

# **COURT OF CASSATION CODE OF JUDICIAL CONDUCT**

*(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.)*

## **PREAMBLE**

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

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

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

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

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

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

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

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

THE GRAND PLENARY ASSEMBLY OF THE COURT OF CASSATION upon the proposal of THE BOARD OF PRESIDENTS OF THE COURT OF CASSATION, aiming to provide guidance to the bench members and rapporteur judges of the Court of Cassation by establishing the standards of ethical behaviour, enable the members of the legislature and executive and lawyers and the public to better understand the judiciary and provide support to the judiciary, define binding professional code of ethics for the judges without disregarding the fact that compliance with the code of conduct is the first and foremost responsibility of the judges, hereby ADOPTS this Code of Conduct.

# PART I

## INTRODUCTION

### *Title*

- I. This Code shall be referred to as the “Court of Cassation Code of Judicial Conduct.”

### *Definitions*

- II. The following definitions shall apply in this Code:

“Judge” refers to the First President, deputy presidents, chamber presidents, bench members and rapporteur judges of the Court of Cassation;

“Court of Cassation staff” refers to all personnel of the Court of Cassation.

### *Code*

- III. The provisions of the Code for judges are as follows:

# PART II

## COURT OF CASSATION

## CODE OF JUDICIAL CONDUCT

### *Value 1*

### INDEPENDENCE

#### *Principle:*

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

#### *Rules:*

- 1.1 A judge shall reject any attempt to influence his or her decision in any matter before the judge where such attempt arises outside the proper performance of judicial duties.
- 1.2 A judge shall not allow family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

- 1.3 A judge shall not deviate from the law to appease public clamour, to avoid criticism, or to advance an improper interest.
- 1.4 A judge shall maintain his/her independence in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.5 A judge shall be free from inappropriate connections with, and influence by, the executive and legislative branches of government, and also demonstrate to a reasonable observer to be free there from.
- 1.6 In performing judicial duties a judge shall be independent of judicial colleagues.
- 1.7 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.8 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

## *Value 2*

### **IMPARTIALITY**

#### *Principle:*

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

#### *Rules:*

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice, and shall not be influenced by any improper motive or corrupt practice.
- 2.2 A judge shall accord to the parties to a case and their lawyers the right to be heard according to law and equally.
- 2.3 A judge shall, except as authorised by law, not initiate communications with the parties on the merits, or procedures affecting the merits, of a proceeding that is before, or could come before, the judge.
- 2.4 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, members of the judiciary and litigants in the impartiality of the judge and of the judiciary.
- 2.5 A judge shall, so far as is reasonable, so conduct himself or herself, and organize the judge's own and the judge's family's personal and economic activities in such a way as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing, deciding, appeal or otherwise dealing with, cases.
- 2.6 A judge shall not knowingly and willingly, while a proceeding is before, or could come before, make any public or implicit comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process.

- 2.7 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide or deal with, the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide, or deal with, the matter impartially. Such proceedings include, but are not limited to, instances where
- 2.7.1 The judge has actual bias or prejudice concerning a party;
  - 2.7.2 The judge previously served as a lawyer or advisor, or was a material witness, in the matter in controversy;
  - 2.7.3 The judge or a member of the judge's family, has any interest that could be affected substantially by the outcome of the proceeding;
  - 2.7.4 A member of the judge's family represents a litigant or is associated in any manner with the case.

### *Value 3*

## **INTEGRITY**

### *Principle:*

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

### *Rules:*

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

*Value 4*  
**PROPRIETY**

*Principle:*

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

*Rules:*

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. The test for appearance of impropriety is whether the conduct would create in the mind of a reasonable observer a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so willingly.
- 4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the courts, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not allow the use of the judge's residence or workplace by a member of the legal profession to receive clients, or use the residence or workplace of another member of the legal profession for such purpose.
- 4.5 A judge shall, in exercising freedom of expression, belief, association and assembly, always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.6 A judge shall avoid taking part publicly in controversial discussions of a partisan political nature.
- 4.7 A judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language.
- 4.8 A judge shall administer his/her or his/her family's assets in a manner not to interfere with the proper performance of judicial duties.
- 4.9 A judge shall refrain from relations involving any interests that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial office, or involve the judge in transactions with lawyers and other persons likely to come before the court in which the judge serves.
- 4.10 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else.
- 4.11 A judge shall not convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.12 A judge shall not use the information acquired by the judge in the judicial capacity for any other purpose not related to the judge's judicial duties.
- 4.13 A judge shall not accept gifts; but may receive a gift, award or similar item which has no substantial value, is symbolic and in the nature of a memento that might not

reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality. The acceptance of a gift as required by international protocol, etiquette, custom or institutional courtesy is excluded. Gifts at a value exceeding the statutory limit shall be kept at the museum of the institution. A judge shall not make gifts which may give the impression of anticipation of a return.

- 4.14 Since the complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial. As knowledge of the community is essential to the sound administration of justice, a judge may, subject to the proper performance of judicial duties:
  - 4.14.1 Write, lecture, teach and participate in activities concerning the law.
  - 4.14.2 Meet with public bodies, private organizations on matters relating to the law.
  - 4.14.3 Serve as a member of an official body, commission, committee or other body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge.
  - 4.14.4 Engage in civic activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.15 A judge shall not provide advice to the parties to a case even when it is to be provided free of charge.
- 4.16 A judge shall not act as an arbitrator or mediator or perform judicial functions in a private capacity unless expressly authorised by law.
- 4.17 A judge may form or join associations of judges or participate in other organisations representing the interests of judges provided that such act not break the law.
- 4.18 A judge shall primarily speak through his or her judgments. A judge shall not criticise own decisions or those of his or her colleagues, unless required by his or her mandate, in a manner to influence decisions, communicate with such critics or make statements on such news and comments in the media unless s/he is so authorised.
- 4.19 A judge shall generally avoid the use of the criminal law and contempt proceedings to restrict legitimate public criticism of judicial performance unless necessary.
- 4.20 A judge shall not engage in psychological harassment (mobbing) against his/her colleagues and personnel, or allow such behaviour.

***Value 5***  
**EQUALITY**

***Principle:***

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

***Rules:***

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

***Value 6***  
**COMPETENCE AND DILIGENCE**

***Principle:***

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

***Rules:***

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall particularly observe the working hours, and ensure that the personnel under his/her administration do so.



- 6.4 The judge is responsible for the efficient administration of justice in his or her court. The president of a chamber shall take necessary measures to fairly distribute the case files among bench members or rapporteur judges.
- 6.5 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties and supervision of the court, taking advantage for this purpose of the training and other facilities which should be made available. Judges with administrative powers shall support, encourage in this respect the judges and personnel administratively subordinate to him or her, and identify the particular ones considering the case load.
- 6.6 A judge shall keep himself or herself informed about relevant developments of international and comparative law, including international conventions and other instruments establishing human rights norms.
- 6.7 A judge shall perform all judicial duties, including the entry of dissenting opinion, efficiently, fairly and with reasonable promptness.
- 6.8 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom s/he deals in an official capacity. The judge shall require similar conduct of legal representatives and court personnel.
- 6.9 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.
- 6.10 Access to justice being of fundamental importance to the rule of law, a judge shall, within the limits of his or her powers, adopt procedures to facilitate and promote such access.
- 6.11 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.
- 6.12 A judge shall, when performing administrative duties relating to the appointment, promotion, title change and similar personal affairs of judges or personnel, subscribe first and foremost to competence and merit in a transparent way, and require the same of his or her subordinates.

## **PART III**

### **IV. Judicial Ethics Advisory Committee**

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

The Advisory Committee shall consist of 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 term of office shall be 2 years; expiring members may not be re-elected. The most senior member of the Court of Cassation

in the committee shall serve as the Chair, whereas the second most senior member shall serve as the Deputy Chair.

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. Where the first round of vote fails to elect the person; the second round of voting shall be held for the two candidates having the highest number of votes in the first. In case of a tie, the candidate receiving the Chair's vote shall be elected. Where seat is vacated in the Committee, the replacing member shall complete the term of office of the replaced member. Decisions shall be passed by majority vote. The secretariat services shall be undertaken by the Deputy Secretary-General of the Court of Cassation as designated by the President of the Court of Cassation.

2. The Advisory Committee shall regulate its own procedure rules.

#### **V. Duties of the Advisory Committee**

- 1 Judges may request an opinion from the Advisory Committee about the propriety of contemplated or proposed future conduct.
2. In furnishing its opinion, the Advisory Committee shall set forth the facts upon which the opinion is based, citing the rules, cases, and other authorities that bear upon the advice rendered, and the applicable principles of judicial conduct.
3. The 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 a corrected copy is published on the internal network (intranet) of the Court of Cassation.
4. An opinion of the Advisory Committee is not binding; it is in the nature of a recommendation.