

Sociological Factors Affecting the Judicial Decision Making of Judges in Contentious Cases in Turkey

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Preprint

Absract

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, medya, social pressure factors also influence the judicial decision-making processes of the judges in Turkey.

Keywords: Contentious cases; judge, judicial decision making; sociological factors;
Türkiye

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 defines 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.

RESULTS

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. 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 "*...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) 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) "*... 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) In the research, the interviewees demonstrate that they are from Anatolia and describe the Anatolian geography's education, cultural, economic, and social circumstances "*...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) “...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) “...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) 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) 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) 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) 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) 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) The interviewee 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 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) 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 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) “...classical middle-class activities are actually watching TV, playing with the computer, picnic on the weekend, etc.” (5. interviewee) “...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) 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) 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) “...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) “...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) “...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) 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) 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 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) 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) 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) 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) “...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) 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 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) 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) 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 we are all impacted different structures and culture, my main concern is Turkish culture and traditions” (1. interviewee) 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) *“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) 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) 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 *“...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) 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) “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” (1. interviewee) 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) 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) “...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 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) 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) 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 “...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) 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) 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 process and relationships, so experience is very important in every point” (2. interviewee) “...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) 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 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)* 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)* 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)* 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) "*...the "lady" prosecutor character there impressed me a lot*" (8. interviewee) 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 man and see what's going on, after all, you face with woman who needed to be protected by you*" (5. interviewee) 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) 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) 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) 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) 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 “...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) 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) “...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 effect of the workload on our decision-making processes is obvious, there is no time for more comprehensive research” (2. interviewee) 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)⁷⁸ 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) 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 “...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)⁸⁰ “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) 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) 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, i can't explain that brain fatigue, it is a situation that accumulates, i think we need to go through psychological tests, because you are incredibly worn out, you are human, you are depressed, it is already 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) 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) 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 to develop and realize justice, I think that this situation will reflect the decisions of the judges” (8. interviewee) 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)

DISCUSSION

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 Doxa. 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 cannot 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, them

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).

CONCLUSION

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 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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Preprint