



1.2. IMPARTIALITY OF THE JUDICIARY



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I- RULES ON IMPARTIALITY OF JUDGES AND PUBLIC PROSECUTORS

Relevant Legislation:

- 1- Civil Procedure Code, No: 1086 (Official Gazette: 2, 3, 4 July 1927 no: 622, 623, 624)
- 2- Criminal Procedure Code, No: 5271 (Official Gazette: 4 December 2004 no: 25673)
- 3- Law on Judges and Prosecutors, No:2802 (Official Gazette:26.2.1983, 17971)



1- Civil Procedure Code

A judge is prohibited from trying a case where the following situations are present and he/she is obliged to abstain from trying the case even if not requested:

- In a case relevant to him/her or directly or indirectly related to him,
- In a case relevant to his/her spouse even if they are not married at time of the case and his own relatives or relatives in law or in cases of persons he has adopted.
- In a case in which he/she is representative, trustee or guardian of one of the parties,
- In a case concerning the association, municipality or any other legal entities of which he was in the executive board during the trial (Art.28 of Civil Procedure Code).



In cases below a judge can refuse himself or can be refused by the parties:

- In a case in which he advised one of the parties
- In a case in which he declared his opinion even if not legally required.
- In a case in which he/she testified or acted as witness, expert, arbitrator or judge
- In a case which is relevant to his/her relatives
- Where he/she has a hostility or rivalry against one of the parties of the trial.
- In a case where there is reasonable doubt about the impartiality of the judge (Article 29 of Civil Procedure Code)



2- Criminal Procedure Code

A Judge is prohibited from trying a case where the following situations are present:

- Where he/she is the victim of the case.
 - Where he/she is or was a close relative to suspected, accused or victim
 - If he had formerly dealt with the case as lawyer of the parties etc.
 - If he was heard before as witness or expert in the same case.
- (Article 22 of Criminal Procedure Code)



The parties may request the refusal of a judge under the following conditions:

- There is suspicion that impartiality of a judge is in danger.
- Reasons for prohibition of a judge stated above exists.
(Article 24 of Criminal Procedure Code)
- Procedure for prohibition from a case and refusal of a judge is set out in detail in Articles 22-32 of Criminal Procedure Code.



According to the Law on Judges and Prosecutors, partially behaving requires a disciplinary sanction, which is change of location. (Article 68) If this partiality is proved through investigations, the related judge or prosecutor is transferred to a different place without asking his preference. (Article 46)



II- FIGHT AGAINST CORRUPTION IN THE JUDICIARY

MAIN SOURCES

- 1- Turkish Criminal Code No: 5237 (Official Gazette: 12 October 2004 no: 25611)
- 2- Special laws on Fight Against Corruption
- 3- Law on Judges and Prosecutors
- 4- Circulars of the Ministry of Justice



1- Turkish Criminal Code (TCC)

Some articles of the Turkish Criminal Code regulate corruption offences for the acts of public officers.

Misconduct of judges and public prosecutors is also investigated and prosecuted under these provisions.



A- Attempt to Influence Judicial Bodies

Attempt to Influence judicial bodies is a special type of crime.

A person who unlawfully attempts to influence judicial bodies, or forces them to give instructions in favor or against any one of or all the parties present in the trial before the court, or the offenders, or those participating in the action, or the victim, is sentenced to imprisonment from 2 to 4 years.

The sentence to be imposed shall be from 6 months to 2 years if the attempt is no more than favoritism. (Article 277 of TCC)



B- Attempt to Influence Fair Trial

Attempt to influence judges or public prosecutors or experts of the courts or witnesses related to an investigation or a prosecution brought before a court by oral or written statements is a crime and shall be sentenced from 6 months to 3 years imprisonment.

(Art. 288 of TCC)



C- Misconduct in office

Excluding the acts defined as offense in the law, any public officer who causes suffering of people or injury by acting contrary to the requirements of his office, or secures unjust benefit to third parties, is sentenced to imprisonment from 1 to 3 years.

(Article 257(1) of TCC)



D- Other Provisions of Turkish Criminal Code

- Counterfeiting official document (Article 204 of TCC)
- Embezzlement (Article 247 of TCC)
- Extortion (Article 250 of TCC)
- Bribery (Article 252 of TCC)



2- Special Laws

Law on Declaration of Assets, Fight Against Bribery and Corruption No: 3628 (Official Gazette: 4 May1990 No: 20508)

According to this Law all judges and public prosecutors should declare his/her property and his/her family's property every year .



3-Law on Judges and Prosecutors

Disciplinary measures regulated by Law on Judges and Prosecutors are as follows:

Change of Location: Accepting bribe or extorting, asking gifts from parties

Suspension of Degree Promotion: Involving in commercial activities that are prohibited for judges and prosecutors.

Suspension of Grade Promotion: Not to declare asset record, to be in debt over his/her income.



4-Circulars (DG for Criminal Affairs of Ministry of Justice)

1- Circular No: 7, 1.1.2006 (Investigation and Prosecution Procedures Regarding Corruption Affairs)

By this circular the public prosecutors are generally informed about the implementation of investigation and prosecution procedure on corruption cases according to new legislation.

2- Circular No: 12, 1.1.2006 (Investigation and Prosecution Procedure about Judges and public Prosecutors)

This circular explains the investigation and prosecution procedures about judges and public prosecutors because of their misconduct in office. In the circular the specific articles of Law no: 2802 (Law on Judge and Prosecutors) are expressed in order to provide right implementation of the provisions.



Corruption Complaints Against Judges And Public Prosecutors

Complaints on bribery and other corruption offenses

- In 2005 89 complaints
- In 2006 53 complaints (As of 27.09.2006)

All complaints against judges and public prosecutors are examined in the relevant unit of the Ministry of Justice.

Among the 142 complaint files in 2005 and 2006:

- Permission granted to open an investigation to 4 files and after the investigation 2 of them are submitted to the High Council.
- 126 files were rejected
- Examination of 10 files are pending



Complaints Related to Impartiality of Judges And Public Prosecutors

Complaints Related to Judgments contrary to impartiality and behaving contrary to impartiality

- In 2005 853 complaints
- In 2006 547 complaints (as of 27.09.2006)

Among the 1400 complaint files in 2005 and 2006:

- Permission granted to open an investigation to 14 files and after the investigation 4 of them are submitted to the discretion of High Council.
- 1345 files were rejected
- Examination of 41 files are pending.



III- ELIMINATION OF PREJUDICES AND DISCRIMINATION IN THE JUDICIARY

Equality before the law is a basic rule set out in the general principles section of the Constitution.

- All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.
(Art. 10 of the Constitution)



Judges are bound by the Constitution and laws in their judgment.

According to the Constitution judges shall give judgment in accordance with the Constitution, law, and their personal conviction, in conformity with the law.

(Art. 138 of the Constitution)



The Rule of Elimination of All Types of Discrimination in the Turkish Criminal Code

In the implementation of the Criminal Code, discrimination is not allowed between people on the basis of race, language, religion, sect, nationality, colour, gender, political and other opinion, philosophical belief, national or social origin, birth, economic and social status.

(Art. 3/2 of TCC)



IV- ADOPTION OF JUDICIAL ETHICS

The Bangalore Principles of Judicial Conduct 2002 has been adopted by a decision of the High Council of Judges and Public Prosecutors on 20.06.2006, (Decision No:305).

It has also been published in the Justice Journal of September 2004 which is distributed to all judges and public prosecutors free of charge.

Turkish translation of The Bangalore Principles of Judicial Conduct 2002 is published in the web site of the Ministry of Justice.



Apart from the adoption of The Bangalore Principles of Judicial Conduct, Turkish legal system already includes almost all principles mentioned in the Bangalore Principles in various laws.

Also, Turkish judiciary is sensitive in principles of judicial conduct and has a strong tradition of implementation.

Bangalore Principles of Judicial Conduct is in the curriculum of the Turkish Justice Academy.

In this regard judicial ethics seminar is given for 4 hours to all candidate judges and public prosecutors and relevant national and international documents are examined in the seminar.



The High Council of Judges and Prosecutors agreed to recognize the Budapest Principles adopted by the Conference of Prosecutors General of Europe. This document will be disseminated to all judicial branches as decided in the meeting of the High Council of Judges and Prosecutors on 10.10.2006. (Decision No. 424)



V- EXISTENCE OF APPROPRIATE DISCIPLINARY PROCEDURES

The Constitution provides that investigations of judges or public prosecutors may be possible in the following conditions:

- If they have committed offences in connection with, or in the course of their duties,
- Whether or not their behavior and attitude are in conformity with their status and duties.



Disciplinary Procedure and Criminal Investigation of Judges and Prosecutors

- Permission of the Ministry of Justice

Initiating disciplinary investigation on behaviour and conduct not conforming with profession and initiating criminal investigation on offences in connection with the profession is subject to the permission of the Ministry of Justice (Law on Judges and Prosecutors, Law No: 2802, Article 82).



- Disciplinary investigation or criminal investigation may be initiated upon a complaint or denunciation.
- The denunciation or complaint petitions on judges/prosecutors are submitted to the Directorate General for Criminal Affairs. In the DG for Criminal Affairs a judge is appointed to examine the complaint and make an assessment on whether to investigate or not.



The denunciations and complaints shall not be processed unless they include:

- definite event or concrete evidence
- name, address, signature, etc.
- new evidence on the event which was investigated before

Also subjects which take part in the jurisdictional and appraisal competence of judges and can be claimed in objection or appeal phases and denunciation or complaint petition given by mentally ill persons shall not be processed (Law no:2802, Article 97)



On complaints which are processed, a senior judge/prosecutor or judicial inspector conducts a preliminary investigation (Law no: 2802, Article 82)

- According to the report prepared after the preliminary investigation;
 - If the events claimed against the judge/prosecutor cannot be proved, it is decided not to proceed further.
 - If the events are proved, it is decided to give permission for initiating investigation
- Upon permission for investigation, a senior judge/prosecutor or judicial inspector leading the investigation, takes the statement of judge/prosecutor and prepares a report. This report is submitted to the DG for Criminal Affairs and examined therein.



- Upon assessment of that unit;

- If it is necessary to impose disciplinary sanction, the investigation file is sent to the High Council of Judges and Prosecutors

- If it is decided to open a criminal investigation, the investigation file is sent to Prosecution Office concerned

- If the choices mentioned above are not applied, the investigation file is finalized and after this phase Ministry of Justice shall not intervene in investigation (Law no: 2802 Article 87). At this phase all transaction relating to disciplinary or criminal investigation are conducted by a judge discharged in Ministry of Justice. It is possible to object or appeal to Administrative Courts against the transactions conducted during the investigation.



Imposing Disciplinary Sanctions Against Judges and Public Prosecutors

- The right to impose disciplinary sanctions against judges is vested in the High Council of Judges and Public Prosecutors.

(Constitution Article 159/3; Law No.2461, Article 4/1; Law No: 2802, Article 62/1)



- The report, prepared as a result of an investigation is examined by the High Council of Judges and Public Prosecutors and a decision is taken on disciplinary matter.
- The report is not binding for the High Council.
- Judges and Prosecutors shall not be subjected to disciplinary sanctions without being granted the right of defence. (Law No:2802 Article 71)
- If three years have lapsed after committing an action requiring a disciplinary sanction, the judge neither shall be subject to any disciplinary investigation nor a sanction, with the exception of offences requiring the Expulsion from Profession and Change of Location sanctions. (Law No:2802, Article 72/2)



- The conditions under which judges may be subjected to disciplinary sanctions are prescribed in Law No 2802 Article 62-69. Accordingly, the following disciplinary sanctions may be applied depending on the nature and gravity of disciplinary actions;

- a- warning
- b- deduction from salary
- c- condemnation
- d- suspension of grade development
- e- suspension of degree promotion
- f- change of location
- g- dismissal from profession



- Judges and public prosecutors can request re-examination of the case from the High Council. Furthermore an objection can be made to the Council of Examination of Objections. (Law No 2802 Art 73)

No objection or appeal may be made to any court against decisions of the High Council.



CONDUCTING CRIMINAL PROSECUTION AGAINST JUDGES AND PUBLIC PROSECUTORS

A-OFFENCES WITH RESPECT TO DUTIES

- If a criminal prosecution is initiated against a judge/prosecutor (as a result of investigation or inquiry initiated by the Ministry of Justice either ex officio or denunciation or complaint,) the prosecution file shall be sent to the public prosecution office nearest to where the suspected judge performs his duty. (Law No.2802, Art.89/1)
- The public prosecutor shall prepare the indictment within five days and submit it to the Heavy Criminal Court (HCC).



- The HCC shall decide whether or not a criminal case is opened.
- If the HCC decides that a criminal case should be opened,
- Cases against those have a first degree and serving in HCC's are brought before the Court of Cassation,
- Cases against other judges and public prosecutors are brought before the HCC of their judicial area. (Law No.2802, Art.89/2,90)



B- PERSONAL OFFENCES

The Ministry of Justice has no competence on offences merely in connection with personal offences. The Chief Public Prosecutor of the HCC which is in the nearest judicial region shall conduct the investigation and the HCC concerned shall try the case. (Law No: 2802, Art.93)