

SOCIOLOGICAL FACTORS AFFECTING THE JUDICIAL DECISION MAKING  
OF JUDGES IN CONTENTIOUS CASES IN TURKEY



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## PLAGIARISM

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

11 / 01 / 2023

Arca Begüm Bayır- Oğuz

## ABSTRACT

The judicial decision-making process refers to the judge's process of concluding a case. According to legal formalism, the judge decides based on legal rules in their decision-making processes. As opposed to legal formalism, legal realism argues that judges are affected by multiple factors in their judicial decision-making processes, such as their life, education, professional experiences, personal beliefs, etc. The research question is, what are the sociological factors that affect the judges' judicial decision-making processes in controversial cases in Turkey? The significance of this research is that judiciary investigations study in the legal discipline framework. However, sociological studies on the judiciary in the international works are gradually gaining intensity. These studies enable to see human factor in the various dimensions of the judiciary. This dissertation aims to contribute to the developing interdisciplinary approach from sociology to jurisdiction. The qualitative research method was used in this study. The sample of this thesis is that judges who work in Turkey, and their ages are between 30 and 55. The study's data were obtained by conducting in-depth interviews with ten judges and using the researcher's semi-structured interview form. The collected data were analyzed by applying the content analysis method. The dissertation findings show that based on Bourdieu's theoretical perspective, class, family, education, and culture affect judicial decision making, but in addition to these factors, emotions, experiences, gender, workload, media, social pressure factors also influence the judicial decision-making processes of the judges in Turkey.

**Key Words:** *Judge, Judicial Decision Making, Sociological Factors, Contentious Cases, Turkey*

## ÖZET

Yargısal karar verme süreci, yargıcın önüne gelen bir davayla ilgili sonuca ulaşma sürecini ifade etmektedir. Hukuki formalizme göre, yargıçlar karar verme süreçlerinde sadece kanun koyucu tarafından oluşturulan kurallara göre karar vermektedir. Bu görüşün karşısında olan hukuki realizme göre, yargıçlar yargısal karar verme süreçlerinde yaşam, eğitim, profesyonel deneyimleri, toplum, kişisel inançları vb. gibi faktörler tarafından etkilenmektedir. Bu araştırmanın temel sorusu, Türkiye’de tartışmalı davalarda yargıçların yargısal kararlarını etkileyen sosyolojik faktörler nelerdir? şeklindedir. Bu araştırmanın önemi, Türkiye’de yargı alanına yönelik yapılan çalışmalar hukuk disiplini etrafında şekillenmektedir. Oysa, uluslararası alanda yargı konusunda yapılan sosyolojik çalışmalar giderek yoğunluk kazanmaktadır. Bu çalışmalar, yargının insan faktörüne vurgu yapan farklı boyutlarını görmemizi sağlamaktadır. Bu çalışmada nitel araştırma yöntemi kullanılmıştır. Araştırmanın örneklemini, Türkiye’de yargıçlık görevini yapan ve yaşları 30 ile 55 arasında olan kişilerdir. Araştırmanın verileri, araştırmacı tarafından geliştirilen yarı yapılandırılmış görüşme formu kullanılarak, on yargıç ile derinlemesine görüşme gerçekleştirilerek elde edilmiştir. Toplanan veriler içerik analizi yöntemi uygulanarak analiz edilmiştir. Araştırmanın sonucunda, Türkiye’de tartışmalı davalarda Bourdieu’nun teorik perspektifine dayanarak sınıf, aile, eğitim, kültür etkisi görülmekle birlikte, bu faktörlere ek olarak duygular, deneyimler, toplumsal cinsiyet, iş yoğunluğu, media, sosyal baskı faktörlerinin de yargıçların yargısal karar verme süreçlerine etkisi olduğu görülmüştür.

**Anahtar Kelimeler:** Yargıç, Yargısal Karar Verme Süreçleri, Sosyolojik Faktörler, Tartışmalı Davalar, Türkiye.

To my mom Safiye Akkul Bayır  
and my husband Şenol Oğuz...



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*“One of the characteristics of such courts is not to only convict innocent people but also to condemn without knowing the cause”*

*Franz Kafka, Case*

## **CHAPTER 1**

### **INTRODUCTION**

Law as a discipline needs to be investigated from various perspectives and sociology considers law as one of the social institutions that should be discussed in social relations. Sociology of law defines law as a social phenomenon construct and product of social reality that studies society and law relations from different perspectives (Gurvitch, 1947, p.47). Sociology of jurisdiction is one of these fields of study, which investigates the relationship between the judicial decision-making processes of judges and their personal, educational, and social background, political preferences, ideological positions, etc. (Sancar & Atilgan, 2009, p.40).

Presiding judges have the power and influence of the justice system compared to other public officers. One of the cornerstone questions for judges is how to reach their decisions, discuss lawyers, legal scholars, litigants, and so on for years. An analysis of judicial decision-making from the view of legal formalism claims that every judicial decision is based on a mathematical formula. The judge finds and applies a convenient legal rule to make a "correct" decision which means all cases decide in this pure mechanical approach which is defined in common law as independent and impartial. Formalists essentially comprehend judges as isolated from society and adjudicate a strict rule-based application (Guthrie et al., 2007, p.40) On the other hand, legal realism criticizes the formalist perspective on judicial decision-making and demonstrates that these approaches deny the judge's complex role between facts and rules (Cardozo, 2005,

p.99). The traditional approach to decision-making brings more gaps between the current lived situations of society and judges. This approach claim that the law is "indeterminacy". The various factors play a role in the complex judicial decision-making process, such as life experience, educational and professional background, personal beliefs, the previous and current social context, etc. (Dagan, 2007, p.611). No matter which legal rule is there, the significant point is how judges' lenses see this case and from where. Thus, when they interpret the cases, they also define which class, gender, ethnicity, etc. can/cannot behave or act like this. According to Bourdieu, the law should be demonstrated from its theoretical and practical meanings. The theoretical meaning define the law as an abstract theory organized as an independent and objective system. However, the practical meaning of the law is determined by lawyers, counselor, judges etc. were affected by various factors. Legal practitioners apply the theoretical understanding of law in specific cases by interpreting rules and principles. That is the reason all the uncertainties in its practical side of the law should be analyzed (Bourdieu, 2005, p.19).

This thesis seeks to address the following research question: what are the sociological factors that affect the judges' judicial decision-making processes in controversial cases in Turkey? The subsequent research examines the sociological factors that affect judges' judicial decision-making processes in contentious cases in Turkey through Bourdieu's concepts: habitus, capital, and field. The dissertation used qualitative research methods by conducting in-depth interviews with ten judges using a semi-structured interview form. This research highlighted the issues arising from the formalist approach. The importance of this thesis is to make an original contribution to how judges judge, from a sociological perspective to jurisprudential issues. The dissertation findings show that based on Bourdieu's theoretical perspective, class,

family, education, and culture are impact on judicial decision making, but in addition to these factors, emotions, experiences, gender, workload, media, social pressure factors also influence the judicial decision-making processes of the judges in Turkey. The first part of this dissertation will demonstrate the concept of judicial activity and the judicial activities of the judge, which are the interpretation of the law, the discretionary power, and the creation of the legal rule. The second part of this research will clarify Sir William Blackstone's, legal formalism, and legal realism explanations of the judicial decision-making process. The third part of this study will explain this dissertation's theoretical and conceptual framework. The fourth part of this research will express the research method, which consists of the research sample, limitations, the role of the researcher, the ethics of the research, the data collection and analysis process, and the validity and reliability of the research. In fifth part of this research will discuss the research findings. The last part of this research will show discussion.

## CHAPTER 2

### THE JUDGE'S JUDICIAL ACTIVITIES IN TURKEY

#### 2.1. The concept of judicial activity

The powers are divided into legislative, executive, and judiciary according to the 1982 Constitution<sup>1</sup>. The jurisdiction is demonstrated by Article 9 of the 1982 Constitution, which states that this authority is exercised by “independent courts on behalf of the Turkish Nation.” Judicial activity is classified into two types: organic/formal and material. The activities of the courts define formal/organic judicial activity, but it could argue that a definition is insufficient because it does not include the administrative activities of judges and courts. In a material sense, judicial activity applies accepted law to an existing dispute by judges and courts (Kuru et al., 2014, p.57). In that sense, the formal and material definitions of judicial activity appear as two elements that resolve the legal dispute. Considering all of these, the concept of judicial activity defines as the application of abstract legal rules to a concrete case, that is, a dispute that solves in accordance with judicial procedures by judicial organs that claim to be independent and impartial (Tanriver & Hanagasi, 2021, p.3). At this point, the judge's primary responsibility is to resolve the legal dispute and apply the provisions of the legislation to the case. The judge carries out this process in three ways. These appear to be the judge's interpretation of legal rules, using the judge's discretion and creating a legal rule.

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<sup>1</sup> <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.2709.pdf>

## **2. 2. The judge's judicial activities**

### **2.2.1. Interpretation of legal rule**

To resolve the dispute and apply the relevant legal rule, the judge first understands what that rule means. At this point, determining the meaning and scope of the rule are referred to as legal interpretation (Aybay et al, 2017, p.313). In Turkey's legal doctrine, the interpretation of the legal rule, which is one of the judge's judicial activities, is defined by jurists. According to Aral (1985, p.184), the goal of interpreting the legal rule is to ensure that it reaches a reasonable conclusion and is revealed the meaning of the rule. Dinçkol (2005, p.128) explains that to elucidate the meaning of rule in a legal proceeding. On the other hand, Hatemi (2021, p.75) states that interpretation aims to reveal the applicable and necessary meanings. Dural and Sarı (2011, p.124) defined interpretation as a mental process used to determine the legal provision. Oğuzman and Barlas (2013, p.67) who provide a definition that supports this explanation, define interpretation as determining the meaning of a statutory provision.

While Zevkliler and Havutçu (2005, p.76) defined interpretation as the process of determining what the legal rule truly means and what it covers, Gedik (2002, p.12) broadens the definition and expresses it as the judge's interpretation and reintroduction of the legal norm. Given the explanations provided, it is possible to define legal interpretation as revealing the semantic features of texts in legal sources (Özsunay, 1981, p.211). Regarding the judge's interpretation, the views of classical interpretation theory and realist interpretation theory are considered (Gözler, 2017, p.287). According to the classical interpretation theory, a legal rule can be applied to any legal situation. In this case, the judges reveal and apply the meaning of the relevant legal rule (Akipek & Akıntürk, 2007, p.106). According to the realist interpretation theory, the legal text contains more than one norm, at which point the interpretation is a choice among these

norms. The judge's interpretation and the process of creating law are seen through the lens of this viewpoint (Gözler, 2017, p.288). Aside from resolving the stated legal dispute, the judge requires interpretation while carrying out his judicial duties for various reasons. The first one is the inability of previous laws to meet the needs of modern times. Given that an earlier law reflects the conditions of its time, it should be determined whether it will be used with the same meaning the next time. The judge adopts the rule to today's conditions in this regard (Dinçkol, 2005, p.127). Secondly, legal rules are composed of words and sentences that follow a specific grammatical order. As a result, concepts, sentences, and words must be clearly understood to comprehend the rule of law (Serozan, 2013, p.136). Then judges decide which provision is abolished, regulated, accepted, or applied in contradiction and uncertainty. These kinds of uncertainty and inconsistency in the provisions of some rules arise, necessitating interpretation (Işıқтаç & Metin, 2003, p.184).

### **2.2.2. Judicial discretion**

The judge is required to apply the provisions of the law in the cases, but the relevant legal rule may be too general or abstract to cover the specifics of the case. In such cases, the legislator gives the judge's discretion based on the circumstances of the case (Oguzman & Barlas, 2013, p.92). For example, the judge's discretionary is mentioned in Article 4 of the Turkish Civil Code<sup>2</sup>. The discretion is critical considering the emphasis placed on legal limitations in the judge's trial process. In the Turkish legal doctrine, the discretionary, which is one of the judge's judicial activities, is defined in various ways by jurists.

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<sup>2</sup> “In matters where the law gives discretionary or orders to consider the requirements of the situation or justified reasons, the judge decides in accordance with the law and equity.”

According to Dinçkol (2005, p.266) the judge's discretion, along with any legal rule, is to take the necessary measures and make decisions based on the characteristics and structures of the cases. Akipek and Akıntürk (2007, p.142) support this definition, the judge's discretion means the ability to adapt the law's abstract and flexible provisions to the concrete and specific case. Edis (1973, p.172) broadens the definitions and defines discretion as knowingly and willingly filling the gaps left by the legislator the judge's features in the case by evaluating emotions such as moral considerations, unity of law, and social justice. Arbitrary behavior occurs when a person in a position of authority acts arbitrarily in the context of the judge's own beliefs (Dinçkol, 2005, p.271). On the other hand, the judge's discretion has been opened to discuss whether the judge behaves arbitrarily. While exercising this authority, the judge should decide the precise limits of discretionary to avoid giving the impression that the judge is above the law (Aral, 1985, p.205). Özsunay (1981, p.254) states the precise limits of discretionary and divides these limits into internal and external borders. He defines internal borders as the obligation of the judge to act reasonably and the obligation to act in accordance with fairness, which emphasizes that the judge decides objectively by separating from the judge's feelings, thoughts, and judgments. Moreover, it must be appropriate for the purpose specified by law and compatible with justice and societal value judgments. The concept of equity and justice reveals interrelatedly. The idea of equity includes the principles and rules in the characteristics of the concrete case examined by the judge. The concept of judge's justice is linked to mental development, conscientious education, and understanding of society's value judgments (Tekinay, 1987, p.77). Regarding the external borders, the judge's discretion is recognized by the law, which indicates that the rules bind the judge. External borders are given discretion by identifying and drawing the limits set by the law. The judge's inability to go beyond

the limits drawn by the law indicates that the use of authority stems from the law and the conformity of its form, purpose, and scope to the specified article (Dinçkol, 2005, p.275).

### **2.2.3. Creation of legal rule**

In the Turkish legal system, the obligation of judges to resolve disputes is regulated in Article 36<sup>3</sup> of the 1982 Constitution. The judge's creation of law emerges in cases where there is no law provision to resolve the legal dispute. In that sense, the judge expecting from the judge to fill the emerging legal gap by making a rule like a legislator. However, the judge must set a rule while keeping the concept of equity in mind (Aslan & Şenyüz, 2017, p.74). In Turkey's legal doctrine, law creation is defined in various ways by jurists. According to Aktaş (2010, p.16) the judge's creation of law is absent in positive law regarding a dispute. That needs to be resolved legally, and the fact that it has not regulated an issue that should be regulated by positive law, which is contrary to its rule-based order. However, Dural and Sarı (2011, p.132) distinguish between a legal vacuum and a law gap, stating that the legal vacuum is the judge's inability to find provisions in both the law and customary law. In contrast, the law gap is the absence of any provision in the law. The judge's creation of law should occur not at the point of a gap in the law but at the point where there is a legal vacuum Aktaş (2010, p.17) supports the emphasis on customary law in the definition of the law gap by stating that positive law expresses the gap in written law and covers the gap in customary law. On the other hand, Oğuzman and Barlas (2013, p.95) define the law gap as creating a rule in the

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<sup>3</sup> “Everyone has the right to a fair trial by claiming and defending as plaintiff or defendant before judicial authorities by using legitimate ways and means. No court can refuse to solve the case if it is within its mandate and jurisdiction”

absence of a provision to resolve the dispute. It is possible to argue that the resulting gaps are assessed differently in private and public law. For instance, the judge does not create law within the scope of the principle of legality in crime and punishment, which is applicable in criminal law, which is one of the fields of public law<sup>4</sup> (Aytaz, 2015, p.73). Besides that, the Supreme Court's decision<sup>5</sup> on the subject support this idea. As a result, it is possible to say that there is a gap in the law, mainly in the field of private law (Aslan & Şenyüz, 2017, p.74).

#### **2.2.4. Other types of gaps expected to fill in the judge's judicial activities**

There are several distinctions among the legal vacuum discussed above in the section on the creation of law by the judge. Apart from the legal gap discussed in the judge's creation of law section, there are other gaps in judicial activities. They all are evaluated to distinguish between the law gap and the gap in the provision. Addressing these points is critical in obtaining comprehensive information. At this point, pointing out that there is a lot of debate in the doctrine about these distinctions. However, in the study's scope, primarily opinions are included. In the light of the law gap, firstly, conscious, and unconscious gaps, the conscious gap occurs when a legislator does not intentionally and

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<sup>4</sup> *In civil law, a private law field, "the law is applied in all matters that it touches with its word and substance. When there is no applicable provision in the law, the judge decides based on customary law. If this is not the case, the judge decides based on the rule judge would have made if the judge had been a legislator" judges find a solution through discretionary judicial activity.*

<sup>5</sup> *"...in our opinion, it is unacceptable as a rule that the authority to create law, which is granted to the judge in the resolution of disputes in the field of private law, is also recognized in the field of public law, and that this authority is used particularly in determining the scope and content of strike bans. Otherwise, the path to enforcing strike bans that are not expressly stated in the law will be opened. As a natural result, both the right to strike will be damaged, and serious doubts and hesitations will arise in exercising a constitutional right. When an unlawful strike is considered a crime and is subject to hefty legal and penal sanctions, the drawbacks of such an opinion become more evident"*

willingly decide to resolve a legal dispute, thereby leaving it open. On the other hand, unconscious gaps occur in the form of “gaps arising from negligence” due to the legislator’s lack of care and carelessness, as well as gaps seen due to various reasons such as technological changes after the emergence of the law, which is referred to as “actual gaps” (Oğuzman & Barlas, 2013, p.100). Secondly, open and covered gap. The open gap refers to there being no provision applicable to the case in terms of the content of the dispute, which is expected to be resolved by the law by interpreting the law (Hatemi, 2021, p.95).

Covered gap, even though there is a provision in the law regarding legal disputes, this gap is mentioned in cases where the legal rule is not convenient to apply. In other words, this provision conflicts with another equivalent provision, and using the provision would violate the rule of good faith and cause abuse of the right (Oğuzman & Barlas, 2013, p.102). In the light of the gap in the provision, intra-legal refers to the gaps left by the legislator voluntarily and knowingly to be filled by the judge. The discretion of the judge is mentioned in filling the gap here. (Kırca, 2001, p.93). Article 4<sup>6</sup> of the Turkish Civil Code states that it is expected to decide on the dispute based on the facts of the case and equity (Serozan, 2013, p.176). According to Turkish Civil Code Article 12<sup>7</sup> explains for adulthood are not clearly stated and the situation is left to the judge’s discretion. Another situation in which there is a gap in the rules is when the law refers to customs and traditions (Dural & Sarı, 2011, p.135). Article 367<sup>8</sup> of the Turkish Civil Code can be used as an example. Instead of defining the characteristics

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<sup>6</sup> “the judge decides on an equitable basis in matters where the law grants discretionary power and orders to consider the requirements of the situation or justified reasons.”

<sup>7</sup> “a minor who has completed the age of fifteen can be made adult by the court upon request and with the consent of a guardian.”

<sup>8</sup> “If the community formed by more than one person living as a family has a house head determined by law, contract, or custom, this person’s authority to manage the house”

of the concept of the head of the house, society's customs and traditions to which the law provision applies to the case. According to Serozan (2013, p.177) the judge acts as a legislator and makes decisions within the framework of the positive legal order.



## **CHAPTER 3**

### **JUDICIAL DECISION MAKING AS “PURE LOGIC” OR “DETERMINATE”**

Through the process of judges’ judicial activities, they decide about the case, which calls a judicial decision-making process. There are various theories concerning judicial decision-making processes. These points of view will be discussed and evaluated in this section. Firstly, Sir William Blackstone’s thoughts and legal formalism followed by legal Realism in America will be explained.

#### **3.1. Preceding theories on judicial decision-making processes**

##### **3.1.1. Sir William Blackstone**

One of the prior theorists of the judicial decision-making processes was Sir William Blackstone. According to him, judges must find and apply the law, and they cannot make law. Moreover, when judges decide controversial cases, they discover the law which preordained by God (Capurso, 1998, p.8).

##### **3.1.2. Legal formalism: judicial decision making as pure logic?**

Legal formalism shares Blackstone’s opinions regarding evaluating the judicial decision process as linear, but in addition more he argues that law as God’s law against positivism. The formalist view holds that the legislator’s rules determine the outcomes of legal disputes. According to this view, the law system is independent; its source is the legislator’s will, provides certainty, and has the power of coercion (Uygun, 2020, p.79). This view emphasizes the importance of law practitioners adhering to the pure meaning of the law rather than expanding the objective boundaries by drawing a framework for judges’ decision-making processes (Schauer, 1988, p.510). Moreover, the judges make objective, impartial decisions in the cases by providing

rational justifications for every legal dispute by stating the legal rule (Chowdhury, 2017, p.59). The judge only must implement the law made by the legislator to be precise and consistent for every case (Hasnas, 1995, p.87). It is significant to maintain their opinions on the judicial decision-making process based on this. Positivists claim that all judicial decisions distinguish three equations. This equation includes the legal rule “R,” the facts of the case “F,” and the decision of the judge, “D.” This formula is presented as  $R \times F = D$ . This perspective claims that a judge’s decisions are the product of two elements: the legal rule and the facts (Frank, 2017, p.648). After the judge determines the case, the rule is applied. This theory places statutory and common law and judge’s applicable process of law and argues that judges under the mathematical formula demonstrate the conclusion. Other judges decide by using the same formula. The formalist advocates that when the facts are determined, the judge finds and applies a proper legal rule to make a “correct” decision (Capurso, 1998, p.9). There are interpretative law schools and conceptual jurisprudence movements that comment on formalism in the judicial decision-making process. These two views, like formalism, evaluate the judge’s judicial competencies solely in the context of this formula.

### **3.1.3. American legal realism: judicial decision making as determinate?**

One of the most effective reactionary theories of how judges decide is that concerned by realists against earlier theories of judicial decision making. The influential famous names of the judicial activities are Eugene Ehrlich, Karl Llewellyn, Jerome Frank, Oliver Wendell Holmes, and Joseph Bingham. Realists evaluate this view as “transcendental nonsense.” For them, “laws are products of human creation, and not ideal entities drawn up heaven” (Benditt, 1978, p.2). Realists stress that judges do not find and apply the

law; judges make the law depending on cases. According to this perspective, inconsistencies in judicial decisions about cases result from various judges' views, personalities, etc. That is why law encompasses all complex relations, and systems are always dynamic and uncertain (Frank, 2017, p. 844). Frank also adds that judges' decisions are based on "judicial hunch," was defined by Judge Hutcheson as "and brooding over the cause, the judges for the feeling, the hunch that intuitive flash of understanding that makes the jump-spark connection between question and decision and at the point where the path is darkest for the judicial feet, sets its light along the way" (Hutcheson, 1929, p.278). In further support of this explanation, Haines excludes the formalist view and presents that judges' decisions are affected by the judge's personality, economy, social, political, lifelong experiences, etc. Only logic and comparison do not develop a new perspective for judicial decision-making to be evaluated and should interact with other social sciences (Rock, 2015, p.2024).

## CHAPTER 4

### THEORETICAL AND CONCEPTUAL FRAMEWORK

#### 4.1. Theoretical framework

##### 4.1.1. Bourdieu's theory of practice into judicial-decision making

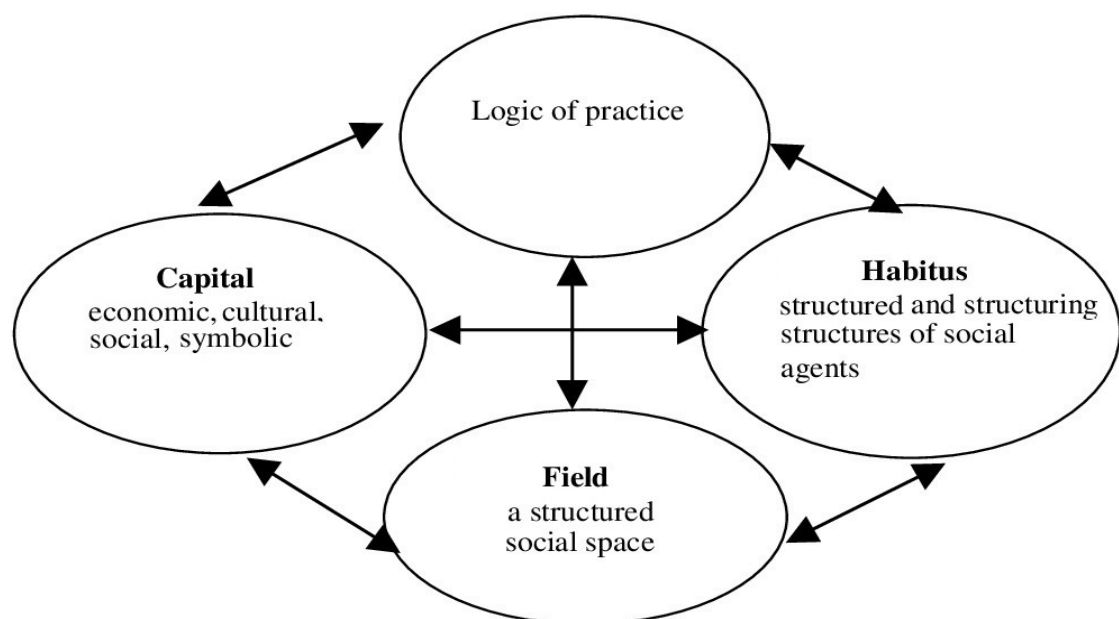
Bourdieu has developed a basic outline for a theory of practice consisting of major conceptual categories habitus, capital, and field. At that point, he begins by criticizing two approaches in his view of the law. Firstly, formalists regard law as a closed, independent, objective, and autonomous system whose only criterion is its internal dynamics. (Bourdieu, 2005, p.17). Secondly, the Marxist point of view considers law as a tool of the economic ruling class by reducing the unique form of legal dynamics. According to him, the law should be explained from two perspectives: its practical and theoretical meanings. The practical meaning of the law is "determined by the confrontation of various groups, e.g., judges, lawyers, counselors, and so on, affected by various idiosyncratic interests" The law emerges because of the conflict between agents in the field. The theoretical meaning describes the law as an abstract theory organized as an autonomous and self-sufficient system, but all the uncertainties and deficiencies in its practical origins with the ideas of consistency and justice. Legal practitioners are more concerned with applying this system in specific cases which interpret rules and principles (Bourdieu, 2005, p.19). Two factors determine legal and social practices. The first is that the situation law consists of competitive struggles and authority disputes that give meaning to social practices. This term includes the law's different occupation groups' power relations. The second is the logic of legal functionality constantly limits the actions which can occur and the scope of legal solutions with these constraints (Bourdieu, 1987, p.816).

#### 4.1.1.1. The concept of relationality in the Bourdieu's approach

Many fields in the social sciences examine using relational theories. The relational theory defines as a viewpoint on how individuals, groups, society, and social movements interact with one another and how their connections are shaped by their differences. According to Bourdieu's relational approach, social and mental structures are constructed by dependent, complex, and interdependent relations. All relations patterns should be analyzed to find truth (Bourdieu & Wacquant, 2012, p.61). Bourdieu uses the concepts of habitus, capital, and field to analyze social functioning from a relational perspective.

**Figures 1**

*Bourdieu's concepts of habitus, capital, field, and their relationality*



#### 4.1.1.1.1. Habitus

Bourdieu developed the concept of habitus in his relational approach has two essential aims. The first is to avoid an objectivist view that perceives the agent as a mechanic. The second is to abstain from a subjectivist perspective which comprehends the agent as a conscious intention and a purposeful person. Habitus clarifies individuals' tendencies, predispositions, and knowledge because of the cultural environment in which they were born and raised. However, it does not merely determine behavior on its own. It is a constructive mechanism that operates continuously within perpetrators and is the principle of developing strategies to cope with the various events (Bourdieu & Wacquant, 2012, p.27). It reflects systematizing the social perception, internalizing the situations of dividing them into logical classes by dividing them into social categories (Bourdieu, 1996, p.170). It is also possible to argue that this concept emerged due to the internalization of social structures of a mechanism or principle that internally directs and organizes the field agents. The social formation that shapes the agent's practice produces the habitus, and the habitus that shapes the practices also reproduces the structures (Bourdieu, 1992, p.122).

According to Bourdieu (2005, p.255), "habitus is what systematizes all of an agent's practices because they are the product of applying identical patterns, while also distinguishing them according to a certain system from the practices that make up another lifestyle" Habitus also refers to factors such as language, ethnicity, and class that exist in our minds and are a result of our social experiences, which includes socialization in the sociological context. In the process of socialization, the agent acquires thoughts and actions as a member of a class or social group, the reality of which he does not question. This process includes all the ideas and behaviors that shape the actor's perception of the world. The individual's world is created to embody what

the individual acquires and functions in this socialization process. What we refer to as social reality manifests internally in mind, i.e., in habitus, and externally in things, i.e., in fields (Bourdieu & Wacquant, 2012, p.63).

Although the practice is the most effective tool, it is the concrete form of activity based on habitus and creates it.

...the theory of practice, in contrast to empiricism, asserts that the objects of knowledge are not passively inscribed but constructed, whereas the principle of this construction, in contrast to intellectualist idealism, is a system of universal categories and a priori forms peculiar to a transcendent subject rather than the historical transcendence represented by the habitus, a system of structured and constructive dispositions that are socially constructed, acquired through practice, and continually directed toward practical functions (Bourdieu, 1992, p.111)

Another feature of habitus is its connection to both collective and individual history. It tends to the person's actions and disposition based on the person's previous experiences. Bourdieu demonstrates that habitus is used to comprehend the performance of different agents in the legal field. It consists of various differentiation, linguistic performance, and effectiveness based on hierarchy. For example, one of the actors in the legal field is the judge is not simply obtained legal consequences from the case but also has partial autonomy in this field. This situation is the essential criteria for distributing the legal authority's determined capital. In essence, while numerous dynamics are routinely impacted in such lawsuit processes, most of these dynamics are judge's habitus (Bourdieu, 2005, p.23).

#### 4.1.1.1.2. Capital

Bourdieu used capital as a concept concerning habitus, which differs from Marx's economic-based explanation. According to him, capital allows a person to participate and achieve the gains brought by competition within the processes in a social field. The acquisition and maintenance of capital are based on habitus, and actors gain tendencies about habitus and institutions such as family, school, etc. In other words, it is the entire set of social relations in which the actors' acquisitions form their capital because of their habitus, and production and reproduction occur within the field dynamics. People accumulate various capitals in this context. This distinction causes changes in the practices' usage patterns. For example, education, language, and habits, the actors' capital due to their group membership and social connections, can have a different effect in another field. It is critical to examine the relationships between the actors' mental structure, social structure, and positions (Bourdieu & Wacquant, 2012, p.60). Their position in the field determines the system of tendencies people acquire during their socialization, referred to as their capital. Bourdieu asserts that the actors active in the field gain power in proportion to the amount of variable capital by emphasizing that the social structure is established through the distribution of capital types. He clarifies capital in four types—economic, cultural, social, and symbolic (Bourdieu & Wacquant, 2012, p.62).

Economic capital refers to an individual benefit from material values they have. Cultural capital is a person's knowledge of the values cherished in society—for example, a person's diploma, school, etc. Cultural capital exists in three forms: embodied cultural capital, objectified cultural capital, and institutionalized cultural capital. The embodied cultural capital is seen in the body's posture and movements, which mostly happen unconsciously and is acquired with characteristics such as

language, habits, and writing style. There are learned according to the family's social status, beginning in childhood, and producing the most severe effect of equality in the field of education. Objectified cultural capital symbolizes tastes and competence by accumulating the cultural goods—for instance, books, pictures, paintings, etc. The individual's cultural capital takes a form of institutional recognition, such as with diploma and academic position. Institutionalized cultural capital is becoming concrete with the obtained titles through education. (Bourdieu & Wacquant, 2012, p.64). Social capital is gained through group membership and is closely associated with habitus and symbolic capital. It refers to the network of people in a society that the individual knows and can rely on for support. These can be seen as families, schools, institutions, relatives, etc. Lastly, symbolic capital refers to an individual's related features such as appearance, prestige, stance, and speech. They both represent an accumulation from the past (Bourdieu & Wacquant, 2012, p.66).

#### **4.1.1.1.3. Field**

Bourdieu defines the field concerning habitus and capital. He demonstrates that society, education, art, sports, and so on are all made up of distinct but related fields. Social positions and socialization of individuals are related to power relations that are effective in all areas. Qualifications, achievements, and accumulations that are valuable in the field form that occurs the own capital of that field. The power is positioned within the field in accordance with this capital. Thus, the amount of the actors' capital determines their social position and is the primary reason for power inequalities in the field. In this way, social reality is created by the dominant groups that hold the most capital in the field. On the other hand, the field refers to where social activities are formed. Moreover, not only all relationships and networks in the field consist of various

logic, but also all fields have interconnected with each other, and the struggle and conflict of actors depending on their capital take place fluid and dynamic structure in the field (Bourdieu, 1992, p.65). Although each field is reproduced and regulated, they have some constant thoughts or situations in the field, such as “doxa.” Doxa is the absolute reality and is accepted without question in the field. For this reason, there is a constant movement in the field about what can be a subject of struggle and what cannot be and things that cannot be dealt with called “doxa” (Bourdieu, 1992, p.57). According to Bourdieu (1992, p.130), the analysis of a field should begin with three essential points. These are the field’s position according to power, the objective structure of the relations between the subjects of the competing actors or institutions, and actors’ habitus. This refers to the different predisposition systems that actors acquire through the internalization of social, political, and economic circumstances, defined, and revealed within the field in question should be analyzed in the field. When placing the law in the legal field, it is possible to express it as internal assumptions, rules, original behaviors, and values that maintain its structure (Bourdieu, 1987, p.806). In other words, actors’ different capital struggle in the dynamic legal field to have the monopoly of the right. The language, stance, rhetoric, and interpretation styles of the actors who perform in this field to the extent of their capital are the presentation of their various capital. For instance, professionals in this field redefine and translate issues into legal language that can be expressed in everyday language and create a demand for their services. As a result of the power to represent the law and act on behalf of the state behind this language, the judge, who is one of the legal professionals, will have far more influence within the jurisdiction than in other areas of expertise in law (Bourdieu, 2005, p.34).

Language, as one of the most powerful tools in this field, plays an essential role in conveying the impression of being objective, impartial, and universal, as stated within the framework of formalism, because linguistic procedures attempt to maintain the illusion of impartial and objective information by separating the law from colloquial language. For example, the words “approve” and “acceptable” are used by judges to refer to supra-subjective values and create the perception that decisions are made independent of the judge’s personality. The main reason for this is that the perception of the legal field created by legal formalism is reconstructed, reproduced, and rationalized through the actors of that field (Bourdieu, 2005, p.14). This closed system argues that the conflict in the field can merely be resolved through legal rules and traditions. When the judge is in the legal field, who has the legal legislation defined in formalism. Legal formalist concepts of the objectivity and impartiality of law are “doxas” in this legal field which is the absolute reality, and actors are accepted and adopted without question (Bourdieu, 2005, p.31).

Bourdieu claims that judges use the legal regulations in accordance with their habitus, and for him, these legislations are solely a tool considered to be used by the judges. The judges’ socialization processes, ideology, positions in the field, etc., should be examined in terms of how multiple factors impact interdependently judicial decision-making processes (Bourdieu, 2005, p.14). However, the source of the legitimacy mechanism required by the judge in judicial processes in the state. Based on this power, the judges claim that they make an impartial and objective decision (Bourdieu, 2005, p.40). The assumption that the judge can interpret legal norms objectively in their judicial decision-making processes causes the judge to restate impartial and objective law claims. According to Bourdieu, the judges can interpret the legal dispute by narrowing or stretching the application of the rule of law within broad freedom of

interpretation. That is to say, the decision made at the end of the trial process is an extension of the practice of law and the judicial activity of the judge. Although the judges argue that they decide based on legal regulations, considering two judges who decide differently in the same case, the main point of the differentiation is related with the concept of habitus (Bourdieu, 2005, p.15).

## **4.2. Conceptual Framework**

### **4.2.1. Jurisdiction, judge and judicial decision making**

Legal formalism argues that every judicial decision is mechanical and based on finding and applying the proper legal rule to decide. This perspective comprehends judges as strictly dependent on rules (Guthrie et al., 2007, p.9). Within this understanding, where the legislator is considered superior, the judge transforms into a "technician," interpreting the legal rule and principles within the legal framework (Chowdhury, 2017, p.59). In other words, this approach states that the judge solely applies legislatively enacted the rule of law, which is why judicial decision-making processes are precise and consistent (Hasnas, 1995, p.89). The formalist view impacts the law system and other disciplines and shapes how to look at the law. In sociology, Durkheim (1995, p.42) clarifies a social phenomenon as external pressure on individuals, whether they are aware of it or not, independently of individuals. He defines law as an abstract social phenomenon that becomes a positive phenomenon through legislation procedure. As opposed to Durkheim, Weber (2012, p.144) claims that the law cannot be explained by a single reason which should investigate from various perspectives. The formalist method cannot provide a deeper understanding of the law. On the contrary, the law enforces society both physically and psychologically.

During this time, the formalist approach criticized terms of ignoring human factors in the law discipline.

In Turkish legal doctrine, the legal formalist perspective on law continues today. Gözler (1999, p.91) states that law is a "binding rule system" and consists merely of positive laws, and the duty of the jurists is not to advise the legislator but to use the legal rule. Eroğul (2010, p.29) defines the law as the rules which regulate society and are supported by public power. Yelbaşı (2014, p.248) argues that law is the plural of the word right, rights, and interests protected by law and the set of rules that regulate the relations between individuals in society and are authorized sanctioned to be obeyed by state power. In law, the system of jurisdiction resolves legal disputes through independent courts (Tanör & Yüzbaşıoğlu, 2013, p.444). Gözler (2000, p.834) expands on this explanation and defines jurisdiction as a system of legal disputes that are resolved and decided definitively by independent and impartial courts and judges. In the historical process, the understanding of formalism has begun to be questioned by different scholars, and one of them is H.L.A Hart. As noted above, formalist's fundamental claims, but, for him, formalist law contains gaps that legal practitioners must fill, judges are unable to find a rule for every legal dispute. In that situation, judges cannot avoid looking at the dispute and must decide based on the existing rules. He claims that while doing so, the judge makes a new legal rule or changes existing legal rules through interpretation. He called making a new rule "judicial discretion" and has been heavily criticized by Ronald Dworkin (Hart, 1961, p.149). According to Dworkin, Hart's judicial discretion approach is objectionable because it violates the principles of democracy and irreversibility. The judge should not apply a rule like a legislature but find and apply the rule regarding the dispute. If the judge cannot find a rule to apply to the case, the judge should investigate legal principles (Uygun, 2020, p.82).

He claims that Hart's major source of error at this point stems from his perception of law as a rule-based system. He defines law as a system comprised of rules and principles. He distinguished in his theory between rule and principle. He developed the judge model, which he named "Hercules." According to this judge model, he argues that the judge makes a fair decision in all types of disputes based on the concept of right. According to Dworkin, judges use their judicial activities in two ways which are weak and strong. The limits of discretionary power used in a weak sense are clear. The judge's resolution of the legal dispute is because the legal rules cannot be applied mechanically. On the other hand, if the judge's discretionary power is exercised broadly, the judge may act more broadly in the cases and find solutions based on principles (Dworkin, 2006, p.55). In time, other perspectives have been developed against a formalist approach that provides various views about the description of the law. One of the most significant contributions of these perspectives is the evaluation of a judge's judicial decision-making processes and how they are affected by sociological factors instead of the mechanical view of formalism. François Geny<sup>9</sup> claims that the law is influenced by the economic, political, psychological, and sociological variables and should respond to the needs of society in this complex developing world. He claims that judges' judicial decision-making processes take on creative roles by reflecting dynamic changing processes into law (Young, 1949, p.168).

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<sup>9</sup> Geny asserts a distinction between the judge and the legislator and clarifies this situation: "*The legislator enacts general and abstract rules. The individuals and groups to whom these rules are applied are not specified. The legislator can choose their source of inspiration and more freely determine which direction to take. However, the judge will make a law directly against the people concerned about a specific issue. As a result, it is required to act extremely impartially and objectively. He is not free to choose any principle at random. It will decide solely based on "objective factors"*"

Ehrlich rejected the formalism that judges make rational decisions within a logical framework and said, "forget the logic." He argues that law is based on social reality and distinguishes the law as judicial law and living law. Judicial law is the legal rule that emerges because of the legislator's decision, and living law continues within the framework of the legal rules in social life. By stating that this distinction has given sociological meaning to law. He says that judges should consider living law to be more inclusive in judicial decision-making processes (Nelken, 2008, p.447). Ağaoğlu (2012, p.149) also explains similar thought in that there is a written law in every neighborhood, and there is a law that lives in the public conscience; there is an inherent right in the nation's soul. Sancar and Atılğan (2009, p.25) argue that judges in judicial decision-making processes are affected by sociological factors. In following, Demirdöven (2007, p.305) divides the judge's process into two identities. First and foremost, when judges ignore what is going on in society and make decisions solely within the framework of the law, they eliminate their ethical field of action and freedom. Second, when the judges base their decision on their moral understanding, beliefs, and experiences, they violate the law's claim of objectivity. The judge should forge her path in her judicial duties and be the one who realizes it. These explanations provide to keep up the balance between social reality and the framework of the law. Gönenç (2014, p.330) stated that the judge was separated from all environmental effects, i.e., by retreating to an ivory tower. This implies that it is a state of extreme optimism to assume that they make an objective, impartial, and equal decision by avoiding all preconceptions, obstacles, and constructions from their minds. Klare (1998, p.176) states that the judicial decision-making process occurs dependently on the judge's ethical and political value judgments in two ways. Firstly, the legal materials used by jurists in their legal studies and interpretive practices shape the judge's logic in general. Secondly, judges are affected

by their values, institutions, and perceptions. The judges constantly make decisions based on one or more of these bases, either consciously or unconsciously. Kantorowicz also criticizes "unconditional trust in the text of the law" and claims that a law made up of written rules is a prejudice. He states that it would be a severe mistake for the judge not to see if there is a gap in the law, and he asks, "what is understood from the law, jurisprudence, and the practice of justice?" He argues that the judge's discretion and value judgments are critical for the pointed case<sup>10</sup> (Kantorowicz, 1934, p.1241). The significant discussion regarding a judge's judicial decision-making is that supremacy of legal rule, or a judge's experiences can be evaluated as valuable. As opposed to this view, Yaltı (2019, p.71) argues that the judge's political, philosophical, social upbringing, prejudices, and worldview should be reduced by applying abstract norms to the lawsuit during the decision-making process. Otherwise, this situation may arise in a way that benefits or detriment any of the parties involved. However, Uzun (2016, p.56) concerns the diversity of judges' different identities and argues that if the judges do not reach the maturity to make their own decisions, they do not care the freedoms of people who will decide about. Besides, they perceive differences as a threat and use their judicial power to eliminate these differences. Also, Tutumlu (2016, p.413) mentions the "judge ethos" as the balance between law and justice. Depending on the diversity of the judge's identity, how judges' judicial decision-making can be considered crucial in maintaining justice.

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<sup>10</sup> This viewpoint is expressed by Kantorowicz "Of course, judges and lawyers who know much more than the law, who work extensively, who not only have experience, but have mastered the effects and needs of both economic and social life, can grasp, and formulate the appropriate rules for specific cases. One should not object to the fact that this may be a task left entirely to the judge's discretion. Because discretion, as it is commonly perceived, is not illegal under the law. Rather, it is an intuitive way of discovering rules".

## CHAPTER 5

### RESEARCH METHOD

#### 5.1. Research Design

Qualitative research design demonstrates how people make sense of their lives, events, and actions in the flow of their experiences. This research type consists of observing and recording people's way of understanding through participant observation, interviews, and so on (Creswell, 2020, p.15). In this context, a qualitative research approach was used in this study to analyze the sociological factors that affect the judges' personal experiences and perceptions of judicial decision-making processes. This thesis seeks to address the following research question: What are the sociological factors affecting the judicial decision-making processes of judges in controversial cases in Turkey?

##### 5.1.1. Participants

The sample of this research is that purposive sample methods provide an in-depth study of situations thought to have extensive knowledge. In this sense, purposive sampling methods have emerged within the qualitative research tradition and provide a useful way of understanding, discovering, and explaining events. Criterion sampling, which is one of the types of purposeful sampling, is to study situations that ascertain a predetermined set of criteria/s (Yıldırım & Şentürk, 2016, p.120). The sample of this study was selected based on two determining criteria by the researcher. The first of these are people who work as a judge in Turkey. Second, the age of these judges is between 30 and 55<sup>11</sup>.

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<sup>11</sup> As a researcher, the reason for age restriction stems from the pilot study I did the previous year. The primary purpose of my pilot study was to measure whether I could reach the judges for my thesis project because the judges always are too busy. Still, I got the new point of age criteria because, through my interview in the pilot study, three interviewees clarified that a new judge profile has changed in the last

**Table 1***Demographic Table of Interviewee Judges*

| Interviewee | Sex    | Education      | Education of mother | Profession of mother     | Education of Father | Profession of father | Interview date   |
|-------------|--------|----------------|---------------------|--------------------------|---------------------|----------------------|------------------|
| 1.          | Male   | Under Graduate | Primary School      | Unemployed <sup>12</sup> | Primary School      | Worker               | 25 December 2021 |
| 2.          | Male   | Doctorate      | Primary School      | Unemployed               | Primary School      | Farmer               | 27 December 2021 |
| 3.          | Male   | Doctorate      | Undergraduate       | Teacher                  | Under Graduate      | Teacher              | 28 December 2021 |
| 4.          | Male   | Master         | Primary School      | Unemployed               | Secondary School    | Officer              | 30 December 2021 |
| 5.          | Male   | Under Graduate | Primary School      | Unemployed               | Under Graduate      | Teacher              | 04 January 2022  |
| 6.          | Male   | Under Graduate | Primary School      | Unemployed               | Primary School      | Driver               | 11 January 2022  |
| 7.          | Male   | Doctorate      | Primary School      | Unemployed               | Primary School      | Worker               | 13 January 2022  |
| 8.          | Female | Doctorate      | Primary School      | Unemployed               | Primary School      | Worker               | 15 January 2022  |
| 9.          | Male   | Master         | Primary School      | Unemployed               | High School         | Worker               | 20 January 2022  |
| 10.         | Male   | Master         | Primary School      | Unemployed               | Under Graduate      | Engineer             | 28 January 2022  |

8-10 years. Now the children of more affluent families are directed to this profession. My interviewees attributed this situation too many political and social reasons. After that, I decided to talk to two young judges who had just started their profession and heard this difference from them. For this reason, I chose to set an age limit, which may be another research project's subject.

<sup>12</sup> When I asked the interviewee judges, “what is your mother’s job?” four judges said, “she is a “standard” housewife.” As a researcher, I know this subject is out of my research but I decided to ask following questions: “what does standard housewife mean?” “why do they define housewife as an occupation?” “Do we consider housewife as a paid occupation?”. After that, I decided to write in the box housewife as “unemployed” because I think that researchers should not legitimize and reproduce gendered language by accepting these concepts. Women spend more time on unpaid care work than men, but this does not mean accepting this gender role as a paid occupation and instead of this, supporting all patterns to empower women in economic position. *“All around the world, women spend two to ten times more time on unpaid care work than men. This unequal distribution of caring responsibilities is linked to discriminatory social institutions and gender stereotypes on gender roles. Gender inequality in unpaid care work is the missing link in the analysis of gender gaps in labour outcomes, such as labour force participation, wages, and job quality. Tackling entrenched gender norms and stereotypes is a first step in redistributing responsibilities for care and housework between women and men.”* (Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes, OECD Development Centre, December, 2014, [https://www.oecd.org/dev/development-gender/Unpaid\\_care\\_work.pdf](https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf))

Ethical issues are the protection of rights and interests of working people for their subjective constructions of the events, actions, and experiences. These rights and interests respect people's autonomy, protect their privacy, and avoid harm (Hammersley & Traianou, 2017, p.6). Various ethical problems arise at every phase of the qualitative research process. These issues are misleading and confidential activities, consent, avoiding harm, and deception. In this context, the researcher should ensure the confidentiality of the participants by giving them pseudonyms to eliminate these problems. The necessary ethical committee and institutional permissions should be obtained to create the data within ethical principles. The researcher should pay attention to issues such as informing the participants about the confidentiality of the research and obtaining informed consent forms from them in which they declare that they voluntarily participated in the research (Creswell, 2020, p.176). In this study, pseudonyms were given to the participants to ensure their privacy. Permission was obtained from the Yeditepe University Social and Human Sciences Ethics Committee, participants were informed about the confidentiality of the research before the interview, and informed consent forms were obtained from the participants. They declared that they were willing to participate in the study.

### **5.1.2. Data collection and analysis**

Data in qualitative research generally includes spoken and written words even though other forms exist. The most common for collecting data is the interview which may be open, semi-structured, or structured, although other forms exist. The crucial point is getting “*lived details*” from people (Cropley, 2021, p.84). The number of needed interviewees is dependent on the purpose of the study (Stark, Trinidad, 2007, p.1375). Interview in which semi-structured was used as data collection techniques in

this study. The interview length of the interviewees was between 1 hour and 1 hour and 15 minutes. The descriptive recording technique was used in the processing of qualitative data. This technique aims to preserve the natural and authentic transmissions of the interviewees. According to this technique, making a point not to get lost mimics gestures, pauses, moments of silence, and hesitation during the transcription process. The grammatical structure of the interviewees' statements is presented without changing it, which means putting their words in their original form (Mayring, 2000, p.79). In this study, the interviews were audio-recorded. Then, the audio recordings were listened to and transcribed word by word. Lastly, I did a pilot study the previous year before starting my thesis to estimate accessing situations to judge their workload circumstances because I was thinking that this might be a limitation for my research. This pilot study contributed to my dissertation in terms of two things: one is how I can access and connect with judges, and the second in reorganizing my research questions and interview behavior. The interviews were carried out in an online zoom program due to the pandemic conditions. This situation makes difficult to understand their feelings at that moment. Moreover, I tried to connect an equal number of women and man judges to ensure gender equality for research, but I did not receive answer my message or e-mails. Even though according to the statistical data of the council of judges and prosecutors about number of female and male judges by years show that the female judges number have increased year by year, I could connect two judges and only one accepted to participate an interview.

**Table 2**

*Number of Female and Male Judges by Years According to the Statistical Data of the Council of Judges and Prosecutors*

| <b>Year</b> | <b>Number of Women</b> | <b>%</b> | <b>Number of Men</b> | <b>%</b> | <b>Total</b> |
|-------------|------------------------|----------|----------------------|----------|--------------|
| <b>2021</b> | 7090                   | 46,26    | 8236                 | 53,74    | 15326        |
| <b>2020</b> | 6855                   | 45,98    | 8054                 | 54,02    | 14909        |
| <b>2019</b> | 6476                   | 45,83    | 7655                 | 54,17    | 14131        |
| <b>2018</b> | 5140                   | 42,81    | 6866                 | 57,19    | 12006        |
| <b>2017</b> | 4661                   | 41,54    | 6559                 | 58,46    | 11220        |
| <b>2016</b> | 3782                   | 36,93    | 6458                 | 63,07    | 10240        |
| <b>2015</b> | 3582                   | 35,56    | 6490                 | 64,44    | 10072        |

**Table 3**

*The Difference Between the Number of Female and Male Judges Based on Years According to the Statistical Data of the Council of Judges and Prosecutors*

| <b>Years</b> | <b>The Difference Between the Number of Female and Male Judges</b> |
|--------------|--------------------------------------------------------------------|
| 2021         | 1.146                                                              |
| 2020         | 1.199                                                              |
| 2019         | 1.179                                                              |
| 2018         | 1.726                                                              |
| 2017         | 1.898                                                              |
| 2016         | 2.676                                                              |
| 2015         | 2.908                                                              |

According to the years of judges and prosecutors' board, the number of male judges is higher than that of female judges every year. The differences between male and female judges have regularly decreased from 2015 to 2019. In 2020, the difference between male and female judges increased. Comparing the other years in 2021 is the

least difference between male and female judges in the jurisdiction system in Turkey. Even though the number of female judges has increased from year to year, the important limitation in the study is the challenge of reaching a female judge. Although I tried to connect 17 women and 17 men to have gender equality in the research, only one female judge responded to my message. When I asked about this situation, the female judge expressed it as follows.<sup>13</sup>

*“...they have a life between work and home, my female friends are basically like that, working at work and home, but I’m surprised how they do all works at the same time, because it’s an extremely busy profession, a job that keeps attention from you, so if you’re married, it’s a double dominate women, on the other hand, I’m most surprised at the situation, that I have friends who both men and women and have same judges position, and the woman says that my husband needs to go higher than me because he is a man!, they are really weird, but she wants to see her husband higher than her because of his sex” (8. interviewee)<sup>14</sup>*

Even though gender is not the main concentration of this research, gender- based inequality among male and female judges became an essential limitation for the study.

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<sup>13</sup> I did and analyzed my interview in Turkish. Then, I translated all interview parts into English. For this reason, as a researcher, I would prefer to share the original interview parts in footnotes along with the translated text.

<sup>14</sup> “..hem iş hem ev arasında bir hayatları var, yani benim arkadaşlarımın temelde öyle, işte çalıştıkları kadar evde de çalışıyorlar, haa gerçi ben bu duruma şaşıyorum nasıl yetişiyorlar, çünkü bu yoğun bir meslek, sürekli sizden dikkat isteyen bir meslek, o sebeple evliyseniz kadın hakim olmak başlı başına ayrı bir yük, diğer yandan ben en çok şu duruma şaşıyorum, kadın ve erkek ikisi de hakim olan arkadaşlarım var, kadın olan diyor ki eşim benden daha üst bir mertebeye çıkması gerekiyor, sonuçta o erkek!, gerçekten çok acayip ikisi de hakim ama kadın kocasının sadece erkek olduğu için kendisinden daha yüksekte olmasını istiyor...” (8. Görüşmeci)

*“Qualitative analysis is a process of discovering meaning and involves deconstruction and reconstruction of narratives to tease out their more abstract and general meaning in a parsimonious form”* (Crompton, 2021, p.121). Data analysis in qualitative research includes preparing data for analysis, coding the data, bringing the codes together and reducing them to themes, and presenting the data in figures, tables, or a discussion (Creswell, 2020, p.184). In this study, the described procedures were followed. Firstly, all transcriptions are read to get a general impression. Then each related statement, the research problem was coded. Coded put into categories and lastly writing as themes. All analyses are expressed systematically after description, interpretation, and analysis. The statements of the interviewees were used as quotations. Besides that, I would like to point out that chosen theoretical orientation (Bourdieu’s theoretical approach) also gave the ideas for analysis. The following were done to ensure validity and reliability in this study. To be given literature of the judicial decision-making process from different countries to justify my research position on this issue. Where I was unsure, I asked by turning the questions to the participants at the points in the interviews. I sent every research part to my colleagues and advisor. As a researcher, I participated two courses at Yeditepe University and Coursera to follow research processes and define my role in all research processes. I put deviant cases, examples, and quotations from interview narratives. Lastly, the researcher is the data collection tool. The researcher's contribution to the research environment can be beneficial and positive rather than harmful (Corbin & Strauss, 2014, p.60). Therefore, it is necessary to define personal value, acceptance, and bias in research. I gained experience because of the legal education and summer internship program. These situations have shaped my perception of the decision-making processes of the judges. There was an opportunity to examine many cases during these processes. I began to

question why the verdict of some cases does not make sense in terms of the general principle of law, and I came across many studies that investigate on the importance of the judge in decision-making processes about cases. I also received a sociology education, and I thought that this situation should be examined in the context of sociology. The information I obtained from the cases presupposed that the judges were influenced by sociological factors and made their decisions. Even though research in law conducts objectively, I believe that the researcher's experiences shape the situation of understanding and interpreting the data. For this reason, I asked my research question about what these factors are. I did this study as I received undergraduate education in law and sociology and tried to evaluate my internships from two perspectives. As a result of observation, I tried to contribute the socio-legal studies to evaluate judicial decision-making processes from a different perspective.

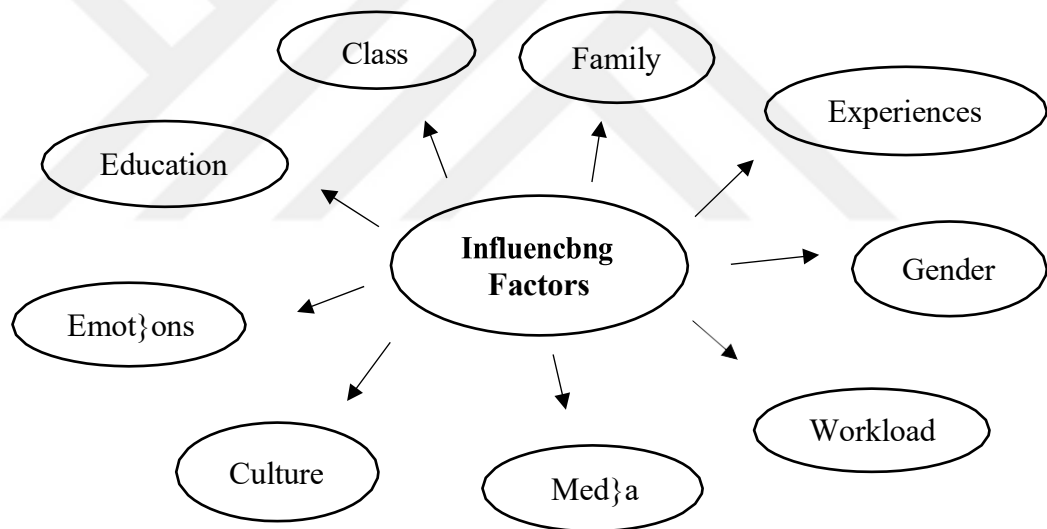
## CHAPTER 6

### *“...The Judge Make Decisions with Human Emotions”<sup>15</sup>*

Research findings indicate that judicial decision-making processes are affected by ten sociological factors in controversial cases in Turkey. These factors are class, family, education, emotions, culture, experiences, gender, workload, media, and social pressure. These factors impact a judge’s ability to make choices and manage them through judicial decision-making processes.

**Figure 2**

*Influencing sociological factors in judicial decision-making process*



#### **6.1. “When did the white collar become a judge, a prosecutor?”<sup>16</sup>**

The interviewee states that the judges in Turkey come from the lower and middle classes and these class structures reflect Turkish society and culture. Therefore, what they learn from this class influence judicial decision-making processes

<sup>15</sup> “...hakim insandır, yani insan kokusu taşıyan kararlara imza atacaktır”

<sup>16</sup> “Beyaz yakalılar ne zaman hâkim, savcı olmuştur?”

*“...you know, in Turkey, judges and prosecutors usually come from lower and middle class, so we come from society, from within the people, in the environment where we all grow, the culture that we learn has the influence of the Turkish society, and we need to see the impact of this when evaluating case”*  
(1. interviewee) <sup>17</sup>

On the other hand, interviewees clarify that judge is the children of rural areas people in Anatolia *“...because our judges and prosecutors generally come from lower- middle class especially the children of the rural areas. When did the white-collar become a judge?”* (10. interviewee) <sup>18</sup>

*“... the judges are generally from the rural areas of Anatolia, they are the hardworking children of the poor families in the countryside, so it is possible to say that the profession is from the lower and middle classes, of course, this is my observation, it has always been like that in the places I have been, and so am I.”* (3. interviewee) <sup>19</sup>

In the research, the interviewees demonstrate that they are from Anatolia and describe the Anatolian geography’s education, cultural, economic, and social circumstances.

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<sup>17</sup> “.. siz de bilirsiniz, Türkiye’de hakim ve savcılar genelde alt ve orta sınıftan çıkar, bu yapının içinden yani aslında biz halkın içinden geliyoruz, hepimizin yetiştiği çevrede, öğrendiği kültürde Türk toplumunun etkisi var, olayları değerlendirirken bunun etkisini görmek lazım...” (1. görüşmeci)

<sup>18</sup> “..çünkü bizim hâkim savcılarımız genelde alt ve orta sınıftan, özellikle kırsal kesimden olan insanların çocuklarından çıkıyor. Beyaz yakalılar ne zaman hakim olmuştur?” (10. görüşmeci)

<sup>19</sup> “...hakimler genelde Anadolu’nun taşra yerlerindendir, taşranın yoksul ailelerin çalışkan çocuklarıdır bu nedenle mesleğin alt ve orta sınıftan olduğunu söylemem mümkün, tabii bu benim gözlemim, bulunduğum yerlerde hep böyleydi, ben de öyleyim...” (3. görüşmeci)

*“...I grew up in a small place in the central Anatolia, a place with impossibilities, especially in terms of economy, I went to primary school in the village, there was a multigrade class in our village, we were educated in 1,2,3 class in one classroom, 4,5 class in another classroom, people who live in that place, including my parents are very inadequate in directing you, they do not have the opportunity to have a hobby or prepare you for life, the situation continues as it is, because of financial impossibilities, we see only economic and livelihood problems” (2. interviewee) <sup>20</sup>*

*“...so, I come from an ordinary small town that we know in central Anatolia, there is a town, there are middle- and low-income groups in terms of economy, it is a place where fairs are held once a year in cultural terms, singers who come to the fairs are working in the sub-staff women singers of Ankaralı Namık, people have fun two or three days a year.” (4. interviewee) <sup>21</sup>*

*“...the primary school was a village primary school, it was a village school where a teacher taught approximately five classes at the same time, it was a town in central Anatolia, I can say that impossibilities prevailed in every perspective” (7. interviewee) <sup>22</sup>*

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<sup>20</sup> “..Orta Anadolu şehrinde küçük bir yerde büyüdüm ben, imkansızlıkları olan bir yer hele ekonomik açıdan, ilkokulu köyde okudum, köyümüzde birleştirilmiş sınıf vardı, yani 1,2,3 bir derslikte 4,5 bir derslikte eğitim gördük, şimdi şöyle genel olarak bulunduğum yerde insanların yani annem babamda dahil sizi belirli bir şeye yönlendirme konusunda çok yetersiz, hobi edindirme veya sizi hayata hazırlama imkanları yok, maddi imkansızlıklardan dolayı sadece ekonomik ve geçim sorunları ön planda” (2.görüşmeci)

<sup>21</sup> “...yani işte Orta Anadolu’da bildiğimiz sıradan küçük bir ilçeden geliyorum ben, bir kasaba, ekonomik anlamda orta ve alt gelir grupları var, kültürel anlamda yılda bir kez panayırların olduğu bir yer, panayırlara gelen şarkıcılarda Ankaralı Namık’ın falan alt kadrolarında çalışan türkücü kadınlar, eğlenir işte insanlar senenin iki üç günü” (4. görüşmeci)

<sup>22</sup> “...ya ilkokul bir köy ilkokuluydu, bir öğretmenin yaklaşık beş sınıfı okuttuğu bir köy okulu, orta Anadolu’da bir kasabaydı, her açıdan imkansızlıkların hakim olduğunu söylebilirim” (7. görüşmeci)

The interviewee talked about sui generis Anatolian countryside identity and morality. He expresses that the Anatolian countryside identity does not consist of art, philosophy, and book. Anatolian morality includes a pragmatic point of view. He states that if judges grow up with this identity and morality, they lose research and questioning abilities, and that is the reason judicial decision-making shape according to pragmatic concerns

*“..but I can tell you that the Anatolian country has an identity, for example, when we were in there, we didn't read a book or something, there were no books, I read more books after university, the rural people have nothing to do with philosophy, art or books, neither did I, the profession did not contribute much to me in terms of culture, you can't provide inner discipline, you can't develop yourself much, and if you go out and continue your profession with the codes of that culture, you will decide again with pragmatic concerns without questioning too much without doing too much research, what is that pragmatic concern? if you look at the fact that the faster I decide, the more decisions I make, the sooner I will be promoted and my salary will increase, then different decisions will come to the issue, one of them gets up and decides by thinking a bit, and by reading a little more, then there will be differences between the decisions and the reasons” (4. interviewee) <sup>23</sup>*

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<sup>23</sup> “..ama şunu söyleyebilirim size Anadolu taşrasının bir kimliği var, mesela oradayken kitap filan okumuyorduk, kitap yoktu, ben üniversiteden sonra daha çok kitap okudum, felsefe, sanatla, kitapla çok fazla bir ilgisi yoktur taşra insanının, benim de yoktu, yani mesleğin bana kültürel anlamda kattığı çok bir şey olmadı açıkçası, biraz önce söylediğim taşra ahlakı şöyle aslında, maalesef bakış açısı pragmatik oluyor orada, iç disiplin sağlayamıyorsunuz, benliğinizi çok geliştiremiyorsunuz ve oradan çıkıp o kültürün sizdeki kodlarıyla mesleğe devam ederseniz şayet çok fazla araştırmadan çok fazla sorgulamadan sadece yine pragmatik kaygılarla karar verirsin, nedir o pragmatik kaygı? ne kadar hızlı karar verirsem ne kadar çok karar verirsem, o kadar çabuk terfi ederim, maaşımda o kadar çabuk artar diye bakarsanız meseleye işte o zaman farklı farklı kararlar çıkar. Bir tanesi de kalker biraz düşünerek

In this context, the other interviewee demonstrates that when he started his career, he thought that judges are from the upper class, but the judges mostly come from Anatolian geography, and these people do not develop themselves intellectually

*“When I entered this profession, I thought that this profession was created by upper-class people, as in the examples abroad, but I saw that it was not, the people in the profession mostly came from Anatolia and they have not developed themselves intellectually” (6. interviewee) <sup>24</sup>*

The interviewee explained that, apart from exceptions, the judges come from the rural parts of the Anatolian geography, and these places are traditional and conservative. For this reason, the judge learns what is “normal” during the socialization process in this geography which impacts the evaluation process of the case.

*“... if we do not consider the exceptions, the judge and prosecutor are the children of people from rural areas in Turkey, therefore these people live extremely conservative lifestyles that are tradition-bound therefore it is possible to normalize violence against animals in their families, villages, or abuse of children, for example, the man comes from the heart of Anatolia, if he hasn't really developed himself, don't expect from him to make an intellectual decision, because all the normal around the man constructs like that, maybe even his own wife married with him at the age of sixteen or at the age of seventeen, it is very common in our profession” (10. interviewee) <sup>25</sup>*

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*karar verir, biraz daha okuyarak karar verir, o zaman verilen kararlar arasında, gerekçeler arasında farklar ortaya çıkar” (4. görüşmeci)*

<sup>24</sup> *“...ben bu mesleğe girdiğimde bu mesleğin yurtdışındaki örneklerde olduğu gibi üst sınıf insanlar tarafından oluşturulduğunu düşünüyordum, ama öyle olmadığını gördüm, meslekteki insanlar daha çok Anadolu'dan gelen ve entelektüel olarak kendisini çok geliştirebilmiş insanlar değil” (6. görüşmeci)*

<sup>25</sup> *“..yani bizim o zamana kadar istisnaları saymazsak hâkim savcılık Türkiye'de kırsaldan gelen insanların çocuklarının yaptığı meslek, dolayısıyla geleneklerine çok bağlı aşırı muhafazakar yaşam*

The interviewee mentioned that they migrated from Anatolia to the big city. Despite their mass migration, they carried the conservative and discriminatory mind in Anatolia to big city. For this reason, he mentioned that his family constantly warned him about whom to talk to as "appropriate" or " inappropriate"

*“...we came to the metropolis from the central Anatolian region, don't mind what I call the city, the slum in the city, the place has changed, but the people are the same, I grew up in a two-storey shed that place was an extremely conservative and discriminatory, and my mother always warned me that you should talk this person, but you should not talk another person, she determine which person is convenient to talk” (9. interviewee) <sup>26</sup>*

The interviewee expressed that the conservative and nationalist point of view is effective in the decision-making processes in terrorism cases *“...most of our judges and prosecutors come from central Anatolia that place is a more nationalist and conservative, for instance nationalism can affect a judge who is dealing with a terrorism case” (2. interviewee) <sup>27</sup>* The interviewer stated that the general legal rule is that the person must write an explanation for a bank transfer, but when he evaluated the case, he thought that the person in the case could not know this rule. He said that he

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*tarzlarından beslenen insanlar, dolayısıyla ailelerinde, köylerinde hayvana karşı şiddet, vakalar ve çocuğun istismarı işte efendim kadına karşı şiddet oldukça normalleşmiş şeyler olması çok muhtemel, adam mesela Anadolunun bağrından geliyor, öyle kendisine gerçekten bir şeyler katmamışsa çok entel falan bir karar almasını beklemeyin, çünkü adam çevresindeki tüm normaller böyle kurgulanmış. Belki kendi eşi bile on yedi yaşında on altı yaşında evlenmiş onla, bizim meslekte çok yaygın” (10. görüşmeci)*

<sup>26</sup> *“..bakın şöyle bir şey biz Orta Anadolu Bölgesinden geldik büyük şehire, şehir dediğime bakmayın şehirdeki gecekonduya, mekan değişti ama insanlar aynı, topluca gelince mekanlar değişse bile insanlar aynı kalıyor, iki katlı bir barakada büyüdüm ben, aşırı muhafazakar ve ayrımcı bir ortamda hem de, annem hep tembih ederdi, o şöyle bu böyle, onunla görüş, bununla görüşme diye” (9.görüşmeci)*

<sup>27</sup> *“.. hakim savcı arkadaşlarımızı çoğu Orta Anadolu'dan geliyorlar, orası daha milliyetçi muhafazakar kesimden gelen kişiler, örnek veriyorum bir terör davasına bakan bir hakimi milliyetçilik etkileyebilir” (2. görüşmeci)*

knows this kind of people who live in rural areas in Anatolia because he comes from this kind of lifestyle

*“...for example, let's say a private law case, when you make a transfer to someone, what is the requirement of the general legal rule, you have to write an explanation for that transfer, why did you send it, when you do not explain, we accept it as the payment of a previously taken debt, this is the general rule, but we went out of exception, there is a woman who lives in the village and her husband died, they paid compensation to her, she sent the compensation to her father-in-law without any explanation, now, if we apply the general rule, we will say that there was no explanation, you got it from your father and paid the debt, but, the status of the woman is clear, she has already lived in the village, she is not in a position to know such things, so we are affected, it is not possible to isolate completely from society and I come from there, I know those people, how would they know such things...” (2. interviewee) <sup>28</sup>*

Based on what interviewees said, apart from exceptions, most judges are from rural areas of Anatolian geography. Most people are conservative, traditional, nationalist, and lower-middle class in this geography and during their upbringing, the interviewees defined their leisure activities as lower-middle class activities, watching television, playing on the computer, barbecuing, and going out with friends “...I grew up in a low

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<sup>28</sup> “...mesela özel hukuk davası diyelim geçen gün karara bağladık normalde de mesela siz birine havale yaptığınız zaman genel hukuk kuralı gereği nedir o havaleye açıklama yazmanız lazım niçin gönderiyorsunuz açıklama yapmadığınız zaman önceden alınmış bir borcun ödenmesi olarak kabul ediyoruz biz genel kural bu ama geçen istisna dışına çıktık. Bir tane burada köyde yaşayan bir kadın eşi vefat ediyor buna tazminat ödüyorlar bu da tazminatı kayınbabasının hesabına gönderiyor açıklama yok. Şimdi biz hukuk uygulasak diyeceğiz ki açıklama yoktu babandan aldın borcu ödedin karar temiz değil kadının statüsü belli zaten köyde yaşıyor bu tür şeyleri bilebilecek durumda değil yani bak etkileniyoruz, tamamen soyutlamamız mümkün değil, bende oralardan geliyorum, kendimizi tarafların yerine nasıl koymam gerekiyor, o insanları tanıyorum, onlar nerden bilsin böyle şeyleri...” (2. görüşmeci)

*socio-economic neighborhood, as social activities, here are the classical lower-class activities, such as barbecue, going to the forest to play football, going out with friends” (6. interviewee)<sup>29</sup> “...classical middle-class activities are actually watching TV, playing with the computer, picnic on the weekend, etc.” (5. interviewee)<sup>30</sup> “...on the weekends when the weather is nice, I like to go on a picnic or go fishing at the places where I work, for example, in the past we didn't know what free time was because it was more work-oriented in the village” (1. interviewee)<sup>31</sup> It can be said that the social activities continue within the same group dynamics. However, against the other interviewees explanations, the interviewee stressed university time and he said that when he went to the university, he started going to the cinema and theater and reading different books. For this reason, he moved away from the discriminatory attitudes of the place where he grew up*

*“...with getting a university, my thoughts have changed, I used to go to the theater and the cinema and buy different types of books as I could, then I saw that the more I read, the more I moved away from the place where I grew up, that is, I don't know, those values that consist of discrimination” (9. interviewee)*

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<sup>29</sup> “...sosyo- ekonomik olarak cilt seviyede bir mahallede büyüdüm, sosyal aktivite olarak işte klasik alt sınıfın aktiviteleri, mangal yapmak, ormana gidip futbol oynamak, arkadaşlarla gezmek gibi” (6. görüşmeci)

<sup>30</sup> “...klasik orta sınıf aktiviteleri aslında televizyon izlersiniz, bilgisayarla oynarsınız, hafta sonu piknik gezme falan” (5. görüşmeci)

<sup>31</sup> “...hafta sonu havaların güzel olduğu zamanlar, pikniğe gitme veya görev yaptığım yerlerde, balığa gitmeyi severim, arkadaşlarla, eskiden bizimkilerle köyde daha çalışma odaklı olduğundan boş zaman ne demek bilmezdik mesela” (1.görüşmeci)

<sup>32</sup> “..üniversiteyi kazanmam ile birlikte ufukum genişledi, kazandığım üç beş kuruşla tiyatroya sinemaya gider, elimden geldiğince farklı tarzda kitaplar alırdım, sonra gördüm ki okudukça büyüdüğüm yerden yani ne bileyim o ayrımcılık kokan değerlerden uzaklaşıyorum” (9.görüşmeci)

The interviewees mentioned that their social activities were limited for many reasons, but socialization decreased after starting the profession. One of the interviewees said that this situation is related with the expectations of the society as the judge who claims that society expects judges to be asocial people like "to be a court wall"

*"...it is not possible to say that I have so many hobbies, for example, I can say that mostly reading books, going to the cinema, visiting the region nearby places, (laughing) for example, I started Pilates for a while, it was against the standard, expected from us like "to be a court wall" in fact, the general profile of judges and prosecutors are like that, we are not social people with a lot of hobbies, I think it's very related to upbringing and the society" (2. interviewee)<sup>33</sup>*

*"...I love music very much, I grew up in a house with a musical instrument, I try to play the guitar, but when I was in the profession, I can say that I didn't have much time, I haven't been doing it for a long time" (10. interviewee)<sup>34</sup>*

*"...when you asked me now, I questioned myself. I was involved in music during high school, I also worked in university, of course, I can't do it anymore because it is not compatible with this profession and we don't have much time, it's officially dedication" (3. interviewee)<sup>35</sup>*

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<sup>33</sup> *".. öyle çok hobim olduğunu söylemem mümkün değil, mesela en fazla kitap okuma, sinemaya gitme, yöreyi veya civardaki yerleri gezme diyebilirim,(gülerek) mesela şunu söyliyim bir ara pilatese başlamıştım, aykırı geldi insanlara bizden beklenen standart, düz, mahkeme duvarı olmak... aslında hakimlerin savcılarının genel profili de böyle öyle çok hobisi olan sosyal insanlar değiliz, bence yetişmeyle çok alakalı, sonra toplumla tabii" (2.görüşmeci)*

<sup>34</sup> *"...müziği çok severim, müzik enstrümanı olan bir evde büyüdüm, gitar çalmaya çalışıyorum, ancak meslek içerisindeyken, pek vaktim olmadı diyebilirim, uzunca bir süredir yapmıyorum" (10. görüşmeci)*

<sup>35</sup> *"Aslında şöyle şimdi siz sorunca kendimi sorguladım, lise döneminde müzikle uğraştım üniversite döneminde de uğraştım, tabi artık uğraşamıyorum çünkü meslekle bağdaşmıyor hem de o kadar vaktimiz yok, resmen adanmışlık işte" (3. görüşmeci)*

*"...if I say that I don't have a very special taste, I can say that I don't have a hobby anymore, I even thought about it again now, I really don't, I wanted to paint for a while, I took a lot of courses, I did something, but it remained so, it is not compatible with the profession anyway" (4. interviewee)<sup>36</sup>*

The interviewee mentioned that he always does the same things in daily life and defined himself as asocial and for him, this situation affects his point of view “...judges, prosecutors, we live in isolation, you come and go with the service, you live in the public housing, you always see the same people, that’s what shapes your perspective, you’re literally asocial (laughing)” (7. interviewee)<sup>37</sup> The interviewee explained that judges are an asocial people. When they would like to socialize, they prefer to spend time with bureaucrats, the gendarmerie commanders or the district governors in the place. He stated that this situation prevents the judges meet different perspectives, and it reflects in the decision-making processes in the cases.

*“...judges and prosecutors generally don't have very sophisticated tastes, very rarely, I'm surprised when we meet colleagues at a nice concert, and I said wow! I'm glad that I have colleagues like this on behalf of my profession, generally they socialize among themselves, bureaucrat, the gendarmerie commander, the district governor, their social circles, unfortunately, remain at a certain level, I don't find it right because it's better to spend time with different people in terms of gaining a various perspectives, these perspectives reflect to your decisions, I believe that the judgment will change with different perspectives, what is illegal*

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<sup>36</sup> “...benim yani çok özel bir zevkim yok desem artık yeridir, yani hobim yok diyebilirim, hatta şuan birdaha düşündüm gerçekten yok, bir ara resim yapmaya özendim ve baya kurslar aldım, bir şeyler de yaptım ettim ama öyle kaldı, zaten meslekle bağdaşmıyor ki” (4. görüşmeci)

<sup>37</sup> “...hâkim savcılar tecrit yaşıyoruz, servisle geliyorsunuz, servisle gidiyorsunuz, lojmanda yaşıyorsunuz, hep aynı insanları görüyorsunuz, o bakış açınızı şekillendiren şey oluyor, tam anlamıyla bir asosyallık, gülüşmeler” (7. görüşmeci)

*evidence and what is not, these are the issues that concern legal technique, but even these issues show our point of view on some issues” (3. interviewee)<sup>38</sup>*

The interviewee explains that when judges stay away from the dynamics of everyday life in society, they do not know how people live. This is the significant reason for the possibility of good decisions in their decision-making process

*“...when the judges isolate themselves from the society, the accuracy of their decisions decreases, in my opinion, the most important thing asking these questions, what is the situation of the society right now? what are the dynamics? what are people's concerns or understandings right now? If you don't go into the society and live with them, you won't understand, also, we are jurists, we cannot say that this law has ended like this, we will apply it to the case, maybe we will interpret or predict it with another law, we need to reflect it in a living, case” (2. interviewee)<sup>39</sup>*

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<sup>38</sup> “... ya hakimlerin savcılarının genel olarak çok sofistike zevkleri pek yok, çok nadiren bazen meslektaşlarla güzel bir konserde karşılaştığımız zaman şaşıyorum, vay be böyle meslektaşlarım varmış diye seviniyorum mesleğim adına, genelde kendi aranda sosyalleşme bürokratla sosyalleşme jandarma komutanıyla sosyalleşme kaymakamla sosyalleşme işte bu insanların da sosyal çevreleri konuşabilecekleri konuları entelektüel düzeyde hani maalesef belli bir düzeyde kalıyor, ben tabi hoş yani meslektaşla sosyalleşmeyi doğru bulmuyorum farklı bakış açısı kazanmak için farklı insanlarla vakit geçirmek daha iyi oluyor, sizin kazandığınız bu bakış açısı kararlara yansıyor, farklı bakış açılarının gelmesiyle yargının değişeceğine inanıyorum, işte hukuka aykırı delil nedir ne değildir bunlar tabi hukuk tekniğini ilgilendiren konular ama bu konular bile aslında bazı konulara bakış açımızı sergiliyor”(3.görüşmeci)

<sup>39</sup> “...hakimler kendilerini toplumdan soyutladığı zaman kararlarındaki isabet de düşüyor bana göre en önemlisi şu soruları sormak, toplum şu an ne durumda? dinamikleri ne? insanların şu an kaygıları ne veya anlayışları ne? toplum içine gidip onlarla yaşamazsanız anlayamazsınız, bir de biz hukukçuyuz, motamot kanun maddesini bu kanun böyle oldu bitti diyemeyiz, onu olaya uygulayacağız belki başka bir kanunla yorumlayacağız veya öngöreceğiz, onu yaşayan olaya yansıtmamız lazım” (2. görüşmeci)

## 6.2. “...In fact, even the judge's breakfast affects her/his decisions”<sup>40</sup>

The interviewee stated that judges' psychology, intelligence level, emotions, and social conditions affect the judicial decision-making process.

*"... after all, we are human, we have different perceptions, intelligence levels, psychology, maybe we would feel differently if we read that case under different conditions, as human, we have some financial or moral problems, they may have problems with their spouses, they may have problems with their children, all of these are factors in decision making process" (8. interviewee)<sup>41</sup>*

Demonstrating the effect of their circumstances in the judicial decision process, the interviewees indicated that they started to decide more sensitively in child cases after having a child. For them, this transformation in their life created a different perspective evaluation of this type of cases *"...we are human, we have feelings, I am a father, everything became more sensitive after I had a child, for example, I remembered that I cried the case of child abuse, I felt very bad" (10. interviewee)<sup>42</sup> "...a girl was abused and killed, I have a son, when I think about this case, my heart bleeds, is it possible that this situation is not reflected?" (9. interviewee)<sup>43</sup>* The interviewee expressed the effect of the emotional situation on the case, and this situation was the subject of the Ottoman code of civil law. For him, the feelings of judges affect judicial decision-making

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<sup>40</sup> "...aslında hakimin sabahki kahvaltısı bile kararlarını etkiler"

<sup>41</sup> "... sonuçta bizlerde insanız, hepimizin algısı, zeka seviyesi, psikolojisi farklı, belki farklı koşullarda o dosyayı okusak farklı hissedicez, hepimizin insan olarak birtakım maddi veya manevi sıkıntıları var, eşleriyle problem yaşayabilir, çocuklarıyla problem yaşayabilir, bunların hepsi karar verme süreçlerimize etken" (8. görüşmeci)

<sup>42</sup> "...insanız biz duygularımız var, ben babayım, benim çocuğum olduktan sonra her şey daha hassas bir hale geldi, örneğin çocuk istismarı davasında hüüngür hüüngür ağladığımı hatırlıyorum, çok kötü oldum, dağıldım resmen" (10. görüşmeci)

<sup>43</sup> "... bir kız çocuğu istismar edilmiş, öldürülmüş, benim kız çocuğum var, içim kan ağlıyor o durumu düşününce, nitekim bu durumun yansımaması mümkün mü?" (9. görüşmeci)

processes. Therefore, the judges should not decide when they feel anger, fall in love, etc.

*“...we should not forget that we are human, we have feelings, we are affected by everything, while reading a case or making a decision, you evaluate situations with your own perspective, moreover, there is an article in Mecelle, if there are physical obstacles such as somnolence, sad, hungry and so on, the judge should not decide about case so we need to get rid of such things, but most of the time is not possible, for example, we have family problems, we have friends problems, we have economic problems, you go through everything that society goes through, sometimes you read the case, we say that we have an opinion, but when you write the reason, you actually did not see it at that time, something completely different, If you are in the process of making a decision and if you are angry, sad, in love, you have to be very careful, because you transfer all of these feelings to the case, one of the most important reasons why decisions differ according to judges, it should be like this such as there will be no external warning, we stay calm, we read the names of case by covering them up, only then can a very ideal decision be made, but that is not possible either”*

*(2. interviewee) <sup>44</sup>*

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<sup>44</sup> “...insan olduğumuzu unutmamak lazım, duygularımız var bizimde, her şeyden etkileniyoruz, karar verirken dosyayı okurken kendi süzgecinizden geçiriyorsunuz durumları, hatta Mecelle’de onunla ilgili bir madde var, hakim kederli, hüznü, aç, uyku basması gibi fiziki engeller varsa karar vermemesi gerekiyor, dolayısıyla bizim bu tür şeylerden arınmamız lazım ki oda çoğu zaman mümkün olmuyor, örnek veriyorum aile sorunlarımız oluyor, arkadaş sorunlarımız oluyor, ekonomik sorunlarımız oluyor, toplumun yaşadığı her şeyi yaşıyorsunuz, bazen bakıyorsunuz dosyayı okuyoruz bizde kanaat oluştu diyoruz ancak gerekçesini yazarken bir bakıyorsunuz aslında o sırada görmemişsiniz, tamamen farklı bir şey çıkabiliyor, öbür türlü şey oluyor, karar verme sürecindeyseniz ve kızgınsanız, üzgünseniz, aşkınsanız çok dikkatli olmak gerekiyor, çünkü bu duyguların hepsini o davaya aktarıyorsunuz, davaların hakimlere göre farklılaşmalarının en önemli sebeplerinden, şöyle olması lazım dıştan uyarıcı hiçbir şey

The interviewee mentioned that even what the judge eats in the morning impacted the decisions. As opposed to the previous interviewee, he talked about the importance of feelings when deciding a case *“...in fact, even the judge's breakfast in the morning affects her/his decisions, because the judge is human, judge make decisions which are impacted by human factors, so our hormones, emotions, anger, ambitions, sadness, all of our sense are necessary in judicial decision-making processes”* (10. interviewee)<sup>45</sup>

### **6.3. “The Kadi of Üsküdar and the Kadi of Beşiktaş make different decisions about divorce, two sides of the sea, two different decisions in the same case...”<sup>46</sup>**

The interviewee likened the judge and artist. He stated that the decision-making process is shaped according to the judges' perspectives on the case. This view is based on cultural norms and traditions.

*“..As a jurist, you create a work, the product you have created is an art and every artist has an own point of view on an event, for example, when someone ask a sculptor how you made a piece of marble, the sculptor says that I did not make this work because the product of block has already inside so everyone's way of shaping is different in decision- making processes, decision-making processes are like that, everyone's way of shaping is different like art because*

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*olmayacak, sakın olacağız, sınırları alınmış önyargı olmayacak dosyalarda taraf isimlerini kapatarak okuyacağız ancak o zaman çok ideal karar çıkabilir ama o da mümkün değil”* (2. görüşmeci)

<sup>45</sup> *“...aslında hakimin sabahki kahvaltısı bile kararlarını etkiler diye bir şey vardır gerçekten öyle, çünkü hakim insandır, yani insan kokusu taşıyan kararlara imza atması için orada görevlendirilir, yargılama boyunca onun hormonlarına, duygularına, öfkesine, hırslarına işte üzüntüsüne yani hassas noktalarının hepsine ihtiyaç vardır”*(10.görüşmeci)

<sup>46</sup> *“...Üsküdar kadısı ile Beşiktaş kadısı boşanmak konusunda farklı kararlar verirdi, denizin iki tarafı, aynı davada iki farklı karar...”*

*we are all impacted different structures and culture, my main concern is Turkish culture and traditions” (1. interviewer)<sup>47</sup>*

The interviewees stated that the culture in which the judge grew up shaped how they understood the concepts. While one of my interviewees explained this situation through the “freedom” of expression cases, the other demonstrated it with a different perception of the concept of “divorce” cases.

*“...for example, one subject, is it an insult or is it a freedom of expression? The answer to the questions is related to your thought and culture, this situation determines the decision- making processes, this is very clear! because while some may interpret a subject more liberally, other may interpret it narrowly depending on which culture growing up, judges can be against each other in the committee, different decisions can be made, particularly based on various factors” (7. interviewee)<sup>48</sup>*

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<sup>47</sup> “...şimdi hukukçu olarak tamam ortaya bir eser çıkarıyorsun, sonuçta ortaya çıkardığın ürün bir sanattır ve her sanatçının olaya bir bakış açısı var örneğin bir heykeltıraşa bir mermer bloktan eseri nasıl yaptın diye sorulduğunda, heykeltıraş ben bu eseri yapmadım zaten o bloğun içinde o ürün vardı, ben dışındaki fazlalıkları aldım diyor, karar verme süreçleri de böyledir, herkesin şekillendirme biçimi farklıdır sanat gibi, çünkü hepimiz farklı yapılardan ve kültürden etkileniyoruz, benim temel olarak göz önünde bulundurduğum Türk kültürü ve gelenekleri” (1.görüşmeci)

<sup>48</sup> “..örneğin bir konu hakaret midir, bu bir ifade özgürlüğü müdür sorularına vereceğiniz cevap sizin düşünce sisteminizle ve yetiştiğiniz kültürle ilgilidir, bu durum karar verme süreçlerini belirler, bu çok net! yetiştiği kültüre, ortama bağlı olarak kimisi bir konuyu daha özgürlükçü yorumlarken kimisi daha dar yorumlayabiliyor hakimler heyette birbirlerine muhalif kalabiliyor, farklı kararlar çıkabiliyor, çünkü yargılamayı yapan insandır” (7.görüşmeci)

*“Orhan Pamuk is talking about something about this, the Üsküdar kadi and Beşiktaş kadi make different decisions about divorce, two different decisions in the same case, that is, it changes according to the judge’s interpretation, because our way of understanding about divorce completely different depending on our culture, society” (9. interviewee)<sup>49</sup>*

One of the essential concepts stated by the judges regarding the decision-making processes has been “justice.” At this point, what is the sense of justice? What is it based on? Who exactly does it include? or What does it not include? It is significant to evaluate these questions in the context of the decisions in the cases. The concept of justice was emphasized in the decision-making processes of the judges. However, which kind of construction processes this concept included is based on is important in terms of its impact on decision-making processes. This situation affects judges’ perspectives and causes them to interpret the same cases differently. The interviewees mentioned the effect of the sense of justice on the decision-making processes *“When you say jurisdiction, justice comes first, so let justice be done, weather all hell broke loose, you need to look into your decisions from this point of view” (1. interviewee)<sup>50</sup>* However, the interviews explained how the sense of justice is different. The interviewee mentions that the context of society and culture shapes judges' sense of justice. For example, if the judge comes from a society where femicide is considered "sacred," the judge tries to reduce the punishment of the man who killed the woman based on the legal rules in the judicial decision-making process.

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<sup>49</sup> *“...Orhan Pamuk kitabında şöyle bir şeyden bahsediyor, Üsküdar kadısı ile Beşiktaş kadısı boşanmak konusunda farklı kararlar verirdi, denizin iki tarafı, aynı davada iki farklı karar, yani hâkimin yorumuna göre değişiyor, çünkü boşanma hakkındaki düşüncelerimiz yettiğimiz ortama ve kültüre göre tamamen değişiyor” (9. görüşmeci)*

<sup>50</sup> *“yargı dediğinizde önce adalet gelir, bu nedenle adalet yerini bulsun isterse kıyamet kopsun, bu bakış açısıyla kararlarımızda ilerlememiz gerekiyor” (1. görüşmeci)*

*“...I decide according to my sense of justice, judges make a decisions about cases according to the sense of justice that construct by society, that is, what society's sense of justice is, in fact, a judge's understanding of justice is on average, for example, if a judge comes from a culture where femicides are sanctified, a judge can reduce the punishment of the man who killed the woman as much as she/he can based on the law” (4. interviewee)<sup>51</sup>*

The interviewee bases his sense of justice on Turkish culture. According to his perspective, Turkish culture comes from his family and the two important sultans of the Ottoman Empire, Kanuni Sultan Süleyman and Yavuz Sultan Selim. Moreover, he gave an example of how interpreting the case considering his father-grandchild relationships in the decision-making processes

*“...the sense of justice is the trust of sides, my decision-making is parallel to my sense of justice, my sense of justice comes from Turkish culture, if you look at the words that I say and use as an example which comes from Kanuni Sultan Süleyman and Yavuz Sultan Selim” (1. interviewee)<sup>52</sup>*

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<sup>51</sup> “.. adalet duyguma göre karar veriyorum, yargıçlar önünde gelen davaları toplum tarafından inşa edilen adalet duygusuna göre verirler, yani toplumun adalet duygusu, adalet anlayışı ne ise aslında ortalama olarak bir yargıcın adalet anlayışı da odur, mesela bir yargıç kadın cinayetlerinin kutsallaştırıldığı bir kültürden geliyorsa, kadını öldüren adamın cezasını yasalara dayanarak elinden geldiğince düşürebilir” (4.görüşmeci)

<sup>52</sup> “...adalet duygusu tarafların birbirine güvenidir, benim kararlarımı vermem adalet duygumla paraleldir, adalet duygum, Türk kültüründen geliyor, söylediğim, kullandığım sözlere bakarsanız örnek aldığım Kanuni Sultan Süleyman ve Yavuz Sultan Selimden gelir” (1. görüşmeci)

*“For example, one of the years I work as a judge, a child in village touched the earthing line of the electricity at home and died because of electric shock. If I am not mistaken about the Article 22 of the Turkish Penal Code that contains if family members suffer from deaths, they cannot be punished emotionally too much, the prosecutors did not file a lawsuit against the parents for causing negligent death, but a lawsuit was filed against the grandfather because the child died in his grandfather's house, there was an incident that I had experienced before, my brother's first child was born and my father was playing with him a lot, I was doing an internship at that time, so I was probably impressed by the way my father played with his grandson, so I said, dad, when we were kids, you did not play with us, my father said, well, you are a walnut, but this is the inside of the walnut, we said okay, after 7-8 years this mentioned case happened, the prosecutor's office said that there is a fault of the grandfather here, he should be punished, I did not impose a penalty pursuant to Article 22, why, because I saw from my father that grandfather loves his grandson more, that is, I made such a decision, since I thought that after the death of the grandchild, the grandfather will not be punished if the parents are not punished, of course, after this decision, the prosecutor's office appealed, and I justified my decision well based on Turkish traditions and customs and got accepted” (I. interviewee) <sup>53</sup>*

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<sup>53</sup> “Mesela hâkim olarak görev yaptığım yılın birinde vatandaş köy yerinde küçük çocuk evde elektriğin topraklama hattına elini sürmüş ve elektriğe çarpılarak ölmüş, savcılık anne baba hakkında TCK yanlış hatırlamıyorsam 22. maddesinde taksirli ölümlerde aile bireyleri çok zarar gördüyse duygusal anlamda çok ceza verilmeyebilir maddesi var, ona dayanarak anne baba hakkında taksirli ölüme neden olmaktan dava açmamıştı savcılık ama çocuk dedesinin evinde elektriğe kapıldığı için dede hakkında dava açılmıştı, benim daha önce yaşadığım bir olay vardı, abimin ilk çocuğu doğdu, babam onunla çok oynuyordu, ben o zaman staj yapıyordum yani muhtemelen babamın torunuyla oynamasından

The interviewee mentioned that his sense of justice based on culture by giving an example of the case of marriage at a young age and had two children, but he argues that these marriages were “normal” in her culture that is why punishing them would destroy unit of family.

*“...for example, the age of marriage in some group is very early, when they come to the hearing, if the girl is fourteen or fifteen years old, we say “it's too late” in quotation, in the case, the hospital reported that there are a girl who was married at the age of fourteen or fifteen and has two children, it is a crime according to the law, what do you contribute to the society when punish this man? I am also against early marriage, when I apply the law directly, my conscience does not allow, there is marriage by consent, but consent is not a legally valid in law because she is very young, I also think that this group says that our customs and traditions include marriage at an early age, so I cannot make decisions by ignoring this, my sense of justice is based on culture” (2. interviewee)<sup>54</sup>*

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*etkilenmişim ki baba biz çocukken bizimle bu kadar çocukla oynamadın dedim. Babam da orada dedi ki ee siz cevizensiz, bu cevizin içi dedi, iyi dedik tamam, tabii bu olaydan 7-8 yıl sonra işte olay oldu, savcılık dedi ki, burada dede kusuru vardır cezalandırılırsın dedi. Ben 22. Madde gereğince ceza vermedim, neden çünkü babamdan gördüm dede torununu daha çok seiyor, yani torunun bir şekilde vefat etmesinden sonra anne babaya ceza verilmediği yerde dedeye de ceza verilmez diye düşündüğümünden böyle bir karar verdim, şimdi bu karardan sonra savcılık temyiz etti, ben de bu ifadelerimi Türk gelenek ve göreneklerine dayanarak güzelce gerekçelendirdim ve kabul aldım” (1. görüşmeci)*

<sup>54</sup> *“..örneğin davasına baktığım grupta evlilik yaşı çok küçük, hatta duruşmaya geldiklerinde eğer kız on dört on beş yaşındaysa biz çok geç kalmış diyoruz tırnak içinde, mesela evlenmişler kız on dört on beş yaşında evlenmiş ve iki tane çocuk var, hastane ihbar etmiş, kanuna göre suç ama şimdi iki çocuk var adama versen on beş yıl ceza toplumda neyi kurtarmış olacaksın? ben de erken evliliğe karşıyım, bu durumda kanunu direk uyguladığımda vicdanım el vermiyor, orada rızayla evlilik var ama küçük olduğu için rıza hukuken geçerli bir rıza değil, ayrıca şöyle düşünüyorum o cezanın muhatabı olan toplum diyor ki bizim adetlerimizde küçük yaşta evlenmek var, biz buna inanıyoruz, ben bunu görmezden gelerek karar veremem, benim adalet duygum kültüre dayanıyor” (2.görüşmeci)*

Two other interviewees stated their opinions about the same case. They said that child marriage is abuse, which cannot be legitimized based on family unity and cultural discourse. They persistently repeated that culture should be excluded if necessary

*“... a girl is fifteen years old, was married in the village, normally, when the prosecutor get the news, she/he need to arrest man, mother and father of the girl, all of those who mediate the marriage, like the parents of the groom because this is a crime of abuse, it is very serious, because a person maturity is both physical and mental, the legislator recognized that it is difficult to determine physical and mental and legislator determine an age limit for it, sometimes this age limit maybe risky because even if you are older than determined age, you may not have mental maturity, but at least this legal rule protect young people who are under this limit, when I look into this case, I am strict on this issue, maybe I exclude cultural facts, but it is not possible for me to accept this” (10. interviewee)<sup>55</sup>*

*“...an example that I come across frequently that is married at a young age, after giving birth, the police report to the prosecutor and being sued for sexual abuse, the man is generally acquitted based on common misconceptions from Turkish Criminal Code, I do not accept this, we cannot approve the wrong things, for those who decide like I explained who justify their decision as they*

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<sup>55</sup> *“...Ordu’nun köyünde 15 yaşında bir çocuk evleniyor, normal şartlarda cumhuriyet savcısı olarak haber aldığınızda adamı alacaksınız kızın annesini ve babasını alacaksınız, damadın anne babası gibi evlendirmeye aracılık eden kim varsa hepsini alıyorsunuz, bu istismar suçudur, çok ciddi, çünkü bir insanın erginliği hem fiziksel hem de zihinseldir, yasa koyucu fiziksel ve zihinsel erginliği belirlemenin zor olduğunu kabul etmiş ve diyor ki ben buna bir yaş limiti koyuyorum ki bu yaş limiti bile riskli, çünkü bazen bu yaşı geçmiş olsanız bile zihinsel ergenliğiniz olmayabilir, ama en azından daha küçükleri korumak adına önemli, o açıdan ben bu konuda katı düşünüyorum diyebilirim, kültürel gerçekleri dışlamış olacağım ama bunu kabul etmem mümkün değil” (10.görüşmeci)*

*are family, so we should not break up a family? Furthermore, some jurists say that, but their group accept child marriage in their customs and traditions, I do not accept it, they should not be an example, there is no reason to approve child marriage in my point of view” (3. interviewee)<sup>56</sup>*

**6.4. “...When I started my career, I had a child, I had a girlfriend, I went abroad but now you send people who are twenty-three years old, don't do any of these things and tell them divorce husband and wife”<sup>57</sup>**

People develop different perspectives by experiencing various situations throughout their lives. The interviewee stated that experience provides to evaluate the case more broadly “...the effect of experience is very important when making decisions, while the experienced person can look at the field more broadly, it is not possible to say this for others, knowledge is reinforced with experience” (4. interviewee)<sup>58</sup> As opposed to previous situation, the interviewee mentioned that when they are inexperienced, it is difficult for the judges to decide with a sense of responsibility.

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<sup>56</sup> “...sıklıkla karşılaştığım bir örnek çocuk yaşta evlenmek, evleniyorlar hastanede doğumdan sonra polis bildiriyor savcılığa, cinsel istismardan dolayı dava oluyor, davada genelde yaygın kanaat Türk Ceza Kanununda olan yanlışlıktan faydalanıp beraat kararı veriliyor, ben bunu kabul etmiyorum, kim olursa olsun bunun değişimi için bu yönde karar verilmesi şart, bu düzenin yanlış giden yerlerini onaylayamayız, bu yönde karar verenlerin gerekçesi şu yani hukuki gerekçeleri, insanlar ev kurmuşlar yuva kurmuşlar eee düzenleri bozulsun mu? Yani hem onların gelenek ve göreneklerinde kabul ediliyormuş, ben bunu kabul etmiyorum, örnek olmasınlar, çocuk yaşta evlenmeyi onaylayacak bir gerekçe yok benim bakış açımda..” (3. görüşmeci)

<sup>57</sup> “...mesleğe başladığımda bir çocuğum vardı, bir kız arkadaşım olmuştu, yurtdışına gitmiştim ama şimdi bu dediklerimin hiçbirini yapmayan yirmi üç yaşındaki insanları gönderip karı koca boşa diyorsunuz”

<sup>58</sup> “.. karar alırken tecrübenin etkisi oldukça önemli, tecrübeli olan kişi alana daha geniş bakabiliyorken, diğerlerinde bunu söylemek mümkün değil, bilgi tecrübeyle pekişiyor” (4. görüşmeci)

*“...I would like to say that today I approach it with a different sense of responsibility, but I am not a very old person, but when I started my career, I had a child, a girlfriend, I went somewhere in the world alone with a bag on my back, but you give divorce case to the person who is twenty years old and did not experience any of these things I said” (10. interviewee)<sup>59</sup>*

As mentioned, emotions affect the judicial decision-making process, but the interviewee explained that controlling ambivalent feelings is related to experience.

*“...my feelings used to change very quickly in the first years of the profession, for instance, I was very young, I was impressed by a beautiful girl in the case, but I am not even thirty years old, now I think we start the profession at a very early age” (9. interviewee)<sup>60</sup>*

By emphasizing the relationship between the age factor and experience, the interviewees mentioned that the judges who are younger and have little life experience reduces the accuracy of judicial decisions.

*“...for example, when a person who is twenty-two- or twenty-three-year-old, becomes prosecutor or judge in the district, despite being very inexperienced, they feel strong and cannot understand the behavior of the people, in fact, they consider themselves as superior to the citizens they serve, it reflects decision*

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<sup>59</sup> “...bugün daha farklı bir sorumluluk duygusuyla açıkçası yaklaştığımı söylemek isterim, ama ben çok yaşlı biri değilim ama mesleğe başladığımda bir çocuğum vardı, bir kız arkadaşım olmuştu, sırtıma bir çantayı takıp tek başıma dünyanın bir yere gitmişim ama bu dediklerimden hiçbirini yapmayan yirmi üç yaşındaki insanlara siz boşanma davası veriyorsunuz” (10. görüşmeci)

<sup>60</sup> “...mesleğin ilk yıllarında duygularım çok hızlı değişirdi, mesela bir gün çok gençtim güzel bir kızdan etkilendim davada, ama otuz yaşında bile değilim, şimdi düşünüyorum da çok erken yaşta başlıyoruz mesleğe” (9.görüşmeci)

*process and relationships, so experience is very important in every point” (2. interviewee)<sup>61</sup>*

*“...at that time, jurists from other countries came to the training center, they said to me that you become a judge at a very early age, I asked why, I was a candidate for judge at the age of twenty-three at that time, they said to me it was not possible before the age of thirty, because the earliest age a person can achieve personal maturity, I really understood it over time, it definitely reflects on your decisions” (8. interviewee)<sup>62</sup>*

Exemplifying this situation through a sexual assault case, the interviewee stated that the two young judges were deficient in understanding the details of the case, which is why the case resulted in death.

*“...there has been a sexual assault incident, the person was arrested, all the statements have been taken, a report from the forensic medicine is awaited, at that time, there is a 30 year experience senior president and two judges who have been working for 7-8 years at the high criminal court, in the sexual assault crime case, they thought that the case could happen based on consent between man and girl, the girl is under 18, in this case, there are serious changes in the penalty and in some cases, the man released by taking into account staying in prison, but the president of this court evaluated the current situation with his*

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<sup>61</sup> “... mesela 22-23 yaşlarında birisi ilçeye savcı veya hakim olduğunda, çok deneyimsiz olmasına rağmen kendinde güç görüyor, yeni başlayan arkadaşlarda hayat tecrübesi olmadığı için gittiği yerdeki insanların davranışlarını anlayamıyorlar, aslında hizmet etmek için gittiği vatandaştan kendisini üstün görüyor, bu durum karar verme sürecine, ilişkilerine yansıyor, bu sebeple tecrübe her açıdan çok önemli” (2. görüşmeci)

<sup>62</sup> “...o zamanlar eğitim merkezinde başka ülkeden hukukçular gelmişti, bana çok erken yaşta hakim oluyorsunuz dedi, ben de neden diye sordum, o zamanlar ben yirmi üç yaşında hakim adayıyım, orada otuzundan önce mümkün değilmiş, çünkü kişisel olgunluğunu insanın en erken sağlayabildiği yaş otuz diyordu, onu zaman içinde gerçekten anladım, bu kesinlikle kararlarınıza yansıyor” (8. görüşmeci)

*experience, when the committee went inside to make a decision, two young colleagues said the type of crime has changed so we should release of this man, but the president of this court said that we should not release this person because of current situation of aggrieved party, the other two judges said that there should be an eviction, anyway, they went back to court and released him, the president voted against, of course, he demonstrated social benefit for this case, but he was released by the majority of votes, after three days, the victim's relatives killed the accused person in the village square” (1. interviewee)<sup>63</sup>.*

The interviewee stated that in addition to the decrease in the accuracy of the decisions due to the age factor, various problems also increase because of "power poisoning". *“...some people should not be included in that profession, or they should gain experience, otherwise you send them and then they get into trouble with people, they are mobbing people and staff, you think how they can decide, power poisoning” (3. interviewee)<sup>64</sup>.*

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<sup>63</sup> “...cinsel saldırı olayı olmuş, kişiyi tutuklamışlar, haliyle duruşma olmuş, bütün ifadeler alınmış, adli tıptan rapor bekleniyor, o sırada ağır ceza mahkemesinde 30 yıllık kıdemli bir başkan ve 7-8 yıldır görev yapan iki tane hâkim var, cinsel saldırı suç davasında bahsedilen adam ve 18 yaşından küçük kız arasındaki ilişkisinin rızaya dayalı olabileceği ortaya çıkmış, bu durumda alacağı cezada ciddi değişimler oluyor hatta bazı durumlarda adamın tutuklu kaldığı sürede dikkate alınarak tahliye edilmesi gerekiyor, ancak başkan tecrübesiyle duruşma salonunda olan mağdur tarafın yakınlarının sanığa bakışıyla durumu görmüş ve heyet karar vermek için içeride incelemeye geçtiğinde iki tane genç meslektaş burada suçun vasfı değişebilir, yani rızaya dayalı bir ilişki vardır adamın tutuklu kaldığı süre yeterli, tutuksuz yargılama devam etsin demiş ama başkan hayır demiş bu olayda daha mağdur taraf sinirini atamamış demiş tecrübesine dayanarak, diğer iki hâkim burada tahliye gerekir demişler, neyse mahkemeye çıkmış tahliye etmişler, başkan karşı oy yapmış, tabii orada bir toplumsal faydadan da bahsetmiş ama oy çokluğuyla tahliye edilmiş, tahliyeden üç gün sonra o cinsel saldırıdaki sanık olan kişiyi köy meydanında mağdurun yakınları vurup öldürmüşler” (1.görüşmeci)

<sup>64</sup> “.. bazı kişiler o mesleğe dahil edilmemeli ya da iyice tecrübe kazanmalı aksi halde onları gönderiyorsun sonra milletin başına bela oluyor, insanlara, personele mobing yapıyor, personele mobing yapıyor, nasıl karar verebileceğini siz düşünün, güç zehirlenmesi” (3. görüşmeci)

The interviewee mentioned that this perspective affects decision-making until the judges find their style.

*“...experience is very important, you can evaluate some things with experience and you can make inferences, there are gaps in between, you need to complete them with reasoning, experience is also formed in the process, when you first start the profession, everyone thinks that they dominate the world, you gradually learn that it is not like that, in time, your style starts to shape after your first task” (7. interviewee)<sup>65</sup>*

#### **6.5. “...Is sexism violence? yes, definitely”!<sup>66</sup>**

Gender is behavior patterns expected from society depending on sex. This gender-based view shapes the perception of people about how woman and man behave in society. At the same time, the words people use in their speech give internalize gender-based perspective. In this context, when the interviewees used gender biased language such as "man" instead of "human" or “lady” instead of "woman" *“... I immediately went to the “lady” lawyer who gave me good opportunities” (9. interviewee)<sup>67</sup> “...the “lady” prosecutor character there impressed me a lot” (8. interviewee)<sup>68</sup>* According to gender-based perception, women should be protected by men. The interviewee described this situation *“...you saw a woman being beaten, go and make a small intervention to the*

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<sup>65</sup> *“...tecrübenin çok önemi var, tecrübeyle bazı şeyleri değerlendirebiliyorsunuz ve çıkarımlarda bulunabiliyorsunuz, arada boşluklar kalıyor, bunları akıl yürütmeye tamamlamanız gerekiyor, tecrübe de süreç içerisinde oluşuyor, mesleğe ilk başlarken herkes dünyaya hükmettiğini zannediyor, süre içerisinde zaten yavaş yavaş öyle olmadığını öğreniyorsunuz, ilk görevden sonra tarzınız oturmaya başlıyor” (7. görüşmeci)*

<sup>66</sup> *Cinsiyetçilik bir şiddet midir? evet kesinlikle!*

<sup>67</sup> *“... hemen bana güzel imkanlar sağlayan “bayan” avukatın yanına girdim” (9. görüşmeci)*

<sup>68</sup> *“...oradaki “bayan” savcı karakteri beni çok etkilemişti” (8. görüşmeci)*

*man and see what's going on, after all, you face with woman who needed to be protected by you” (5. interviewee)<sup>69</sup> Every institution is perceived as a women's or men's system for these norms. The interviewee emphasized that football is a sport played by men “...football is a men’s sport, when I was at high school, I always played it when I was in high school” (5. interviewee)<sup>70</sup> According to these gender patterns, while the father is seen as the head of the family and the most fundamental person, the mother is seen as a "supporter" in all areas of life. The mother is seen as the person who must do all the housework. From this point of view, women's unpaid labor is ignored in the family. The interviewee describes this situation as their father is the main factor in the education process, and the mother is a "supporter." “...my father gave us all the opportunities for the best education, so I am very grateful to my “father” and of course my mother “supported” him” (8. interviewee)<sup>71</sup> The interviewee stated that the normalization of women's gender-based roles shape the perception of normality of the judge and affects particularly women’s cases decision-making process.*

*“...the woman suddenly finds herself looking after the child, doing the dishes, washing the clothes, and going to work, wait a minute, what kind of paradox is this? It is not possible for a person to do all of them, but unfortunately, women are brought up in this way and they are normalized, in fact, what the judge perceives as normal is very important especially in the decision-making processes in women's cases” (10. interviewee)<sup>72</sup>*

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<sup>69</sup> “...sen gördün bir bayan darp ediliyor, şu yapılır, git adama küçük bir müdahale yap bak neler oluyor sonuçta karşında senin tarafından korunması gereken bayan var” (5. görüşmeci)

<sup>70</sup> “...futbol erkek sporudur, ben de lise zamanlarımda hep oynardım” (5. görüşmeci)

<sup>71</sup> “...bize en iyi şekilde eğitim aldırabilmek için tüm imkanlarını sundu babam, bu yüzden babama çok minnettarım ve annem de destek oldu tabi” (8. görüşmeci)

<sup>72</sup> “...kadın bir anda kendisini hem çocuğa bakıyorken, hem bulaşık yerleştirirken, hem çamaşırları yıkarken, hem de işe giderken buluyor, bir dakika yani bu nasıl bir paradoks? Bir insanın hepsini

The interviewee stated that gender equality is crucial for changing people's perspectives; otherwise, the judge's perspective on women and men prevents from seeing the dimensions of violence.

*“...but I think the most important thing is not only the view of the society or the man towards the woman, but the view of the woman herself and from other women, to define herself as someone's wife or mother is famous on social media, in fact, I think that this is the violence of the woman against herself, for example my wife uses her surname before marriage, I am a judge who thinks that the view on the concept of family will change with the individualization of people in society, it is very important from where the judge looks at women and men issues, that's why I told you this, for example, a certain group only talks about physical violence, but economic violence, psychological violence What about cases like this? Is sexism violence? Yes, definitely! For example, sexism is not violence for a mentality that has positioned itself superior to men in society, because male dominance is what it should be” (3. interviewee)<sup>73</sup>*

At this point, the interviewee states that although there was physical violence between the husband and wife, the judge released the husband who killed his wife.

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*yapması mümkün değil ama kadın maalesef bu şekilde yetiştiriliyor ve bunlar normalleştiriliyor, aslında hakimin neyi normal olarak algıladığı özellikle kadın davalarındaki karar verme süreçlerinde çok önemli” (10. görüşmeci)*

<sup>73</sup> *“...ama bence asıl önemli olan sadece toplumun veya erkeğin kadına bakışı değil de kadının kendisine ve kadınlara bakışı, kendini birinin eşi ya da annesi olarak tanımlamak, sosyal medyada meşhur, işte aslında bu durumun kadının kendi kendine şiddeti olduğunu düşünüyorum, mesela benim eşim kendi bekarlık soy ismini taşıyor, ben toplumdaki insanların bireyselleşmesiyle aile kavramına olan bakışın değişeceğini düşünen bir hakimim, burada hakimin kadına ve erkeğe hangi noktadan baktığı çok önemli, bu sebeple size bunu anlattım, mesela belirli bir kesim sadece fiziksel şiddetten bahseder ama ekonomik şiddet, psikolojik şiddet gibi olgular noluca? Cinsiyetçilik bir şiddet midir? evet kesinlikle! Mesela kendini toplumda erkeği üstün konumlandırmış bir zihniyet için cinsiyetçilik bir şiddet değildir, çünkü onun için erkek egemenliği zaten olması gerektirir” (3. görüşmeci)*

*“...in the place where we live, the man beat his wife, there are fractures in the woman's body, the prosecutor immediately arrested that man, but the Criminal Court did not arrest the man, the point of view of the classical society is that they are husband and wife and they could quarrel, Criminal Court released him, two weeks later, that man killed his wife, then he was arrested” (1. interviewee)<sup>74</sup>*

**6.6. “You become a mechanic, you lose your soul, you forget that you are human, in such a case, does the other person who forgets herself/himself remember other as person? I'm asking you”<sup>75</sup>**

The interviewees demonstrated that they could not allocate the necessary time to the cases because of their workload that they are worried about keeping up with the cases, and that there is no time left for comprehensive research on the case. This affects the decision-making processes *“...because there is a lot of workloads, I am tired, unfortunately, in our profession, the workload affects every aspect of our lives” (5. interviewee)<sup>76</sup>* *“...for example, our workload is very high, we have many files, our decision-making processes need to be fast at this point, we are constantly worried, the*

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<sup>74</sup> *“...yaşadığımız yerde adam eşini dövmüş, kadının vücudunda kırıklar var, savcı hemen o adamı tutukladı, ama Ceza mahkemesi adamı tutuklamadı, klasik toplumun bakış açısı karı kocadır kavgada ederler deyip, hakim tahliye etmiş, iki hafta sonra o adam karısını öldürdü, sonra tutuklandı” (1. görüşmeci)*

<sup>75</sup> *“mekanikleşiyorsunuz, ruhunuzu kaybediyorsunuz, insan olduğunı unutuyorsunuz, böyle bir durumda kendisini unutan diğerlerinin insan olduğunı hatırlar mı? soruyorum size”*

<sup>76</sup> *“...çünkü çok fazla iş yükü var, yoruldum, maalesef bizim mesleğimizde iş yükü hayatımızın her alanını etkiliyor” (5. görüşmeci)*

*effect of the workload on our decision-making processes is obvious, there is no time for more comprehensive research” (2. interviewee)<sup>77</sup>* The interviewee stated that they do not do comprehensive research in the judicial decision processes because of the workload, but the most significant part for deciding about case is research “...in the decision-making process, especially information, research, and elaboration are very important, because the more you think about it, the more qualified decisions you make, but this is not possible in our system, the workload is too much” (5. interviewee)<sup>78</sup> The interviewee is in the doctoral process stated that criticism and elaboration are related to academic career, expressed the importance of differentiation in the decisions made by deeply trained minds

*“...why am I doing PhD? because it gives me a different perspective, I definitely use the information I have learnt, when you get used to academic looking and research, you can see how the reasons you write for your decisions change, because you learn to criticize, question and understand deeply” (8. interviewee)<sup>79</sup>*

The effect of the mental exhaustion brought by the workload on the decision-making processes, the interviewee demonstrated that this situation causes a decrease in their perception abilities.

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<sup>77</sup> “... mesela iş yoğunluğumuz çok yüksek, dosyalarımız fazla, karar alma süreçlerimizin bu noktada hızlı olması gerekiyor, sürekli dosyalar yetişecek mi kaygısı oluyor, yoğunluğun karar alma süreçlerimize etkisi açık, daha kapsamlı araştırmaya vakit kalmıyor” (2. görüşmeci)

<sup>78</sup> “... karar alma sürecinde özellikle bilgi, araştırma, ve detaylandırma çok önemli, çünkü ne kadar çok üzerinde düşünürseniz o kadar nitelikli kararlar alıyorsunuz ama bizim sistemimizde bu mümkün değil, iş yükü çok fazla” (5. görüşmeci)

<sup>79</sup> “...ben doktorayı niye yapıyorum? çünkü bana başka bir bakış açısı kazandırıyor, edindiğim bilgileri mutlaka kullanıyorum, akademik bakmaya ve araştırmaya alıştığınızda kararlarınıza yazdığınız gerekçelerin nasıl değiştiğini görebilirsiniz, çünkü eleştirmeyi, sorgulamayı, anlamayı derinlemesine öğreniyorsunuz” (8. görüşmeci)

*“...there was a psychiatrist I loved reading years ago, he wrote in the newspaper and in my opinion, he was a good intellectual, he said that we listen all day, and when it's eight o'clock, the coaches leave, but who would we tell our troubles, in fact, the situation of the judges is the same, it's really tiring” (7. interviewee)<sup>80</sup>*

*“Imagine that you attend the hearing with twenty files a day, this shows that you listen to forty people on average, listening to the problems of forty people in a day... think about this in a month, a year, of course your perceptive ability goes away” (4. interviewee)<sup>81</sup>*

The interviewee explained that the other reason for the decrease in perception ability is the judge's inability to improve herself/himself because of workload *“...everything changes very fast, human relations diversify, differentiate, become more complex, so we need to constantly develop ourselves, otherwise it is impossible for us to understand the case in this workload” (8. interviewee)<sup>82</sup>* The interviewee express that she/he does not feel like a human due to the workload and that she/he forgets that the person in front of her/him is a human and this situation brings stress and weariness.

*“...it is an extremely grind, ı can't explain that brain fatigue, it is a situation that accumulates, ı think we need to go through psychological tests, because you are incredibly worn out, you are human, you are depressed, it is already*

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<sup>80</sup> “...yıllar önce severek okuduğum bir psikiyatr vardı, gazetede yazardı, bana göre iyi bir entelektüeldi kendisi, şöyle bir şey söylemişti. Biz gün boyunca biz dinliyoruz, saat sekiz oluyor, danışanlar çekip gidiyor, ama biz derdimizi kime anlatacağız derdi, aslında hakimlerin durumu da aynı, gerçekten çok yorucu” (7. görüşmeci)

<sup>81</sup> “... günde yirmi dosyayla duruşmaya çıktığınızı düşünün, ortalama bu durum kırk kişi dinlediğinizi gösterir, bir gün içinde kırk kişinin sorunlarını dinlemek..., birde bunu ayda, senelerde düşünün, algılama yeteneğiniz gidiyor tabii”(4. görüşmeci)

<sup>82</sup> “...her şey çok hızlı değişiyor, insan ilişkileri çeşitleniyor, farklılaşıyor, daha karmaşık hale geliyor, o yüzden sürekli kendimizi geliştirmemiz gerekiyor, aksi halde bu iş yoğunluğunda önümüze gelen olayı anlamamız mümkün değil” (8. görüşmeci)

*very busy, it is necessary to relieve stress, believe me, there is such a workload that sometimes you can't perceive the human factor, he/she has a home too. I can say that you become a mechanic, you lose your soul, you forget that you are human, in such a case, does the other person who forgets herself/himself remember other as person? I'm asking you" (8. interviewee)*

**6.7. "... If the person has already been convicted by public, it is not always easy to decide on the contrary" <sup>83</sup>**

The interviewee stated that the case in which the publicly known person was convicted put a lot of pressure on the judge regardless of the difficulty of deciding otherwise.

*"...especially sexual crimes are mostly behind closed doors, they occur between two people, such an investigation is known by the public, it is a much more difficult to make a decision, especially if the person has already been convicted by public, it is not easy to decide to the contrary." (7. interviewee)<sup>84</sup>*

The interviewee explained that the society's awareness of fundamental rights and if society demands them from the judiciary system, the decision of the judiciary will differentiate in this context.

*"...it is not possible for the human rights and freedoms of the society to develop only with the efforts of the judges, it is very important that the society demands*

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<sup>83</sup> "kamuoyunda zaten kişi mahkum edilmişse, bunun aksi bir karar vermek kolay olmuyor"

<sup>84</sup> "...özellikle cinsel suçlar daha çok kapalı kapılar ardındadır, iki kişi arasında oluşur, o tür bir soruşturma bir de kamuoyuna tarafından biliniyorsa burada karar vermek çok daha sıkıntılı bir konudur, özellikle kamuoyunda zaten kişi mahkum edilmişse, bunun aksi bir karar vermek kolay olmuyor" (7. görüşmeci)

*to develop and realize justice, I think that this situation will reflect the decisions of the judges" (8. interviewee)<sup>85</sup>*

The interviewee exemplified this situation through the change in perspective towards honor killings in the judiciary. Social media, the works, and studies of women's associations, etc. affect the way of understanding about honor killing in the judiciary system.

*"...they say that when social media mobilizes prosecutors, people are arrested, I agree, for example, there was the concept of honor killings, there were a lot of remission in the past, men killing of their wives and sisters was almost tolerated in this society and they were treated like heroes, but in the last twenty years, we see that these reductions in sentences in judicial decisions in Turkey have visibly decreased, especially with the increase in public awareness, the development of social media, and the effectiveness of women's organizations " (4. interviewee)<sup>86</sup>*

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<sup>85</sup> “.. sadece hakimlerin çabasıyla toplumun temel hak ve özgürlüklerinin gelişmesi mümkün değil, toplumun bunları geliştirmek ve adaleti gerçekleştirmek için talepte bulunması çok önemli, bu durumun hakimlerin kararlarına yansıtacağını düşünüyorum” (8. görüşmeci)

<sup>86</sup> “..sosyal medya, savcılar harekete geçirince kişi tutuklanıyor diyorlar, katılıyorum, örneğin, namus cinayeti kavramı vardı, eskiden çok fazla ceza indirimleri yapıyordu, bu toplumda erkeklerin karılarını, kız kardeşlerini öldürmeleri neredeyse hoşgörüiliyor ve onlara kahraman gibi davranılıyordu, ama son yirmi yılda, özellikle kamuoyundaki bu duyarlılığın artması, sosyal medyanın gelişmesi, işte kadın örgütlenmelerinin etkin hale gelmesiyle Türkiye’de yargı kararlarındaki bu ceza indirimlerinin gözle görülür bir biçimde azaldığını görüyoruz” (4.görüşmeci)

## CHAPTER 6: DISCUSSION

The judicial decision-making process refers to the judge's process of concluding a case. This research aims to describe the sociological factors that affect judges' judicial decision-making processes in contentious cases in Turkey and discuss these factors with Bourdieu's concepts of habitus, capital, and field. The research question is, what are the sociological factors that impact the judges' judicial decision-making processes in controversial cases in Turkey? This study's importance contributes to the interdisciplinary approach from sociology to jurisdiction. Interdisciplinary social studies have been raised in social science studies, but in Turkey, judiciary research makes the legal discipline the reason why studies in fields from other disciplines are limited. Social conditions affect human behaviors; that is one significant reason many decisions are made by sociological factors. Research findings show that judicial decision-making processes are affected by ten sociological factors in controversial cases in Turkey. These factors are class, family, education, emotions, culture, experiences, gender, workload, media, and social pressure. These factors affect a judge's ability to make choices and manage them through judicial decision-making processes.

As opposed to the legal formalist approach to the judge as a technician through judicial decision-making processes, research findings show that they do not decide merely dependent on legal rules. Still, ten judges accept the legal rules as absolute reality in the legal field called Doga. In the research, the seventh interviewee mentions freedom of expression cases and how judges thought systems and culture determine the interpretation of legal rules which apply to cases. The ninth interviewee demonstrates how judges' interpretations of divorce cases change depending on the culture. Moreover, the fourth interviewee gave a significant example about if the judges come

from a culture that considers femicide as “sacred,” the judge tries to reduce the punishment of the man who killed the woman. Moreover, the three interviewees’ examples in the same cases are crucial due to their different way of interpretations. The second interviewee explains that even though he is against marriage at a young age, if a culture accepts this as “normal,” he does not give a punishment not destroying the family unit. On the contrary, the third and ninth interviewees state child marriage can not accept depending on family unity, culture, and society. This abuse must exclude preventing the legitimization of this norm in society. Comparing their habitus, they interacted with various factors in the socialization process. For instance, the second interviewee’s education level is a doctorate, and his mother and father graduated from primary school. He lived in rural areas in Anatolia. The third interviewee’s education level is a doctorate, and his mother and father are teachers. He lived in the southern part of Turkey. Tenth’s education level is a master and his mother graduated from primary school, but his father is an engineer. He lived in the east part of Turkey. This comparison consists of education, family, and class differentiation among three judges who make different decisions about the same topic. Even though their education level is close, their father’s and mother’s education level and region of residence differ. The fourth, ninth and second interviewee’s families are also from the Anatolian rural side. Depending on what interviewees said, apart from exceptions, most people in rural areas of Anatolian are conservative, traditional, nationalist, and lower-middle class. In addition, they describe this place as pragmatic, not reading a book, asking a question, doing research, having critical questions, and having low intellectual activities. For this case, it can evaluate that one of the significant factors which impact the second interviewee judge habitus acquires thoughts and actions as a member of this social structure about child marriage. Furthermore, in the light of the explanation of habitus,

eight interviewee judges gain tendencies, predispositions, thoughts, actions, and knowledge through their socialization process in middle-lower class families and state education from Anatolian rural areas in Turkey. Based on this structure, ten judges whose class identity middle and lower do not benefit from material values compare to the upper class, called economic capital. However, after they get into law school, they gain prestigious by using law school diplomas and titles called the form the cultural capital of institutionalized cultural capital. By accumulating their education period, their symbolic capital, like prestige, stance, speech, etc., and social capital, like group networking, institutions, and relatives, also changed in the legal field of judges' powerful position. Another form of the cultural capital of embodied cultural capital is language, habits, writing style, etc., gain in from childhood Anatolian family types and impact on habitus. What interviewee says that there is no objectified cultural capital in Anatolian geography. This social context consists of various capital types such as; economic, cultural, social, and symbolic, and depending on this background; they construct reality in judicial decision-making processes. The first interviewee clarifies his sense of justice, defined by Turkish culture, his family, and two sultans of the Ottoman Empire, Kanuni Sultan Süleyman and Yavuz Sultan Selim. Moreover, he gave an example of how interpreting the case considering his father-grandchild relationships in the decision-making processes.

In addition, this is qualitative research, so more factors are found through research processes. One of them is emotions; research results show that emotions such as hormones, anger, ambition, falling in love, and even breakfast impact judicial decision-making processes. The tenth interviewee's explanation also refers to Danziger, Levavb, and Pessó's (2011, p.6891) quantitative study about how a judge's breakfast in the morning affects their decisions. Research results indicate that experience is one of the

affecting factors in the judges' decisions. When considering experience and age relations, the required age criterion to be a judge needs to be raised for a more inclusive case decision. The ninth interviewee mentions how experience and age relations impact controlling feelings about the case, and he says how his way of thinking about cases change at the beginning of his career and now. Furthermore, for instance, the first interviewee clarifies how two young judges were deficient in comprehending the details of the case about sexual assault. Another one is gender; research results indicated that gender is effective in the decision-making processes of judges. Gender refers to the socially and culturally constructed "appropriate" or "inappropriate" behavior patterns for women and men in society. For instance, when the judge considers the case, the perception of the judge's how a family should be in terms of defined patterns impacts the judicial decision-making process. As mentioned in the findings, the third interviewee explained dimensions of violence in society, such as physical, economic, emotional, etc., and who considers the case from these aspects. Still, the first interviewee stated one of the examples he had read before. The woman was physically abused by her husband, but the Criminal court judge released him and said it was a typical family argument. This man killed his wife two weeks later. Comparing two judges' perspectives in the same case, the gendered way of interpreting affects the judicial decision-making process. Could it be possible to have the same decision from two completely different views for the same case? The most discussed case results in Turkey are violence and murder against women. Their gender-based perspective affects the decision processes regarding which legal rules are convenient to apply, but as this research and literature discuss, various factors impact judicial decision-making. That is the reason essential for judges to receive training and lectures from different disciplines lecturers on these issues starting from law school to be more inclusive in their decision-

making processes. Mainly, that education should concern with interdisciplinary case analyses. Research results indicate that workload is one of the factors affecting decision-making processes. The judges mention they need more time because of their workload. This situation impacts no time left for comprehensive research for cases and causes decreasing perception ability. The decline in the working hours of the judges will provide that the decisions are taken with more extensive research and consideration. Research results show that media and social pressure impact decision-making processes. The seventh interviewee states that if the case is known publicly, that is difficult to decide as opposed to society's view. Fourth, interviewees demonstrated how the way of looking at judges about honor killing changed impacted by social media and women's associations. This situation can also consider how the habitus of judges alters affected by them. Besides that, research findings also show that when they start their profession, their social life activities and interactions decrease because of various social and legal limitations. Additionally, they define this profession as asocial and stay away from the dynamics of everyday life. Additionally, when judges would like to socialize, they prefer to spend time with the bureaucrat, the gendarmerie commander, and the district governor in the place. This situation refers to Gönenç's (2014, p.9) definition of "ivory tower," which means judges do not participate in everyday life practices. But have more inclusive judicial decision-making as Ehrlich says that judges should participate in living law which consists of the source of life, traditions, customs, and all systems in society (Nelken, 2008, p.447).

Lastly, as mentioned in a discussion, Bourdieu says that a judge is an agent who makes decisions according to habitus and types of capital in the judicial field. Based on the interviews, Bourdieu's findings are also generalizable in my research field. Judges as agents are affected by class, family, education, emotions, culture, experiences,

gender, workload, media, and social pressure affect judges' judicial activities in disputed cases in Turkey. They are all dynamic, complex, interconnected, and dependent on each other.



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[https://www.oecd.org/dev/development-gender/Unpaid\\_care\\_work.pdf](https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf))

## **Appendix A: Consent Form**

### **Türkiye’deki Yargıçların Tartışmalı Davalardaki Yargısal Faaliyetlerini Etkileyen Sosyolojik Faktörler Niteliksel Bir Araştırma**

#### **Onam Metni**

Merhaba, ben Arca Begüm Bayır Oğuz, Yeditepe Üniversitesi Sosyoloji Bölümü Yüksek Lisans öğrencisiyim. Bu sene yüksek lisans tezimi yazıyorum. Tez konum, Türkiye’deki yargıçların tartışmalı davalardaki yargısal faaliyetlerini etkileyen sosyolojik faktörler üzerinedir. Bu konu ile ilgili sizinle görüşmek yapmak istiyorum. Görüşme sırasında sizinle konuştuklarımı ses kaydı almam gerekiyor. Ancak, istediğiniz zaman ses kaydını durdurabilirim. Alınan ses kayıtları ben ve danışman hocam sayın Prof. Dr. Oktay Uygun dışında hiç kimse tarafından dinlenmeyecek ve çalışmanın sonunda yok edilecektir. Görüşme sırasında ve araştırmamın yazımında kimlik bilgileriniz gizli tutulacaktır. Bu nedenle, görüşme süresince size görüşme öncesinde seçtiğimiz takma isimle hitap edeceğim. Araştırmamın sonunda tek tek kişiler hakkında değil, konuyla ilgili değerlendirme yapılacağını belirtmek isterim. Araştırma bitiminde dilerseniz tezimi sizinle paylaşabilirim. İlginiz ve vakit ayırdığınız için çok teşekkürler.

**Görüşme No:**

**Görüşülen Kişi:**

**Verilen Takma İsim:**

**Görüşmeci:**

**Tarih:**

**Yer:**

**Görüşme Süresi:**

## **Appendix B: Indepth Interview Form**

### **1.Kişisel Bilgiler**

Yaşı

Cinsiyeti

Eğitim Durumu

Medeni Durumu

Doğum Yeri

### **2.Yaşam Hikayesi**

Ailesinin yaşamı/ Annesi/Babası/varsa eşi Nerede doğduğu /O yerin kültürel

özellikleri Eğitim Süreci

Hangi Okulda okuduğu

Alışkanlıkları

Boş zamanlarında neleri yapmaktan hoşlandığı/hoşlanmadığı

### **3.Yargıcılık/ Meslek**

Bu mesleği seçme nedenleri

Bu mesleğin onun için önemi

Mesleğinde sevdiği hususlar

Mesleğinde yaşadığı zorluklar

### **4.Karar Alma Süreçleri**

Tartışmalı dava dosyalarını inceleme süreçleri

Tartışmalı davalarda karar verme sürecinde sadece yasalardan/ ilkelerden yararlanma,

hukuki uyumsuzluk ile ilgili hukuk kuralı olmadığında nasıl bir yol izliyorsunuz

Tartışmalı davalarda karar alma süreçlerinde hisleri, kaygıları, dürtüleri, psikolojik durumu

## Appendix C: Ethics Committee Approval



T.C.  
YEDİTEPE ÜNİVERSİTESİ REKTÖRLÜĞÜ

15.03.2022

Sayı : E.50532705-302.14.01-1179  
Konu : Arca Begüm Bayır Oğuz Kurul Onayı

### İLGİLİ MAKAMA

Üniversitemiz Sosyal Bilimler Enstitüsü Sosyoloji Yüksek Lisans Öğrencisi Arca Begüm Bayır Oğuz'un "Türkiye'deki Yargıçların Tartışmalı Davalardaki Yargısal Faaliyetlerini Etkileyen Sosyolojik Faktörlerin Belirlenmesi" başlıklı araştırmasının Beşeri Bilimler etik standartlarına uygunluğuna ilişkin Yeditepe Üniversitesi Beşeri ve Sosyal Araştırmalar Etik Kurulu Onayı ekte sunulmuştur.

Gerekli iznin verilmesi hususunu bilgilerinize arz ve rica ederim.

İmza  
Prof. Dr. Fatma Yeşim EKİNCİ  
Rektör a.  
Rektör Yardımcısı

Ek: Etik Kurul Onayı.pdf

Bu belge, güvenli elektronik imza ile imzalanmıştır.

Belge Doğrulama Adresi : <http://belgedogrulama.yeditepe.edu.tr/bg.aspx?id=3049193F-3241-4950-82D1-D6CCBBD09447>

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**Appendix D: Abbreviations**

**s./p.** :sayfa/ page

**s./n.** :sayı/ number

