

**ASSESSMENT OF THE COURT OF CASSATION CODES OF CONDUCT
ACCORDING TO THE UNITED NATIONS CONVENTION AGAINST
CORRUPTION¹
UNODC IMPLEMENTATION GUIDE AND EVALUATIVE FRAMEWORK FOR
ARTICLE 11²**

Evaluative framework: Codes of conduct

1) Has the judiciary or other body developed rules or standards with respect to the professional and ethical conduct of members of the judiciary (hereinafter referred to as the code of conduct)?	YES	NO
ANSWER	X	
<p>Explanation:</p> <p>As is known, "ethics"; it is a very rich and broad concept in terms of philosophy and thematic, which requires a multidimensional and holistic viewpoint. “<i>Judicial ethics</i>” is an extremely sensitive, special area that needs to be addressed in the framework of universally adopted principles. A most distinguishing characteristic is to ensure “<i>judicial independence</i>”.</p> <p>Thus, the preamble of Bangalore Principles of Judicial Conduct holds that “... the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.” For this reason, when establishing the codes of conduct specific to the Court of Cassation; care was taken to lay down, with broad participation, the codes of conduct with which (i) chamber presidents, bench members and rapporteur judges; (ii) public prosecutors; and (iii) staff of the Court of Cassation should comply.</p> <p>The Court of Cassation is based on a “collective philosophy of ethics” and 1. for the Bench Members and Rapporteur Judges “Court of Cassation Code of Judicial Conduct”, 2. for the Public Prosecutors “Court of Cassation Code of Conduct for Public Prosecutors” and 3. for the Staff “Court of Cassation Code of Conduct for Staff” were prepared.</p>		
2) Does the code of conduct take into consideration the Bangalore Principles of Judicial Conduct?	YES	NO
ANSWER	X	

¹ This Convention was approved by the Grand National Assembly of Turkey (TBMM) with the Law No. 5506 dated 18.05.2006.

² Extracted from The United Nations Convention against Corruption, Implementation Guide and Evaluate Framework for Article 11, New York 2015, p.17-18.

Explanation:

Dr. Nihal Jayawickrama who drafted the “Bangalore Principles of Judicial Conduct”, and was the General Coordinator of the United Nations Group on Integrity in the Judiciary, and also the senior expert for the Court of Cassation Ethics, Transparency and Trust Project, was commissioned to prepare the preliminary drafts of the codes of conduct for the Court of Cassation. This method facilitated the drafting of the codes of conduct for the Court of Cassation, and avoided any waste of time and labour that might be caused by the attempt to re-write the most fundamental principles and rules of modern legal systems. In addition, it ensured that the codes of conduct for the Court of Cassation were built on the universal codes of conduct for the judiciary. Thereby, the “*preliminary drafts (Codes of Conduct Workbook-I)*” were created in a short time which were suitable to work on and elaborate for customization to the Court of Cassation.

3) Describe the process that governed its development and adoption. In particular, did this process involve consultation with stakeholders outside the judiciary, such as civil society and court user organizations?

YES

NO

ANSWER

X

Explanation:

While establishing codes of ethics, three issues particularly have been taken into high consideration; 1-To establish the codes as a result of broad and democratic participation, 2- To carry on the works on judicial ethics transparently both inside and outside the institution, 3- To collect reviews of court users, other justice actors and non-judicial stakeholders. These processes can be summarized as follows:

In the initial stage, preliminary draft of codes of ethics had been prepared as explained in the question 2.

At the second stage, a survey questionnaire on the preliminary drafts was administered to the employees of all levels of the Court of Cassation, 1400 Court of Cassation personnel, to elicit their views, which were analyzed, and then shared in the International Symposium of the Court of Cassation Ethics, Transparency and Trust Project on 13 April 2017 in Ankara with 500 participants, and in the workshop with 300 employees of the Court of Cassation on the following day. In addition, the National Expert for the Project held individual and focus group interviews to examine in depth the ethics perception of the employees of all levels of the Court of Cassation, and reported the results in detail.

The new texts (draft codes of conduct) created as a result of the workshop and by the support of the international and national project experts were printed and distributed as the “*Codes of Conduct Workbook-II*” which served to promote “internal transparency” in the Court of Cassation. On the other hand, the “Book on Opening Symposium of Court of Cassation Ethics, Transparency and Trust Project, 13-14 April 2017” was prepared and published on the official website of the Court of Cassation (<http://www.yargitay.gov.tr/sayfa/etik-saydamlik/1012>) which ensured “external transparency”.

Also, individual interviews were conducted with the Presidents of Chambers, the Bench

Members and the Public Prosecutors of the Court of Cassation, and focus group works were conducted with the Rapporteur Judges and the Staff of the Court of Cassation in order to determine the perception on the organizational ethics.

At the third stage, a second workshop was organized on 12-16 May 2017 with the participation of 300 employees of the Court of Cassation which produced the third version of the draft codes of conduct. The “*Codes of Conduct Workbook-III*” which included the preliminary draft and all amendments through the final stage was printed (in colour and special design), and distributed to ensure “internal transparency”. In addition, the “Book on Workshop on Codes of Conduct, 12-16 May” was prepared and published on the official website of the Court of Cassation (<http://www.yargitay.gov.tr/sayfa/etik-saydamlik>) to ensure “external transparency”.

At the fourth stage, two meetings on 19-20-21 June and on 4-5-6 July 2017 were held with smaller participation where the codes of conduct, which were obtained in the foregoing phases, were examined systematically for coherence, meaning and grammar without altering their essence. This effort produced the fourth version of the draft codes of conduct.

In order to help the internal and external persons better understand the concept of “judicial ethics”, the “Book on Comparative Judicial Ethics” was printed, distributed and published on the official website of the Court of Cassation (<http://www.Yargitay.gov.tr/sayfa/etik-saydamlik>). This contributed to a better understanding of the codes of conduct specific to the Court of Cassation both inside and outside the institution, and a better assessment of their quality in terms of universal legal culture.

The above-mentioned drafts and sources shared inside and outside of the institution are intended to contribute to the efforts of both the judiciary and the society to "discuss and comment on the basis of information" in the process of establishing and implementing codes of ethics.

At the fifth stage, the book “Drafts of Codes of Conduct for the Court of Cassation” including the booklets “Court of Cassation Draft Code of Conduct”, “Draft Code of Conduct for Public Prosecutors of the Court of Cassation” and “Draft Code of Conduct for Staff of the Court of Cassation” was circulated to elicit views inside and outside (to be reviewed more than 80 institution and organization in 40 days) Turkish Bar Association, High Courts, Faculties of Law, Ministry of Justice, High Council of Judges and Prosecutors etc.) the institution in order to ensure the inside and institutional and non-institutional transparency.

At the sixth stage, all views from inside and outside the institution on “*Court of Cassation Draft Code of Judicial Conduct*” were reviewed in a meeting of restricted participation composed of the Court of Cassation Chamber Presidents and Bench Members, and decided that the draft with approved amendments be submitted to the Board of Presidents of the Court of Cassation. The views on the “*Court of Cassation Draft Code of Conduct for Public Prosecutors*” were reviewed by public prosecutors, and the views on the “*Court of Cassation Draft Code of Conduct for Staff*” reviewed by the Court of Cassation staff, and amendments were made to the drafts in line with the approved suggestions and criticism.

At the seventh stage, the Evaluation of The Opinions of The Court of Cassation Draft Codes of Conducts and Comparison to the United Nation Judiciary Standarts book about the assessment of views on the drafts of codes of conduct was published. In this way, internal and external transparency has been achieved on how opinions are assessed.

At the eight stage, in the “Working Meeting on Codes of Conduct by the Board of Presidents of the Court of Cassation”, the “*Court of Cassation Draft Code of Judicial Conduct*” was examined and assessed by the First President of the Court of Cassation İsmail Rüştü CİRİT, Deputy First President of the Court of Cassation and the President of the General Assembly of Civil Chambers Seyit ÇAVDAR, and Presidents of Chambers. At the end of the two-day work, the “Board of Presidents of the Court of Cassation” convening pursuant to Article 14 of the Law on the Court of Cassation unanimously approved the “*Court of Cassation Draft Code of Judicial Conduct*” and decided to submit it to the Grand General Assembly of the Court of Cassation for approval.

At the nineth stage, a one-day “introductory seminar” was provided to all Members of the Court of Cassation on the Court of Cassation Draft Code of Judicial Conduct which was submitted to the Grand General Assembly of the Court of Cassation. This aimed to inform all Bench Members of the Court of Cassation on the Court of Cassation Draft Code of Judicial Conduct.

At the last stage, “*The Court of Cassation Code of Conduct for Public Prosecutors*” was adopted unanimously by the public prosecutors of the Court of Cassation convened under the chairmanship of Mehmet AKARCA, Chief Public Prosecutor of the Court of Cassation, “*The Court of Cassation Code of Conduct for Staff*” was adopted by İsmail Rüştü CİRİT, President of the Court of Cassation on 19 October 2017. “*The Court of Cassation Code of Judicial Conduct*” was adopted unanimously on 8 December 2017 by the Grand Plenary Assembly of the Court of Cassation convened under the chairmanship of İsmail Rüştü CİRİT, President of the Court of Cassation. The finalized codes of conduct was announced to the public.

4) Has the code of conduct been made available to every judge?	YES	NO
ANSWER	X	
Explanation:		
The Court of Cassation Code of Judicial Conduct, from the very preliminary draft to the final draft, is available not only to the judges but also to all staff members of the Court of Cassation. In addition, the amendments made to the draft which was circulated inside and outside the institution for opinion were posted in the website and made available to the public in the sense of “transparency and public accountability”.		
5) To which institutions has the code of conduct been disseminated in the community or otherwise made publicly available?		

Answer and explanation:

The booklet of the Court of Cassation Codes of Conduct which includes The Court of Cassation Code of Judicial Conduct, Code of Conduct for Public Prosecutors, Code of Conduct for Staff was circulated to more than 80 institutions and organizations including all justice actors, all law schools and bar associations as well as available to the public at large in the institutional website of the Court of Cassation.

6) Is there a mechanism or procedure, formal or informal, to advise members of the judiciary on the propriety of proposed conduct?	YES	NO
---	------------	-----------

ANSWER	X	
---------------	----------	--

Explanation:

The Court of Cassation Code of Judicial Conduct provides for the establishment of the Court of Cassation Judicial Ethics Advisory Committee to advise all members of the judiciary. Being independent from the Administration and the Disciplinary Board, this Committee advises all members of the judiciary and is established to provide guidance on the compliance of a proposed act with the code of judicial ethics.

--	--	--

7) Is there a mechanism or procedure to receive and inquire into complaints of misconduct against members of the judiciary?	YES	NO
--	------------	-----------

ANSWER	X	
---------------	----------	--

Explanation:

Acts that may constitute disciplinary offences are investigated and decided on by the (Court of Cassation) Higher Disciplinary Board independently of the Judicial Ethics Advisory Committee.

To maintain the high standards in the judicial ethics, care was taken that no link whatsoever be established between the Court of Cassation Code of Judicial Conduct and the disciplinary rules; and in that sense, the Court of Cassation Judicial Ethics Advisory Committee was not empowered to investigate violations of ethics (for acts not constituting disciplinary offences).

At the heart of the ethics strategy of the Court of Cassation is the understanding that “each member of the judiciary lay down and comply with own rules.” Therefore, the Court of Cassation Code of Judicial Conduct is a guide.

If acts contrary to the code of conduct are subject to sanctions and investigation, then the code of conduct becomes closer to disciplinary rules. This results in a lowering of the high standards of conduct aspired in the code of conduct. Great importance is accorded to avoiding any linkage between the code of conduct with the disciplinary rules to prevent such a situation that is undesirable and counter-productive to the purpose of the code of judicial conduct. Thus, the Consultative Council of European Judges (CCJE) Opinion No. 3 (2010) states in Article 18 under “Ethics and responsibility” that “18. Deontological principles, drafted by the judges themselves, shall guide the actions of the judges. These principles shall be included in the training of judges.” On the other hand, while the code of professional conduct may at times overlap with laws or disciplinary rules, it is primarily different that the code of professional conduct and disciplinary rules laid by the law.

8) Is this mechanism or procedure within the judiciary or external from it? Does it function independently of the judiciary?	YES	NO
ANSWER	X	

Explanation:

The disciplinary mechanism is within the Court of Cassation, and operates independently of the administration tier of the Court of Cassation.

While the Court of Cassation Judicial Ethics Advisory Committee has no sanction power, it is also independent and within the Court of Cassation. However, this committee includes an academician who has written scientific work on ethics and served in the ethics committees of universities. This ensures transparency while endeavouring to bring an objective and scientific perspective from outside the Court of Cassation to the ethical behaviours of members of the judiciary.

9) Who participates in this mechanism or procedure, and how are members selected?
--

Answer and explanation:

Article 11 of the Law on the Court of Cassation provides that “The Higher Disciplinary Board shall be comprised of the First President, the senior one of the Deputy First Presidents, the Chief Public Prosecutor of the Court of Cassation and Presidents of six Civil Chambers and three Criminal Chambers, and five Bench Members from Chambers from which Presidents are not participating. On the Higher Disciplinary Board shall be chamber presidents who are not regular members in the Board and one Bench Member from each of other chambers as alternate members.” Further, Article 34 provides that “... the First Presidency Board shall identify, by drawing names, the members of the Higher Disciplinary Board...”

The Judicial Ethics Advisory Committee shall consist of 7 bench members of the Court of Cassation (chamber presidents or bench Members, at least two of whom shall be women), 2 rapporteur judges, 1 public prosecutor of the Court of Cassation and 1 university faculty member who was written scientific works on ethics and served in the ethics committees of universities.

The bench members shall be elected by the Grand Plenary Assembly of the Court of Cassation in the procedure for electing the presidents of chambers of the Court of Cassation.

The rapporteur judges shall be elected by the Board of First Presidency from among 20 rapporteur judges with longest tenure in the Court of Cassation; and the Public Prosecutor shall be assigned by the Chief Public Prosecutor of the Court of Cassation from among 10 Public Prosecutors with longest tenure in the Chief Public Prosecutor’s Office of the Court of Cassation.

The members so elected to the Advisory Committee shall elect, by majority vote, the university faculty member to the Advisory Committee.

10) What transparency measures are in place in that mechanism or procedure to promote public confidence in the process to address such complaints?

Answer and explanation:

Article 17/c of the Law on the Court of Cassation provides that an appeal may be made to the Board of Presidents of the Court of Cassation against the decision of the Higher Disciplinary Board. This mechanism is of a nature to build public confidence because the Board of Presidents of the Court of Cassation is the highest board that examines the objections in the Court of Cassation, and is composed of the President and Deputy President, presidents of civil and criminal chambers of the Court of Cassation. The presidency of a chamber is a very important status at the Court of Cassation. Since chamber presidents are elected by the Grand Plenary Assembly of the Court of Cassation, the Board of Presidents of the Court of Cassation has a very strong democratic legitimacy and a structure that builds public confidence.

The Court of Cassation Judicial Ethics Advisory Committee shall send the original formal opinion to the relevant person requesting the opinion, then prepare a version that omits the personal information, and corrected copy is published on the internal network (intranet) of the Court of Cassation.