

**JUDICIAL ETHICS ADVISORY COMMITTEE
DECISION ON WORKING PROCEDURES AND PRINCIPLES**

SECTION ONE

The Objective, Scope, Basis and Definitions

The Objective

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

The Scope

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

The Basis

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

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

Definitions

ARTICLE 4 - (1) In this decision;

a) “Judge” shall mean First President of the Court of Cassation, vice presidents, presidents of chambers, members and rapporteur judges,

b) “Public prosecutor” of the Court of Cassation” shall mean Chief Public Prosecutor of the Court of Cassation, Deputy Chief Public Prosecutor of the Court of Cassation and prosecutors of the Court of Cassation.

c) “Committee” shall mean Judicial Ethics Advisory Committee,

d) “Chair” shall mean Chair of the Judicial Ethics Advisory Committee

e) “Deputy Chair shall mean Deputy Chair of the Judicial Ethics Advisory Committee

f) “Member” shall mean Member of the Judicial Ethics Advisory Committee

g) “Secretariat” shall mean Secretariat of the Judicial Ethics Advisory Committee

SECTION TWO

Structure of the Committee, Qualifications, Election, Tenure and Independence of the Members

Structure of the Committee

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

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

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

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

Qualifications of member judges and public prosecutor

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

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

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

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

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

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

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

The election of member judges and public prosecutor

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

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

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

(4) Documents of the member judges and public prosecutor indicating that they possess the qualifications required for membership shall be archived by the Secretariat.

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

The election of the university faculty member

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

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

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

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

(5) At the first meeting of the Committee, Secretariat makes presentations about all the candidates. First of all, a decision is rendered on those who do not possess qualifications required for membership. Candidates, who possess necessary qualifications, shall be voted by taking into account of their works, projects in which they are assigned, institutions they work, their ability to reach the works written in English and other contributions they provide for the Committee works. After the negotiations about the candidates are completed, members shall determine the university faculty member by open ballot and majority vote. Where the first round of 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.

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

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

The term of office of the members

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

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

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

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

Expiration of the term of office of the members

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

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

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

c) The member resigns.

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

Independence of the members

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

The Secretariat

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

(2) In case that the designated Deputy General Secretary has a legal excuse such as temporary duty, annual or medical leave, the Deputy Secretary General of the Court of

Cassation, who carries out his/her duties according to the division of labour, temporarily performs his/her duty.

SECTION THREE

Duties, Authority and Responsibilities of the Committee

The duty of the Committee

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

The authority of the Committee

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

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

Responsibilities of the Committee and members

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

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

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

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

SECTION FOUR

Duties of the Chair, Deputy Chair, Members and Secretariat and Working Method of the Committee

The duty of the Chair

ARTICLE 17- (1) the Chair shall:

- a) represent the Committee,
- b) preside over the meeting of the Committee,
- c) sign correspondences related to the Committee,
- d) determine the meeting agenda,
- e) assign members, where necessary, to work as a Commission,
- f) review and conclude amendment proposals regarding the drafts of the Committee decisions,
- g) take necessary measures to ensure the Committee work regularly and efficiently.

The duty of the Deputy Chair

ARTICLE 18-(1) The Deputy Chair shall fulfil the duties of the Chair in case s/he may not fulfil his/her duties partially or completely due to his/her legal excuse.

The duty of the Member

ARTICLE 19 -(1) The member shall:

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

The duty of the Secretariat

ARTICLE 20 - (1) Secretariat shall:

- a) hand in the agenda to the members before meeting,
- b) prepare the drafts of the Committee decisions,
- c) meet the demands of research, review and other demands of similar nature,
- d) ensure the correspondences of the Committee is exchanged regularly,
- e) take the required measures to keep the Committee's archive in order,
- f) perform the duties assigned by the Chair.

Working method of the Committee

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

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

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

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

SECTION FIVE

Application, Evaluation of the Application and Decision

Application of Judges and Public Prosecutors to the Committee

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

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

Instances where opinion shall not be requested

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

- a) Abstract, general, outdated past events and issues related to conduct of someone other than the person who asks the question,
- b) Conducts or proceedings out of the objective or scope of the judicial ethics,
- c) Conducts or proceedings in which the criminal or disciplinary investigation has been carried out or is being carried out,

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

e) Conducts or proceedings before the date of 8 December 2017 when The Grand Plenary Assembly of the Court of Cassation adopted the Court of Cassation Code of Judicial Conduct.

Review of the applications

ARTICLE 24-(1) Applications shall be subject to a preliminary review by the Secretariat. The issues related to filing and reviewing the applications as well as the procedures and principles of the preliminary review shall be regulated in the Instruction on Preliminary Review to be prepared by the Committee.

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

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

Negotiation of the applications

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

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

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

Rendering decision on the application and the nature of application

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

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

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

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

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

Writing the Committee decision

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

(2) the decision on the merits of the application

a) concrete cases,

b) rules and case laws forming the basis of the decision,

c) the Court of Cassation Codes of Judicial Conduct, the Bangalore Principles of Judicial Conduct, Budapest Principles,

d) codes of conduct, opinions and decisions of other institutions,

e) rules, views and standards of the United Nations and Council of Europe,

f) other codes of conducts, rules and case laws and views in comparative law shall be taken into consideration.

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

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

Publishing the Committee Decision

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

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

SECTION SIX

Enforcement and Execution

Enforcement

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

Execution

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