

NOTE ABOUT CODES OF CONDUCT OF COURT OF CASSATION

As is known, “*judicial ethics*” 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 “*judicial independence*” and “*judicial integrity*”.

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 reporter judges; (ii) public prosecutors; and (iii) staff of the Court of Cassation should comply. In clearer words, emphasis was made to preclude any interference, or appearance thereof, with the wills of the employees of the Court of Cassation. The codes of conduct were drafted in workshops with broad participation where at least 10 to 15% of the public servants of all levels were represented (40 bench members, 80 reporter judges, 30 public prosecutors and 130 staff members). This method was an important feature that enhanced the democratic legitimacy of the codes of conduct.¹

When establishing the codes of conduct specific to the Court of Cassation, another emphasis was to execute all the processes relating to establishing such codes “*transparently*” inside and outside the institution.

At the initial stage, 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.

At the second stage, a survey questionnaire on the preliminary drafts was administered to the employees of all levels of the Court of Cassation to elicit their views, which were analysed, 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

¹ The method so adopted is also an example of the “philosophy of democratic governance” included in the fundamental values of the Court of Cassation, which will mark its 150th anniversary of founding in the next year. Indeed, all significant positions such as chamber presidents, members of administrative and disciplinary boards are elected by the General Assembly of the Court of Cassation consisting of all bench members.

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”.

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”.

In the fourth stage, two meetings in June and 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.

In 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 (Turkish Bar Association, High Courts, Faculties of Law, Ministry of Justice, High Council of Judges and Prosecutors etc.) the institution. It is expected that the views obtained will be evaluated by the employees of the Court of Cassation, adopted in the General Assembly of the Court of Cassation on 19 October 2017, and the finalized codes of conduct be disclosed to the public.

As a result, we believe that it is important to carry on the works on judicial ethics transparently both inside and outside the institution, and be subject to the public scrutiny.

It takes serious time, money and labour to establish the codes of conduct specific to the Court of Cassation in broad, democratic participation, and thereby ensure judicial integrity. However, we believe this method is more effective to create a sustainable, deeply-rooted understanding, and structural change. Otherwise, the judicial ethics and integrity may simply remain a statement of good intentions.

The ethics component aims to achieve the following:

- a. Enable the chamber presidents, bench members, reporter judges, public prosecutors, and staff of the Court of Cassation to lay down their own codes of conduct;
- b. Adapt and integrate the codes of conduct so created to the working system of the Court of Cassation;
- c. Establish and operate the checks and balances for the implementation of codes of conduct;
- b. Build confidence in the public that the codes of conduct are complied with.

In the context of this philosophy, the laying down and implementation of the codes of conduct mean to review and restructure the monitoring and scrutiny mechanisms which are relevant to each link of the workflow in the Court of Cassation and allow us to advance confidently towards obtaining an improved justice system.

4. The “institutional ethics system” of the Court of Cassation is based on a “collective philosophy of ethics”. The design of ethics in the Court of Cassation requires that the codes of conduct for employees of all levels be created concurrently and coherently.

In order to foster a **collective philosophy of ethics and transparency**, all judicial employees working at all services levels of the justice system operated by the Court of Cassation are involved in the project. In this context, the target groups to benefit from the project are as follows:

- Chamber presidents and bench members,
- Reporter judges,
- Public prosecutors, and

- Staff of the Court of Cassation.

Thereby, the judicial integrity is addressed as an institutional matter, not an issue specific to the judges; because the appearance of judicial integrity cannot be obtained merely by the individual integrity of judges. It is of utmost importance that all judicial staff have integrity for the judiciary to appear in integrity. 24.08.2017.

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