

The Concept of Professional Ethics and Debates on Professional Ethics in the Legal Profession: The Case of Ankara*

Mesleki Etik Kavramı ve Avukatlık Meslek Etiğine Yönelik Tartışmalar

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Abstract

The purpose of this study is to determine the extent to which professional ethics, which is a criterion of professionalism, is realized for public sector lawyers and corporate lawyers (including lawyers working in law offices) and for self-employed lawyers, and to compare and evaluate the findings. This study examined how the problem of professional ethics in the practice of law is handled according to the professional status of lawyers (self-employed, public and corporate), and it aims to contribute to the literature by focusing on both the perceptions and expectations of the two groups regarding professional ethics. The findings obtained from the research were evaluated by considering the Attorneys' Act, the Code of Professional Conduct, and professional practices. It was observed that there is a significant difference between perceptions and expectations of all lawyers participating in the research, without a distinction between public sector and corporate or self-employed, regarding compliance with professional ethics. When the professional ethics perceptions of self-employed lawyers and of public sector and corporate lawyers are compared, no significant difference is found. However, in terms of professional ethical expectations, it is observed that there are significant differences between the two groups regarding some ethical dimensions.

Keywords

Profession, Professional Ethics, Professional, Code of Conduct, Lawyer, Ankara

Öz

Bu çalışmanın amacı, profesyonellik kriterleri arasında kabul edilen meslek etiği konusuna yaklaşımları açısından farklı mesleki statüde çalışan avukatlar arasında algı ve beklentiler açısından anlamlı bir farklılık olup olmadığını ortaya koymaktır. Ülkemizde avukatlar, kamu kesimi avukatları, özel kurum ve kuruluşlarda hizmet sözleşmesi kapsamında çalışan kurum avukatları (avukatlık bürosunda çalışan avukatlar dahil) ile serbest çalışan avukatlar olarak faaliyet göstermektedirler. Kamu kesimi avukatları ile özel kurum avukatları, bir avukatlık bürosunda çalışan avukatlar da dahil olmak üzere, bir işverene bağlı olarak mesleki faaliyetlerini icra etmektedirler ve bağlı avukat statüsündedirler. Serbest çalışan avukatlar ise herhangi bir işverene bağlı olmaksızın kendi nam ve hesaplarına mesleklerini icra ederler. Bu durumun meslek etiği konusuna yaklaşımları açısından söz konusu iki grup arasında bir farklılık yaratması beklenmektedir. Araştırmaya katılan tüm avukatların, kamu kesimi/kurum avukatı ve serbest avukat ayrımı olmaksızın, meslek etiğine uyma konusunda algıları ve beklentileri arasında anlamlı farklılık olduğu görülmüştür. Mesleki etik algılar konusunda, serbest ve bağlı avukatlar karşılaştırıldığında, anlamlı bir fark görülmezken, mesleki etik beklentilerde, avukatın “özen, doğruluk ve onur içinde görev yapma yükümlülüğü” ve “avukatlık faaliyetinin ticari nitelikte olmayışı” alt boyutları için serbest çalışan avukatlar ile bağlı avukatlar arasında anlamlı düzeyde farklılık olduğu görülmektedir.

Anahtar Kelimeler

Meslek, Meslek Etiği, Profesyonel, Avukat, Hukuk, Ankara

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Introduction

Along with social relations becoming globalized, the profession of law has taken on an international character. The technological revolution transforms all social relations, and as a result, there are transformations in the way the profession is practiced. Such developments create a new attorneyship identity and lead to the transformation of legal structures (İnanç, 2000, p. 287). With the intense competition in the legal profession in recent years, it is seen that lawyers all over the world are trying to find a place for themselves in different institutional structures. Along with these different legal entities, the most fundamental problem discussed in the international literature is how differences in the practice of the profession will affect the behaviour of lawyers, but especially the professional ethical behaviour of lawyers (Stagg-Taylor, 2011, pp. 173-192).

The recent mobility in the legal profession, globalisation, the development of technology, the provision of legal services in different organisational structures, and the institutionalisation of pro bono are all changing the face of the legal profession (Wilkins, 2012, p. 39). These new trends present some concerns along with the various conveniences that they bring. Does 'being able to do something' mean, in any case, 'being allowed to do it'? That has been a frequently mentioned problem recently (Tepe, 2015, p. 9). Within the scope of the transformation in the profession, there are ongoing discussions in the literature about whether the ethical rules meet the renewed needs of the profession any longer (Wilkins, 2012, pp. 38-43).

In this context, the aim of this study is to determine the realisation of professional ethics and to compare and evaluate the results for self-employed lawyers and professionals working in the public sector and private institutions and under a service contract with a lawyer.

The study consists of three parts. In the first part, the definition of professional ethics in general is provided, and then professional ethics of the law profession are presented based on national and international literature. In the second part, there is a literature study on ethical elements in the legal profession. The third part is devoted to the field research to determine the perceptions and expectations of professional ethics of self-employed lawyers registered with the Bar Association and lawyers working in public and private institutions, including those working for an employer, in Ankara, Turkey. In the last part of the study, the results obtained from the findings are discussed.

Professional Ethics and the Conceptual Framework of the Lawyer's Professional Ethics

Ethics, which has been a philosophical discipline since the time of Aristotle, originally comes from the Greek word 'ethos'. There are two different uses of the word. The first one means 'habit, morality (custom), custom'. The second use is expressed as 'transforming the traditional rules of action and value measures into a habit in order to do good'. In this sense, ethics reinforce the basic attitude of being virtuous. Morality or custom 'includes generally binding action models that consist of respect and mutual acceptance processes that develop in mutual relations in a human community and that are validated as norms' (Pieper, 2012, p. 31).

'Moral', which is another concept that is parallel to the word ethics, finds its roots in the Latin words 'mos, mores', which express tradition, habit, or character. Morality, which comes from 'moral', is the set of beliefs and attitudes that determine the good or bad, and right or wrong of an individual's actions/character. Ethics, on the other hand, can be defined as the philosophical study of moral principles. This discipline examines both what is right or wrong and what moral duties and obligations are. Although the concepts of ethics and morale have been used interchangeably in recent years, it is seen that the term ethics is used more in the business literature (Özgener, 2008, p. 32).

Ethics or moral philosophy 'is a discipline that studies universal moral law showing what is bad, what right and wrong mean.' According to the interpretations of some philosophers who try to reveal the difference between morality and ethics, morality is 'the principles, virtues and so forth people follow during their lives. Moral philosophy, on the other hand, is an act of thinking about morality and its nature, its foundations, and a search for what can be more correct and better' (Tengiz, 2001, p. 23-24).

YAZICI and YAZICI (2010, p. 1002) also state that although the words morality and ethics are used synonymously, there is a conceptual difference between the two words. Ethics examines the issue of morality on a normative basis and examines what the correct and appropriate moral principles and norms are. On the other hand, morality deals with the moral values and behaviours of groups and individuals in a certain society and period, historically and factually. Considering the definitions of morality; it is stated that it is possible to define it as 'a set of standards, values, principles, and rules that investigates the correctness or falsity of certain actions and the elements that constitute the well-being of humanity in relation to the goals to which these actions are directed, and explains the types of behaviors and decisions necessary to encourage these elements' (Özgener, 2008, p. 33).

While ethics can be described as a personal trait that depends on one's virtues, morality is about behaviours (Aarnio, 2001, p. 3). According to Wines and Napier (1992, p. 831), ethics is 'the systematic application of moral principles to concrete problems'. When we say professional ethics, we mean the rules for determining the ideal in the performance of a particular profession (Aarnio, 2001, p. 1-9).

Professional Ethics of the Legal Profession

In accordance with the literature of the profession, it is emphasized that the service provided is indispensable for the welfare of society and for humanity, as one of the criteria required to be considered a profession. The existence of the principles of professional ethics is the basis of the trust of the society towards the professions, that the professions will display altruistic attitudes and put the public interest first (Karasu, 2001, p. 110). Therefore, it is clear that every profession will be closely related to ethics.

When determining the principles of professional ethics, the aim is to reach the better and beneficial in professional practices rather than general morality (Tengiz, 2001, p. 25). Professional ethics is 'a functional responsibility, the rules of which consist of practical activities, developed in a particular field, and often transferred and delegated through a particular form of professional socialisation-for example, through a certain type of training.' (Güner, 2002, p. 23). The principles and rules in the process of

professionalisation form the basis of professional ethics. Professional ethics principles do not seek the truth and the good in general. What is important for the principles of professional ethics is to try to determine what should be done and what should not be done during the practice of the profession, the boundaries of which are determined by professional services. Professional ethics are the principles of behaviour that are believed to be moral and fair towards society, the recipient of the service, the profession, and colleagues during the practice of a profession. With the principles of professional ethics determined by the professional organisation, practitioners have attempted to define what is appropriate, moral, and fair within the framework of these rules (Tengiz, 2001, p. 25).

Professional ethics has gained even more importance in the face of problems that have arisen as a result of scientific and technological changes, especially after the 1950s. Technological and scientific developments have brought new ethical problems to the agenda. Reliability has come to the fore, especially as professionals have been criticized for their attitudes in certain social events. Ethical codes are important both in terms of being the factor behind the legitimacy of professions and being the basis for the relations between their members and those who benefit from the service (Karasu, 2001, p.110).

Professional ethics in law reflect common shared values or beliefs about how lawyers should behave. Professional ethics include decisions that will govern behaviours in accordance with cultural norms (Etherington & Lee, 2007, pp. 105-106).

Today, we can talk about the influence of two different approaches in the legal profession. The first is the Continental European approach to the legal system. In countries where this understanding is dominant, advocacy is accepted as a public service, lawyers have the right to take or refuse any job they want, are subject to intense advertising bans, cannot carry their professional activities to a commercial dimension, and cannot open branches. A common professional code of conduct to ensure professional ethics is determined by professional organisations. This is the understanding in Turkey. The other approach is the Anglo-Saxon approach, or the 'American approach to attorneyship' (Güner, 2003, pp. 19-21). In the Anglo-Saxon approach, the legal activity is seen as commercial and the public dimension of the attorneyship activity is put in the background. The legal profession is executed by self-employed lawyers and, like any other profession, the legal profession must be subject to the rules of the 'market'. Obstacles to the performance of the service were removed and the legitimacy of advertisements such as 'legal services at very affordable prices' and 'divorce and legal separation for \$175' were accepted by the US Supreme Court within the scope of freedom of expression (İnanıcı, 2000, p. 277).

In Turkey, which has adopted the Continental European approach to attorneyship, the professional rules that came into force after being published in the Bulletin of the Union of Turkish Bar Associations in 1971 have been applied until now without any significant changes (Sav, 2005, p. 188). These are the rules regulating the relations of lawyers with 'judicial authorities, colleagues, business owners, and professional organizations. These rules mainly aim to protect the autonomy, dignity, honor and the professional solidarity both in the private life of the lawyer and while carrying out the profession'. A professional code of practice can be accepted as a set of ethical rules (Yılmaz, 2008, p. 737).

Although the legal profession is seen as a public service with high ethical standards by the members of the profession, it can also be exposed to some criticisms (Wood, 2000, p. 486). Is there a conflict between striving for profit in the legal profession and complying

with professional ethics, or is it just an illusion? In fact, it is argued that companies¹ that put their responsibilities to their clients before the profit motive can gain higher profits by acquiring more clients, because better service means more clients and, as a result, higher profitability (Stagg-Taylor, 2011, p. 182).

There is a debate in the literature on the extent to which the principles of professional ethics in attorneyship are sufficient to respond to the ethical problems that arise in the practice of the profession. Formalism and liberalism, which, it is claimed, ‘numb’ the moral consciousness of lawyers, are criticized and it is claimed that this leads lawyers to act according to the principle of ‘neutral partisanship’² while protecting the legal rights and interests of their clients. It is stated that this means ignoring the demands of ‘third parties, the public, and society’. It is clear that clients will expect from their lawyers the service of defending their interests. However, sometimes clients’ demands may be unethical. The question arises of how lawyers should act against the unethical demands of their clients. Lawyers may warn their clients about unethical requests, and if this does not yield any results, they may withdraw from attorneyship. Lawyers operate in a competitive, capitalist system, so the reconciliation of ‘business ethics’ with ‘professional ethics’ becomes an issue (Wood, 2000, pp. 486-489).

In order to establish professional ethics, all persons and institutions performing the profession must act with an internal sanction. However, there is a need for external sanctions, that is, compelling legal rules in the field of morality (Aktan, 2008, p. 121). The law benefits from effective sanctions in the execution of social behaviour. Sanctions in professional ethics are mostly in the form of professional pressure (such as dismissal from the bar, disqualification, punishment, and reprimand) (Taeusch, 1935, pp. 93-94). Therefore, the duty of professional associations is very important in establishing professional ethics. Professional associations fulfil a very important task in terms of ‘internal self-control’ in the field of ethics (Aktan, 2008, p. 121).

Studies conducted on lawyers in the New York Bar Association in the 1960s revealed that the social environments in which lawyers work affected their ethical attitudes and behaviours. It has been observed that the ethical perceptions of self-employed lawyers and small company lawyers are different from lawyers working in large companies (Levin, 2001, p. 850-851).

A similar study was conducted on lawyers registered with the Chicago Bar Association, the first in 1975 and the second between 1994-95, and approximately 800 lawyers registered with the bar association were examined in both studies. It was revealed that the

1 The European Union and Anglo-Saxon countries, with which Turkey has close relations both legally, politically, and economically, have completed the process of establishing law firms within the framework of the specialization brought by their legal systems and the result of this specialization. Attorney services in Turkey, on the other hand, have not yet reached a sufficient level in terms of specialization and incorporation, except for a few exceptions. However, there is no obstacle to lawyers merging into ordinary partnerships (Yasa İzleme Enstitüsü; <http://yasaizleme.org.tr/>).

2 In this understanding of advocacy, there are two implicitly interrelated principles: partiality and impartiality. The first of them is partisanship, where the lawyer uses all legal means and maximum personal energy and effort to achieve results for any client, being subject only to the constraints of the law. The second is objectivity regarding the morality of clients’ goals. In the lawyer-client relationship, impartiality means that clients’ goals are not attributed to their lawyers. Lawyers cannot be held morally responsible for the matters with which they assist their clients, regardless of how much their assistance injures innocent third parties or harms the public interest in general (Atkinson, 1993, p. 533).

most fundamental difference between lawyers is related to the client or client groups that lawyers address. It has been observed that the legal profession in Chicago is carried out in two different spheres. The first group is small company employees, which means less income and less prestige, and the other group is large corporate lawyers who work with high-status organisation clients, who have prestige, and who are highly paid. In the 1995 study, it was observed that this dual structure, which was stated for the legal profession, continued (Heinz et al., 2005, pp. 6-7; Wilkins, 2012, pp. 26-28).

The differentiation in the fields of expertise of lawyers has also been interpreted as leading to differences in ethical behaviour (Mather, 2011, p. 113). Civil rights/civil liberties, international law, intellectual property, family law, corporate law, real estate, and securities law have been put forward as areas of legal activity where more ethical behaviour may be in question. Apart from this, the areas where unethical behaviours are seen most are divorce, personal injury, bankruptcy, and criminal cases (Heinz et al., 2005, pp. 84-87).

All over the world, the boundaries in the practice of the legal profession are being removed and it is seen that lawyers are globalizing, especially in the USA. Commercial law firms in the US and Europe are emerging and thriving in China, India, Brazil, and many more countries. A new generation of lawyers is being trained in newly emerging American-style law schools. In the light of globalisation and commercial developments, there is a different and a new group of lawyers (Wilkins, 2012, p. 38,39) and it would not be surprising to expect different approaches to the application of professional ethics within this new population.

Ethical Elements in the Legal Profession

Professional ethical codes or principles of professional ethics are ‘the set of rules that specify the standards to be followed by members of a particular profession. These principles include the core values of a profession and the rules that employees are expected to follow’. These principles set the standards of practice either by describing an existing practice or by showing a new practice (Arslan, 2001, pp. 77-78). Not all but the most important ethical responsibilities of lawyers in Turkey, which come from the code of practice and the Attorneys’ Act, are summarized below, under four subtitles.

Obligation to Serve with Care, Integrity, and Dignity

Article 34 of the Attorneys’ Act states that ‘attorneys will perform their duties with care, accuracy, and dignity, act in accordance with respect and trust required by the title of attorney, and are obliged to comply with the professional rules determined by the Union of Turkish Bar Associations’ (Ülgen, 2016, p. 18).

The duty of a lawyer is to show the maximum effort for the successful conclusion of the work or service undertaken. In fact, in French law, the expression ‘the debt of the attorney is a means debt (obligation de moyens) and not the resulting debt (obligation de résultat)’ is used to describe this situation of the attorney (Başpınar, 2008, p. 44). Therefore, what is meant by the lawyer’s careful work is ‘his honesty and every effort to ensure that the work he/she undertakes is concluded in accordance with the right, the law and the interests of the employer’.

However, the lawyer is not obliged to unconditionally obey the instructions of his client that are not clear and understandable enough or that have harmful consequences for the client. If following the client's instruction will result in a violation of the attorney's professional obligations, the attorney is not obliged to comply with the instruction (Sungurtekin, 2012, p. 469, 471).

On the contrary, if the client's requests are in compliance with the principles of professional ethics, but contrary to common morality, the legitimacy of the choice made by the lawyer is an issue to discuss. We can cite an example of the situation that lawyers experience with clients facing the death penalty in the USA. Although a lawyer finds the goals and values of his clients contrary to his/her own views, professional ethics expects him/her to represent his/her clients in the best possible way. Defending a particular mission may outweigh the client's demands for the lawyer. The most typical example of this is when a lawyer who is against the death penalty, despite all his/her efforts, is faced with the client's consent to the punishment regardless of his/her own rhetoric. In this case, professional ethics requires lawyers to stick to the decisions of their clients. However, if the lawyer is against the death penalty and believes that this punishment is a systemic inequality and injustice, he should evaluate whether his/her opinions on this issue are sufficient to overcome the discomfort he/she feels for violating his/her client's consent. In order to protect human dignity, the lawyer may choose to ignore the dictates of the principles of professional ethics. This approach is accepted as morally justified by many contemporary philosophers (Fisher, 2016, pp. 488-508).

Pursuant to Article 38/II of the Lawyer's Professional Rules, 'A lawyer does not accept a job that does not match his time and skills.' (Ülgen, 2016, p. 186). Article 4 of the Oslo Decisions of the International Bar Association introduces a similar regulation with the rule that 'attorneys should not accept a job that their time and abilities do not allow' (Erem, 1995, p. 106).

Ethical rules are important for lawyers to practice their profession reasonably. The only function of the professional ethics rules discussed here is not only to discipline the members of the profession with sanctions such as dismissal or disqualification from the profession but also question whether the violation of these rules can be brought forward as a justification for lawsuits in case of a violation of an ethical principle such as the 'duty of care'. This shows the seriousness of the ethical rules for lawyers and the profession. Clients should know and trust that their lawyers are bound by professional ethical rules ('The Evidentiary...', 1996, p. 1102-1119). In practice in Turkey, the violation of the lawyer's duty of care carries legal responsibility and may lead to sanctions specific to the legal profession (Sungurtekin, 2012, p. 442).

Loyalty and Obligation of Confidentiality

In Article 3 of the Attorney's Code of Practice, 'a lawyer carries out his professional work in a manner that ensures the public's belief and confidence in the profession and work with full loyalty' (Ülgen, 2016, p. 181). As an example of the lawyer's obligation in question, the Code of Practice of Attorneys Article 35 states that 'the lawyer does not accept the representation of two persons in the same case, whose defence may prejudice the defence of the other' (Ülgen, 2016, p. 186), and there is no hesitation in accepting that

if the attorney accepts being the agent of the opposing party and thus abuses the power of attorney, this will shake the client's trust in the lawyer. Therefore, the client is justified in dismissing the attorney merely by stating this reason (Decision of the 13th Civil Chamber of the Supreme Court dated 03.03.1989 and numbered 5293/1388; Journal of Ankara Bar Association, 1993, p. 512-513).

The necessity for lawyers to act in a manner worthy of the respect and trust required by their title, to fulfil their obligations during their professional work, and to remain faithful to their promises stems from the public service nature of attorneyship (Gökcan, 2001, pp. 173-177).

It is stated in the Code of Practice that the lawyer is bound by professional confidentiality (Ulukapı et al., 2002, p. 225; Attorneys' Act Professional Rules Art. 37). According to the relevant article, 'the lawyer will keep this criterion as a basis in abstaining from testimony; the information he/she has learned due to the application of people whose case he/she has not taken is also confidential'. This professional confidentiality is indefinite; leaving the profession will not remove this obligation and the lawyer will take all necessary measures regarding the protection of professional confidentiality. This is all regulated in the professional rules.

Lawyers have an obligation to keep the information conveyed to them by their clients who have come to seek legal advice within the scope of professional confidentiality. However, there are some exceptions to this situation. Seeking advice, etc., with the aim of actually committing a criminal offense or damaging the judicial mechanism are examples of this exception. In the USA, the Sarbanes-Oxley Act³ raised the question of whether lawyers have a duty to report information about their clients to the authorities in the presence of certain special circumstances (Arup, 2004, p. 8).

In terms of professional ethics, keeping professional secrets is of great importance. Violation of the secrets affects not only the one whose secret is disclosed but also the whole society because trust in the profession is shaken to the core (Sungurtekin, 2012, p. 507).

In terms of professional ethics, there are two issues that should be questioned regarding the disclosure of information classified as 'confidential': First, whether the lawyer is obliged to notify his client who is about to engage in illegal activity or has engaged in such an activity in the past, and secondly, when making this statement, whether he/she should take into account the parties his/her client victimizes. Does it make any difference whether the client deceives an administrative/legal authority or an individual? What should be done if the confidential information threatens the life or safety of others? The decision of the Commission formed by the American Bar Association to review the ethical rules in the legal profession is that the lawyer is obliged to disclose professional confidentiality, but there have been opposing views on this issue. For example, the state of New York did not accept that lawyers should disclose information about their clients that they obtained during the attorneyship that could potentially harm them (Davis, 2003, pp. 1281-1292). Therefore, the issue should be evaluated carefully in terms of both private and public law.

3 The Public Companies Accounting Reform and Investor Protection Act, also known as the Sarbanes-Oxley Act, was enacted in 2002 to ensure quality and transparency in the financial reporting process of publicly-traded companies in the USA and to support effective corporate governance (DNB Legal, 2021).

Uncommercial Character of Lawyer's Activity

Today's lawyer has changed from being a person who only takes into account the effects of legal dispute on their client or only trying to maximize the benefit of their client in a case-by-case situation to a person who considers all segments of a dispute and tries to achieve a result that is fair for everyone. The new definition of advocacy is called 'cooperative advocacy' by academics. Therefore, there is a transition from a client-oriented approach to a society-oriented approach (Freedman, 2011, pp. 349-354).

Pursuant to Article 47 of Attorneys' Act, 'the attorney is prohibited from acquiring contentious rights or mediating the acquisition of contentious rights in the business he/she has seized.' (Ülgen, 2016, p. 26). The aim of this article is to prevent the lawyer from gaining personal benefit from the work he/she is following (Güner, 2003, p. 420) since he/she serves the public. There is no profit motive in the legal profession. There is no direct exchange relationship between the service provided by the lawyer and the fee he/she receives (Yılmaz, 2005, p. 145). As such, the aim is to ensure that the lawyer does not have any personal or financial interest in lawsuits so that he/she does not make the case his/her own business and therefore acts independently against the client (Güner, 2003, p. 421).

Pursuant to Article 48 of the Attorneys' Act (Ülgen, 2016, p. 27), the Law provides for penal sanction for 'those who act as intermediaries in bringing work to the lawyer in return for a fee or any benefit promised or given by the lawyer or the employer, and the lawyers who use the intermediary'. Such behaviours are incompatible with the sanctity and honour of the profession. Despite this, it continues to increase today (Güner, 2003, pp. 422-423).

The Attorneys' Act also includes regulations on the prohibition of advertising (Art. 55) (Ülgen, 2016, p. 28). According to this regulation, 'It is forbidden for lawyers to make any attempts or actions that can be considered as advertisements in order to obtain a job, and to use titles other than the title of lawyer and academic titles, especially on their signboards and printed papers'. Considering the text of the article, it is understood that instead of the phrase 'advertisement is prohibited', the phrases 'to engage in all kinds of attempts and actions that can be considered an advertisement' and 'all manners, words, and behaviors that may indirectly cause an advertisement connotation in the minds of individuals even if they are not perceived as advertisements' are used and thus required to be evaluated within the scope of the advertising ban (Yılmaz, 2005, p. 142).

The Turkish Law of the Attorney's Code of Profession stands out with its dominant structure, especially the prohibition on advertising and the way that it prohibits the lawyer from editing his own web page (Rumpf, 2010, p. 145). In line with Articles 1 and 2 of the Attorneys' Act, 'a lawyer is a person who is in the service of the law and serves the public'. Therefore, unlimited advertising opportunities are incompatible with this qualification (Sungurtekin, 1994, p. 515). According to a decision of the Swiss Federal Court, the profession, in general, does not need advertising because the practice of the profession is tied to a legal monopoly. A commercial advertisement not only harms but also damages the reputation of justice and therefore damages one of the main institutions of the state (Erem, 1996, p. 19).

Although it is stated that lawyers have special professional ethics, it cannot be ignored that they act with the aim of gaining profit in an environment of free competition (Sungurtekin, 1994, p. 525). Competition conditions become more challenging, especially for those young lawyers who have just started the business. Therefore, despite the demand for some advertising activities to be allowed, it is natural to say that there will be limits to it (Daniels and Martin, 2012, pp. 124-129).

The act of lawyers wandering around prisons, police stations, hospitals, etc. to look for clients cannot be accepted as a behaviour compatible with professional ethics. For example, the case of a lawyer going to prison, meeting with defendants and being given a power of attorney by giving a guarantee about the outcome of the case even though he/she has not been invited, or the case of a lawyer making an effort to talk to villagers in an expropriation case even though he/she is not invited do not have a good impact on the profession and also constitute different examples of violating the ban on advertising (Güner, 2003, p. 430).

Behaving and Living Life Appropriate to Professional Reputation

In Article 4 of the Rules of Professional Conduct, it is stated that lawyers 'have to refrain from all kinds of attitudes and behaviors that will damage the reputation of the profession' and it is stated that the lawyer must act conscientiously and in accordance with human values (Gökcan, 2001, p. 180).

According to Article 43 of the German Advocacy Law (BRAO), '...A lawyer is obliged to act in a manner worthy of the respect, trust and dignity required by the title of attorney, both within and outside the boundaries of the profession' (İzmir Bar Association, 2004, p. 29-30). The Paris Bar Association Bylaw-2000, rule 1.3 titled 'Principles' states that 'all the values that constitute the basic principles of the profession, guide the behavior of the lawyer in every situation' (İzmir Bar Association, 2004, p. 196). In the Principles on the Role of Lawyers (Havana Rules), in the 12th rule, titled 'Duties and Responsibilities of Lawyers', it is specified that 'lawyers always protect the honor and dignity of their profession as a fundamental element in the delivery of justice' (Ülgen, 2016, p. 207). The profession of attorneyship is one of the professions where private life will not be ignored. However, it is natural that private life will have its limits. The opposite situation means a violation of one's privacy, which is 'contrary to the principle of privacy and intangibility of private life' (Çine, 2014, p. 211-213).

According to Article 5 of the Attorney's Professional Rules, 'A lawyer should explain his thoughts in a mature and objective manner when writing or speaking' (Ülgen, 2016, p. 181). 'A lawyer has to maintain a certain level of style in his words and writings and pay attention to the words and phrases he chooses. The lawyer must also comply with the fact that freedom of expression does not give the right to insult people. The act of a lawyer who does not pay attention to this obligation while carrying out his professional activities and also in his private life constitutes a disciplinary action' (TBBDKK, 12.09.2003, 132/251, Journal of Ankara Bar Association, 2004, p. 159).

The lawyer is subject to certain obligations with which he/she must comply, both in the court and outside the court, in his/her relationship with official authorities (TBBDKK 27.09.1986, 52/50, Journal of Ankara Bar Association, 1986, p. 730). As a matter of

fact, in the Professional Rules (Art. 17), it was emphasized that the lawyer had to act in accordance with the criteria arising from the characteristics of the service in his relations with judges and prosecutors; however, it was stated that mutual respect is essential in these relationships (Ülgen, 2016, p. 183).

‘Lawyers...must be conscious of being sensitive and respectful to each other in courtrooms, offices, and bar associations, and to protect and safeguard the collective reputation of the profession. Being a senior in the profession...doesn’t give the right to humiliate another colleague, even if the opposing side causes the argument.’ (28.03.2015 T.E. 2015/20 K.2015/241) (Çelik, 2016, p. 191).

The professional rules try to guarantee that lawyers behave in accordance with a spirit of collegiality in their relations with each other. For example, a lawyer’s threatening a colleague during a phone call (TBBDDKK, 06.04.1991, 27/19, Journal of Ankara Bar Association, 1991, p. 448) was found to be against the law and Professional Rules, and the complainant was reprimanded.

Field Research on Lawyers’ Approaches to Professional Ethics

The Purpose of the Research

The main purpose of the research is to reveal the professional ethics perceptions and expectations of lawyers, compare the perceptions and expectations of self-employed lawyers and affiliated lawyers⁴ in terms of professional ethics, and determine and evaluate the differences.

The following research questions will be evaluated with the data obtained here.

- 1) Is there any difference between the perceptions and expectations of lawyers regarding professional ethics?
- 2) Is there any difference between perceptions and expectations of self-employed lawyers regarding professional ethics?
- 3) Is there any difference between perceptions and expectations of affiliated lawyers regarding professional ethics?
- 4) Is there any difference between self-employed and affiliated lawyers in terms of perceptions of professional ethics?
- 5) Is there any difference between self-employed and affiliated lawyers in terms of expectations of professional ethics?

The Limitations of the Research

In the first phase, the plan was to include lawyers registered in the Ankara, İstanbul, Zonguldak, and Adana Bar Associations in the scope of the research. Since different socio-economic conditions of each region will have different effects on the professional behaviour, perceptions, and expectations of lawyers in the representative provinces and four geographical regions of Turkey, the aim was to examine the differences in

4 Lawyers of the public sector, lawyers working in private institutions and organizations with service contracts, and lawyers working for an employer that is a lawyer in return for a fee are referred to as ‘affiliated lawyers’ because they carry out their professional activities under an employer.

professional ethics perceptions and expectations of lawyers practicing in these regions. Accordingly, contact information of lawyers registered with the bar associations was requested from the Ankara, İstanbul, Zonguldak, and Adana Bar Associations. However, lawyers registered with the Zonguldak, Adana, and İstanbul Bar Associations could not be included in the scope of the study, as necessary permissions could not be obtained from those Bar Associations regarding access to information.

The survey data were obtained from lawyers residing in Ankara due to the convenience provided by the Ankara Bar Association in allowing access to the information of lawyers registered with the bar association. Therefore, it became possible to reach both solo practitioners and lawyers working in public and/or private institutions and organisations in Ankara within the scope of available resources. Therefore, among the lawyers registered with the Bar Association, those who were contacted and who volunteered to participate in the research were included in the sample. The scope of our study had to be limited to Ankara since we do not have enough data to allow a comparison on the basis of provinces.

The justice system is a structure with three parts: defence, argument, and judgment. Within the scope of our work, only the professional ethics of lawyers who represent the defence are examined, and the argument and judgment, which are the other legs of the justice system, are excluded from the scope of the study.

The Method of the Research

The Data Collection Tool

The information used in the research was obtained by applying the survey method and face-to-face interviews. In order to carry out the study, a questionnaire form was prepared as a data collection tool. A total of 35 questions were prepared on the questionnaire, except for the demographic questions, to measure perceptions and expectations of professional ethics. Respondents expressed their opinions by marking the values as 1 for ‘not at all/very low’, 2 for ‘low’, 3 for ‘medium’, 4 for ‘high’, and 5 for ‘very high’. The questions were designed to measure both perceptions and expectations with the same question. For this purpose, the questions asked ‘how much is it now?’ to measure perception and ‘how much should it be?’ to measure expectation. With such a design, the aim was to state the difference between the current and ideal situation and make it possible to measure expectations without distracting the respondent concentrating on the question.

Data Collection Process⁵

The population to which the survey was applied consists of self-employed lawyers registered with the Ankara Bar Association and professionals who practice law in public institutions and private institutions in Ankara, Turkey. Six hundred and seventy of the questionnaires sent were responded to and it was thought that sufficient data was provided

5 The data within the scope of the research was produced from the master’s thesis submitted to Hacettepe University Institute of Social Sciences in 2017. Due to the fact that the data in the master’s thesis were collected before 2017, which was the date of presentation of the thesis, it was stated that ‘the obligation to obtain an Ethics Committee Approval for the studies that have been put into practice (data collection procedures that have been initiated)’ will not be required, in accordance with the Hacettepe University Ethics Commission Directive. Therefore it has been decided to exempt the thesis from Ethics Committee Approval.

for the analyses, so the online questionnaire was closed to participants after 670 returns. A high-reliability coefficient was obtained as a result of the Cronbach non-standardized α (alpha) test applied to the scales to test the internal reliability.

The data obtained by the survey method were coded and analysed in the SPSS statistical program. During the evaluation of the data, t-test analyses were used for comparisons. In the presentation of the findings obtained as a result of the analysis of the data, analysis was made on the basis of factors. The Keiser-Meyer-Olkin (KMO) coefficient and Bartlett sphericity test were used in the research to determine if the data set was suitable for factor analysis. Since the KMO coefficient was close to 1 and the significance level of the Bartlett sphericity test was less than 0.005, it was determined that the data set was suitable for factor analysis.

Characteristics of the Sample

Of the respondents, 40% were women and 60% were men. While 64% of the sample population was composed of self-employed lawyers, 36% was composed of affiliated lawyers. Of the respondents, 9% are between 55-80 years of age, 63% are between 30-55 years of age, and 28% are under 30 years old. In this context, it is possible to say that more than half of the sample population is middle-aged and above.

Findings

Research Question 1: 'Is There a Difference Between Lawyers' Professional Ethics Perceptions and Expectations?'

Table 1

Comparison of lawyers' professional ethics perceptions and expectations with t-test

		N	Mean	Std. Deviation	T	p
Obligation to Serve with Care, Integrity, and Dignity	Perception	602	3.59	0.59	56.666	0.000*
	Expectation	602	1.73	0.55		
Uncommercial Character of Lawyer's Activity	Perception	599	3.78	0.82	38.926	0.000*
	Expectation	599	2.14	0.82		
Behaving and Living Life Appropriate to Professional Reputation	Perception	602	3.39	0.49	-17.841	0.000*
	Expectation	602	3.79	0.51		

*p < 0.05

According to the results given in Table 1, there is a significant difference between the perception and expectation levels of lawyers in the sub-dimensions 'Lawyer's Obligation to Serve with Care, Integrity, and Dignity', 'Uncommercial Character of Lawyer's Activity', and 'Behaving and Living Life Appropriate to Professional Reputation' ($p < 0.05$). While the level of perception regarding 'Uncommercial Character of Lawyer's Activity' is significantly higher than the level of expectation, the level of expectation for 'Behaving and Living Life Appropriate to Professional Reputation' is significantly higher than the level of perception.

Research Question 2: 'Is There a Difference Between Self-employed Lawyers' Professional Ethics Perceptions and Expectations?'

Table 2

Comparison of professional ethics perceptions and expectations of self-employed lawyers with t-test

		n	Mean	Std. Deviation	T	p
Obligation to Serve with Care, Integrity, and Dignity	Perception	395	3.56	0.63	45.992	0.000*
	Expectation	395	1.66	0.54		
Uncommercial Character of Lawyer's Activity	Perception	394	3.78	0.80	33.912	0.000*
	Expectation	394	2.09	0.80		
Behaving and Living Life Appropriate to Professional Reputation	Perception	395	3.40	0.47	-15.812	0.000*
	Expectation	395	3.81	0.51		

*p < 0.05

According to the results given in Table 2, for self-employed lawyers, there is a significant difference between the levels of perception and expectation for the factors of 'Lawyer's Obligation to Serve with Care, Integrity, and Dignity', 'Uncommercial Character of Lawyer's Activity', and 'Behaving and Living Life Appropriate to Professional Reputation' ($p < 0.05$). While the perception level is significantly higher than the expectation level for the 'Lawyer's Obligation to Serve with Care, Integrity, and Dignity' and 'Uncommercial Character of Lawyer's Activity' factors, the expectation level is significantly higher than the perception level for 'Behaving and Living Life Appropriate to Professional Reputation'.

Research Question 3: 'Is There a Difference Between Affiliated Lawyers' Professional Ethics Perceptions and Expectations?'

Table 3

Comparison of professional ethics perceptions and expectations of affiliated lawyers with t-test

		N	Mean	Std. Deviation	T	p
Obligation to Serve with Care, Integrity, and Dignity	Perception	207	3.65	0.52	33.375	0.000*
	Expectation	207	1.87	0.55		
Uncommercial Character of Lawyer's Activity	Perception	205	3.80	0.85	20.038	0.000*
	Expectation	205	2.24	0.84		

Behaving and Living Life Appropriate to Professional Reputation	Perception	207	3.36	0.52	-9.028	0.000*
	Expectation	207	3.75	0.50		

*p < 0.05

According to the results given in Table 3, there is a significant difference between the levels of perception and expectation for the factors of ‘Lawyer’s Obligation to Serve with Care, Integrity, and Dignity’, ‘Uncommercial Character of Lawyer’s Activity’ and ‘Behaving and Living Life Appropriate to Professional Reputation’ (p < 0.05). While the perception level is significantly higher than the expectation level for the ‘Lawyer’s Obligation to Serve with Care, Integrity, and Dignity’ and ‘Uncommercial Character of Lawyer’s Activity’ factors, the expectation level is significantly higher than the perception level for ‘Behaving and Living Life Appropriate to Professional Reputation’.

Research Question 4: ‘Is There a Difference Between Self-employed Lawyers and Affiliated Lawyers in Perceptions of Professional Ethics?’

Table 4

Comparison of professional ethics perceptions of self-employed and affiliated lawyers with t-test

		N	Mean	Std. Deviation	T	p
Obligation to Serve with Care, Integrity, and Dignity	Self-employed	398	3.56	0.63	-1.590	0.112
	Affiliated	210	3.64	0.53		
Uncommercial Character of Lawyer’s Activity	Self-employed	401	3.78	0.81	-0.268	0.789
	Affiliated	209	3.79	0.85		
Behaving and Living Life Appropriate to Professional Reputation	Self-employed	401	3.40	0.47	1.101	0.272
	Affiliated	211	3.35	0.51		

*p < 0.05

According to the results given in Table 4, there is no significant difference between the professional ethics perceptions of self-employed lawyers and affiliated lawyers (p > 0.05).

Research Question 5: ‘Is There a Difference Between Self-employed Lawyers and Affiliated Lawyers in terms of Professional Ethics Expectations?’

Table 5

Comparison of professional ethics expectations of self-employed and affiliated lawyers with t-test

		n	Mean	Std. Deviation	T	p
Obligation to Serve with Care, Integrity, and Dignity	Self-employed	397	1.65	0.54	-4.696	0.000*
	Affiliated	207	1.87	0.55		
Uncommercial Character of Lawyer's Activity	Self-employed	394	2.09	0.8	-2.198	0.028*
	Affiliated	205	2.24	0.84		
Behaving and Living Life Appropriate to Professional Reputation	Self-employed	395	3.81	0.51	1.302	0.194
	Affiliated	207	3.75	0.5		

*p < 0.05

According to the results given in Table 5, while the sub-dimensions of 'Lawyer's Obligation to Serve with Care, Integrity, and Dignity' and 'Uncommercial Character of Lawyer's Activity' differ significantly between self-employed lawyers and affiliated lawyers ($p < 0.05$), for the 'Behaving and Living Life Appropriate to Professional Reputation' sub-dimension there is no significant difference between self-employed and affiliated lawyers ($p > 0.05$).

Conclusion

With this research, lawyers registered with the Ankara Bar Association and lawyers working in public and private institutions in Ankara, Turkey, were selected as the sample, and the aim was to reveal how professional ethics in attorneyship are perceived by the lawyers and whether their expectations are met. It has been revealed that there is a significant difference between the perceptions and expectations of lawyers in terms of professional ethics.

There are studies in the literature on the principles of legal professional ethics. In Mine Tan's (1972) study on Gaziantep Bar Association lawyers, the level of participation of lawyers in political activities and the social and economic characteristics of the profession are examined, but the study does not specifically focus on lawyers' professional ethics. In Cırhınlıoğlu's research (1997) on lawyers registered in the İstanbul and Sivas Bar associations in 1992, the structure of the legal profession and the nature of the relationship between lawyers and the State are examined. The study includes lawyers' evaluations of professional ethics. In the survey study, the majority of the participating lawyers (74.8%) stated that they believed that their colleagues did not comply with professional ethics.

The fields and subjects that are considered to violate the professional ethics of lawyers are grouped into five categories: 1) Lawyers do not examine their cases well, 2) Lawyers have close relations with political organisations and civil servants, 3) Lawyers deceive their clients, 4) Lawyers consider their political power more important than reaching

justice in courts, 5) Losing faith in justice. The most important criticism is that lawyers take on cases in which they are not really experts and that some lawyers, establishing close friendships with police and judicial organisation employees, use these people for their own purposes. It is stated that similar situations are also in question in cases where experts play an important role, and lawyers try to have appropriate reports prepared in favour of their clients by influencing the experts. In addition, there are expectations of lawyers that professional organisations should be more involved in the protection of professional ethics (Cirhinlioğlu, 1997, p. 95-98).

Another study in which similar results were obtained is about the lawyers of the Elazığ Bar Association (Uzun, 2000), and in this study, it is seen that lawyers' views on professional ethics have not changed. In answer to the question of whether the lawyers act in accordance with professional ethics, it is seen that most of the participating lawyers believe that their colleagues do not comply with professional ethics.

Lawyers registered with the Elazığ Bar Association have also expressed the opinion that members of the profession attend hearings without adequately examining the cases they have taken. In order to not lose customers in a competitive environment, it is stated that lawyers also undertake lawsuits on issues that they are not knowledgeable about. Another point of criticism is that lawyers may abuse their clients. It is stated that they mislead their clients by pretending that they can win unwinnable cases. Considering that a lay person cannot know the situation of the case as well as his lawyer, it is stated that there is fertile ground for clients to be abused through false and misleading statements (Uzun, 2000, p. 99-100).

Despite the breadth of its functions and the importance it carries, it is possible to say that the public has always approached lawyers with suspicion and distrust. Lawyers have been accused of defending wrongful cases and of misinterpreting and applying the law for their own purposes. This belief among the public will have a negative effect on trust in the profession (Tan, 1972, pp. 51-52).

One of the most important features of professions is that they gather around an organisation. The evaluation made by the lawyers of the Elazığ Bar Association regarding the work of bar associations, which is the organisation around which the lawyers gather, is that bar associations do not work well enough. When asked about the reasons, the majority agree that bar associations fail to protect their professional discipline and professional ethics. A significant portion of the participants stated that bar associations could not meet the common needs of the members of the profession. Other opinions are that bar associations are open to political intervention and insensitive to social problems and injustices, the authorities of the bar association are inactive are not active, the inadequacy of the legal system, and the poor organisational spirit (Uzun, 2000, pp. 122-123).

Although not the same as the above determinations, our study also revealed similar types of results. The survey questions included in the study aimed to measure how much lawyers give guarantees to their clients about the outcome of the case; how much effort they make to reach victims and undertake their defence in case of expropriation processes, industrial accidents, or traffic accidents; what the level of their efforts would be to seize any opportunity to gain fame or to make optimistic, unrealistic statements about the

success of the case or the level of suggestion to the witnesses on behalf of their clients' interests; what the level of their efforts would be to look for clients through association activities or by being in close relations with the officials in the courts and enforcement offices or by visiting places such as prisons, police stations, hospitals, etc.; and finally how much they use the confidential information they get from their clients for their own benefit. All these variables are included in the factor dimension of 'lawyer's obligation to serve with care, integrity, and dignity' and it is seen that there is a significant difference between the perceptions and expectations of the lawyers regarding the factor dimension in question, and their expectations on these issues are lower than their perceptions. This is an expected result because all the variables mentioned are activities that are prohibited under professional rules but still practiced by lawyers.

There was no significant difference in the perceptions of lawyers regarding 'act with care, integrity, and dignity' depending on whether they are self-employed or affiliated lawyers. Because rules regarding care, integrity, and dignity are determined within the scope of professional rules, there are also decisions of the Union of Turkish Bar Associations Disciplinary Board to punish lawyers who engage in opposite behaviours with disciplinary action. Within the scope of the lawyer's duty of care, perhaps the most important issue is that the lawyer does not share with the public the matters that fall under the confidentiality of the lawyer-client relationship. The obligation to keep confidentiality, which is the basis of the relationship between the lawyer and his/her client, is a matter that the lawyer must meticulously abide by. The confidentiality between a lawyer and a client is something that lawyers cannot compromise under any circumstances and confidential information must not be used in the time of proxy or after it. The opposite view harms the sanctity, respectability, and professionalism of the profession.

Although it is stated that commercial concerns and market conditions are not determinative in the practice of law due to its public service nature, both self-employed lawyers and affiliated lawyers stated that the profession cannot be completely excluded from commercial realities and that they are obliged to take care of their financial interests. The majority of the lawyers who participated in the survey expressed the opinion that financial concerns have an important place in the practice of the profession.

In this context, enough care should be taken to ensure that the minimum wage tariffs for self-employed lawyers be determined in a way that will fully pay for the lawyer's effort in accordance with current conditions. More than ever before, there is a need for the Bar Associations and Union of Turkish Bar Associations to express their struggles to bring the financial and personal rights of public sector lawyers to the same level as judges and prosecutors, with whom they practice the same profession and go through the same educational processes.

There was a significant difference between the perceptions and expectations of lawyers about 'acting in accordance with professional reputation and living life accordingly'. Lawyers expect that the restrictive effects of the profession of law on their private lives should be far less. Although lawyers take care to act in a way that befits the respect and dignity of the profession, they state that they want to continue their lives as individuals without feeling the weight of being a lawyer in their private lives.

As a result, each rule exists to serve a certain purpose, and the rules regarding

professional ethics in the profession of law serve both to regulate the relations of the members of the profession with their colleagues, clients, and judicial bodies and to protect the dignity of the profession. The primary control task in the observance of these rules by the members of the profession is the professional organisations (Ankara Barosu Meslek Sorunları Kurulu, 2004: 32). Therefore, it should be said that professional organisations have a very important role in the implementation of professional ethics.

Professionalism in attorneyship is closely related to professional ethics. Professionalism in law is defined as the prioritisation of respect for the profession and the quality of attorneyship as a public service, not needing anything other than knowledge and legal norms while performing one's duties, and always protecting the dignity in business relationships (Ankara Barosu Meslek Sorunları Kurulu, 2004: 51).

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