

Geliş Tarihi:

28.07.2022

Kabul Tarihi:

03.10.2022


Yayımlanma Tarihi:

29.09.2023

Kaynakça Gösterimi: Yurtlu, F., & Yıldız, O. (2023). Disinformation activities on social media platforms and responsibility in the context of criminal law: a case review on the Twitter platform. *İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi*, 22(47), 789-804. doi: 10.46928/iticusbe.1148409

DISINFORMATION ACTIVITIES ON SOCIAL MEDIA PLATFORMS AND RESPONSIBILITY IN THE CONTEXT OF CRIMINAL LAW: A CASE REVIEW ON THE TWITTER PLATFORM*

Araştırma

Fatih Yurtlu 

Sorumlu Yazar (Correspondence)

Alanya Alaaddin Keykubat University

fatihyurtlu@gmail.com

Orkun Yıldız 

İzmir Democracy University

yildiz.orkun@gmail.com

Fatih Yurtlu is a faculty member in the Department of International Trade at Alanya Alaaddin Keykubat University, Turkey. He teaches and publishes scientific research in the fields of crime and criminal law. He study on crime and terror organizations, crimes of omission, money laundering, tax and economy criminal law.

Orkun Yıldız is a faculty member in the Department of Management Information Systems at Izmir Democracy University, Turkey. He teaches and publishes scientific research in the business analytics, business models, business process management, digital transformation, e/m commerce platforms, enterprise business systems, human-computer interaction, innovation and technology management, and social media analytics.

* This study is the revised and expanded version of the presentation made at the Internet Disinformation and Law Symposium organized by Ankara Social Sciences University Faculty of Law on 16 May 2022.

DISINFORMATION ACTIVITIES ON SOCIAL MEDIA PLATFORMS AND RESPONSIBILITY IN THE CONTEXT OF CRIMINAL LAW: A CASE REVIEW ON THE TWITTER PLATFORM

Fatih Yurtlu

fatihyurtlu@gmail.com

Orkun Yıldız

yildiz.orkun@gmail.com

Abstract

Many different applications, called social media channels, have been developed. Today, it is seen that some of these applications have become a platform where individual ideas can be shared in written and visual expressions in the public sphere, as well as allowing to follow current developments. Among these platforms, Twitter has the highest number of users for this purpose. This study aims to identify, define, classify and associate criminal law with the statements that carry criminal elements shared on social media platforms, together with the analysis of actual data, by conducting a case study specific to Twitter. The explanatory case study was preferred as the research method of this study. As a case study in line with the purpose of our study, the posts made using the relevant hashtags detected on the Twitter Platform regarding the Gezi Park events, which have been on the agenda of Turkey for the last eight years and which are predicted to be able to share disinformation on social media, have been discussed. In this case analysis, the social media analysis method was used to obtain and analyze the data. Thus, disinformation sharing that may require criminal law responsibility in the determined purposive case study will be identified and classified. Subsequently, the relevant posts will be associated with the regulations in the Turkish penal legislation. This study deals with misleading social media posts, and criminal law responsibility in Turkish, limited to Twitter platform shares for the purposefully determined case study event. The contributions of the study to science and society are that it is the first multidisciplinary collaborative study in the literature that deals with disinformation activities in social media within the scope of criminal law responsibility, classifies these activities and has a content in which it is associated with the relevant regulations of the criminal legislation. The findings obtained and presented in the study may be beneficial for the executive and legislative bodies in reviewing the legal regulations on the subject, raising awareness for other interested parties and contributing to the literature.

Keywords: Cyber Crimes, Types of Disinformation, Social Media Crimes, Twitter, Spreading Misleading News

JEL Classification: M15, M19, K14, K24

SOSYAL MEDYA PLATFORMLARINDA DEZENFORMASYON FAALİYETLERİ VE CEZA HUKUKU BAĞLAMINDA SORUMLULUK: TWITTER PLATFORMUNDA BİR VAKA İNCELEMESİ

Özet

Sosyal medya kanalı olarak isimlendirilen birçok farklı uygulama geliştirilmiştir. Günümüzde, bu uygulamalardan bazılarının hem kamusal alanda bireysel fikirlerin yazılı ve görsel ifadelerle paylaşılabilirdiği hem de güncel gelişmeleri takip etmeye imkân sunan bir platform halini de aldığı görülmektedir. Bu platformlar arasında bu amaçla en çok kullanıcı sayısına sahip olanı ise Twitter'dır. Bu çalışmanın amacı, Twitter özelinde bir vaka incelemesi gerçekleştirerek gerçek verilerin analiziyle birlikte sosyal medya platformları üzerinden paylaşılan suç unsuru taşıyan ifadeleri tespit etmek, tanımlamak, sınıflandırmak ve ceza hukukuyla ilişkilendirmektir. Bu çalışmanın araştırma metodu olarak açıklayıcı vaka incelemesi tercih edilmiştir. Çalışmamızın amacına uygun vaka incelemesi olarak sosyal medyada dezenformasyon paylaşımlarının gerçekleştirilebileceği öngörülen Türkiye'nin son 8 yıldır gündeminde olan ve yargıya intikal etmiş olan Gezi Parkı olaylarına yönelik Twitter Platformunda tespit edilen ilgili hashtagler kullanılarak yapılan paylaşımlar ele alınmıştır. Bu vaka analizinde verilerin elde edilmesi ve analizinde de sosyal medya analizi yöntemi kullanılmıştır. Böylece, belirlenen amaçsal örnek vakada ceza hukuku sorumluluğu gerektirebilecek dezenformasyon paylaşımları tespit edilip sınıflandırılacaktır. Akabinde ilgili paylaşımlar Türk ceza mevzuatındaki düzenlemelerle ilişkilendirilecektir. Bu çalışma, amaçsal olarak belirlenen vaka inceleme olayına yönelik Twitter platform paylaşımlarıyla sınırlı bir şekilde Türkçe ifadelerle yanıltıcı sosyal medya paylaşımları ve ceza hukuku sorumluluğunu ele almaktadır. Çalışmanın bilime ve topluma sağladığı katkılar, sosyal medyada dezenformasyon faaliyetlerini ceza hukuku sorumluluğu kapsamında ele alan, söz konusu faaliyetleri sınıflandıran ve ceza mevzuatının ilgili düzenlemeleriyle ilişkilendirildiği bir içeriğe sahip olan, alan yazındaki çok a ayıda olan çok disiplinli ortak çalışma özelliğini taşımasıdır. Çalışmada elde edilen ve sunulan bulgular, yürütme ve yasama organları için konuya ilişkin yasal düzenlemelerin gözden geçirilmesinde fayda sağlayabileceği gibi diğer ilgililer bakımından da farkındalık oluşturabilecek ve alan yazınına katkı sağlayabilecektir.

Anahtar Kelimeler: Bilişim Suçları, Dezenformasyon Türleri, Sosyal Medya Suçları, Twitter, Yanıltıcı Haber Yayma

JEL Sınıflaması: M15, M19, K14, K24

INTRODUCTION

Social media can be defined as web and mobile-based internet applications that allow unique creation, access and production of user content from anywhere. (Kaplan & Haenlein, 2010). With its ever-increasing size, we can say that many social media tools are described as a platform today. It is also possible for us to define social media channels, especially Facebook and Twitter, as platforms because they have over one billion user profiles worldwide and offer very different information-based services. Within these platforms, people can be positioned quickly, and people with similar interests, views, ideologies, and hobbies can form groups open to members or closed and exchange views on various topics. In particular, the social media platform Twitter allows mass movements because user profiles can instantly access information quickly, the activities carried out can be immediately noticed by users as current issues, and they can provide instant news flow. In addition, although fake accounts called bots can be controlled simultaneously from the same location by being managed by artificial intelligence algorithm-based programs, with the help of developing VPN technologies, they can easily carry out disinformation activities on Twitter by giving the appearance of being located in IP addresses in many different parts of the world, macro point of view, it can pose a significant threat. In recent years, it seems that the Twitter channel is actively used for activities, which aims the the opposition mass movements against governments in many countries around the world quickly turn into violent activities, the emergence of internal turmoil, the occurrence of material and moral damages due to the events, and the deterioration of the socio-economic trust environment of the countries. Social events in which social media channels, especially Twitter, are used extensively by the masses, from 2010 to the present; Arab spring (Tunisia, Egypt, Libya, Syria, Bahrain, Algeria, Jordan, Yemen, Mauritania, Saudi Arabia, Oman, Iraq, Lebanon and Morocco), square protest events (Ukraine), Gezi Park (Turkey) and Yellow Vests (France) and the recent violent demonstrations in Kazakhstan can be cited as examples (Wikipedi, 2022).

As it can be understood from all these examples, social movements that are encouraged by disinformation activities in social media and that emerge rapidly can reach dimensions that may threaten the socio-economic stability of countries, and this situation causes disinformation activities to be seen as a threat to the national security of states. In this direction, a report titled "regulation contents in the digital age" has been prepared by the United Nations (UN) regarding the subject (Ullman et al., 2017). In the related report, Fake news, disinformation and propaganda related to terrorism and illegal activities, and actions that do not comply with human rights standards within the framework of the right to be forgotten are the main issues that should be included in the legal regulations regarding social media companies. Thus, the protection of the rights of the public, individuals and private law legal entities against criminal elements developing on social media platforms, similar to the efforts made under the umbrella of the UN in the 1950s to provide a binding solution for global needs with international conventions and directives. It can also be said that the necessary studies have been started to respond to the needs.

In our study, the typologies in the related report, especially the disinformation activities, are analyzed through a real case study from the Twitter platform. The content of this study is as follows; The concept of disinformation consists of the relevant legislation, method, sample, findings, conclusions and recommendations.

DISINFORMATION CONCEPT

Disinformation; is a word that has passed into our language from French and means "information distortion" (Ullman et al., 2017). In English, the word means "deliberately giving false news" or "spreading false news with the aim of deceiving people" (Cambridge University Press, 2022).

Despite these definitions, since many legal consequences are attached to the relevant act, it is necessary to reveal exactly what the concept of "disinformation" means. This requirement is essential in criminal law, where a strict principle of legality applies. Especially recently, in many countries, including developed Western democracies, the punishment of disinformation, which is carried out in an organized manner through social media and often by unknown persons, is seriously discussed. For example, in Greece, with an amendment added to the penal code in 2021, acts of spreading fake news were criminalized, but this regulation was subjected to severe criticism, especially because it might restrict the freedom of journalists to report (Gouliamaki, 2021). Similarly, the allegations that Russia directly affected the presidential elections in the USA with disinformation activities are still up-to-date in the Western world. (Polyakova & Fried, 2020). Likewise, a high-level working group formed by the European Union conducted a detailed study on the subject and made determinations and evaluations regarding the acts of disinformation in its published report. (Avrupa Komisyonu, 2018).

Regarding disinformation activities, currently, the Turkish penal legislation regulations are insufficient. However, posts that can be described as disinformation on social media can create different types of crimes in terms of their content. In our study, primarily the legal basis of the freedom of thought and dissemination and the legislation on the limitation of these are going to be discussed, and finally, the types of crimes that may arise in terms of spreading false/false information on social media going to be discussed.

RELATED LEGISLATION

The freedom thinking, expressing and disseminating one's thoughts is undoubtedly one of the most the fundamental human rights—freedom of expression ECHR art. In 10, "*Everyone has the right to freedom of expression. This right includes freedom of opinion and to receive and impart information and opinions without interference by public authorities and regardless of national borders. This article shall not prevent States from subjecting radio, television and cinema enterprises to a licensing regime*".

Article 25 of the Constitution of the Republic of Turkey, titled "*Freedom of Thought and Opinion*", states, "*Everyone has the freedom of thought and opinion. No one can be compelled to express his*

thoughts and convictions for whatever reason and purpose; This fundamental right is also guaranteed in our national law, by saying that he cannot be condemned or accused for his thoughts and convictions.’ However, in direct relation to our subject, Paragraph 1 of article 26 of the Constitution of the Republic of Turkey titled "*Freedom of Expressing and Disseminating Thoughts*" appears. Accordingly, "*Everyone has the right to express and disseminate their thoughts and opinions individually or collectively through speech, writing, picture or other means. This freedom also includes the freedom to receive or impart information or ideas without the interference of official authorities. The provision of this paragraph does not prevent broadcasts made by radio, television, cinema or similar means from being connected to the permission system.*"

As can be seen, the freedom of expression and dissemination of thought which also forms the basis of freedom of communication, is being guaranteed as a fundamental human right in international and national law (İçel, 1975). However, as with other rights, this fundamental right is limited (Yurtlu, 2016). In this context; It is not possible to benefit from the freedom of expression and dissemination of thought by provoking people against each other due to differences in belief, language, religion, race, philosophical thought, inciting or encouraging people to commit crimes, or directly attacking the fundamental rights and freedoms of third parties. (Özgenç, 1997).

In this context, in the second paragraph of Article 26 of the Constitution titled "*Freedom of Expression and Dissemination of Thought*", "*The use of these freedoms, national security, public order, public security, the basic characteristics of the Republic and the protection of the indivisible integrity of the State with its territory and nation, prevention of crimes, This freedom may also be severely violated by stating that "it may be restricted to punish criminals, not disclosing the information duly declared as a state secret, protect the reputation or rights of others, private and family lives, or professional secrets stipulated by the law, or fulfilling the judicial duty in accordance with the requirements"*. It is clearly stated that it can be limited if there is a reason.

METHOD

The purpose of this research; this study aims to examine, make sense of, and evaluate disinformation sharing, which can be seen as a criminal element in the context of criminal law in social media channels, and to evaluate it within the categories of criminal elements according to the findings obtained typologically. It has been determined that the analysis methods suitable for this purpose are the social media analytics method and the text analysis method. The main reason for this decision is our research purpose. Multiple prerequisites must be fulfilled in order to achieve the mentioned purpose healthy. These requirements are as follows, respectively: Multidisciplinary joint scientific work and detection of actual shares on the social media channels. Thus, to achieve the research purpose healthy, it is sought that the methodology is being chosen and the analysis method meets the relevant prerequisites. In addition, the scope of the research is limited to social media channels. In line with this limitation, it is a genuine requirement to choose a method that will allow data access

and analysis within the social media channel to be determined. Regarding these features, Twitter has been determined as the platform where our research will be carried out, as it is also suitable for our purpose. The amount of content and information sharing revealed by users on these platforms is included in a huge data pool brings difficulties that cannot be overcome with traditional statistical analysis methods. On the other hand, it is foreseen that it is possible to cope with the difficulties encountered in the data analysis process, thanks to the social media analytics method. Therefore, the explanatory case study method was preferred as the research method that can best meet the requirements mentioned above that we need to fulfil to carry out our research in a healthy way and use social media analytics for analysis (Özsöz, 2008).

On the other hand, thanks to the social media analytics method, which is preferred for analysis, the content created by a large user pool and generally the implicit links between users can be analyzed in order to obtain meaningful information about emerging problems and trends, as well as information, opinions and emotions. (Leskovec, 2011). In addition, this method provides tools and frameworks for collecting, monitoring, analyzing, summarizing and visualizing data by automated means since social media analytics is a considerable amount of social media data. (Zeng et al., 2010). By considering these features, the social media analytics analysis method was preferred in this study in determining, collecting, analyzing and visualizing the content shares of Twitter profiles as secondary data. It is foreseen that the data we will prefer for analysis will be qualitative data so that we can perform the correct determination, classification and evaluation under our research purpose. In this context, the analysis will be carried out according to the text analysis method so that the raw data to be obtained can be analyzed in the best way, and the data that can be considered a criminal element can be determined and analyzed. In this context, it is helpful to give brief information about social media analytics and data types.

There are many different methods within the social media analysis method. These methods are; text analysis, social network analysis and trend analysis (Stieglitz et al., 2014). Text analysis/mining; It can be defined as sentiment analysis or opinion mining, which emerges as a different method in terms of people's entities, individuals, subjects, events and their views, attitudes, evaluations and feelings (Moe et al., 2017; Pang & Lee, 2008).

Another analysis method is social network analysis. Social network analysis; is a method used to analyze relationship structures among people, organizations, groups of interest, and states (Scott & Carrington, 2011). Social network analysis can also be used to examine the relationships between individual and corporate accounts, especially on social media platforms.

The last analysis method that can be mentioned is trend analysis. Trend analysis is the method in which the latest developments in computer and statistical science are analyzed, especially by using hidden Markov models, in order to follow the developing issues on the social media platform (Özsöz, 2008). It can be said that the models used in trend analysis have an algorithm basis that performs the

estimation of the reoccurrence of the most recurring subjects among the related subjects by recording the subjects that are constantly repeating in a specific time interval in order to predict the trending subject (Zeng et al., 2007). In this direction, for our research, it has been determined that the most appropriate analysis method is the text analysis method to determine the criminal elements by analyzing the shares of social media profiles in terms of content and meaning. Social Media Analysis tool was used to obtain the data from the Twitter Platform. In this context, the location of the case study is the Republic of Turkey, the language of the posts to be examined is Turkish, and the case study, determined purposively, is the posts made with the hashtag #geziyidestekliyoruz. In the scope of our study, information about the case study and the data obtained during the analysis process are presented in the section titled sample.

SAMPLE POPULATION

Following the purpose of the research, some events in 2014 were discussed with the assumption that Twitter posts that may constitute a crime may occur. In this context, research was carried out on the Gezi Events, in which those who were prosecuted because they organized, financed and ideologically supported the events alleged to constitute crimes. On the hearing day of the prosecution against the defendants, against whom an indictment was drawn because they were the financial sponsors and organizers of the Gezi Events, the posts on the Twitter platform with the hashtag #Geziyidestekliyoruz were chosen as the sample of this research. In the social media analysis of this case study, 1448 Tweets were identified. All of these tweets were analyzed abstractly in the context of the Turkish Penal Code (TPC) Number 5237 and other penal legislation with their expression and semantic dimensions using the text analysis method, and the following conclusions and inferences were reached.

DATA ANALYSIS AND FINDINGS

As we explained above, freedom of thought and dissemination is clearly guaranteed in both international and national legislation. However, exercising this fundamental right is not absolute, as is the case with other fundamental rights. The basic limit in terms of exercising the right to express and disseminate thought is the violation of the fundamental rights and freedoms of others.

Regarding the subject, the point that should be noted first is that any sharing made on social media that may constitute a crime cannot be considered an act of disinformation. As can be clearly understood from the meaning of the word, disinformation is the activity of spreading false/lie information. For example, acts such as posting offensive and violating personal rights, inciting one part of the public against another, praising the crime and the criminal, and making propaganda for criminal or terrorist organizations do not include disinformation. However, they may require liability in terms of criminal law. On the other hand, different types of crimes can come to the fore through disinformation, that is, sharing posts containing false/wrong information via social media and primarily via Twitter.

Within the scope of our study, we obtained 1448 pieces of data shared on the Twitter platform with the hashtag #geziyidestekliyoruz. We performed data analysis to cover all of these data and determined that among the 1448 data obtained as a result of the text analysis, "derogatory, insulting, damaging their honour and dignity" expressions were frequently used against the supporters of a specific political party or political opinion.¹ In some cases, the posts in this content did not directly address certain people, and in some cases, they directly targeted another Twitter user. In other words, these shares appear to be a direct response to the relevant user. In this context, "defamation" is one of the most common types of crimes committed over social media (Art. 125, par. 2) of the TPC. Since the insulting discourses in the posts we have determined are caused mainly by the person's "declaring, changing, trying to spread his religious, political, social, philosophical beliefs, thoughts and convictions", in most of the shares, TPC art. 125, par. 3. It is seen that the qualified element in 3 is formed.² Likewise, since the accounts where insulting posts are made are not protected accounts, in other words, since anyone can access the insulting messages shared from the related account, "public committing (affront)" of the offence of defamation will come to the fore and TPC. art: 125, According to paragraph 4, it will be necessary to accept that the qualified element of the crime (publicity) has taken place. However, it should be reminded that a large part of these shares cannot be considered technical disinformation because disinformation means that the person knowingly shares false/lie news content. On the other hand, since most of the Twitter shares that we have determined can be considered offense of defamation, there is either direct cursing or a concrete case accusation; these posts will not be technically considered disinformation.

In addition to these types of posts, another type of crime we frequently encounter in our samples is the TPC art 216. It is "inciting the people to hatred and enmity or humiliating", as regulated in 216. In this context, it is seen that incredibly insulting expressions of particular political party voters or people with a particular political opinion are widely used on Twitter.³ Therefore, the shares in

¹ *"The ropeless people who defended the trip did not listen to the cutting of 120 centuries-old plane trees! Didn't they ask? Even then, these are intellectual marginals defending nature. A handful of bigoted hordes set fire to their hometown! That it is a revolution. The trip was the betrayal of the vandals, you know".*

² *"#We are defending Gezi, and these X party members have no religious deity. His religious faith is money and modesty. If the prophet lived for profit, they would strangle the prophet, join the army of Abujahil, become a soldier of the pharaoh, make Nimrod a god, and throw my ibah into the fire. They are like animals or even lower".*

³ *"It is more dishonourable than dishonouring to say that we will erect the statue of President Apo. Why is this man lying inside, he is innocent, and they are the ones who disgraced the X party. You are not Atatürkist or something. And the flock of 25 sheep that voted is #GeziyiSavunun".*

⁴ *"#Defend Trip, these X party members are stupid weathercocks, their religion, God will come out, their profits will come out, if they come to power tomorrow, they will hire the police and execute a lynching by one. They will dig up their families".*

⁵ *"Those who say #GeziyiDefense are none other than the children of traitors, whom Atatürk said we poured into the sea. Otherwise, they would not have been advocating for the Priest to stomp on the Police car and calling it our honour to travel".*

⁶ *"#GeziyiDefense 5 conditions of being a member of X party 1 to speak a lie and to be a thief 2 to be immoral and spineless 3 to worship money for money 4 to be a flamboyant pretentious 5 to be a sycophant charlatan, to be a rogue, to be a traitor".*

question, to a large extent, TPC article 216, paragraph 2. It is foreseen that it may constitute the act of "publicly humiliating a section of the public based on social class, race, religion, sect, gender or regional difference", as defined in article 216, paragraph 2.^{4,5} On the other hand, since the aforementioned posts are largely composed of direct insults and attributions of concrete facts, the concept of disinformation should not be mentioned in terms of this type of crime. Because in disinformation, information that is known to be false/lie is shared with certain motives, rather than mere cursing or accusing a concrete fact, as in offenses of defamation.

However, there is a possibility that some of the posts we have detected may be considered disinformation. However, as we have clearly emphasized above, in order for a sharing/act to be characterized as disinformation, two elements must occur together: First, the content or information is false or lie; The second is that this news, which is known to be false, is deliberately shared for a specific purpose. Therefore, it is impossible to qualify every post that does not reflect the truth in terms of content as disinformation. The people who share/spread this post should know that the relevant content is false/lie and should act despite this. The sharing of this news, which is known to be false/lie, with a certain motive is also an element that should be sought in terms of disinformation.

In Turkish legislation, the most specific type of crime that can be committed with actions that can technically be described as "disinformation" is the "Crime of Manipulation" regulated in the second paragraph of Article 107 of the Capital Markets Law No. 6362. According to this regulation,

"Those who give false, lie or misleading information, make rumours, give news, make comments or prepare reports or spread them in order to influence the prices and values of capital market instruments or the decisions of investors, and thereby gain benefits, shall be imprisoned from three years to five years and shall be punished with a judicial fine of up to five thousand days."

As it can be understood from the provision, it is necessary to act to affect the prices and values of the capital market or the investors' decisions in order for the relevant crime type to occur. Therefore, in terms of this crime, it is necessary to realize the "motive" spiritual element and eventual intent. However, the related crime is regulated as an alternative action crime type (Özgenç & Üzülmöz, 2020). According to this, this crime can be committed by performing one of the alternative actions in

"Those who opened the smash tag and supported it, if they gave the same reaction to the 112 plane trees that were cut down in Beşiktaş, they are all liars and dishonours. They are terrorists whose aim is to plunge the country into chaos. #We are defending the trip".

⁴ *"In the second paragraph of the article, publicly humiliating a different segment of the public regarding social class, race, religion, sect, gender or region is considered a crime. For the crime to occur, an unspecified number of people with the characteristics specified in the paragraph and constitute a part of the population must be humiliated and insulted. In this paragraph, public humiliation of the public in order to protect the public peace is defined as a crime"*. See TPC m. 216 grounds.

⁵ *"Gezi is one of the rare proofs that the citizens of this country can show social reflexes, showing that they are not MALS. That's why the power saxophone players can't stand GEZI... What does it mean not to be a sheep?... #GeziyiSavunudu"*.
"They all take orders from the same place and serve the same place, the devil! Don't be fooled! Don't let him fool you with Allah and the Prophet!".

the form of disinformation, that is, giving false/lie information, making rumours, giving news, making comments, preparing a report, spreading such information, rumours, news, comments and reports. (Kaplan and Beyoglu, 2018; Dizdar, 2022). The type of crime in the relevant regulation also appears as a connected multi action crime type (Özgenç & Üzülmöz, 2020). Because in the type of crime in question, the benefit should only be provided by the relevant alternative actions (Özgenç & Üzülmöz, 2020).

CONCLUSION AND RECCOMENDATIONS

One of the areas most frequently encountered with acts of spreading fake news/disinformation is the economy. Concerning capital, money and commodity markets, false/lie shares on social media and significantly Twitter can quickly gain material benefits or cause severe financial losses to individuals, institutions or companies. Likewise, the "crypto money" market, which has been on the agenda and popular lately, is a very convenient area for disinformation acts. In this context, the relevant regulation in Capital Markets Law No. 6362 (art. 107, par. 2) largely fulfils its function in penalizing disinformation acts committed for economic benefit. The second area that spreads fake news/disinformation is the political and social area, which can be encountered frequently. By deliberately producing/sharing false/lie news, fear and panic can be created in society. Twitter, it is aimed to create an atmosphere of fear or panic in society by spreading news that is known to be false/lie, especially from bots or anonymous accounts.

Moreover, with such posts, violent social events can be started, or violence that has already started can be spread (İçel, 2001). There is no general regulation in the Turkish penal legislation to penalize such acts of disinformation. For the reasons we have explained in detail above, TPC art. 213 and art. 216 provisions do not cover acts related to this type of disinformation. Because in the first of the related crime types, the act of "threat" is clearly mentioned, while in the second, "incitement to hatred and hostility" and "humiliation" are mentioned.

The disinformation sharing sample discussed within the scope of this research is related to the disinformation activities carried out to create fear and panic in society, which is specified as the second type rather than the first type of disinformation for economic benefit. In our study, as a result of the text analysis of the data obtained from the Twitter platform by considering an accurate sample, it has been determined that there are approaches that can create crimes in our country by the disinformation type in question. Especially in Western democracies, where freedom of expression is regarded as a fundamental constitutional right, those who make posts that will cause fear and panic on social media are protected by criminal law instruments. In other words, these acts are regulated as a type of crime or at least in many cases. In the country, the criminal law regulations on the subject are seriously taken into consideration. On the other hand, while some countries take concrete initiatives on the subject, some countries stay away from this approach because it will restrict the freedom of thought and expression. However, even in countries that are distant from this approach,

implementing administrative/judicial measures such as at least access to disinformation-content news is seriously discussed and applied from time to time.

As a result of our study, the opinion we have reached on the subject; Disinformation acts that can create fear and panic in society and threaten public order in a close and concrete way spread quickly, primarily through social media, and cause substantial dangers and damages to the safety of life and property of people. In other words, the acts in question can seriously impair public safety and healthy. In this respect, criminal law may need to step in if the acts that create disinformation severely and unequivocally impact public safety and health. A new clause can be added to TPC art. 213. However, it is always necessary to consider the possibility of creating a severe restriction on the freedom of thought and expression by going beyond the purpose of the relevant type of crime. Therefore, in the type of crime to be enacted; On the one hand, freedom of thought and dissemination should not be interfered with as much as possible, and on the other hand, it should be ensured that disinformation acts that seriously threaten the peace, security and health of the society by being carried out maliciously and in an organized way should be met with a proportional sanction.⁶

In order to comply with this fine line, it is necessary to draw attention to three fundamental issues that must be present in a possible legal regulation. First, the type of crime likely to be regulated should only be committed with direct intent. Because the persons making the said post are liable for criminal liability, they must act knowing that the content of the relevant post is false/lie. In daily life, most social media users share from their accounts, assuming that the content of previously produced posts is correct. Users may have re-shared the tweet (retweeted) or expanded the interaction area by liking these shares, although at least they predicted that the relevant post might have false/lie content. In such cases, it should not be considered that the persons concerned are prosecuted in criminal law. Such an approach will undoubtedly result in a disproportionate limitation of the freedom of thought and expression and will not coincide with the fundamental purpose of criminal law. In this respect, the possible type of crime should only be committed with direct intent. In other words, it should not be committed with eventual intent or negligence.

In addition to this general approach, the second element to be sought in the suggested crime type is; that fake news sharing is made around a specific purpose and motive. Searching for the commission

⁶ The said proposal was withdrawn for re-evaluation upon the consensus in the parliament.

As of 25.06.2022, the definition of crime regarding the acts of disinformation in the law proposal on the subject, which is waiting to come to the general assembly of the Turkish parliament, is as follows: *“Anyone who publicly disseminates false information regarding the internal and external security, public order and general health of the country, with the sole motive of creating anxiety, fear or panic among the people, in a way that is suitable for disturbing the public peace, is sentenced to imprisonment from one year to three years.*

“If the crime is committed by concealing the real identity of the perpetrator or within the framework of the activity of an organization, the penalty given is increased by half”.

The aforementioned proposal was withdrawn for re-evaluation upon the consensus formed in the parliament and was not enacted.

of false news with a specific purpose or motive in the type of crime proposed to be regulated will technically bring the related crime to be committed only with direct intent, and thus, the case of committing the said type of crime with eventual intent will be out of punishability. Likewise, the fact that the purpose element is included in the relevant crime type in addition to the moral element of intent will also prevent the punishment of individual posts with fake news (parodies) that are not made for any illegitimate purpose.

The third point to be sought in the type of crime that can be regulated is the condition that the sharing of false content "creates an immediate and concrete danger in terms of public safety or healthy". It should be considered that this condition should be included as an objective conditions of punishability in the related crime type. Thus, the area of freedom of thought and expression will be protected to a reasonable extent by preventing the punishment of posts that do not pose an imminent and tangible danger in terms of ordinary and social life.

We emphasized above that the disinformation activities in question can target public order, in other words, social peace. However, it should not be overlooked that this type of sharing can create severe dangers in terms of public healthy. It should not be overlooked that some substances that are spread among the society and that are claimed to be good against the virus can pose a severe danger to public healthy, especially in recent times when the Covid-19 epidemic has reached severe dimensions. During the peak of the Covid-19 epidemic, false/lie information spread over social media has endangered people's health. Some examples of false/lie information shared on social media regarding the Covid-19 virus in the relevant period are as follows:

- "Coronavirus survives 12 hours on the surface it falls on; drinking hot water helps kill the virus".
- "Raki is good for the new coronavirus (Covid-19)".
- "Turks are not and will not be affected by the coronavirus due to their genetic structure".
- "The new coronavirus (Covid-19) stays in the throat for four days before descending into the lungs. The virus can be intervened during this time by gargling with salt, hot water and vinegar".
- "Dr. claims of ...- There is no epidemic, the current flu was already corona, it was not taken care of on purpose, we already had coronavirus. A disaster scenario like hundreds of people will die in Turkey is unnecessary"(Soğukdere & Öztunç, 2020).

Therefore, in the type of crime, we propose to be regulated, putting public safety and general health in immediate and concrete danger can be sought as an objective conditions of punishability.

Considering these three fundamental issues, our suggestion regarding the third and fourth paragraphs to be added to TPC art. 213 is as follows:

"A person who publicly spreads the news that he knows to be false or lie in order to create anxiety, fear and panic among the public is sentenced to imprisonment from two to five years if the act in question creates an immediate and concrete danger in terms of public safety and general health".

"If the crime is committed within the framework of the activity of a criminal organization or by using the intimidating power of a criminal organization, the penalty is increased from half to one fold".

RESOURCES

Avrupa Komisyonu. (2018). A multi-dimensional approach to disinformation—Report of the independent High-level Group on fake news and online disinformation. *Publications Office of the European Union*.

- Cambridge University Press. (2022). Cambridge Dictionary | English Dictionary, Translations & Thesaurus. <https://dictionary.cambridge.org/>
- Dizdar, E. (2022). Sermaye Piyasası Hukukunda Piyasa Dolandırıcılığı Suçu (6362 Sayılı Kanun M. 107). *TBB Dergisi*, 159, 251.
- İçel, K. (1975). Haberleşme Özgürlüğü. *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, 41(1-2), 71-107.
- İçel, K. (2001). Avrupa Konseyi Siber Suç Sözleşmesi Bağlamında "Avrupa Siber Suç Politikasının Ana İlkeleri". *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, 59(1-2), 3-13.
- Gouliamaki, L. (2021, Nisan). Greece: Alleged 'Fake News' Made a Crime | Human Rights Watch. <https://www.hrw.org/news/2021/11/17/greece-alleged-fake-news-made-crime>
- Kaplan, M., & Beyoğlu, C. Ü. (2018). Türk Sermaye Piyasası Hukukunda Piyasa Dolandırıcılığı Suçu. Dr. Dr. hc Silvia Tellenbach'a Armağan (Editörler: Feridun Yenisey/İzzet Özgenç/Ayşe Nuhoglu/Adem Sözüer/Faruk Turhan), 249-313.
- Kaplan, A. M., & Haenlein, M. (2010). Users of the world, unite! The challenges and opportunities of Social Media. *Business Horizons*, 53(1), 59-68.
- Leskovec, J. (2011). Social media analytics: Tracking, modelling and predicting the flow of information through networks. Proceedings of the 20th international conference companion on World wide web, 277-278.
- Moe, W. W., Netzer, O., & Schweidel, D. A. (2017). *Social media analytics*. Include. Handbook of marketing decision models. Springer Publication. 483-504.
- Özgenç, İ. (1997). Suç Teşekkülü, Düşünceyi Açıklama ve Örgütlenme Hürriyeti. *Journal of Istanbul University Law Faculty*, 55(3), 51-64.
- Özgenç, İ., & Üzülmüş, İ. (2020). *Genel Ceza Hukuku* (3. bs). Seçkin Publication. 45-46.
- Özsöz, C. (2008). Vaka incelemesi. *Sosyoloji Notları Dergisi*, Sayı 4 ve 5. 66-74.
- Pang, B., & Lee, L. (2008). Opinion mining and sentiment analysis. *Foundations and Trends® in information retrieval*, 2(1-2), 1-135.
- Polyakova, A., & Fried, D. (2020). Democratic Offense Against Disinformation. Center for European Policy Analysis. <https://cepa.org/democratic-offense-against-disinformation/>
- Scott, J., & Carrington, P. J. (2011). *The SAGE handbook of social network analysis*. SAGE publications.
- Soğukdere, Ş., & Öztunç, M. (2020). Sosyal medyada koronavirüs dezenformasyonu. *Kastamonu İletişim Araştırmaları Dergisi*, 5, 59-85.
- Stieglitz, S., Dang-Xuan, L., Bruns, A., & Neuberger, C. (2014). Social media analytics. *Business & Information Systems Engineering*, 6(2), 89-96.
- Ullman, I., Reed, L., & MacKinnon, R. (2017). Submission to UN Special Rapporteur for Freedom of Expression and Opinion David Kaye: Content Regulation in the Digital Age. RDR, December 15.
- Vikipedi. (2022). Arap Baharı. İçinde Vikipedi. https://tr.wikipedia.org/w/index.php?title=Arap_Bahar%C4%B1&oldid=27460286
- Yurtlu, F. (2016). Suç Örgütünün Propagandasını Yapma Suçu ve Türkiye Açısından AİHM Kararlarına Yansımaları. *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, 20(3), 411-435.
- Zeng, D., Chen, H., Lusch, R., & Li, S.-H. (2010). Social media analytics and intelligence. *IEEE Intelligent Systems*, 25(6), 13-16.
- Zeng, J., Zhang, S., Wu, C., & Xie, J. (2007). *Predictive model for internet public opinion*. Fourth International Conference on Fuzzy Systems and Knowledge Discovery (FSKD 2007), 3, 7-11.

