



Economic Crime Division
Directorate of Co-operation
Directorate General of Human Rights and Legal Affairs
January 2008

COUNCIL OF EUROPE COOPERATION PROGRAMME

**Ethics for the Prevention of Corruption in Turkey (TYEC)
CoE Project No. EC/1062**

WORKING PAPER: A JUDICIAL CODE OF CONDUCT

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PC-TC(2008)44

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author's own and do not necessarily reflect
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1. INTRODUCTION

This report is concerned with the development of a Code of Conduct for the judiciary identified in Output 7:

Output 7	The development of codes of conduct for elected office holders and the judiciary will have been supported
Activity 7.1	Organise workshops on the needs and possibilities for developing codes of conduct for elected office holders and the judiciary: Introduction and brainstorming sessions with recommendations to what extent and scope these codes shall be developed
Activity 7.2	Support the development and drafting sessions of identified Codes of Conduct for elected office holders through workshops and direct technical advice

2. INTERNATIONAL STANDARDS

The international agenda on the integrity and independence of the judiciary is contained in:

The UN Basic Principles on the Independence of the Judiciary 1985;
The Bangalore Principles of Judicial Conduct 2002;
The UNODC Report on Strengthening the Judiciary against Corruption 2001;
The Report of the Fourth Meeting of the Judicial Integrity Group, UNODC, 2005.

In addition, the Technical Guide on Strengthening Judicial Integrity and Capacity, and the Commentary for the application of the Basic Principles (the Bangalore Principles) on Judicial Conduct are under consideration for publication by UNODC.

3. OVERALL EXPECTATIONS

These documents address a number of key themes relating to the judiciary. These include:

- judicial independence in its individual aspects (i.e. the ability to act free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason);
- impartiality (i.e. the ability to act without favour, bias or prejudice);
- personal conduct which is above reproach in the view of a reasonable observer or user of the criminal justice system;
- propriety and the appearance of propriety in the manner in which the judge conducts his or her activities, both personal and professional;
- an awareness, understanding and recognition of diversity in society and respect for such diversity;
- competence;
- diligence and discipline.

3.1 Judicial Independence

‘Judicial independence’ also refers to the institutional and operational arrangements defining the relationship between the judiciary and other branches of government and ensuring the integrity of the judicial process. The arrangements are intended to guarantee the judiciary the

collective or institutional independence required to exercise jurisdiction fairly and impartially over all issues of a judicial nature.

There are three essential conditions for judicial independence: security of tenure for all judicial appointments; financial security; institutional independence with respect to matters of administration that relate directly to the exercise of the judicial function, including the management of funds allocated to the judicial system, assignment of judges, distribution of cases, access to sittings of the court, court administration and record-keeping, and court lists.

3.2 Judicial Independence and Immunity

Judicial independence does not require that judges should enjoy immunity from the application of normal laws, except to the extent that a judge may enjoy personal immunity from civil suits for alleged improper acts or omissions in the exercise of judicial functions. Where such immunities are provided, the preferred approach, in order to limit the potential for judges to avoid prosecution for corruption and so as not to undermine the credibility of the judiciary, is a “functional” approach, so that judges are only immune from prosecution for offences that are alleged to have taken place in the course of, or as a consequence of, carrying out their judicial duties.

In order to ensure that the “functional” approach cannot be misused to avoid criminal liability, it is also essential to provide a process for lifting the immunity in appropriate circumstances, along with safeguards for ensuring that the process is transparent, fair and consistently applied. Examples of various European approaches are given in Table 1.

4. CODES OF CONDUCT

In this regard, and like other public officials, the fairness and impartiality of the judicial process requires that no judge should be above the requirements placed on other public officials. In particular there should not be any conflict of interest between a judge and those before the court. The judiciary should therefore consider the adoption of, and compliance with, a national code of judicial conduct that reflects contemporary international standards. A body such as a Judicial Services Commission, or Constitutional Court, should be responsible for supervising and enforcing the Code, dealing with allegations, and adjudicating on the lifting of judicial immunity.

The code should at the least impose an obligation on all judges to declare their assets and liabilities and those of their families to an appropriate body and available for verification and monitoring. It should also reflect the guidance provided in the legislation governing the disclosure of more general conflicts of interests and standards of public conduct which are the responsibility of the Council of Ethics for the Public Service.

5. THE CONTENTS OF THE CODE

In fact, a Turkish judicial Code of Conduct would, by drawing on the Bangalore Principles and comparing them to the *Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials*, have much in common with the Code applicable to other public officials – see Table 2.

Table 1: Judicial Immunity: A European Overview

SOURCE	<p>Http://www.uni.-wuersburg.de/law</p>	<p>http://www.uni.-wuersburg.de/law</p>	<p>www2.unimaas.nl/~elseweb</p>	<p>www.advoris.de</p>
LEGAL REGULATION	<p>Constitution – Art. 87, 88 Law on Court Regulation</p>	<p>Constitution - Art. 152</p>	<p>Law on Judicial Authority (1999) – Section 101 Law on Justices of the Peace (1997) – Section 54 Law on Examining Magistrates (1988)</p>	<p>Constitution (1995) – Art. 97, 98 Law on Judges – Art. 25 Law on Federal Constitutional Court</p>
SUBSTANCE OF IMMUNITY	<p>The judges are independent in conducting their official activity.</p> <p>The judges are dismissed after retiring at certain age.</p> <p>The judges can be removed, transferred or retired against the judges' will only through an official judicial decision in the cases, provided by the law. The established form of removal from office must also be observed.</p> <p>These requirements are set forth in the Law of Court Regulation. They do not apply on retirement or transferring to another position, when the transferring or retirement are imposed by structural changes in the courts.</p> <p>Special Cases with Constitutional Judges</p> <p>A Constitutional Judge is removed from office on not carrying out official duties without justified</p>	<p>The magistrates become irremovable from the moment of their appointment.</p> <p>There is a prohibition for their removing from office unless through an efficient judicial decision. The judges can be transferred to other positions only with their consent and in accordance with the applicable laws.</p>	<p>The Justices of the Peace and the justices' clerks cannot be prosecuted in connection with statements made or decisions taken while carrying out their official duties.</p> <p>The Law on Judicial Authority broadens the range of penal non-liability also for the General Commissioners of income tax and the justices' clerks' assistants. There has been established Immunity from action</p>	<p>The following terms of office are constitutionally fixed: lifetime, for a specified term, with a test term, ad hoc and honorary.</p> <p>Lifetime tenure is appointed to a judge who has at least three years of experience after the appointment to a judicial position.</p> <p>Appointing a judge for a limited term of office is possible only as provided by the Federal Law. The judge can be dismissed six, twelve, eighteen or twenty-four months after the judge's appointment to the position.</p> <p>Appointing a judge for test term is applied to judges who are to be later appointed for a lifetime tenure or as a prosecutor. Such a judge can be appointed for a lifetime tenure or as a prosecutor no later than five years after the test term appointment. The term can be prolonged in case of suspension without compensation. The test-term judge can be dismissed three or four years after the judge's appointment.</p> <p>The judge ad hoc can be appointed to lifetime tenure no later than two years after the appointment. The regulations for the judges with a limited term of office are applicable to judges ad hoc.</p> <p>Honorary judges (schoffen) are judges who are appointed and carry out judicial activity only in the cases, provided by the law. Those judges are dismissed preliminarily only</p>

	<p>reasons. Constitutional Judges retire at the age of seventy.</p> <p>Incompatibility of Constitutional Judges</p> <p>Constitutional judges cannot be members of:</p> <ul style="list-style-type: none"> € the Federal or Local Government; € the National Council; € the Federal Council; € a general representative authority; € political parties. 		<p>through a judicial decision. Their obligation to observe the session hall confidentiality is expressly regulated.</p> <p>The judges are independent and are solely subordinate to the law.</p> <p>The judges who have been appointed on regular terms can be preliminarily dismissed, transferred and retired against their will only through a court decision and on the basis and in the order, defined by the law.</p> <p>The judges are subject to official control, conducted by a senior official supervision. The range of that control is expressed by the possibility to indicate the unlawful conduct of official duties and to appeal for lawful and immediate settlement of official affairs. If the judge claims the measures of that supervision affect the judge's independence, then the Official Court (a senate to the Federal Supreme Court) adjudicates the case.</p> <p><u>Responsibility of the Federal Judges and Grounds for Removal from Office</u></p> <p>The responsibility of the federal judges emerges when Constitutional rules or Constitutionally established order of a certain province have been offended. In such circumstances, according to Art. 98 of the Constitution, a federal judge can be transferred or retired through a decision of the Federal Constitutional Court. The decision is taken with a majority of two thirds and suggested by the Federal Parliament. In cases of knowing violation of official duties, the judge can be dismissed.</p> <p><u>Grounds for Dismissal</u></p> <ul style="list-style-type: none"> - the loss of German citizenship according to Art. 116 of the Constitution. - at entering public-law relations with a higher instance unless the law provides otherwise or with the appointment to a professional military position or to limited-term military service. In such cases the Senior Official Supervision, in accord with the higher instance, and with the consent of the judge can decide that the judge is allowed to carry out the judge's judicial activities alongside with the new responsibilities. - in case of refusal to be sworn in. - when at the time of the appointment the judge is a member of the Federal Parliament or a provincial parliament and has not terminated the mandate in the
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				<p>period, indicated by the Senior Official Supervision.</p> <ul style="list-style-type: none"> - in case of appointment after the judge has completed the maximum eligible age. - handing in of resignation. - when the judge has reached retirement age or is practically unable to conduct the judge's duties and has not voluntarily resigned. - when the judge permanently resides abroad without the consent of the Senior Official Supervision. - through a court decision. <p><u>Special Cases of Removal from Office through a Court Decision</u></p> <p>Lifetime tenure judges and limited-term judges can be removed from office against their will only through an efficient court decision.</p> <p>Judges are removed from office on the basis of a court decision, taken by a German court., according to the Law on Justices in case of:</p> <ul style="list-style-type: none"> - imprisonment for more than one year for committing a crime. - crime against the peace. - high treason. - action threatening the democratic constitutional state. - high treason within a certain province. - action threatening the state's external security. <p>When deprived of the right to serve in a public office or with the loss of basic rights as a result of misuse of those rights, judges are removed from office.</p> <p><u>Disciplinary Responsibility of Judges</u></p> <p>Disciplinary measures can be undertaken against judges for misconduct of judicial duties.</p> <p><u>The Competent Authority for Judging Disciplinary Responsibility, Removing from Office, Transferring and Retirement of Judges</u></p>
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<p>LIABILITY OF MAGISTRATES</p>				<p>The Federal Official Court is competent in adjudicating disciplinary proceedings, retirement of judges, transferring judges for the benefit of justice administration, matters concerning invalidity of appointment and revocation of appointment, removing from office, retirement because of practical inability to carry out official duties, matters concerning the extra-judicial activities of judges and official supervision. The Federal Official Court is established as a special senate to the Federal Supreme Court.</p> <p><u>Special Cases with the Federal Constitutional Court Judges</u></p> <p>The regulations for federal judges apply to the Federal Constitutional Judges - Art. 105 of the Constitution.</p> <p>The Federal Constitutional Court can, with a majority of two thirds, authorize the federal President to:</p> <ul style="list-style-type: none"> - pension off a judge from the Constitutional Court because of a long-term inability to carry out judicial duties; - to dismiss a Constitutional Court judge if the latter has been sentenced to more than six months of imprisonment or has been sentenced for a dishonoring deed; - to dismiss a Constitutional Court judge if the judge has guiltily violated judicial duties so that holding the same judicial position is excluded. <p><u>Special Cases with Prosecutors</u></p> <p>Prosecutors are subject to subsidiary application of regulations concerning judges - Art. 122 of the Law on Judges.</p>
			<p>Under certain circumstances magistrates can be subject to civil court action for damages, for example, inflicted as a result of certain decisions taken by those judges.</p> <p>Such circumstances are: ∈ review of court decision, where the magistrate appears or is represented in the quality of defendant;</p>	

				<p>€ appeals before the Supreme Court according to a written consent between the claimant and the defendant on the facts of the case;</p> <p>€ a petition for inquiry by the Attorney General, sent before the Supreme Court.</p> <p>In the above-mentioned circumstances the Justices of the Peace, the Justices' clerks and the Justices' Clerks' Assistants can be personally charged to cover the judicial costs of the other party in the proceeding. The Law on The Justices of the Peace envisages the possibility for magistrates to be dispensed from the responsibility to pay the awarded judicial costs (immunity from costs) by the respective Committee of Magistrates. The Law on Judicial Authority, amending and complementing the Law on the Justices of the Peace, broadens the protection of the justices of the peace, the justices' clerks and the justices' clerks assistants. According to that law the magistrates' obligation for compensating the judicial costs of the other party in the proceeding is diminished. Judicial immunity does not apply to cases where magistrates have acted improperly or penal proceeding against them has been initiated.</p>	
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SOURCE	http://www.uni-wersburg.de/law	http://www.uni-wersburg.de/law	http://www.uni-wersburg.de/law	www.asem.org	http://www.uni-wersburg.de/law http://constitution.rediris.es/codigo.html , http://www.docuweb.c.a.sispain.politics/court/court.html
	GREECE	DENMARK	SPAIN	ITALY	http://www.uni-wersburg.de/law http://www.corteconstituzionale.it

LEGAL REGULATION	Constitution (1986) - Art. 87,88,99	Constitution (1992) - Art. 64	Constitution (1992) - Art. 117, 119, 121, 159 Law on Constitutional Court	Constitution (1947) - Art. 104-107 Constitutional Law of 09.02.1948 Rules for the Functioning of the Court of Cassation
SUBSTANCE OF IMMUNITY	<p>While carrying out their judicial duties, the judges comply only with the Constitution and the Law.</p> <p>Control on judges is exercised by higher judges, by the Prosecutor and the deputy prosecutors of the Supreme Court. The Prosecutors are controlled by members of The Supreme Court of Cassation and by higher prosecutors.</p>	<p>The Constitution provides for complete independence of judges. In conducting their judicial duties they comply only with the law.</p> <p>Judges can be removed from office. The decision for that is taken by a special court after bringing the suit. The court is constituted by three professional judges, each one respectively from the Supreme Court, a court of appeals and a court of first instance. After the sentence becomes efficient the judge is removed from office.</p> <p>Judges cannot be transferred without the judges' consent except for cases of restructuring of the legal system.</p>	<p>Judges and magistrates in Spain constitute the so-called judicial authority. They are independent, irremovable and responsible only before the legal regulations.</p> <p>Judges and magistrates cannot be transferred, removed from office or pensioned off except as provided by the law.</p> <p>In case of damages inflicted as a result of mistakes in the activities of the judicial authority and the judicial administration, the Constitution provides the right for compensation by the Government.</p> <p>Only one side of the concept for immunity, that of penal non-liability, is found in the legal regulations, concerning the statute of judicial magistrates. Judges and magistrates are exempt from liability in the cases, provided by the law.</p> <p>The Attorney General enjoys the benefit of immunity similar to judicial immunity.</p> <p><u>Special Cases with the Constitutional Court Judges</u></p> <p>The Constitutional Court is the senior interpreter of the Constitution. That is why this constitutional institution is supreme and independent of all other state institutions.</p> <p>The members of the Constitutional</p>	<p>Magistrates' immunity perceived as penal non-liability and penal immunity is not regulated in the Constitution. The Constitution however contains provisions which are closely related to immunity and which in combination with immunity guarantee the independence of judicial authority.</p> <p>Judges are irremovable. Judges can be removed from office only through a decision of the Supreme Judicial Council (SJC) which provides the opportunity for judges to defend themselves before it.</p> <p>Judges are appointed, transferred or promoted only through decisions of the SJC. It is also the competent authority for imposing disciplinary measures on magistrates. The Minister of Justice has the power to initiate disciplinary proceedings.</p> <p>Judges are liable for damages inflicted by them knowingly or through rude negligence as a result of action or inaction in the process of conducting judicial duties.</p> <p>The regulations for judges are applicable for prosecutors, included in the judicial system.</p> <p><u>Constitutional Court Judges</u></p> <p>Constitutional Court judges enjoy the benefit of immunity perceived as penal immunity. They cannot be subject to search. Their homes cannot be searched. Constitutional judges</p>

			<p>Court are independant and irremovable for the term of their office.</p>	<p>cannot be imprisoned unless through an effective sentence.</p> <p>Penal immunity is not applicable in cases where a judge has been caught in the spot committing a crime and the crime is such as to require custody.</p> <p>The Constitutional Court is the competent authority for lifting immunity, if there is a demand for lifting a constitutional judge's immunity, the president of the Court appoints a commission of three judges to investigate the case and sets a date for a session of the Court not sooner than one month after receiving the demand.</p> <p>The concerned judge must be informed about the demand and the court session and can study the materials brought to the president and present documents. The judge has the right to be heard by the Court. The Constitutional Court takes the decision for lifting immunity through secret voting.</p>
<p>LIABILITY OF MAGISTRATES</p>	<p>Special rules have been established for civil claims against the Judicial Authorities.</p> <p>A special statute regulates judicial liability for guiltily inflicted damages as a result of negligent conduct of judicial functions.</p> <p>Judicial claims against magistrates are considered by a special court. The Court is presided by the Chair of the State Council. The members are a councillor of the State Council, a member of the</p>			

	Supreme Court of Cassation, a councillor of the Audit Office, two acting law professors from the law schools of the Universities in the country and two lawyers who are members of the High Disciplinary Council of the Bar and who are appointed by casting lots. Judicial magistrates can be removed from office only through court decision in cases of sentence, heavy disciplinary infringement, illness, disability, which are verified as provided by the law.			
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	PORTUGAL	http://www.parlamento.pt/leis/consyituicao-ingles	SWEDEN	FINLAND	FRANCE
SOURCE	Constitution - Art. 212, 224 par. 5	www.bild.net	Constitution (1989)- Section 11, Art. 5, par. 1, 2	http://www.uni.-wersburg.de/law	www.asem.org
LEGAL REGULATION	The substance of immunity is perceived as penal non-liability and penal immunity; Judges have the benefit of the provisions for independence.	The Constitution regulates judicial immunity only in one aspect - that of penal immunity. A lifetime tenure judge can be	The Constitution does not contain direct provisions concerning immunity. Certain regulations have been established to ensure stability. Transferring a judge to a different position can only happen with the	Constitution - Art. 103	Constitution - chapter VIII, Art. 64 Regulation N 58 - 1270 on the activities of judicial authority
SUBSTANCE OF IMMUNITY					The judicial authority is independent. That is guaranteed by the President of the Republic. In carrying out judicial duties magistrates are independent and the judges' decisions are solely based on the law.

<p>LIABILITY OF MAGISTRATES</p>	<p>impartiality and immunity. Judges are not liable for their decisions except in the cases provided by the law.</p>	<p>removed from office if the judge has committed a crime or has repeatedly shown gross negligence while carrying out judicial duties. If the removal from office has taken place through a decision of a non-judicial authority, the lifetime tenure judge has the right to demand a review of the decision in court.</p>	<p>judge's consent.</p>	<p>Judges of the general court system are irremovable. They cannot be transferred to different, even higher positions without their consent.</p> <p>A centralized principle has been established in the prosecutor's office (subordination of the lower prosecutor to the higher). Prosecutors have unlimited freedom of speech in court sessions.</p> <p>The Supreme Judicial Council participates in nominating magistrates by presenting a suggestion to the President of the Republic or by expressing its competent opinion (avis conforme).</p> <p>The Supreme Judicial Council is the competent authority for imposing disciplinary measures on magistrates. The Minister of Justice has the initiative to bring a disciplinary proceeding.</p>
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Source: compiled by the Parliamentary Internship Program in Bulgaria, translated by ABA-CEELI, Bulgaria, 2002

Table 2: Bangalore Principles and the Turkish Code for Public Officials		
BANGALORE PRINCIPLES	MAIN EXPECTATIONS	RELEVANT ARTICLE OF TURKISH CODE
INDEPENDENCE	Free from influence Promote public confidence	8, 9
IMPARTIALITY	Free from influence Avoid conflict of interest No prejudicial comment	5, 6, 9, 10, 13
INTEGRITY	Avoid any appearance of conflict of interest	9, 13, 14
PROPRIETY	Accept restrictions to ensure impartiality Preserve dignity of office Avoid favouritism or partiality Avoid financial influence No gifts Avoid political or other involvement	13, 14, 15, 18, 22
EQUALITY	No discrimination Courtesy Equal treatment	5, 6, 10, 11
COMPETENCE AND DILIGENCE	Full time Continuing professional development Courtesy and fairness	5, 6, 7, 10, 11, 16, 19

Given such a complementarity, the concept of a Code for the judiciary should be seen as acceptable both in terms of international standards and in terms of the expectations placed on other public officials by the Turkish law.

6. DELIVERY

It is expected that such a Code should be the responsibility of the judiciary themselves, either through a Judicial Services Commission, Constitutional Court, or equivalent body. It would be expected that the Code, its delivery, training, and investigations, would parallel the work of the Ethics Council.

The area of conflict of interest and asset declaration should be clearly defined and the declarations should be regularly updated. They should be inspected after appointment and monitored from time to time by an independent official as part of the work of a Judicial Services Commission, Constitutional Court, or equivalent body. They should also be available for inspection by counsel in the judge's court in order that they may be reviewed by litigants for possible conflicts of interest. The less such a requirement is less open to public scrutiny the more the code must emphasise that a judge, having made a declaration in an appropriate way, knows that they must act consistently with it and disqualify themselves if a situation of conflict in fact arises.

A code of conduct will be effective only if its application is regularly monitored, and a credible, preferably independent, mechanism is established, preferably independent of the

judiciary, to receive, investigate and determine complaints against judges and court personnel, fairly and expeditiously. Appropriate provision for due process in the case of a judge under investigation should be established bearing in mind the vulnerability of judges to false and malicious allegations of corruption by disappointed litigants and others.

A code of judicial conduct may be supplemented with a code of conduct for court personnel.

7. SOURCES

For further guidance the following should be consulted:

- The UN Basic Principles on the Independence of the Judiciary 1985.
- The Bangalore Principles of Judicial Conduct 2002.
- The UNODC Report on Strengthening the Judiciary against Corruption 2001.
- The Report of the Fourth Meeting of the Judicial Integrity Group, UNODC, 2005.

The reports are in the public domain and accessible as follows:

- The UN Basic Principles on the Independence of the Judiciary 1985 - www.unhchr.ch/html/menu3/b/h_comp50.htm.
- The Bangalore Principles of Judicial Conduct 2002 - www.coe.int/t/dg1/legalcooperation/judicialprofessions/ccje/textes/BangalorePrinciplesComment.PDF.
- The UNODC Report on Strengthening the Judiciary against Corruption 2001 - www.unodc.org/pdf/crime/gpacpublications/cicp10.pdf.
- The Report of the Fourth Meeting of the Judicial Integrity Group, UNODC, 2005 - www.unodc.org/pdf/corruption/publication_jig4.pdf.