THE DECISION OF NO GROUND FOR INVESTIGATION ON THE BASIS OF RIGHT NOT TO BE LABELLED AS CRIMINAL AND PRESUMPTION OF INNOCENCE IN THE SCOPE OF HUMAN RIGHTS(*)

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Abstract

"Decision of No Ground for Investigation (DNGI)", which was added as the 140/6 article of the Law no. 7078 to the 158th article of the Turkish Criminal Procedure Code (TCPC), is included as a type of decision. In general and abstract complaints and denunciations without crime, public prosecutors can make the decision. An investigation will not continue due to a denunciation or complaint that does not have sufficient qualifications, and state institutions will not be unnecessarily busy. Provided that the DNGI is utilized appropriately by public prosecutors, there can be a severe decrease in the workload of courts and based on the presumption of innocence (PI) and the right not to be labelled as criminal (RNLC) in the scope of human rights, people can be protected from unnecessary investigations because of complaints or denunciations which do not constitute any crime.

Keywords

Right not to be Labelled as Criminal, Criminal Procedure Code, Human Rights, Decision of No Ground for Investigation, Presumption of Innocence.

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İNSAN HAKLARI KAPSAMINDA YER ALAN LEKELENMEME HAKKI VE MASUMİYET KARİNESİ TEMELİNDE SORUŞTURMAYA YER OLMADIĞINA DAİR KARARI

Öz

Ceza Muhakemesi Kanunun 158. maddesine 7078 sayılı Kanun'un 140/6. maddesiyle getirilen "Soruşturmaya Yer Olmadığına Dair Karar" Türk Ceza Muhakemesi Kanunu'na giren karar türüdür. Belirli suç tanımı içine girmeyen ya da dayanağı olmayan soyut ve genel şikâyet ve ihbarlarda, Cumhuriyet savcıları doğrudan doğruya soruşturma başlatılmadan iddia hakkında SYOK verebilir. Yeterli niteliklere sahip olmayan ihbar veya şikâyet hakkında soruşturma başlatılıp gereksiz yere devlet kurumları meşgul edilmeyecektir. Bu kurum Cumhuriyet savcıları tarafından düzgün bir şekilde kullanılır ise mahkemelerin iş yükünde ciddi düşüş yaşanabilir ve insan hakları kapsamı içerisinde yer alan masumiyet karinesi ve lekelenmeme hakkı esas alınarak suç teşkil etmeyen şikâyet veya ihbar nedeniyle bireylerin gereksiz soruşturmalardan korunması sağlanabilir.

Anahtar Kelimeler

Lekelenmeme Hakkı, Ceza Muhakemesi Hukuku, İnsan Hakları, Soruşturmaya Yer Olmadığına Dair Karar, Masumiyet Karinesi.

INTRODUCTION

The DNGI regulated in the article 158/6 of the TCPC is included as a new type of decision in the TCPC. The most vital feature of the decision is that it is taken before the investigation starts. People will be exposed to criminal investigations unnecessarily because of complaints and denunciations which do not constitute any crime. In addition, the PI and the RNLC will function effectively. However, the enough caution must be taken not to violate the freedom of claim and the obligation of effective investigation. The principle of the obligation of effective investigation is the first sub-principle of the obligation of the public prosecution. The sub-principle of promptly initiating an investigation by public prosecutors following the news that a crime has been committed is called the first sub-principle of the obligation of the public prosecution. Crime can be received in the form of the denunciation or complaint, or public prosecutors can be directly aware of the crime. When the crime news is received, in case of the initial suspicion, public prosecutors starts the investigation phase and collects the evidence against and in favour of the suspect[1].

Before the DNGI, upon a crime suspicion, a prosecution immediately had to be started by public prosecutors so as to learn the truth of the matter. Public prosecutors had to conduct the necessary research in order to reveal the material truth within the range of the investigation initiated and the case continued until the conclusion of the trial. This procedure is the obligation of the public prosecution[2]. However, with the new amendment, if it is clear that the complaint or denunciation does not constitute a crime even without an investigation, or if the complaint or denunciation is abstract and general in nature, public prosecutors do not initiate an investigation. In this context, if

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1 Yakup Duranoğlu, "Kamu Davasının Açılmasında Geçerli Olan İlkeler [Kamu Davasının (Kovuşturmanın) Kamusallığı, Davasız Muhakeme Olmaz, Kamu Davasında Mecburilik (Kovuşturma Mecburiyeti), Takdirilik (Maslahata Uygunluk) İlkeleri]", ***Tekirdağ Namık Kemal Üniversitesi Hukuk Fakültesi Dergisi,*** 2 / 1, 2021, p. 226; Veli Özer Özbek - Koray Doğan - Pınar Bacaksız, ***Ceza Muhakemesi Hukuku***, 13. ed, Seçkin Yayınları 2020; Muharrem Özen, ***Ceza Muhakemesi Hukuku Dersleri*****,** 5. ed, Adalet Yayınları, 2020.

2 Bahri Öztürk, "Ceza Muhakemesi Hukukunda Kovuşturma Mecburiyeti", **DEÜ Hukuk Fakültesi Döner Sermaye İşletmesi**, Ankara, 1991, p. 5-6; Ensar Baki, *CMK m. 171/1 Uyarınca Cumhuriyet Savcısının Kamu Davası Açmada Takdir Yetkisi*, **TC. Ankara Üniversitesi Sosyal Bilimler Enstitüsü**, (Yayımlanmamış Yüksek Lisans Tezi), Ankara 2011, p. 4; Hüsamettin Uğur, "Ceza Muhakemesinde Kovuşturma Mecburiyeti İlkesinden Maslahata Uygunluk İlkesine", ***TBB Dergisi***, 73, 2007, p. 257; Mustafa Özen, "Cumhuriyet Savcısının Takdir Yetkisi", ***Erzincan Binali Yıldırım Üniversitesi Hukuk Fakültesi Dergisi***, 13, 2009, p. 43-44.

the public prosecutors have any hesitation about whether a denunciation or a complaint constitutes a crime, an investigation will begin. In addition, when the investigation begins, it is not possible to go back and is not possible to make the DNGI. For this reason, public prosecutors should be very careful in the practice of this type of the DNGI.

The DNGI can be made if at the end of the preliminary evaluation it is clear that the complaint or denunciation does not constitute a crime even without an investigation, or if the complaint or denunciation is abstract and general in nature. Thus, the labelling of individuals as suspects is prevented. An investigation will not be initiated about a denunciation or complaint that does not have sufficient features, and state institutions will not be unnecessarily busy.

If the DNGI is used accurately by public prosecutors, individuals will be protected from unnecessary investigations and a serious decrease in the workload of the courts will take place. The RNLC and the IP, which are in line with human rights, gruantee that people are protected even before the investigation. It is essential to finish the judicial process in the most reasonable time for complaints and denunciations which are obviously understood not to constitute any crime or that are abstract and general. This can be seen as one of positive obligations of the state. However, it should be known that it is nearly impossible to determine a reasonable period that can cover all possibilities. Since the nature of the subject and the attitudes and behaviours of the people are different according to the characteristics of each case, it affects the duration of the trial[3].

I. OVERVIEW

Victims of crime, complainants or denouncers may apply to public prosecutors verbally or in writing. The RNLC and the IP are guaranteed with the 6th paragraph added to the article 158 of the 5271 TCPC with the Decree Law No. 694. In order for a DNGI, the action must not reach the initial suspicion. The initial suspicion is not dependent on any form requirement. Consistent with the article 160 of the 5271 TCPC, it has been declared that a simple initial suspicion of crime is sought[4]. It is at the lowest level of suspicion,

[3] Kenan Özdemir, "***Adil Yargılanma Hakkı ve Makul Süre***", Adalet Dergisi, 1999.

[4] Metin Yıldırım, ***Uygulamalı Genel ve Özel Ceza Soruşturması***, 2. ed., Adalet Yayınevi, Ankara, 2020, p. 571.

but its existence is essential to begin an investigation. In order for the initial suspicion to occur, there must be the concrete evidence that a crime was committed. In the past even when there was no initial suspicion in practice before the DNGI, the complainants were stigmatized as suspects and criminal investigations were initiated. As a result, these people were registered with "National Judiciary İnformatics System (UYAP as Turkish)" as suspects and the decisions of no ground for prosecution were given even if the DNGI conditions were met. This resulted in basic international principles such as the RNLC and the PI being ignored at the very beginning of the criminal procedure. The legislator described the direct investigation obligation without preliminary trial phase and filter as an important shortcoming and believed that the article 158/6 of the TCPC would be a remedy for this[5].

"DNGI" regulated in the article 158/6 of the TCPC is a new type of decision brought into the TCPC with the Decree Law No. 694 on August 15, 2017. With this decision, the RNLC will be protected. However, the balance among right to legal remedies, effective investigation obligation and the RNLC needs to be well-adjusted. It has been stated that the Public Prosecutors resorted to not processing general and abstract denunciations and complaints especially before "DNGI", and this could lead to the professional misconduct[6]. In situations that this way was processed, it could impose very heavy sanctions on the complainee, and since the complainee was given the title of suspect, his/her acquaintances could describe him as a criminal. The complainee could get heavy accusations from his/her acquaintances and even his/her relatives could be wrongly accused. Denunciations and complaints could be made for purposes such as blackmailing, the elimination of the opponent and revenge. In addition, by taking the title of suspect, the person could be subjected to criminal investigation as a result of the indisputable power and authority of the state in the criminal procedure code. The complainee could have been exposed to a position that restricts freedom, humiliates the public and the society, by applying measures of protection such as arrest, detention, judicial control, searching assets, seizure of properties, custody, monitoring by technical means and etc. When the first button in a shirt is put wrong, every

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5 Uğur Turhan, Soruşturmaya Yer Olmadığına Dair Karar, **Maltepe Üniversitesi, Sosyal Bilimler Enstitüsü,** Yüksek Lisans Tezi, 2019, p. 4.

6 Aysun Altunkaş, ***Ceza Yargılamasında Şüphe Kavramı***, Ceza Yargılama Hukukunda Son Gelişmeler Sempozyumu, Seçkin Yayınları, Ankara, 2016, p. 79.

button goes wrong. When the DNGI is implemented correctly, public prosecutors filter decisions effectively. Thus, the RNLC is protected, innocence is guaranteed and a fair start can be made for an investigation.

In each criminal justice system, prosecutors decide whether to prosecute or not to prosecute. Also, prosecutors should not begin or continue the prosecution when an investigation shows the charge to be unfounded, should not present evidence which taken through methods against the law and must keep confidential information taken from third parties, especially where the PI is at stake, unless disclosure is compulsory[7].

The DNGI is a judicial decision and also it is a judgment according to the TCPC[8]. The most important features of this decision are that no investigation is opened due to the denunciation and complaint about the person, that the person is not given the title of suspect, and that the process is concluded with the DNGI without starting a criminal investigation. Public prosecutors will prevent groundless and baseless accusations with the DNGI due to the clearly understandable or abstract and general nature of denunciations and complaints, even without any investigation and the complainee's action does not constitute a crime. In this respect, it can be said that the RNLC may be a manifestation of the PI in practice. It has been declared that the screening function of the public prosecutors protects the right of individuals not to be labelled as criminal by creating a legal shield between real crime suspects and people who are faced with baseless criminal charges and protecting innocent people from baseless and unfounded accusations. The DNGI protects individuals from unfair accusations in accordance with its purpose, and criminal investigations will not be initiated against them due to baseless and unsubstantiated accusations. In addition, it is believed that the existing workload of the judiciary will decrease and a fast and fair trial will be carried out in a reasonable time. According to the data obtained from the General Directorate of Criminal Records and Statistics, when the Judicial Statistics for 2021 is analysed, it is stated that the total number of investigations in the Chief Public Prosecutor's Offices in 2014 was 6.985.818 of which 3.344.363 were

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7 Council of Europe Committee of Ministers, ***Recommendation Rec (2000) 19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System***, https://www.refworld.org/docid/43f5c8694.html, 6 October 2000.

8 Cumhur Şahin - Neslihan Göktürk, ***Ceza Muhakemesi Hukuku II***, 7. ed, Seçkin Yayınları, Ankara, 2018, p. 245.

finalized, the total number of investigations in the Chief Public Prosecutor's Offices in 2019 was 9.342.676 of which 4.364.030 were finalized, the total number of investigations in the Chief Public Prosecutor's Offices in 2020 was 8.995.141 of which 3.760.903 were finalized and the total number of investigations in the Chief Public Prosecutor's Offices in 2021 was 9.856.642 of which 4.559.689 were finalized. Of the total investigations in 2019, 4.552.392 were concluded for no investigation and public lawsuits were filed against 3.018.368 and 1.071.532 were concluded with other decisions. Of the total investigations in 2020, 4.176.893 were concluded for no investigation and public lawsuits were filed against 2.357.600 and 915.351 were concluded with other decisions. Of the total investigations in 2021, 5.013.705 were concluded for no investigation and public lawsuits were filed against 2.898.436 and 1.083.617 were concluded with other decisions. While the number of files received by the chief prosecutors' offices in 2012 (transfer from last year, the total number of files received during the year) was 6.323.397, the number of files became 9.856.642 in 2021 with a 55.9% increase rate. It is stated that there were a total of 6.572 prosecutors in 2019, a total of 6.862 prosecutors in 2020 and a total of 7.489 prosecutors in 2021 throughout Türkiye. It can be estimated how heavy the workload of the public prosecutors is as they have the prosecution phase, execution and other duties. In 2021, in investigations carried out by the Chief Public Prosecutor's Offices, 46.3% of the 9.856.642 files were decided. In 55.7% of the decisions made about the suspects, there was no ground for prosecution, public lawsuits were filed for 32.2% of them and 12.1% of them were other (lack of venue and jurisdiction, joinder, transfer to another bureau) decisions. In investigations conducted by the Chief Public Prosecutors' Offices, 46.3% of 9.856.642 cases were decided. Of the files received by the Chief Public Prosecutor's Office, 55.6% were files with known offenders, and 44.4% were files with unknown offenders. 19.1% of the current 4.380.574 unsolved files were removed due to the statute of limitations, 0.2% of them were found guilty during the year, and 1.9% of them were given as other decisions. As for procedures related with decree, 19.1% of the 8.473.419 files were decided[9]. All these statistical information shows how much the workload of public prosecutors is. Before the time of the DNGI, such problems also damaged the public's trust. The public generally stated that there were

[9] T.C. Adalet Bakanlığı Adli Sicil ve İstatistik Genel Müdürlüğü, ***Adalet İstatistikleri 2021***, Ankara, 2022, p. 3, 7-8, 45.

problems in the trial process. According to another statistic, while the average duration of the investigation phase was 378 days in 2014, 416 days in 2019, this figure increased to 473 in 2020 and decreased to 413 in 2021. The number of indictments was 29.337 in 2014, 52.906 in 2019, 43.909 in 2020 and 56 518 in 2021. When the investigation phase between 2014 and 2021 is examined, it is seen that the number of files during the year in 2021 increased by 33.2% compared to 2014 and by 15.1% compared to 2020. In 2021, the number of indictments rejected by courts pursuant to the TCPC article 174, which is known to return to the prosecutors' offices as a workload increased by 92.7% compared to 2014 and by 28.7% compared to 2020. Again, the average cleaning rate is 94.3% and the ratio of the completed files to the incoming files is 45.2% on average, indicating that there are too many transferred files from the previous years. It can be estimated how heavy the workload of the public prosecutors is as they have the prosecution phase, execution and other duties. In 2019, while the total number of defendants seen in Criminal Courts was 4.447.362, 723.567 defendants were acquitted as a result of trials (16.3%), 2.082.514 defendants were sentenced (46,8%), other defendants took other decisions. While the total number of defendants was 3.246.170 in 2020, 488.116 defendants were acquitted as a result of these trials (15.0%). A verdict of conviction was given for 1.541.870 defendants (47.5%). While the total number of defendants was 5.000.933 in 2021, 756. 767 defendants were acquitted as a result of these trials (15.1%), and 2.529.492 defendants were convicted (50.6%). All these statistical information shows how much the workload of public prosecutors is[10].

One of the most of the lawsuits filed against Türkiye in the European Convention on Human Rights (ECHR), is based on violations of rights resulting from the public prosecutors' failure to adequately comply with international conventions during the investigation phase. The work of the public prosecutors, who are described as the king of the investigation in the judicial system, is very sensitive and their work is very suitable for violating the right to a fair trial. To give an example, the fundamental rights and principles such as the right to a fair trial, the PI, the RNLC, the investigation within a reasonable time, the right to defence, the right to benefit from an interpreter and the freedom to seek justice are among the rights to be considered during the investigation phase. Violations take place exactly in these places. Excessive

[10] Adli Sicil ve İstatistik Genel Müdürlüğü, ***Adli İstatistikler 2021***, Ankara, 2021, p. 12, 36.

workload is among the reasons why they make these mistakes. In the study conducted by the Ministry of Justice, based on the statistical data covering the years 2014-2021, the difference between the number of files (1.963 in 2017) received by public prosecutors and the number of files (844 in 2017) decided by public prosecutors was highest in 2017. The number of files (transferred from last year and cases brought within the year) received by public prosecutors was 1.525[11] in 2019, 1.409[12] in 2020 and 1.418[13] in 2021. The number of files decided by public prosecutors was 712 in 2019, 589 in 2020 and 656 in 2021. The percentage of the number of files received by public prosecutors to the number of files decided by public prosecutors was 46,7% in 2019, 41,8% in 2020 and 46,3% in 2021. After the DNGI was made, based on the workload of the denunciation files of the Chief Public Prosecutor's Offices throughout the country, the number of denunciation files was 207.408[14] in 2019, 240.403[15] in 2020 and 314.807[16] in 2021. DNGI was made for 119.623 in 2019, 141.986 in 2020, 198. 154 in 2021 from denunciation files. The decision of initiation of the investigation was made for 22.872 in 2019, 19.622 in 2020 and 24.457 in 2021 from denunciation files. The other decisions were made for 24.798 in 2019, 29.105 in 2020 and 41.340 in 2021 from denunciation files. Denunciation files transferred to the next year were 40.115 in 2019, 49.690 in 2020 and 50 856 in 2021. The average duration of the decision about denunciation files was 75 days in 2019, 83 days in 2020 and 68 days in 2021. The percentage of denunciation files received by public prosecutors to denunciation files decided by public prosecutors was 80,7% in 2019, 79,3 % in 2020 and 83,8% in 2021. When the denunciation files of the Chief Public Prosecutor's Offices in Türkiye for the years 2018-2021 are examined, in 2021 it is seen that the denunciation files increased by 32.4% compared to 2020, and the decision that there was no ground for the investigation in the denunciation files during the year increased by 39.6%. In 2021, 75.1% of the denunciation files in the Chief Public Prosecutor's Offices were decided that there was no ground for investigation, preventing them from initiating the

11 Transferred from last year (703) and cases brought within the year (822).

12 Transferred from last year (780) and cases brought within the year (629).

13 Transferred from last year (753) and cases brought within the year (665).

14 Transferred from last year (31.028) and cases brought within the year (176.380).

15 Transferred from last year (40.115) and cases brought within the year (200.288).

16 Transferred from last year (49.690) and cases brought within the year (265.117).

investigation phase, and preventing an increase of 4.3% in the number of investigation files received during the year. Only 9.3% of the denunciation files were decided to initiate an investigation[17].

II. CIRCUMSTANCES WHERE THE DECISION OF NO GROUND FOR INVESTIGATION IS MADE

"DNGI" regulated in the article 158/6 of the TCPC is a new type of decision brought into the TCPC with the Decree Law No. 694 on August 15, 2017 and was enacted with the Decree Law No. 7078 on March 08, 2018. The DNGI is made by public prosecutors in the situation of If the denunciation or complaint which is abstract and general in nature. According to the Turkish Language Association, abstract, whose existence cannot be perceived by the senses, is defined as the opposite of concrete and general in nature is not specific to a thing or a person, but includes all its similarities[18] and general in nature means that it does not give any specific evidence to blame somebody in the article 158/6 of the TCPC. If the complaint and denunciation are not based on concrete events and evidence, fictitious events are mentioned, and include situations of a general nature, the DNGI should be made. The article 158/6 of the TCPC states that it is foreseen that there will be 2 situations to make the DNGI. The first of these is that an act which is the subject of the denunciation or complaint is not considered a crime according to the penal laws, and the second is that the denunciation or complaint is abstract and general. The DNGI is regulated in a limited way. Except for these two situations, the DNGI cannot be made. Even if there is no possibility of obtaining evidence about the action, there is an obstacle to trial such as mediation and the action constitutes a misdemeanour, disciplinary offense or unfair action under private law, they do not constitute exceptions and the investigation should be initiated. When a public prosecutor examines the denunciation or complaint, the evidence should be freely evaluated[19]. The presence of the simple suspicion is sufficient to begin the investigation. In order to start the prosecution, the suspicion reaches the sufficient level. The detection of suspicion does not mean the arbitrariness of the public prosecutor. The discretion is made within certain

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17 Adli Sicil ve İstatistik Genel Müdürlüğü, ***Adli İstatistikler 2021,*** 2021, p. 4, 9.

18 https://sozluk.gov.tr/, Taken on March 22, 2023.

19 Fatih Birtek*, "Cumhuriyet Savcısı'nın Delilleri ve Fiili Takdir Yetkisi"*, ***Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi***, 19/2, 2013, p. 955.

norms. In the presence of the simple suspicion, a public prosecutor has to start the investigation. In fact, a public prosecutor has no discretion as to whether or not to initiate an investigation after admitting the existence of the simple suspicion[20]. On February 02, 2018, the Directorate General for Penal Affairs of the Ministry of Justice stated that, about this regulation, because of the denunciation or complaint that does not fall within the scope of penal code and criminal procedure code, falls within the subject of other procedural law fields, constitutes a legal dispute, cannot be understood well due to the unclear content and subject, includes the abstract and general nature and does not specify a certain place, time or event, people cannot be labelled as suspect and this regulation aimed to prevent the possible inconveniences in terms of "PI" and "RNLC"[21].

If it is clearly understood that the complaint or denunciation does not constitute a crime even without an investigation, or if the complaint or notice is abstract and general in nature, the DNGI is made. In this manner[22];

A. When the Complaint or Denunciation is Subject to Civil Courts or Enforcement Offices and This Situation is Considered as a Legal Dispute or an Administrative Sanction or There is no Crime Defined in the Criminal Laws

In this case, the denunciation or complaint made to the law enforcement offices or prosecutor's offices does not clearly constitute a crime without the need for an investigation[23]. For example, Pursuant to the article 20/d of the Highway Traffic Law, since all kinds of sales and transfer transactions not made by the notary publics are not considered valid, problems coming from all kinds of sales and transfer transactions are considered legal disputes which should be solved by civil courts[24]. If there is no investigation initiated, the public prosecutor does not have the authority to impose administrative sanctions for

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20 Veysel Canan Canoğlu, "*Cumhuriyet Savcısının Soruşturma Yapılmasına Yer Olmadığı Kararı"*, ***İzmir Barosu Dergisi,*** 2017, p. 105-106; Erengül Biçer, Cumhuriyet Savcısının Kamu Davası Açmada Takdir Yetkisi, **Çankaya Üniversitesi Sosyal Bilimler Enstitüsü**, (Yayımlanmamış Yüksek Lisans Tezi), Ankara, p. 19.

21 Asım Kaya, Cumhuriyet Savcısının Etkin Soruşturma Yapma Görevi, **T.C. Özyeğin Üniversitesi Sosyal Bilimler Enstitüsü**, Doktora Tezi, İstanbul, 2020, p. 52-53.

22 Ahmet Aslan, ***Cumhuriyet Savcısı ve Soruşturma***, Adalet Yayınevi, Ankara, 2018, p. 51.

23 Yıldırım, 2020, p. 572.

24 Criminal Board of the Court of Cassation no. 2016/13-546 and 2017/70 (Yargıtay Ceza Genel Kurulu 2016/546 Esas, 2017/70 Karar).

misdemeanors. In situations that are not clearly regulated in the law, the public prosecutor does not have the authority to impose administrative sanctions[25]. Also, findings obtained through illegal methods are unlawful. Provided that there is no lawful evidence, public prosecutors should not initiate an investigation[26].

According to the view that the crime is a faulty and unlawful human act, the DNGI may be made to the subject of the denunciation or complaint in which any of the material element, illegality or moral element is missing. In this context, it is stated that, for example, if a person's property is damaged unintentionally and this situation is understood without any investigation, public prosecutors may make the DNGI[27]. Kaşka says that the state of self-defense, does not constitute a crime and because of this, the DNGI can be made for the self-defence[28]. Especially, in terms of fault and illegality, it is difficult to make the DNGI for a denunciation or complaint which does not clearly constitute a crime without the need for an investigation, since a situation often requires an evaluation together with the statement and evidence collection within the scope of the investigation procedures. In investigating the reality of events, public prosecutors must engage in some kind of preliminary investigation. Pradel states that informal interrogation can be carried out in processes that cannot be used as evidence in judicial procedure, such as the collection of some traces and signs, the request of clarification from official authorities[29]. For instance, if it is understood that on the camera recoding, the person who is alleged to threaten somebody is not there, or it is understood that he is someone else, or that such an act has never been committed, if it can be clearly understood as a result of the examination to be made on the images, the DNGI should be made. If somebody says that someone who was 1.80 m tall battered him/her and give the camera recording, firstly the examination should be completed on this camera

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25 ***Kabahatler Kanunu***, T.C. Resmî Gazete, *No: 5326*. 31 March 2005.

26 ***Türkiye Cumhuriyeti Anayasası,*** T.C. Resmî Gazete, *No: 2709*. 9 November 1982, article 38/6; ***Ceza Muhakemesi Kanunu***, T.C. Resmî Gazete, *No: 5271*. 04 December 2004, article 217/2, 206 and 289.

27 Muharrem Özen - Atacan, Köksal, "Suçsuzluk Karinesi Bağlamında Soruşturma Yapılmasına Yer Olmadığı Kararı", **Ankara Üniversitesi Hukuk Fakültesi Dergisi**, 68, 2019.

28 Hakan, Kaşka, ***Türk Ceza Muhakemesi Hukukunda Soruşturma Evresinin Sona Ermesi***, Adalet Yayınevi, Ankara, 2019.

29 Jean Pradel, ***Çağdaş Sistemlerde Karşılaştırmalı Ceza Usulü***, Beta Yayınları, İstanbul, 2000.

recording before giving the title of the suspect and if it can be understood that that person is, for example, 1.40 tall and the appearance is completely different, the DNGI should be made. If employees complain to their employer about the wage they could not receive from their employer, the DNGI should be made since the said action does not constitute a crime.

B. When the Situation That is the Subject of the Complaint or Denunciation is Abstract and General in Nature

In this situation, no other action is taken and the DNGI is made. In addition, in the light of this evaluation, it will be primarily evaluated whether a situation subject to a denunciation or a complaint constitutes a crime and if it constitutes a crime, it will be prosecuted whether this situation is abstract and general in nature. Estimates or daily experiences that do not create even a simple suspicion do not have the necessary and sufficient conditions to initiate an investigation[30]. In order to start the investigation, the suspicion should exceed a simple prediction dimension, come out of uncertainty and reach a certain intensity. A prediction that is not based on concrete events is not enough to initiate an investigation. If a denunciation and complaint about a person consists of abstract claims, vague statements, groundless complaints and baseless statements, public prosecutors will not consider the application in question and make the DNGI. Also, it is stated that a denunciation and complaint which is too broad or general, make it difficult for those who investigate it, as well as make it impossible to answer the questions of what, where and how to investigate can be made to the DNGI, because a denunciation and complaint should be limited, specific and predictable in a certain scope. The “abstract and general” nature of the denunciation should be understood as the lack of competence to require the judicial authorities to initiate an investigation or the inability to reach a conclusion[31]. These two conditions (abstract and general in nature) must happen together. For instance, “illegal guns are traded in Ankara”, “all bosses commit crimes”, “all doctors are thieves”, “someone will be stabbed in Ankara”.

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30 Feridun Yenisey - Ayşe Nuhoğlu, ***Ceza Muhakemesi Hukuku***, 3. ed, Seçkin Yayıncılık, Ankara, 2015, p. 570.

31 Atilla Tanrıvermiş, Masumiyet Karinesini Genişleten Bir İlke Olarak Lekelenmeme Hakkı, **T.C. İstanbul Kültür Üniversitesi, Lisansüstü Eğitim Enstitüsü,** Doktora Tezi, İstanbul, 2021, p. 473-474.

III. THE RELATIONSHIP OF THE DECISION OF NO GROUND FOR INVESTIGATION WITH SIMILAR DECISIONS

Due to many reasons such as the increase in crimes in the TCPC and the complexity of criminal disputes, there are institutions brought to reduce the workload in the courts. Especially for minor crimes, the legislator tried to make the trial simple and fast by bringing alternative solutions. The main goal in the criminal law is not the punishment of the person, but the rehabilitation. Sometimes, the warrant on being taken by force to give statement in the court or conducting an investigation is enough to rehabilitate the person. In addition, it is essential that the punishment to be imposed is deterrent, measured and proportional. Decisions such as a reprieve, an administrative investigation, the deferment of the announcement of the verdict and etc. have been arranged with this sensitivity. These decisions have similar aspects to the DNGI.

A. Administrative Investigation

A regulation similar to the TCPC 158/6 regulation is included in Article 4 of 4483 Code on Prosecution of Civil Servants and Other Public Service Employee. According to this code, a denunciation or a complaint to be made against civil servants and other public officials should not be abstract and general in nature, the person or event should be specified in the denunciation or the complaint, the allegations should be based on serious findings and documents a denouncer or a complainant has to give his/her real name, surname and signature, as well as the work or residence address. Denunciations and complaints that do not meet the conditions are not processed by the Chief Public Prosecutor's Office and the authorities having the power to give permission, and the situation is notified to the person making the denunciation or complaint[32]. However, provided that allegations are put forward with documents that will not leave any room for doubt, the correctness of the name, surname and signature, as well as the work or residence address, is not required. Chief public prosecutors and competent authorities must keep the identity information of the denouncer or complainant confidential. The code only concerns civil servants and other public officials. In the code, it is regulated that which conditions must be met in order for the denunciation or the complaint to be processed, and if it does not meet the conditions, it will not be processed. However, even if some conditions are

[32] Zehreddin Aslan - Halil Altındağ, ***Memurların Disiplin ve Ceza Soruşturması***, Seçkin Yayınları, Ankara, 2018.

not fulfilled, it is also stipulated that action will be taken if the claims are put forward with serious documents.

Provided that a denunciation or a complaint does not meet certain conditions, they will not be processed not only by competent authorities to give permission but also by the Chief Public Prosecutors. It can be said that the article 4 for a Chief Public Prosecutor no longer has any meaning after the TCPC 158/6 and it should be noted that public prosecutors can make the DNGI. When the DNGI is made by a public prosecutor, the denouncer or the complainant can object to it pursuant to the article 173 of the TCPC, but when the denouncer or the complainant applies to the administrative authorities about civil servants and other public officials, the denouncer or the complainant cannot object to it by using the article 173 of the TCPC. However, according to the article 9 of the code 4483, an appeal can be made to the Regional Administrative Court within ten days from the notification of the decision of the competent authority. Another difference that emerged between the TCPC and code 4483 is that no registration is made in a special system regarding general and abstract denunciations and complaints made to administrative authorities and the normal archive rules are applied. But denunciations and complaints made to the judicial authorities are recorded in the system specific and seen by certain persons. In addition, while it was stated in the code 4483 that the denouncer and the complainant is kept confidential, the same rule is implicitly accepted in the article 158/6 of the TCPC[33]. In terms of administrative investigations, the article 4/3 of 4483 Code on Prosecution of Civil Servants and Other Public Service Employee and the article 158/6 of the TCPC have similar purposes. In the article 158/6, the individual is prevented from being labelled as criminal by being protected from denunciations and complaints which do not constitute a crime or remain abstract and general in nature, while civil servants and other public officials benefit from a similar protection with the 4/3 article of the Law No. 4483. For the first time before the DNGI, there was a protective regulation that would be limited to public officials with the Law No. 4483 on abstract denunciations and complaints, and denunciations and complaints that do not constitute a crime[34].

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[33] Berrin Akbulut, "Soruşturma Yapılmasına Yer Olmadığı Kararı (TCK m. 158/6)", ***Journal of Penal Law and Criminology***, 10/1, 2022, p. 163-164.

[34] **Memurlar ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanun**, T.C. Resmi Gazete, Kanun No: 4483, 4 December 1999.

B. Reprieve

According to the TCPC[35] "Except for the crimes within the scope of mediation and prepayment, public prosecutors may decide to postpone the criminal case for five years, despite the existence of sufficient suspicion, for crimes requiring a maximum prison sentence of three years or less". In this article, the principle of discretion has been brought forward by giving the discretionary power to public prosecutors. Provided that public prosecutors do not see any benefit in filing a public case despite obtaining evidence suitable for filing a public case as a result of the investigation and all the conditions are met for the reprieve in the law, they may decide to postpone the initiation of the public case against the suspect. Except for the crimes within the scope of mediation and prepayment, public prosecutors may decide to postpone the investigations they carry out for crimes that require a maximum prison sentence of three years or less. In order to be able to make a decision of the reprieve, the suspect had not been previously sentenced to prison for an intentional crime and the suspect must fully redress the damage suffered by the victim or the public. Also, in order for public prosecutors to make a decision to postpone, suspects must think that they will avoid committing an intentional crime in the future, and there must be a thought that the decision of postponement will be more beneficial for suspects and the society than filing a public lawsuit. This decision can be appealed by the injured and the suspect. If an intentional crime is not committed by the suspect within the adjournment period, the public prosecutors decide not to prosecute. If an intentional crime is committed, a public lawsuit is initiated.

The reprieve has some similarities and differences with the DNGI. While the reprieve is an exception to the principle of obligation to initiate a public action, the DNGI is an exception to the principle of obligation to investigate. On the other hand, objections can be made against both decisions according to the article 173 of the TCPC. These two decisions serve the purpose of alleviating the workload in the courts and constitute an aspect of the principle of discretion. There is not even an initial suspicion against the person for the DNGI, but in the reprieve, although there is "sufficient suspicion" that an individual has committed a crime, public prosecutors decide to postpone it at discretion. The reprieve prevents the initiation of prosecution. In other words,

[35] ***Ceza Muhakemesi Kanunu***, T.C. Resmî Gazete, *No: 5271*. 04 December 2004, article 171/2.

an investigation is made, but in the end, no criminal case is filed and it is postponed. However, the DNGI prevents investigation. Both decisions are taken by public prosecutors and they have an appeal process. Although there is not even an initial doubt in the DNGI, there is sufficient doubt to postpone for the reprieve.

C. Decision of No Ground for Prosecution

At the end of the investigation phase, public prosecutors make the decision of no ground for prosecution in cases where there is insufficient evidence for a public lawsuit to be initiated or if there is no possibility for prosecution. Public prosecutors can terminate the investigation in some situations. One of them is the inability to obtain the sufficient evidence, and the second one is the absence of the possibility of prosecution.

Public prosecutors make the decision of no ground for prosecution by going into the essence of the matter and by carrying out some investigation procedures. In this case, a person complained will become a subject in the investigation with the title of the suspect. The decision must be notified to the victim who was harmed by the crime and the suspect whose statement was taken beforehand or who was interrogated. Public prosecutors may decide not to prosecute within the framework of discretion, in the presence of conditions that require the application of effective repentance provisions as a personal reason for abolishing the sentence, or if there is a personal reason for impunity. Provided that public prosecutors obtain sufficient evidence to initiate a public lawsuit after the decision of no ground for prosecution and provided that a decision accepting the sufficient evidence to resuscitate the case is made by a criminal court of peace, they are obliged to file a public lawsuit regarding the case subject to the investigation[36].

The decision of no ground for prosecution and the DNGI are both institutions that protect the RNLC, ensure that no indictment is drawn up for a criminal case against those subjected to investigation, and that they are freed from accusations. With the DNGI, all complaints can be eliminated without informing even the complainant. However, in the decision of no ground for prosecution, the victimization of the "suspect" in terms of the personal rights

[36] Muharrem Özen, "Suçsuzluk Karinesi Bağlamında Soruşturma Yapılmasına Yer Olmadığına Dair Karar", **Ankara Üniversitesi Hukuk Fakültesi Dergisi**, 68/1, 2019, p. 283.

of the person may continue or new grievances may arise due to the failure to obtain sufficient evidence for sufficient suspicion to make a criminal case. Also, an important difference between the decision of no ground for prosecution and the DNGI is that the decision of no ground for prosecution reaches the suspect whose statement has been taken or interrogated, but the DNGI is not notified to the person who has not yet received the title of "suspect". Both decisions can be appealed[37] and the legislator has ruled that the appeal procedure is the same for both decisions. In the DNGI, public prosecutors remove a denunciation or a complaint without any direct investigation. This is a process that dissolves in the Public Prosecutor's Office in the form of a purely administrative storage. However, the decision of no ground for prosecution is a decision made after a certain investigation phase. In one case, the prosecutor completed a certain investigation process, but the decision of no ground for prosecution is made due to the conviction that the necessary conditions for filing a public lawsuit were not met, in the other case, public prosecutors ignored a denunciation or a complaint without even considering the petition to be investigated. In other words, for the decision of no ground for prosecution, the investigation and the criminal procedure begin and reach a certain level, but in the DNGI, the investigation and the criminal procedure does not even begin[38].

While the criterion to resuscitate the case is the sufficient evidence after the decision of no ground for prosecution, the criterion to reinitiate an investigation is the simple evidence after the DNGI.

IV. THE DECISION OF NO GROUND FOR INVESTIGATION AND PRESUMPTION OF INNOCENCE IN TERMS OF HUMAN RIGHTS

The PI and the RNLC are within the scope of the human rights principle, which is the right to a fair trial. Fair trial principles should be followed in the investigation and prosecution stages of the trial. The RNLC, which protects people's honor and dignity, is closely related to the PI, which is a necessary element of the right to a fair trial. Although the DNGI decision is a recent

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[37] Ersan Şen, ***Soruşturmaya Yer Olmadığı Kararının Önemi ve KYOK ile Mukayesesi***, 2020, March 28, https://www.hukukihaber.net/sorusturmaya-yer-olmadigi-kararinin-onemi-ve-kyok-ile-mukayesesi-makale,7601.html.

[38] Hakan Kızılarslan, "Soruşturma Yapılmasına Yer Olmadığı Kararları (Syok) ve Bu Kararların Ceza Muhakemesi Sistematiği Açısından İrdelenmesi", ***TBB Dergisi,*** 2019 (144), p. 86.

regulation in the Turkish legal system, it prevents individuals from being labelled as criminals. If denunciations and complaints about the person before the prosecution are abstract and unclear, it is possible to make a decision out of investigation. If it is decided not to carry out an investigation, the person is considered as a criminal, and the decision will be recorded in a different database to prevent damage to the person's social reputation. It is closely related to the RNLC, which means that everyone is presumed innocent until the crime is definitively proven. They are aimed at protecting the individual's dignity and honor in the eyes of society on the basis of human rights.

The PI can be defined as the right of a person to be considered innocent even during the trial[39]. Even if a verdict of the conviction is made at the end of the trial, the accused is protected under the PI until the finalization of this verdict. With the application of the PI, it is ensured that the law enforcement, public prosecutors and judges are free from prejudices to prevent experiential inferences that the person committed the crime[40]. There are many regulations in national and international legislations regarding the PI. In the Turkish Constitution, nobody cannot be considered guilty until proven guilty in a court[41]. In international legislations, every person accused with the punishment is considered innocent until proved guilty and all people are equal in a court[42]. Also, the concept of the PI has nothing to do with the activity of drawing conclusions about an unknown event from a known event[43].

The RNLC, on the other hand, expresses that the person is not considered guilty, but is more concerned with the protection of the human social dignity, honour and dignity.

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39 Bahri Öztürk - Mustafa Ruhan Erdem, ***Uygulamalı Ceza Muhakemesi Hukuku***, Seçkin Yayıncılık, 11. Baskı, Ankara, 2007.

40 Veysel Canan Canoğlu, "Cumhuriyet Savcısının Soruşturma Yapılmasına Yer Olmadığı Kararı", ***İzmir Barosu Dergisi,*** 2017, p. 94/95.

41 ***Türkiye Cumhuriyeti Anayasası,*** 1982, article 38/4.

42 United Nations, ***Universal Declaration of Human Rights*****,** https://www.un.org/en/about-us/universal-declaration-of-human-rights, 10 December 1948, article 11; The United Nations General Assembly Resolution 2200A (XXI), ***International Covenant on Civil and Political Rights***, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights, 16 December 1966, article 14/2; European Court of Human Rights Council of Europe, ***European Convention on Human Rights***, https://www.echr. coe.int/documents/convention_eng.pdf, 4 November 1950, article 6/2.

43 Elies Van Sliedregt, ***A Contemporary Reflection on the PI***, Eres Revue internationale de droit pénal, 2009, 80, p. 249.

A. Presumption of Innocence

After the 1789 French Revolution and the First and Second World Wars, the concepts of ethics and human rights began to develop rapidly. Human rights have started to be protected at both national and international levels. One of these rights is the PI. The principle of the PI is first encountered in the Rhode Island Constitution in the United States. The principles of the PI began to be adopted in the Constitutions of Delaware, Maryland, North Carolina, and Virginia shortly after the American Declaration of Independence and the declaration of American independence[44].

Basically, the PI states that a person cannot be considered guilty until his guilt is proven by a court decision[45]. Even if the criminal charge turns into a conviction, it should be accepted that the PI continues as long as the sentence in question is not legally finalized. Because in this case, the guilt of the person within the meaning of the article 38/4 of the Constitution and the 6/2 article 6 of the Convention has not been established and therefore cannot be considered guilty[46]. It is necessary to accept that the PI continues in cases where the criminal case is dropped for any reason, will be dismissed conditionally after a certain period of time, or the case is postponed without a conviction against the accused. The reason is that there has not been a sentence of conviction yet[47]. However, It does not automatically violate the PI if a person is found guilty of a disciplinary offense or is given compensation based on the same events that did not result in a conviction in criminal proceedings. In this context, "the language used by decision makers" is critical.[48] The first aspect of the guarantee of the PI under the article 6/2 of the Convention is that the PI is available in the period during which the person is charged with a criminal offense until the conclusion of the criminal trial and the second aspect of the PI comes into play when a verdict other than

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44 Robert Melton, ***Magna Carta and Modern Legacy***, New York: Cambridge Universitesy Press, 2015, p. 83-84; Asuman Öz, Avrupa İnsan Hakları Mahkemesi Kararları Işığında Ceza Muhakemesinde Masumiyet Karinesi, **T.C. Erciyes Üniversitesi Sosyal Bilimler Enstitüsü**, (Yayımlanmamış Yüksek Lisans Tezi), Kayseri, 2022, p. 13.

45 Mustafa Kıvrak, 2013/3175, 20.02.2014.

46 Mustafa Kıvrak, 2013/3175, 20.02.2014.

47 Kürşat Eyol, 2012/665, 13/6/2013 § 27.

48 ECHR (European Convention on Human Rights), Allen/Birleşik Krallık [BD], App. No: 25424/09, 12/7/2013 §§ 92-105 and 120-126.

conviction is made as a result of the criminal proceedings and when the criminal offense is committed in subsequent proceedings, it requires that there is no doubt about the innocence of the person in the face of it[49]. In addition, the presumption concerns merely a specific criminal charge which is raised against the individual, not his/her general good character[50].

The obligation to protect the PI concerns public prosecutor as well as all public authorities. Because the PI is a right that should be protected not only during the trial but also at the prosecution stage (from the moment when the person is faced with the allegation of crime). In this respect, a public prosecutor is obliged to protect this right in his works and processes during the investigation phase. The PI is a right closely related to the right of defence. For this reason, one of the consequences of the PI is that the burden of proof in the accusation is on the prosecution. The person under suspicion of crime does not have to prove his/her innocence. It is the basic presumption that he/she is innocent[51]. The PI states that an individual is not considered guilty without a final verdict of guilt. Because the innocence of the individual is "fundamental", the burden of proving his/her guilt belongs to the office of the prosecutor and no one can be burdened to prove his/her innocence. A person cannot be treated as a criminal by the judicial/public authorities without a final verdict of guilt[52]. Presumptions of innocence defend people against types of coercion that actual or suspected criminal conduct is considered to justify and presumptions are a matter of how people behave, rather than of their attitudes or beliefs[53].

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49 Seven/Türkiye, 60392/08, 23/1/2018 § 43.

50 International Covenant on Civil and Political Rights (1976) article 14/2: 'Everyone charged with a criminal offence shall have the right to be presumed innocent ...'. In the context, the 'innocence' of the individual can only become in connection with an offence charged.; Thomas Weigend, "There is Only One PI", ***Netherlands Journal of Legal Philosophy***, 42/3, 2013.

51 Hatice Derya Ormanoğlu, "Anayasal Bağlamda ve Avrupa İnsan Hakları Sözleşmesi Boyutuyla Suçsuzluk Karinesi", ***Ankara Üniversitesi Hukuk Fakültesi Dergisi***, 65/ 4, 2016, s. 2242.; Orhun Bekar, Tarihsel Gelişim Sürecinde Savcılığın Örgütlenmesi ve Soruşturma Evresi ile Soruşturmaya Yer Olmadığına Dair Karar, **T.C. Çağ Üniversitesi Sosyal Bilimler Enstitüsü,** Yüksek Lisans Tezi, Mersin, 2022, p. 82-83.

52 Kürşat Eyol, § 26.

53 Robin Antony Duff- Stuart Green (eds***), Philosophical Foundations of Criminal Law, Philosophical Foundations***, Oxford University Press, 2011; Duff, Robin Antony, "Who Must Presume Whom to be Innocent of What?", ***Netherlands Journal of Legal Philosophy, Forthcoming***, Minnesota Legal Studies Research Paper, 2012, p. 12-65.

The aim of the criminal procedure is to balance the interests of the public and individuals, and to protect the rights of the accused while seeking material benefits[54]. International conventions and the article 38/4 of the Turkish Constitution regulate the "PI" in a way that covers all phases of the trial. Protecting individuals' honors and dignities is one of the main duties of the criminal procedure. The article 6 of the ECHR pointed to the PI by stating that *"everyone accused of a crime is presumed innocent until proven guilty"*. Moreover, the article 11 of the United Nations Universal Declaration of Human Rights emphasized the importance and value of the PI by saying *"anyone charged with a crime is presumed innocent unless he is found guilty according to the law at the end of a public trial where all the guarantees necessary for his defence are given."* The United Nations Covenant on Civil and Political Rights, with the article 14, pointed out how important the PI is by saying *"a person charged with a crime has the right to be presumed innocent until proven guilty according to law."* The article 160 of the TCPC stipulated the existence of a simple initial suspicion of a crime against the person under investigation. In the PI, the innocence of the person is essential and the DNGI prevents the title of suspect with baseless and abstract allegations that damage individuals' dignities and honors and possible damages that may occur in terms of fundamental rights and freedoms[55].

B. Right Not to be Labelled as Criminal

The concept of human dignity has been debated for centuries and has increased its importance in the legal order. Especially with the end of the Second World War and the development of the idea, people started to have some basic rights as a result of the development of the concept of human rights. For instance, the "Universal Declaration of Human Rights", which was a driving force in the recognition of basic human rights at the level of states after the Second World War and was proclaimed on 10 December 1948, stated that human beings have dignity in its first article. This is not the only document that contains the concept. Although there is no consensus on what exactly should be understood from the concept of human dignity, the concept of human dignity has been given great weight in its contents, especially in national and

[54] Feridun Yenisey - Ayşe Nuhoğlu**, *Ceza Muhakemesi Hukuku***, 6. ed, Seçkin Yayınevi, 2018, p. 71.

[55] Hakan Kızılarslan, "*Soruşturma Yapılmasına Yer Olmadığı Kararları (Syok) ve Bu Kararların Ceza Muhakemesi Sistematiği Açısından İrdelenmesi*", ***TBB Dergisi*** 2019 (144), p. 66-67.

international documents[56]. In our legislation, as in comparative law, there is no regulation expressly stated as "RNLC". "Right to protection of reputation" is included in the ECHR. As a part of the right to privacy, it is a concept that is valid within the scope of "protection of private and family life" within the scope of Article 8 of the Convention. For the protection of ECHR article 8 to be effective, such interference must achieve a certain degree of seriousness in the attack on a person's reputation and in such a way as to prevent the person from enjoying the right to privacy. Even though the right to protection of reputation is seen as a part of fair trial under ECHR article 6/1 and PI under ECHR article 6/2[57], it is more considered within the scope of the ECHR article 8[58]. The ECHR Grand Chamber stated that the right to protection of reputation is a right protected within the scope of respect for private life[59]. Within the scope of the right to privacy, the state is under positive obligations to ensure that the privacy of private life is not violated by third parties. But, as long as the conditions in article 8/2 of the ECHR does not happen, the state is under a negative responsibility not to intervene according to article 8/1 of the ECHR[60].

In general, the DNGI made to prevent people from being called suspects with accusations arising from a simple estimation is a proper move in order not to harm the fundamental rights and the freedom of individuals. It is extremely important for the protection of the RNLC that people are not included in the criminal investigation under the suspicion of crime and unnecessary accusations. Verdicts of the Court of Cassation state that situations thought to result in a conviction should be the subject of a criminal case and that public prosecutors should act as a filter in other situations[61]. This situation can be resolved with the DNGI. Before the DNGI, public prosecutors were

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56 Nihat Bulut, "Eski Yunan'dan Aydınlanma Çağı'na İnsan Onuru Kavramının Gelişimine Bir Bakış", ***Erzincan Üniversitesi Hukuk Fakültesi Dergisi***, 7/3-4, 2008, p. 1; Kürşat Özyurt, *Soruşturmanın Gizliliği ve Lekelenmeme Hakkı*, **KTO Karatay Üniversitesi Lisansüstü Eğitim Fakültesi,** Yüksek Lisans Tezi, Konya, 2022, p. 47.

57 ECHR, Verlags Gmbh & Co.KG /Avusturya, App. No. 3145/96, 11/04/2000, para. 47-60.

58 ECHR, Kyrıakıdes / Cyprus. App. No. 309058/05, 16/10/2008, para. 37.

59 ECHR, Bédat/ Swıtzerland, App. No. 56925/08, 29/03/2016, para. 72; Tanrıvermiş, 2021**,** p. 6-7.

60 Nicole, Moreham, "The Right to Respect for Private Life in the European Convention on Human Rights: A Re-examination", ***European Human Rights Law Review***, 2008; Eray Ertürk, *Türk Hukukunda Lekelenmeme Hakkı*, **T.C. Ankara Yıldırım Beyazıt Üniversitesi Sosyal Bilimler Enstitüsü**, (Yayımlanmamış Yüksek Lisans Tezi), Ankara, 2020, p. 49.

61 Yener Ünver - Hakan Hakeri, ***Ceza Muhakemesi Hukuku***, 13. ed, Ankara 2017, p. 491.

investigating denunciations and complaints based on non-serious and objective grounds or they were not taking the denunciations and complaints serious and ignoring them[62]. The decision of no ground for prosecution and the acquittal are decisions that reveal the innocence of individuals. However, the society is interested in the beginning of the investigation and as it can be understood by the proverb "There is no smoke without fire", the opening of the investigation is sufficient to accuse the person and people think that the decision of no ground for prosecution and the acquittal decisions are made because the state cannot find the enough evidence to punish. In short, the decision of no ground for prosecution and acquittal decisions cannot restore the dignity of individuals in the society. The DNGI is maintained in a system accessible only to judges and public prosecutors. The state has a positive obligation to protect individuals in a certain way when they are accused. One of them is the RNLC[63]. The Court of Cassion in Türkiye stated that public prosecutors should collect all the evidence in a reasonable time during the investigation phase, act in accordance with the principle of hearing in one session, and finish the prosecution in one or two sessions without the need for new evidence to be collected. According to this view, just matters that are thought to result in conviction should be the subject of a lawsuit and public prosecutors should function as a filter[64]. With the DNGI, it is aimed to eliminate the denunciations and complaints that are not serious and lack any objective basis, while the investigation is still beginning. At the point of complaints and denunciations about people, it is aimed to prevent the public from being exposed to criminal investigations by protecting their RNLC by acting as a preliminary investigation and filter. The Court of Cassion in Türkiye stated that a public prosecutor has to take into account the principle of "proportionality", which is regulated in the constitution and the law, while collecting evidence, taking into account the principles of the investigation's exclusivity and the right of individuals not to be labelled as criminal[65].

If the subject of the denunciation and complaint does not constitute a crime or is abstract and general in nature, the application is recorded in the "National Judiciary İnformatics System" as a "investigation record", not as an

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62 Nur Centel - Hamide Zafer, ***Ceza Muhakemesi Hukuku***, 20. ed., Beta Yayınevi, 2021.

63 Fatih Akıncı, "*Lekelenmeme Hakkı"*, ***TAAD***, 11/43, 2020.

64 Yargıtay (The Court of Cassion in Türkiye) 13.CD E. 2011/17629 K. 2011/6976 T. 30.11.2011.

65 Yargıtay (The Court of Cassion in Türkiye) 16. CD. 2019/5661 E. 2021/2150 K., 16.03.2021.

"prosecution record". If investigation records are included in the same pool as the prosecution records, this violates the RNLC from the very beginning[66]. Although the TCPC wishes to protect the RNLC with the regulation in 158/6, it cannot be said that the TCPC fully protects the RNLC with this regulation. These records can only be viewed by public prosecutors, judges or courts. Although there is a denunciation or complaint with the baseless, general and abstract suspicion or with an act that does not clearly constitute a crime, the record of the person is registered in the special system indefinitely and these records are kept in the system by the Public Prosecutor, the judge and the court at all times. It is not necessary to keep a record of the denunciations and complaints about the acts that do not constitute a crime or are not committed. These records can be used later by being correlating with some people's crime allegations in the future and these crime allegations can be tried to be proved to be true with these records. These records kept indefinitely can damage the RNLC[67]. In national and international courts, there are some examples about the duration of records kept. The Constitutional Court of Türkiye gave a violation decision on the grounds that there is no clear regulation on how long the prisoner's correspondence will be kept in the system, under what conditions they will be made accessible and used by third parties, with which authorities they can be shared by the prison, and how personal data and privacy will be protected, and there is uncertainty in practice[68]. The ECHR stated that if there are no safeguards for the collection, retention and deletion of fingerprint records of persons suspected of certain crimes but not convicted, the violation can be possible[69].

The reason for the 158/6 amendment of the TCPC is that "public prosecutors can decide that there is no ground for investigation for abstract and baseless allegations and complaints, and that these decisions are recorded in a separate system and it is aimed to ensure the right of individuals not to be labelled as criminal". The justification for this article is based on the right of

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66 Yıldırım, 2020, p. 572.

67 Berrin Akbulut, "Soruşturma Yapılmasına Yer Olmadığı Kararı (TCK m. 158/6)", ***Journal of Penal Law and Criminology***, 10/1, 2022, p. 196.

68 Ümit Karaduman, 2020/20874, 02.02.2022.

69 ECHR, M.K. v Fransa, App. No: 19522/09, 18.04.2013; Council of Europe and European Court of Human Rights, ***Avrupa İnsan Hakları Sözleşmesi Madde 8 Rehberi***- Özel hayata ve aile hayatına, konuta ve haberleşmeye saygı hakkı, https://www.echr.coe.int/Documents/Guide_Art_8_TUR.pdf, 2019.

individuals not to be labelled as criminal. The data published by the Justice Ministry of the Office of Press and Public Relations Counsellor on July 23, 2021 states that the RNLC was made for 404 thousand 800 hundred files out of 602 thousand denunciations made in more than 3.5 years when the amendment began. The RNLC was made for 3 thousand 738 hundred denunciations out of 13 thousand 931 hundred denunciations in 2017, was made for 38 thousand 682 hundred denunciations out of 80 thousand 865 hundred denunciations in 2018, was made for 119 thousand 621 hundred denunciations out of 176 thousand 380 hundred denunciations in 2019, was made for 141 thousand 973 hundred denunciations out of 200 thousand 285 hundred denunciations in 2020. In the first 7-month period of 2021, the RNLC was made for 100 thousand 786 hundred denunciations out of 130 thousand 629 hundred denunciations[70]. In 2021, 165 thousand 286 hundred people enjoyed the RNLC. The decision was made for 469 thousand 288 hundred cases out of 734 thousand 795 hundred denunciations in 4 years when the amendment began[71]. 986 thousand 355 hundred people enjoyed the RNLC in 5 years when the amendment began[72].

V. PROCEDURE, OBJECTION, INSPECTION ROUTE AND RESULTS OF THE DECISION OF NO GROUND FOR INVESTIGATION

The denunciation of a crime whose investigation and prosecution depends on the denunciation, by the person who has the right to complain, to the competent authorities is called denunciation and the person who makes this denunciation is called a denouncer. The person exposed to this denunciation is called a suspect if an investigation is initiated against him. “Complainer” or “denouncer” is a person who informs the other person of the allegation of the crime to official authorities to take necessary measures. It is a person’s reporting the allegation of the crime to the competent authority. Everyone has the right

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[70] **Adalet Bakanlığı Basın ve Halkla İlişkiler Müşavirliği**, “Lekelenmeme Hakkı Kapsamında 404 Bin Dosyada SYOK Verildi”, https://basin.adalet.gov.tr/lekelenmeme-hakki-kapsaminda-404-bin-dosyadasyok-verildi, 23 July 2021.

[71] **Adalet Bakanlığı Basın ve Halkla İlişkiler Müşavirliği**, “2021 Yılında 165 Bin Kişi Hakkındaki İhbarlarla İlgili SYOK Verildi”, https://basin.adalet.gov.tr/2021-yilinda-165-bin-kisi-hakkindaki-ihbarlarla-ilgili-syok-verildi, 31 December 2021.

[72] **Adalet Bakanlığı Basın ve Halkla İlişkiler Müşavirliği**, “Lekelenmeme hakkında 986 bin 533 kişi yaralandı”, https://basin.adalet.gov.tr/lekelenmeme-hakkinda-986-bin-533-kisi-yaralandi, 31 January 2023; **Türkiye Gazetesi**, “Lekelenmeme hakkından 986 bin 533 kişi yararlandı”, https://www.turkiyegazetesi.com.tr/gundem/lekelenmeme-hakkindan-986-bin-533-kisi-yararlandi-945853, 31 January 2023.

for denunciations. However, complaint is a right granted to victims or people affected by crime (injured part). Everyone has the right to report a crime according to the principle of the ex officio investigation. If conditions are not available for the ex officio investigation, complainers have the 6-month period to report the crime otherwise this right cannot be used. In the denunciation, such a period of limitation of rights is not stipulated. In the DNGI, the person complained by the denunciation and the complaint is not called a suspect and this person can be called as a complainee or a denunciated one.

DNGI stays in the "National Judiciary Informatics System (UYAP as Turkish)". It is intended that the individual is not labelled as a suspect without an initial suspicion. The initiation of the investigation is not subject to any form requirement as a rule. But there must be an initial suspicion on a crime. In the grades of doubt, the initial suspicion the lowest and needs concrete evidence. If there is no initial doubt, the application finalizes with the DNGI without taking an investigation number, by registering for the DNGI on the "National Judiciary İnformatics System" screen without taking an investigation record. In the last sentence of paragraph 6 of Article 158 of the TCPC, it is regulated that the processes and decisions made pursuant to this paragraph will be recorded in a specific system and it is decreed that these records can only be viewed by public prosecutors, judges or courts.

The article 158/6 of the TCPC regulated that the DNGI will be sent to the denouncer or the complainant, and that these persons can appeal against the decision according to the article 173 of the TCPC. The complainer or the person injured by the crime may appeal to a Criminal Court of Peace in the place where the Assize court is located in the jurisdiction of the public prosecutor, who made this decision, within 15 days from the date of notification of the DNGI. If the objection is accepted, the public prosecutor will initiate the investigation and if there is sufficient doubt about the suspect, the public prosecutor prosecutes it. If the sufficient doubt level is not reached, the decision of no ground for prosecution is made. Also, it looks possible for the denouncer or the complainant to apply to the Chief Public Prosecutor and request that the decision that there is no ground for investigation to be reviewed and annulled, and if the Chief Prosecutor who checked the request considers the request appropriate, it is possible to annul the decision and order an investigation. However, if an objection is made to a Criminal Court of Peace and the objection is rejected, an investigation should not be initiated

unless new evidence emerges[73]. However, the Turkish law do not prevent one public prosecutor from making a DNGI about a situation and do not prevent the other public prosecutor from initiating an investigation about the same. This means that a DNGI does not prevent a public prosecutor from initiating an investigation when the complaint or the denunciation is made on the same subject again. It would be appropriate for the legislator to regulate the conditions under which an investigation can be initiated after the DNGI is given by the public prosecutor like the legislator made the regulation for the decision of no ground for prosecution[74].

Although the DNGI is an important step in the protection of the right of individuals, there are some problems in some aspects. The examination made by the public prosecutor for the DNGI is in the nature of a preliminary investigation. Within the scope of the preliminary investigation, an effective investigation may be violated by public prosecutors. In this context, it is unclear whether the Criminal Court of Peace will decide to extend the investigation if an objection is made against the decision regarding the absence of an investigation in accordance with the procedure in the article 173 of the TCPC. Also, it is stated that a denunciation or a complaint regarding the crime can be made to the Office of the Chief Public Prosecutor or law enforcement authorities. Generally, all denunciations and complaints are not made to the Office of the Chief Public Prosecutor, and most of them are made to law enforcement officers. In practice, there is no system specific for the DNGI records in the systems of the General Directorate of Security and the Gendarmerie General Command regarding judicial proceedings. It is seen in practice that people complained of are given the title of suspect at the point of denunciations and complaints made to the law enforcement. In addition, although denunciations and complaints within the scope of CMK art. 158/6 are saved as the denunciation record by public prosecutors, people complained of in the reports coming from the police or Gendarmerie are given the title of suspects in the law enforcement system[75]. When the subject which does not

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[73] Sinan Oğur - Faruk Turhan, "Son Yasal Değişiklikler Işığında Cumhuriyet Savcısı Tarafından Verilen Kovuşturmaya Yer Olmadığına Dair Kararın Denetimi", **Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi**, C. XII, S. 2, 2022, p. 595.

[74] ***Ceza Muhakemesi Kanunu***, T.C. Resmî Gazete, *No: 5271*. 04 December 2004, article 172/2.

[75] Yüksel Ertürk Bezgin, "Soruşturmanın Gizliliği İlkesi Kapsamında Lekelenmeme Hakkı", **Erzincan Binali Yıldırım Üniversitesi Sosyal Bilimler Enstitüsü**, (Yayımlanmamış Yüksek Lisans Tezi), Erzincan 2020.

constitute a crime is understood without conducting an investigation, it is easier for public prosecutors to evaluate the denunciation and complaint stated in the article 158/6 of the Code of Criminal Procedure. However, the prosecutor's decision related to the "abstract and general nature" of the application needs the subjective evaluation. Public prosecutors may make an assessment of the "abstract and general" nature of the subject of the application, just because it is not of sufficient competence. For example, a person who has the knowledge that a crime has been committed may unintentionally cause the event to remain "abstract and general" in order not to reveal himself in the denunciation or complaint. However, in this case, the prosecutor should investigate the necessity of the situation, investigate whether there is a need to issue an indictment, and try to collect the evidence. In some cases, the subject of the application may remain unanswered because the person making the denunciation and complaint cannot be reached due to an anonymous application and sometimes because people who made the denunciation and complaint change their addresses after the applications. The subject of denunciation and complaint may remain inconclusive, as the applicant does not follow up his application on the belief that the judicial authorities will definitively conclude the situation. In the situation that public prosecutors apply to applicants for additional information in order to investigate the incident in depth due to the fact that the denunciation and complaint is "abstract and general", no result will be obtained simply because the judicial authorities cannot reach the applicant[76]. It should be stated separately whether the DNGI will lead to the deterioration of the evidence that should be obtained immediately during the investigation phase and what the initial suspicion is and in which cases this suspicion can be used. It should be explained whether it is possible to make the DNGI if the prosecutors have not obtained any evidence[77]. Also, this decision expresses the drawbacks that the public prosecutors might have the opportunity to run away from work and inexperienced public prosecutors breach the state of law and can reduce people's faith in the law. It is also a requirement of the rule of law that a person who has been harmed by a crime can demand that the trial to be carried out by the judicial authorities be conducted in a substantive manner and that the perpetrators of the relevant crime be punished accordingly.

[76] Turhan, 2019, p. 159-163.

[77] Kızılarslan, 2019, p. 62.

CONCLUSION

With the annex to the 6th paragraph of the TCPC No. 158 and the 140th Article of the Law No. 7078, the DNGI was made and the authority to make the decision was given to public prosecutors. In fictional and general denunciations and complaints that do not contain a crime, public prosecutors are authorized to make the DNGI. It is observed that this regulation aims to reduce public prosecutors' workload, to respect the RNLC and a fair trial. However, this decision should be used in exceptional cases. In other words, public prosecutors should not apply to this decision if they have the slightest hesitation about whether the denunciation or complaint constitutes a crime. Prior to the introduction of the DNGI into the TCPC, in practice, some public prosecutors preferred not to process abstract and general denunciations and complaints. For this reason, it is appropriate to include the DNGI in order to eliminate the problems that may occur in the TCPC. In addition, the ECHR is of the opinion that PI and the RNLC related to the DNGI cannot be limited only to the prosecution phase. In addition, the reasonable time should be taken into account in this decision. Just because it is not at the investigation stage, it should not mean that the time is not important. Since it is new, it will take time for it to fully adapt to the system and for public prosecutors to adopt it.

REFERENCES

AKBULUT, Berrin. Soruşturma Yapılmasına Yer Olmadığı Kararı (TCK m. 158/6). ***Journal of Penal Law and Criminology*** 10.1 2022, pp. 153-209.

AKINCI, Fatih. Lekelenmeme Hakkı. ***TAAD*** (2020), pp. 177-202.

ALTUNKAŞ, Aysun. Ceza Yargılamasında Şüphe Kavramı. Donay, S. and A. Altunkaş. ***Ceza Yargılama Hukukunda Son Gelişmeler Sempozyumu***. Ankara: Seçkin Yayınları, 2016.

ASLAN, Ahmet. ***Cumhuriyet Savcısı ve Soruşturma***. Ankara: Adalet Yayınevi, 2018.

ASLAN, Zehreddin - ALTINDAĞ, Halil. ***Memurların Disiplin ve Ceza Soruşturması***. Ankara: Seçkin Yayınları, 2018.

BAKİ, Ensar. ***CMK m. 171/1 Uyarınca Cumhuriyet Savcısının Kamu Davası Açmada Takdir Yetkisi***. Ankara: TC. Ankara Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı Yüksek Lisans Tezi, 2011.

BEKAR, Orhun. ***Tarihsel Gelişim Sürecinde Savcılığın Örgütlenmesi ve Soruşturma Evresi ile Soruşturmaya Yer Olmadığına Dair Karar***. T.C. Çağ Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı Yüksek Lisans Tezi. Mersin, 2022.

BEZGİN, Yüksel Ertürk. ***Soruşturmanın Gizliliği İlkesi Kapsamında Lekelenmeme Hakkı***. Yayımlanmamış Yüksek Lisans Tezi. Erzincan: Erzincan Binali Yıldırım Üniversitesi SBE, 2020.

BİÇER, Erengül. ***Cumhuriyet Savcısının Kamu Davası Açmada Takdir Yetkisi***. Çankaya Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuk Anabilim Dalı. Ankara, 2021.

BİRTEK, Fatih. Cumhuriyet Savcısı'nın Delilleri ve Fiili Takdir Yetkisi. ***Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi***, 19.2, 2013, pp. 953-990.

BULUT, Nihat. Eski Yunan'dan Aydınlanma Çağı'na İnsan Onuru Kavramının Gelişimine Bir Bakış. ***Erzincan Üniversitesi Hukuk Fakültesi Dergisi***, 7.3-4, 2008.

CANOĞLU, Veysel Canan. Cumhuriyet Savcısının Soruşturma Yapılmasına Yer Olmadığı Kararı. ***İzmir Barosu Dergisi***, 2017.

CENTEL, Nur and HAMİDE, Zafer. ***Ceza Muhakemesi Hukuku***. 20. İstanbul: Beta Yayınları, 2021.

CEZA MUHAKEMESI KANUNU. T.C. Resmî Gazete. ***Sayı: 5271***. 04 Aralık 2004.

DUFF, Robin Antony and GREEN, Stuart. ***Philosophical Foundations of Criminal Law, Philosophical Foundations***. Oxford University Press, 2011.

DUFF, Robin Antony. Duff, Robin Antony, Who Must Presume Whom to be Innocent of What?, Netherlands Journal of Legal Philosophy, Forthcoming, 2012, p. 12-65. ***Netherlands Journal of Legal Philosophy, Forthcoming***, 2012: 12-65. Minnesota Legal Studies Research Paper.

DURANOĞLU, Yakup. Kamu Davasının Açılmasında Geçerli Olan İlkeler [Kamu Davasının (Kovuşturmanın) Kamusallığı, Davasız Muhakeme Olmaz, Kamu Davasında Mecburilik (Kovuşturma Mecburiyeti), Takdirilik (Maslahata Uygunluk) İlkeleri]. ***Tekirdağ Namık Kemal Üniversitesi Hukuk Fakültesi Dergisi***, 2.1 2021, pp. 265-296.

ERTÜRK, Eray. ***Türk Hukukunda Lekelenmeme Hakkı***. T.C. Ankara Yıldırım Beyazıt Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı Yüksek Lisans Tezi. Ankara, 2020.

KABAHATLER KANUNU. "T.C. Resmi Gazete." ***No: 5326***. 31 March 2005.

KAŞKA, Hakan. ***Türk Ceza Muhakemesi Hukukunda Soruşturma Evresinin Sona Ermesi***. Ankara: Adalet Yayınevi, 2019.

KAYA, Asım. ***Cumhuriyet Savcısının Etkin Soruşturma Yapma Görevi***. T.C. Özyeğin Üniversitesi Sosyal Bilimler Enstitüsü Hukuk Bilim Dalı Kamu Hukuku Anabilim Dalı Doktora Programı. İstanbul, 2020.

KIZILARSLAN, Hasan. Soruşturma Yapılmasına Yer Olmadığı Kararları (Syok) ve Bu Kararların Ceza Muhakemesi Sistematiği Açısından İrdelenmesi. ***TBB Dergisi***, 2019, pp. 59-104.

MELTON, Robert. ***Magna Carta and Modern Legacy***. New York: Cambridge Universitesy Press, 2015.

MEMURLAR VE DİĞER KAMU GÖREVLİLERİNİN YARGILANMASI HAKKINDA KANUN. "T.C. Resmi Gazete." ***Kanun No: 4483***. 4 December 1999.

MOREHAM, Nicole. The Right to Respect for Private Life in the European Convention on Human Rights: A Re-Examination. ***European Human Rights Law Review***, 2008. Victoria University of Wellington Legal Research Paper No. 11/2019.

OĞUR, Sinan and TURHAN, Faruk. Son Yasal Değişiklikler Işığında Cumhuriyet Savcısı Tarafından Verilen Kovuşturmaya Yer Olmadığına Dair Kararın Denetimi. ***Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi***, 9.2, 2022, pp. 583-625.

ORMANOĞLU, Hatice Derya. Anayasal Bağlamda ve Avrupa İnsan Hakları Sözleşmesi Boyutuyla Suçsuzluk Karinesi. ***Ankara Üniversitesi Hukuk Fakültesi Dergisi***, 65.4, 2016.

ÖZ, Asuman. ***Avrupa İnsan Hakları Mahkemesi Kararları Işığında Ceza Muhakemesinde Masumiyet Karinesi***. T.C. Erciyes Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı Yüksek Lisans Tezi, 2022.

ÖZBEK, Veli Özer, DOĞAN, Koray and BACAKSIZ, Pınar. ***Ceza Muhakemesi Hukuku***. 13. Seçkin Yayınları, 2020.

ÖZDEMİR, Kenan. Adil Yargılanma Hakkı ve Makul Süre. ***Adalet Dergisi***, 1999.

ÖZEN, Muharrem and KÖKSAL, Atacan. Suçsuzluk Karinesi Bağlamında Soruşturma Yapılmasına Yer Olmadığı Kararı. ***Ankara Üniversitesi Hukuk Fakültesi Dergisi***, 2019.

ÖZEN, Muharrem. ***Ceza Muhakemesi Hukuku Dersleri***. 5. Adalet Yayınları, 2020.

ÖZEN, Muharrem. "Suçsuzluk Karinesi Bağlamında Soruşturma Yapılmasına Yer Olmadığına Dair Karar." ***Ankara Üniversitesi Hukuk Fakültesi Dergisi***, 68.1, 2019.

ÖZEN, Mustafa. Cumhuriyet Savcısının Takdir Yetkisi. ***Erzincan Binali Yıldırım Üniversitesi Hukuk Fakültesi Dergisi***, 13, 2009, pp. 41-68.

ÖZTÜRK, Bahri and ERDEM, Mustafa Ruhan. ***Uygulamalı Ceza Muhakemesi Hukuku***. 11. Ankara: Seçkin Yayıncılık, 2007.

ÖZTÜRK, Bahri. ***Ceza Muhakemesi Hukukunda Kovuşturma Mecburiyeti***. DEÜ Hukuk Fakültesi Döner Sermaye İşletmesi, 1991.

ÖZYURT, Kürşat. ***Soruşturmanın Gizliliği ve Lekelenmeme Hakkı***. KTO Karatay Üniversitesi Lisansüstü Eğitim Fakültesi Kamu Hukuku Anabilim Dalı Tezli Yüksek Lisans Tezi. Konya, 2022.

PRADEL, Jean. ***Çağdaş Sistemlerde Karşılaştırmalı Ceza Usulü***. Trans. Sulhi Dönmezer. İstanbul: Beta Yayınları, 2000.

SLIEDREGT, Elies Van. ***A Contemporary Reflection on the Presumption of Innocence***. Eres Revue internationale de droit pénal, 2009.

ŞAHİN, Cumhur and GÖKTÜRK, Neslihan. ***Ceza Muhakemesi Hukuku II***. 7. Ankara: Seçkin Yayınları, 2018.

TANRIVERMİŞ, Atilla. ***Masumiyet Karinesini Genişleten Bir İlke Olarak Lekelenmeme Hakkı***. T.C. İstanbul Kültür Üniversitesi Lisansüstü Eğitim Enstitüsü Doktora Tezi. İstanbul, 2021.

TURHAN, Uğur. ***Soruşturmaya Yer Olmadığına Dair Karar***. Kamu Hukuku Yüksek Lisans Tezi. İstanbul T.C. Maltepe Üniversitesi Sosyal Bilimler Enstitüsü. 2019.

TÜRKİYE CUMHURİYETİ ANAYASASI. "T.C. Resmî Gazete." ***No: 2709***. 9 November 1982.

UĞUR, Hüsamettin. Ceza Muhakemesinde Kovuşturma Mecburiyeti İlkesinden Maslahata Uygunluk İlkesine. ***TBB Dergisi***, 73, 2007.

ÜNVER, Yener and HAKERİ, Hakan. ***Ceza Muhakemesi Hukuku***. 13. Ankara, 2017.

WEIGEND, Thomas. There is Only One Presumption of Innocence. ***Netherlands Journal of Legal Philosophy***, 42.3, 2013, pp. 193-204.

YENİSEY, Feridun and NUHOĞLU, Ayşe. ***Ceza Muhakemesi Hukuku***. 3. Ankara: Seçkin Yayıncılık, 2015.

YENİSEY, Feridun and NUHOĞLU, Ayşe. ***Ceza Muhakemesi Hukuku***. 6. Seçkin Yayınevi, 2018.

YILDIRIM, Metin. ***Uygulamalı Genel ve Özel Ceza Soruşturması***. 2. Ankara: Adalet Yayınevi, 2020.

Electronic Sources

ADALET BAKANLIĞI BASIN VE HALKLA İLİŞKİLER MÜŞAVİRLİĞİ. ***2021 Yılında 165 Bin Kişi Hakkındaki İhbarlarla İlgili SYOK Verildi***. 31 December 2021. 05 March 2023. <https://basin.adalet.gov.tr/2021-yilinda-165-bin-kisi-hakkindaki-ihbarlarla-ilgili-syok-verildi>.

ADALET BAKANLIĞI BASIN VE HALKLA İLIŞKILER MÜŞAVİRLİĞİ. ***Lekelenmeme Hakkı Kapsamında 404 Bin Dosyada SYOK Verildi***. 23 July 2021. 05 March 2023. <https://basin.adalet.gov.tr/lekelenmeme-hakki-kapsaminda-404-bin-dosyadasyok-verildi>.

ADALET BAKANLIĞI BASIN VE HALKLA İLİŞKİLER MÜŞAVİRLİĞİ. ***Lekelenmeme hakkında 986 bin 533 kişi yaralandı***. 2023 January 31. 05 March 2023. <https://basin.adalet.gov.tr/lekelenmeme-hakkinda-986-bin-533-kisi-yaralandi>.

ADLİ SİCİL VE İSTATİSTİK GENEL MÜDÜRLÜĞÜ. ***Adli İstatistikler 2021***. Ankara, 2021. 06 March 2023. <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/310520221416422021H%C4%B0ZMETE%C3%96ZELK%C4%B0TAP.pdf>.

COUNCIL OF EUROPE AND EUROPEAN COURT OF HUMAN RIGHTS. ***Avrupa İnsan Hakları Sözleşmesi Madde 8 Rehberi-Özel hayata ve aile hayatına, konuta ve haberleşmeye saygı hakkı***. 2019. 07 March 2023. <https://www.echr.coe.int/Documents/ Guide_Art_8_TUR.pdf>.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS. ***Recommendation Rec 19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System***. 2000. 05 March 2023. <https://www.refworld.org/docid/43f5c8694.html>.

EUROPEAN COURT OF HUMAN RIGHTS COUNCIL OF EUROPE. ***European Convention on Human Rights***. 04 November 1950. 07 March 2023. <https://www.echr.coe.int/documents/convention_eng.pdf>.

GENERAL ASSEMBLY RESOLUTION 2200A (XXI). ***International Covenant on Civil and Political Rights***. 16 December 1966. 08 03 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

ŞEN, Ersan. ***Soruşturmaya Yer Olmadığı Kararının Önemi ve KYOK ile Mukayesesi***. 28 Mart 2020. Hukukihaber Web Sitesi. 16 Ekim 2021.

T.C. ADALET BAKANLIĞI ADLİ SİCİL VE İSTATİSTİK GENEL MÜDÜRLÜĞÜ. ***Adalet İstatistikleri 2021***. Ankara, 2022. 05 March 2023. <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/9092022143819adalet_ist-2021.pdf>.

THE UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 2200A (XXI). ***International Covenant on Civil and Political Rights***. 16 December 1966. 07 March 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

TÜRKİYE GAZETESİ. ***Lekelenmeme hakkından 986 bin 533 kişi yararlandı***. 31 January 2023. 05 March 2023. <https://www.turkiyegazetesi.com.tr/gundem/lekelenmeme-hakkindan-986-bin-533-kisi-yararlandi-945853>.

UNITED NATIONS. ***Universal Declaration of Human Rights***. 10 December 1948. 07 March 2023. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

Cases

AYM, Ümit Karaduman, App. No: 2020/20874, 02.02.2022.

AYM, Kürşat Eyol, App. No: 2012/665, 13/6/2013.

AYM, Mustafa Kıvrak, App. No: 2013/3175, 20.02.2014.

AYM, Seven/Türkiye, App. No: 60392/08, 23/1/2018.

ECHR, Allen/Birleşik Krallık [BD], App. No: 25424/09, 12/7/2013.

ECHR, Bédat/ Swıtzerland, App. No: 56925/08, 29/03/2016.

ECHR, Kyrıakıdes / Cyprus. App. No: 309058/05, 16/10/2008.

ECHR, M.K. v Fransa, App. No: 19522/09, 18.04.2013.

ECHR, Verlags Gmbh & Co.KG /Avusturya, App. No: 3145/96, 11/04/2000.

Yargıtay 13.CD E. 2011/17629 K. 2011/6976, 30.11.2011.

Yargıtay 16. CD. E. 2019/5661 K. 2021/2150, 16.03.2021.