

ASSESSMENT OF THE COURT OF CASSATION CODES OF CONDUCT¹
ACCORDING TO THE UNITED NATIONS CONVENTION AGAINST
CORRUPTION²
UNODC IMPLEMENTATION GUIDE AND EVALUATIVE FRAMEWORK FOR
ARTICLE 11³

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 philosophically and thematically, 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 and its most distinguishing characteristic is “<i>judicial independence</i>”. 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 for 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 would comply, to be defined actually by themselves and with a broad participation.</p> <p>The Court of Cassation developed three separate ethical principles based on a “collective philosophy of ethics”: 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”.</p>		

¹ The Court of Cassation Code of Judicial Conduct, which was proposed to be adopted in Decision 23.9.2017.T dated 2017/12 of Court of Cassation Board of Presidents, was adopted unanimously in the meeting of Grand Plenary Assembly of the Court of Cassation dated 8 December 2017.

² This Convention was approved by the Grand National Assembly of Turkey (TBMM) with the Law No. 5506 dated 18.05.2006

³ Extracted from The United Nations Convention against Corruption, Implementation Guide and Evaluate Framework for Article 11, New York 2015, p.17-18.

2) Does the code of conduct take into consideration the Bangalore Principles of Judicial Conduct?	YES	NO
ANSWER	X	
Explanation: <p>Dr. Nihal Jayawickrama, the Coordinator of the United Nations Judicial Integrity Group who drafted the “Bangalore Principles of Judicial Conduct”, and also the senior expert for the Ethics, Transparency and Trust Project of the Court of Cassation, 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 - prevented 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 was ensured that the Court of Cassation Codes of Conduct were built on the universal codes of conduct for the judiciary. Thereby, the “<i>preliminary drafts (Codes of Conduct Workbook-I)</i>” were created in a short time which were suitable to work on and elaborate for customization to the Court of Cassation.</p>		
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: <p>A) COURT OF CASSATION CODE OF JUDICIAL CONDUCT (CODES OF CONDUCT FOR BENCH MEMBERS AND RAPPORTEUR JUDGES OF THE COURT OF CASSATION)</p> <p>While establishing codes of ethics, as well as others, particularly three issues have been taken into high consideration; 1-To develop 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:</p> <p>In the initial stage, preliminary draft of codes of ethics had been prepared as explained in the question 2.</p> <p>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 analysed, and then shared in the International Symposium of the Ethics, Transparency and Trust Project of the Court of Cassation on 13 April 2017 in Ankara with 500 participants, out of whom 400 participants were the Court of Cassation employees, and in the workshop with 300 employees of the Court of Cassation on the following day. 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 Ethics, Transparency and Trust Project of the Court of Cassation, 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 presidents of chambers, bench members and public prosecutors of the Court of Cassation, and focus group works were</p>		

conducted with rapporteur judges and staff of the Court of Cassation in order to determine the perception on the institutional ethics of the Court of Cassation. Within this period, group interviews were done with lawyers, as two of them were held in the Union of Turkish Bar Associations and one was held in the Court of Cassation, and their views were collected regarding the drafts of the codes of conduct.

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 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, as a result of the processes briefly summarized above, two meetings on 19-20-21 June and on 4-5-6 July 2017 were held with narrow-scoped 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.

In order that the concept of “judicial ethics” is better understood internally and externally, 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 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 (Ankara, July 2017)” was published and “Court of Cassation Draft Code of Judicial 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” included in the book was circulated to elicit views inside the institution. The same draft was sent to justice actors such as Constitutional Court, Council of State, Court of Accounts, Council of Judges and Prosecutors and more than 80 institutions and organizations, especially Union of Bar Associations and law faculties to elicit their reviews in 40 days, in this way “external transparency” was also ensured.

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 narrow-scoped participation composed of the Court of Cassation chamber presidents and bench members on 15-16 September, and it was decided that the draft with approved amendments was to 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*” were reviewed by the Court of Cassation staff, and amendments were made to the drafts in line with the suggestions and criticism deemed appropriate.

At the seventh 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, First Vice President of the Court of Cassation and the President of the General Assembly of Civil Chambers Seyit ÇAVDAR, and Presidents of Chambers at the meeting of Board of Presidents of the Court of Cassation which was held on 22-23 September. 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 eight stage, one day “Introductory Seminar” regarding Court of Cassation Draft Code of Conduct submitted to the approval of the Grand Plenary Assembly of the Court of Cassation was organized for all bench members of the Court of Cassation. In this way, it was aimed that all bench members of the Court of Cassation constituting Grand Plenary Assembly of the Court of Cassation would have knowledge of Court of Cassation Draft Code of Judicial Conduct.

At the ninth stage, “Court of Cassation Code of Judicial Conduct” was submitted for the approval of Grand Plenary Assembly of the Court of Cassation in the meeting dated 19 October 2019. The meeting was postponed to 8.12.2017 due to the prolonged discussions, and with the aim of increasing the efficiency of the second meeting, members who had objections were asked to convey their opinions and suggestions on this matter in written form.

At the tenth stage, “Court of Cassation Code of Judicial Conduct” entered into force upon being adopted unanimously by the Grand Plenary Assembly of the Court of Cassation in the second meeting dated 8 December 2017.

B) COURT OF CASSATION CODE OF CONDUCT FOR PUBLIC PROSECUTORS

During the developing of Court of Cassation Code of Conduct for Public Prosecutors, the same process, which was described in detail above, was followed. However, since the target group is public prosecutors of the Court of Cassation, seventh stage regarding the proposal of code of ethics submitted by the Board of Presidents of the Court of Cassation, and the ninth and tenth stages regarding adoption of code of ethics by Grand Plenary Assembly of the Court of Cassation were not implemented. On the other hand, ethical training was provided for Public Prosecutors of the Court of Cassation before code of conduct was adopted. Court of Cassation Code of Conduct for Public Prosecutors was adopted unanimously on 19 October 2019 by Public Prosecutors of the Court of Cassation who convened under the chairmanship of the Chief Public Prosecutor of the Court of Cassation.

C) COURT OF CASSATION CODE OF CONDUCT FOR STAFF

Above mentioned process was also followed with regard to the Court of Cassation Code of Conduct for Staff. However, since the subject was related to the staff, the text was not submitted to the Board of Presidents of the Court of Cassation and Grand Plenary Assembly of the Court of Cassation. Instead, it was remarked that Court of Cassation Code of Conduct for Staff was prepared by the group composed of those who were staff and prepared ethical principles, and the approval of the President of Court of Cassation was requested. These principles entered into force by the approval of the President of the Court of Cassation dated 19 October 2017.

4) Has the code of conduct been made available to every judge?	YES	NO
ANSWER	X	
Explanation: <p>The Court of Cassation Codes of 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 drafts which were 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”. In conclusion, all studies including draft studies and opinions are open to access of the public. It was also physically distributed to rapporteur judges, public prosecutors and staff.</p>		
5) To which institutions has the code of conduct been disseminated in the community or otherwise made publicly available?		
Answer and explanation: <p>The booklet of the Court of Cassation Codes of Conduct was circulated physically to all justice actors, all law faculties and more than 80 institutions and organizations, especially the Union of Bar Associations, as well as available to the public at large on the institutional website of the Court of Cassation. Not only codes of conduct but also all preparatory works, symposium books and other published materials can be accessed on the Court of Cassation’s website.</p>		
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: <p>Under the scope of the Court of Cassation Code of Judicial Conduct, the Court of Cassation Judicial Ethics Advisory Committee was established to provide advices to all members of the judiciary. The Committee whose 7 out of 11 members are elected by the Grand Plenary Assembly of the Court of Cassation has a strong democratic legitimacy. At the same time, the Committee was ensured to be completely independent from the administrative and the disciplinary bodies. The presence of two rapporteur judges and a public prosecutor in the Committee represents the collective ethics understanding of the Court of Cassation. The fact that a faculty member from the outside of the Court of Cassation takes part in the Committee is the guarantee of transparency and accountability to the society of the Committee’s works. This Committee advises all members of the judiciary and is established and entered into service to provide guidance on the compliance of a proposed act with the code of judicial ethics.</p>		

7) Is there a mechanism or procedure to receive and inquire into complaints of misconduct against members of the judiciary?	YES	NO
ANSWER	X	
<p>Explanation:</p> <p>Acts that may constitute disciplinary offences are investigated and decided on by the (Court of Cassation) Higher Disciplinary Board independently of the Court of Cassation Judicial Ethics Advisory Committee.</p> <p>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). Full compliance with the article 74 of Recommendation CM/REC (2010)12 of the Committee of Ministers to Member States on Judges: independence, efficiency and responsibilities was achieved with this practice.</p> <p>The understanding that “each member of the judiciary lay down and comply with own rules” lies at the basis of the ethics strategy of the Court of Cassation. Therefore, the Court of Cassation Code of Judicial Conduct is a guide.</p> <p>If acts contrary to the code of conduct are subject to sanctions and investigation, then the code of conduct becomes closer to disciplinary rules. <u>This results in a lowering of the high standards of conduct aspired in the code of conduct.</u> 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, 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, 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.</p>		
8) Is this mechanism or procedure within the judiciary or external from it? Does it function independently of the judiciary?	YES	NO
ANSWER	X	
<p>Explanation:</p> <p>The disciplinary mechanism is within the Court of Cassation, and operates independently of the administration tier of the Court of Cassation.</p> <p>While the Court of Cassation Judicial Ethics Advisory Committee has no sanction power, it is also independent and takes place within the Court of Cassation. However, this committee includes a faculty member 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.</p>		

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 First Vice 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 included 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 wrote scientific works on the field of ethics and already 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 chamber presidents of the Court of Cassation.

The rapporteur judges shall be assigned 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 absolute majority vote, the 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 Vice Presidents, 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. With this feature, “the Court of Cassation Judicial Ethics Advisory Committee operates very transparently. Also the presence of a faculty member outside the Court of Cassation is a feature that increases transparency.