

## Turkey / Turquie

### MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

- a) of prosecutors;
- b) of the judiciary or the justice system as a whole;
- c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

### Questions

#### IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

Usually the Ministry of Justice reacts at this point. The other public institutions and agencies react in coordination with the Ministry of Justice as to the parts concerning judicial matters.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

The Ministry of Justice deals with the matters related to the prosecution services.  
The CJP carries out the measures for the independence of the prosecutors.

3. Are these measures reflected in the law or in the prosecution policy or debate?

Yes.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

The Independence of prosecutors is guaranteed by the Constitution.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

There is no specific decision in this regard, but all the public institutions and agencies as well as citizens have internalized the fact that the independence of prosecutors is guaranteed by the Constitution.

6. Does the prosecution system in your country belong to the judiciary?

Yes, the prosecution system is part of the judiciary. Its physical needs and interinstitutional relations are dealt with through the Ministry of Justice.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

It is parallel. The CJP ensures the independence of judges and prosecutors. (The administrative acts and actions of the prosecutors are carried out through the Ministry of Justice)

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Prosecutor office is independent from the executive and legislative branches of the State. (The administrative acts and actions of the prosecutors are carried out through the Ministry of Justice.)

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

The prosecutor office is not dependent on any of the actors above mentioned. The prosecutor office interacts with all the actors based on the principle of the independence of prosecutors. Prosecutor is the chief of the police and investigation authorities from the moment of start of the prosecution. The police and investigation authorities have to obey instructions of prosecutors.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Yes, the CJP performs this duty.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

Since 2017 the prosecutors (also judges) do not vote in the election of the CJP members.

10. Who has the initiative of disciplinary proceedings?

The CJP has the initiative of disciplinary proceedings.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

They are appointed for a life term. They are not retired before age 65 against their will (as guaranteed by the Constitution).

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes. The CJP conducts the same procedures for prosecutors as those it carries out for judges.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The government definitely cannot give instructions to the prosecutors.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Senior prosecutors cannot give those under their supervision or junior prosecutors any verbal or written instruction.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

Chief prosecutors decides the allocation and management of cases as division of work that was determined by him/her before and also known by the prosecutors working with him/her.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

The code of ethics was prepared and published. The pre-vocational and vocational training hereof is effectively carried out.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

It is reflected in the code of ethics in depth. The Declaration of Judicial Ethics was adopted at the General Assembly meeting of the CJP on 6 March 2019. It was announced to the public with a press meeting on 11 March 2019, and was communicated to all serving judges and prosecutors. It has essentially been based upon the fundamental principles of respect

for human rights, independence, impartiality and integrity. Adherence to ethical principles is one of the main criteria for the appointment and promotion of judges and prosecutors.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

Since this topic (the decisions of international courts and treaty bodies as regards the practical independence of prosecutors) is very specific, generally the media is not interested in.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The prosecutor offices learn about these decisions in the vocational training courses and seminars held by the Ministry of Justice and the Justice Academy of Turkey (Generally there is no interaction with the broad public).

## **DECLARATION OF ETHICS FOR TURKISH JUDICIARY**

Judges and prosecutors are 'wise, perceptive, honest, trustworthy, honourable and resilient' persons who ensure in the performance of their duties that justice is provided with the utmost sensitivity and accuracy, act with professional responsibility, and are aware that they affect the lives of humans and the society through all their acts, decisions, and behaviours, and that the protection of their reputation in the eyes of the society will also enhance the reputation of the Turkish judiciary. They conduct their duties independently and impartially within the authority granted to them by the Constitution and laws, adopting universal values with a free conscience. They sincerely adopt the principles stated in this declaration and promise, on their honour and conscience, to act in line with these principles in their professional and social lives.

Judges and prosecutors:

1- Respect human dignity, protect human rights and treat everyone equally

1.1. Reflecting our civilization's embracement as well as the universal acceptance of the inviolability of human dignity, always rely on human dignity and act in compliance with human rights and freedoms.

1.2. are aware that the principle of human rights-based state can be fulfilled only through efficient protection of human rights and freedoms, and are conscious of their responsibility thereof.

1.3. accept that living together entails respect for differences, understanding each other, and treating everyone equally.

1.4. absolutely reject discrimination on the basis of language, religion, sect, race, ethnicity, nationality, sex, political view, social and economic status, birthplace, lifestyle, age, health status, physical appearance, marital status and so on, and they do not use a discriminatory discourse. They know that positive discrimination enshrined in the Constitution shall not be considered as violation of the principle of equality.

1.5. give confidence to the society and all those involved in judicial processes, including their colleagues, lawyers, judicial staff, witnesses, experts, and particularly those wishing to access justice, that the principle of equality is applied. They prevent, within their area of duty and authority, any actions that might undermine this trust.

## 2- Are independent

- 2.1. are the guarantee of fair trial and rule of law, with their independence.
- 2.2. act with the awareness that judicial independence is granted for fulfilling the judicial function free from any influence or pressure.
- 2.3. unconditionally reject any influence or pressure that might directly or indirectly affect their independence.
- 2.4. render their decisions independently, without any concern about any possible negative reaction from individuals, institutions, or public, and without feeling obliged to please them.
- 2.5. are aware that for ensuring and maintaining trust in the judiciary, it is important to not only be independent but also to appear as such.
- 2.6. are aware that independence does not mean being irresponsible and privileged, but on the contrary, it aims to ensure justice in accordance with the principle of accountability.
- 2.7. know that accountability, according to the procedures and substantives specified in laws, does not undermine their independence, but rather consolidates it by increasing public legitimacy.

## 3- Are impartial

- 3.1. act impartially by refraining from discriminating against or favouring any party, in pursuance of a fair trial.
- 3.2. not only act impartially but also take a stance to eliminate any doubt about their impartiality from an objective perspective. They are aware that for ensuring and maintaining trust in the judiciary, it is important to not only be impartial but also to appear as such.
- 3.3. refrain from any kind of discriminatory discourse and conduct incompatible with the principle of impartiality in their professional and social lives, and they take care not to violate their impartiality through their speech or body language.
- 3.4. act with the foresight that any comment, evaluation, or statement shared via mass media, especially the social media, might easily result in certain consequences that go beyond its original purpose and thus make their impartiality questionable.
- 3.5. do not let their personal opinions and ideas cast doubt on their impartiality and do not act with prejudice. They monitor themselves not to be influenced by their own biases or preferences in performing their duties.
- 3.6. maintain their impartiality even in cases where a positive or negative public opinion has been formed.
- 3.7. refuse to engage in any biased behaviour for the interests of their own, their relatives, or their social circles in the exercise of their duties, and do not compromise their impartiality.
- 3.8. do not provide any advantages to their colleagues or former colleagues who currently work as lawyers, experts, mediators, or perform other judicial professions, and they do not create such an impression.

## 4- Are honest and consistent

- 4.1. being aware that honesty and integrity are indispensable elements of the high character required by the profession, they act in accordance with these traits in both their professional and social lives.
- 4.2. In line with their honesty, they seem as they are and be as they seem.
- 4.3. are sensitive in fulfilling their promises in order to protect their professional reputation. They act in a careful manner in order not to engage in any situation that may cast doubt on their honesty.
- 4.4. do not deviate from integrity in their words and behaviours, as well as in their work and acts, even if they foresee that this will result in unfavourable consequences for them.
- 4.5. act in such a manner to ensure that there is no doubt about their honesty during judicial procedures, including any doubt by parties against whom a judgment has been rendered.

- 4.6. perform their duties by considering consistency in their practices as required by the principle of legal certainty.
- 4.7. do not interpret consistency as rigidity, and they take social changes into consideration.

#### 5- Represent trust in the judiciary

- 5.1. ensure and strengthen trust in the judiciary with all their acts, actions, and decisions, with the awareness that trust in them is directly and inseparably connected with trust in the judiciary.
- 5.2. ensure, through their dignified attitude, that they are trusted by everyone, particularly the Turkish Nation on behalf of which they make decisions.
- 5.3. consider with maximum care and attention whether they need to withdraw from duty when they notice that a perception, doubt, or concern that may harm trust in them has been formed.
- 5.4. carefully refrain, at any place and any time, from any attitude or behaviour that might undermine trust in the judiciary or make it questionable.
- 5.5. act sensitively in their private lives not to cast doubt on their professional reliability.
- 5.6. use their freedom of expression in such a manner that they do not harm trust in the judiciary or do not show political bias.

#### 6- Consider confidentiality

- 6.1. consider confidentiality, not as a means of hiding information from the public but to provide justice by protecting the rights of those involved in judicial procedures.
- 6.2. protect the confidentiality of any state secrets, business secrets, or private information about individuals or institutions that they obtain in connection with their duty.
- 6.3. do not use any secret or information that should be kept confidential to their own benefit or to the benefit or the detriment of others. They do not violate the confidentiality of such information via social media or any other means.
- 6.4. ensure that those having access to confidential information as part of their duties, particularly the court staff, abide by confidentiality.
- 6.5. accurately identify the information that must be kept confidential. In cases where confidentiality interferes with the principles of openness and transparency, the right not to be labelled as criminal, the right to information, the right to defence, and freedoms of press, information, and expression, they act in consideration with keeping the sensitive balance between the honour and reputation of persons and public interest.
- 6.6. ensure confidence that the information and secrets entrusted to the judiciary are protected, and they respect the confidentiality of such information and secrets even after the end of their service.

#### 7- Act with propriety as required by their profession

- 7.1. Being aware of the value added to their lives and the responsibility laid on them by their profession, they act with the sensitivity that their duty requires.
- 7.2. act within the framework of principles of respect and courtesy in their professional and social relationships, and they consider the influence of their words and behaviours on others.
- 7.3. are aware that the society expects them to be virtuous, in addition to providing a quality judicial service.
- 7.4. use a reconciling discourse and act prudently and cautiously in all circumstances.
- 7.5. create an efficient working environment by working with their colleagues in harmony, cooperation, and mutual respect while exercising their duties.
- 7.6. are willing to share their professional knowledge and experience with their colleagues.

7.7. act in accordance with the ethical principles of the profession while sharing their comments or explaining their opinions in print, audio-visual, or social media within the framework of their freedom of expression.

7.8. are constructive and considerate in their comments and evaluations regarding the functioning of the profession and the judicial decisions. They do not subject the competence of their colleagues to debate in a manner that might harm the reputation of and the trust in the judiciary.

7.9. do not accept any gift, donation, loan, aid, or favour which is, or may seem to be, in connection with the exercise of their duty. They do not take advantage of the power arising from their position and profession. They ensure that others who are close to them and the staff they work with also respect this rule.

7.10. ensure that public goods and services and human resources are used in the most effective and proper way and in compliance with their purposes, taking into consideration the requirements of the service.

7.11. pay due attention to their private lives to ensure protection of their professional reputation.

7.12. do not allow persons that they are in contact with in their private lives to influence their acts and decisions, and they refrain from any attitude or behaviour that might give an impression that these persons have the power to exert such an influence. Neither do they allow anyone to create such an impression.

7.13. protect their professional reputation by carefully selecting the environments and places where they will spend their social lives.

#### 8- Are competent and act diligently in their profession

8.1. perform their duties on the basis of their conscience and in a manner befitting their moral maturity, competence, and merit.

8.2. are aware of the impact that their decisions and acts may have on the lives of those concerned and on the society. Therefore, they conduct all their professional activities with due care and diligence and attach due importance to them. They address every problem with the same sensitivity and solution-oriented approach.

8.3. take care to reach all sources of information required to render a fair decision and to support their acts with sufficient justification.

8.4. assume responsibility to receive the necessary training to update and improve their professional knowledge and to follow scholarly advances, domestic and international legal developments, and case laws in their field.

8.5. know that enhancing their professional competence contributes to their capability to decide independently from external influences.

8.6. perform their duties without delaying justice and within a reasonable time.

8.7. set a good example in terms of professional ethics through the attention they pay to their behaviour as well as their commitment to their duty, endeavour, and sedulity.

8.8. use their working hours efficiently and act with maximum care not to hinder the public duty. They know that time is important for everyone and act sensitively in this regard.

8.9. do not make any requests concerning appointments, changes in place of duty, and their rights related to employment that would be incompatible with the principle of fairness.

This declaration is a binding document that sets the ethical principles to be pursued by the judges and prosecutors of the Republic of Turkey. When judges and prosecutors encounter any situation that is not mentioned in this declaration, they act in compliance with the spirit of the above principles, which they have promised on their honour and conscience to observe. Declaration of Ethics for Turkish Judiciary is a promise made by judges and prosecutors to the Great Turkish Nation on behalf of which they decide and to each individual in it.