15 min.

	Principle		Rules
1	Independence	A	A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide or deal with the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide, or deal with, the matter impartially, regardless of at which stage the proceeding is.
2	Impartiality	B	A judge shall not deviate from the law to appease public clamour, to avoid criticism, or to advance an improper interest.
3	Integrity	C	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.
4	Propriety	D	A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on the aforementioned grounds.
5	Equality	E	A judge shall not permit court staff 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 judicial duties or functions.
6	Competence and Diligence	F	Access to justice being of fundamental importance to the rule of law, a judge shall, within the limits of his or her powers, adopt procedures to facilitate and promote such access.
		G	A judge shall perform all of his or her judicial duties, which include writing dissenting opinions, efficiently, fairly and within a reasonable time.
		H	A judge shall carry out judicial duties by displaying sensitivity equally for all persons, such as the parties, witnesses, lawyers, court staff, judicial colleagues.
		I	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.
		J	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.
		K	A judge shall not knowingly and willingly, while a proceeding is before, or could come before the judge, make any public or implicit comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process.
		L	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.

10.2. ACTIVITY 21: ETHICAL DECISION-MAKING AND WRITING A CASE STUDY

Objective: To raise awareness about how unethical behaviours affect the parties and to analyse ethical decision-making processes.

Instruction:

1. Participate in the group formed by the facilitator.
2. Write brief scenarios about the code of judicial conduct with your fellow group members. Be careful there is one ethical dilemma and decision in this scenario.
3. Change the scenarios with the members of other groups.
4. Read the scenarios that have come to your group written by other groups.
5. Answer the questions below with your fellow group members for each scenario.
 - a) What is the fundamental ethical problem in this scenario? Which code of conduct has been violated?
 - b) Who are the affected parties in this scenario?
 - c) What kind of alternatives can be provided in order to give an ethical decision in this scenario?
 - d) Which option would you choose if you were in that situation? How would you act?
 - e) How would you justify the propriety of your decision in terms of ethics?

Duration: 30 min.

10.3. ACTIVITY 22: RULMAN

Objective: To assess the learning of participants during the two-day training in a funny way and to provide review and reinforcement.

Instruction:

1. Prepare two questions with short answers taking into account the Court of Cassation Code of Judicial Conduct and all the information you have learned during the two days.
2. Then, stand and form two chambers, which are placed one within the other, and pair off in a way that you will face each other.

3. Ask the questions which you prepared to each other in the order that the ones from the outside chamber first and then the ones from the inside chamber.

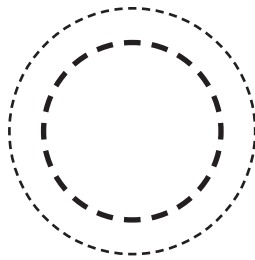
4. After you have answered the questions, if you are in the inside group, move one step right and pair off the new participants following a ring or whistle.

5. If you are in the outside group, wait until the participants move and stand in front of you. Continue questioning and answer study with each participant.

6. Continue doing the activity until you pair off the person at the beginning again.

5. Therefore, enable to review and reinforce what have been learned.

Duration: 15 min.



10.4. ACTIVITY 23: CONVERSATION CIRCLE

Objective: To enable to assess the two-day judicial conduct training and get feedback from the participants.

Instruction:

1. Sit in a form of chamber.
2. An object determining the order of talk will be used. This is called "conversation object".
3. This object is handed around and gives the order of talk to another person.
4. When it is your turn, answer the question "What are your feelings and thoughts about the two-day training?" with a short sentence.
5. Maintain the conversation by giving the conversation object to the person next to you.

Duration: 15 min.

APPENDIX

1. COURT OF CASSATION CODE OF JUDICIAL CONDUCT TRAINING PROGRAMME EVALUATION FORM

Dear Participant,

The main objective of preparing this evaluation form is to determine how effective the implemented training programme is. The information you provide will make contribution to us while developing the next programmes. Please state to what extent you agree or disagree with the statements below.

STATEMENTS	YES	PARTLY AGREE	NO
1. The objective of the training programme was explained to the participants clearly and explicitly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. The training programme was conducted in accordance with its objective.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. The content of the training programme was prepared in accordance with the objectives.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. It was ensured that there is an active participation to the training-learning process during the implementation of the programme	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. The content of the programme was supported with the examples from daily life related to the subject.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. The activities was conducted by using technological equipments and materials during the implementation of the programme.

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7. The instructors who participated in the programme have sufficient expertise in their field.

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8. The implemented programme fulfilled your expectations.

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9. The programme provided you with new information and skills.

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10. The duration of the programme was sufficient for doing the planned activities.

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11. What were the most beneficial activities for you during the programme? (Please write).

12. Which other subjects would you like to be included in the programme? (Please state).

13. What is your grade to the training programme you received out of 100? (Please state).

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2. ETHICS GLOSSARY

Justice: Treating people as they deserve

Discrimination: Behaviour which is contrary to equality shown to individuals and groups intentionally or unintentionally even if it is not based on competence, ability or past performance.

Independence: Being able to arrange decisions, behaviours, attitudes and initiatives without being affected by any power. Being excluded from the control of others and deciding on one's own will.

Value: Good or bad measurement of a thing or a thing which is created by giving value. The preferences which direct all decisions and actions of an individual and which explain to what they give importance and why.

Truthfulness: Consistent loyalty of a person to moral, intellectual, and artistic principles in spite of all deterrent effects to give up.

Integrity: Showing fair and trustful behaviours, which do not include any cheating or trick.

Competence: Having the professional efficiency to do a job successfully and proficiently

Equality: The situation in which there is no discrimination among citizens before the law in terms of political and social rights.

Ethics: A whole of principles taken as a model in judging human attitudes and behaviours in terms of good, bad, appropriate, inappropriate.

Ethical dilemma: A situation in which two or more competing values are in a state of conflict.

Trust: The feeling of faith and commitment without fear, hesitation, or doubt. Believing in the expected quality of something and acting accordingly.

Gift: Transferring a specific physical asset by an individual or an institution to somebody voluntarily and without expecting benefit.

Code: Main opinions, which direct actions.

Rule: Ways of action in accordance with the codes.

Efficiency: Appropriateness and propriety of a person to a job.

Mobbing: Emotional abuse which is aimed at a particular person by administrators, inferiors, and colleagues individually or as a group, which is done systematically and continually, which obstructs working and disturbs the peace, and which includes psychological violence, oppression, blockade, humiliation, and threat.

Task: A feeling of responsibility which consists of liabilities and prohibitions coming mostly from inside.

Prejudice: Making a final decision without having the necessary information about a person or an incident beforehand.

Diligence: Showing a permanent effort, hard-work, attention and care in a study.

Respect: Appreciating a person unprecedentedly and take him or her into consideration.

Respectability: To be given value, to be respected.

Responsibility: To do a job with desired quality and quantity.

Standard: The systems, which make guidance for showing expected behaviours and abstaining from the inappropriate ones.

Transparency: It is the principle of taking and implementing decisions in accordance with rules and arrangements, providing the ones who will be affected by the decisions taken with access to information, which is accessible, understandable and concrete.

Impartiality: Remaining impartial, reflecting the truth, acting based on experiment, observation, evidence, and abstract data.

Corruption: Illegal use of the power by an individual who has a specific authority and position in order to gain a personal profit or to provide interest for himself.

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4. BIOGRAPHIES



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She was graduated from Ankara University Education Sciences Faculty Education Management and Planning Department in 1985. She completed her graduate studies at Ankara University Institute of Social Sciences in 1988. She was appointed as a research assistant to Ankara University Education Sciences Faculty Education Management and Planning Department in 1988. She was assumed the title of PhD with the thesis named “Causes of Stress in Education Management” in 1993, and she was appointed as an assistant professor to the same department. She worked as a post-doctoral researcher at the “University of Cincinnati” in the United States of America-OHIO with the scholarship she received within the scope of YÖK (Higher Education Institution)/ World Bank Development of the National Education Project in 1993 for 8 months. Since 2012, she has been working as a Vocational Coordinator at Ankara University. She has worked as a programmer, coordinator, and instructor in many vocational training and management of hundreds of public and private institutions, and she has carried out researches on necessity- determining and assessment. She wrote 10 books, some of which are Administrative, Vocational, and Organizational Ethics, Ethics in Education and Teaching, Vocational Training in the Public and Private Sector, Academic Ethics. She has a great number of essays and book chapters which have been issued in many Turkish and foreign magazines. She gives lectures at undergraduate and graduate levels. She worked as a counsellor and specialist in the projects “Ethics for the Prevention of Corruption in Turkey- (TYEC1)” and “Project on Consolidating Ethics in the Public Sector in Turkey (TYEC2)” which were conducted with the cooperation of the Council of Europe and Council of Ethics for Public Service of the Prime Ministry , and in “Project of Strengthening Judicial Ethics in Turkey” which was conducted with the cooperation of the European Union and the Council of Judges and Public Prosecutors.



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He is the Deputy Secretary General of the Court of Cassation and responsible for the European Union and the United Nations projects and international relations, laws, judicial reform and strategic planning (2014-...). He worked as a Public Prosecutor (1995-2002), as a rapporteur judge responsible for the training of the convicted in the Directorate General of Prisons and Detention Houses (2002-2007), and as a rapporteur judge of the 19th Civil Chamber of the Court of Cassation (2007-2014).

He received his master's degree (1998) and PhD (2004) from Ankara University Faculty of Law, Departments of "Law of Civil Procedure, Enforcement and Bankruptcy Law". He attended to "Arbitration" and "Commercial Law" programme of "Ankara University Faculty of Law, Banking and Commercial Law Research Institute", each with the duration of one year, and "the European Union and International Relations" of the European Communities Research and Implementation Center. He got mediation training at the Singapore Mediation Centre (SMC) and researched the institutions of mediation. He also attended to "Mediation Training Programme" in Turkey, passed the exams, and became eligible for being a mediator. In addition, he is also responsible for the Turkish International Disputes Resolution Center. He carried out researches in the Execution department of the Council of Europe in November and December 2017 for 2 months within the scope of Supporting the Individual Application System to the Constitutional Court and he observed the implementations regarding the execution of ECtHR decisions and the working system of the European Union Council of Ministers.

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He attended to the workshops of the Turkish Law of Obligations No 6098 Justice Commission of the Grand National Assembly of Turkey as the representative of the Court of Cassation. He participated in the Science Commission of the Draft Law of Civil Procedure No 6100 (restricted with the Article 70 of the enacted text). He also worked as a senior manager in many national and international projects. He is married with two children.

