

## BÜLENT ŞIK CASE

### DEFENDANTS:

**Bülent Şık:** Academic dismissed from Akdeniz University through a Statutory Decree (KHK), food engineer, Columnist on Cumhuriyet Daily Newspaper

**Faruk Eren:** Cumhuriyet Daily Newspaper Managing Editor

### BACKGROUND:

A Study had been performed between the years 2011-2016 by “*Public Health Institution of Turkey*” affiliated to the Ministry of Health to be able to determine the carcinogenic chemicals present in Kocaeli Dilovası, Edirne, Kırklareli and Tekirdağ. Assistant Professor Bülent Şık from Akdeniz University participated together with other scholars to studies regarding “*Assessment and Evaluation of Drinking Water Resources In Terms of Environmental Impact*”, one of the sub-projects of this study carried out on “*The Impact Assessment of Environmental Factors over Human Health*” in specified regions. However; since the results of the research study had not been announced, Bülent Şık published his findings on Cumhuriyet Newspaper on 15<sup>th</sup> of April, 2018 with the heading “*The State concealed the carcinogenic products, we are making them public! Here is the poison list...*”. Article series with the heading “*Report concealed from the public! Turkey is being poisoned just like this*” was published on the 16<sup>th</sup> of April 2018 with the spot headings such as “*Here is how we are poisoning; research concealed by the Ministry, Poison in the Food, Earth and Sky Full of Chemicals*”; and series continued on the 17<sup>th</sup> of April 2018 “*Concealed by the Ministry, Cumhuriyet is making public: Which vegetables contain arsenic, which drinking water contain pesticides?*”

### EVENTS:

Following the series of articles, Ministry of Health filed a criminal complaint against Bülent Şık in accordance with “*Disclosure of Confidential Information in Respect of a Duty*” (Turkish Penal Code Article 258), “*Procuring Prohibited Information*” (TPC Article 334), “*Disclosure of Prohibited Information*” (TPC Article 336) by giving justification with the alleged message of Bülent Şık “*Please don't buy anything from us*” to countries importing fruit and vegetables from Turkey, and Ministry of Health is also stating that the foreign trade of Turkey might be affected by this article series, and stating that the words used by Bülent Şık might create a false impression such as everywhere is full of hazardous chemicals, and like all the food contain poison and stating that articles published in a way that might “*create fear and anxiety among the public*”. Same accusations also directed to Faruk Eren, the managing editor of Cumhuriyet Daily Newspaper where the series published. İstanbul Chief Public Prosecutor's Office Press Offences Bureau demanded the punishment of Bülent Şık in accordance with the specified Articles by filing an indictment. Upon the sending back of the indictment by the Court, without making any changes same indictment resent back to the Court by Terror and Organized Crime Investigation Bureau and indictment was accepted. Decision of non-prosecution was given for Faruk Eren. The trial of Bülent Şık began on February 7, 2018.

## JUDGING THE JUSTICE

### VERDICT

February 22, 2019

1. Ministry of Health directed the accusation of “the procuring of prohibited information” while filing a criminal complaint against Bülent Şık. However, it is obvious that Bülent Şık didn’t acquire these information from somewhere else, on the contrary Bülent Şık contributed to the production of these information and actually Ministry signed a protocol for the contribution of Bülent Şık to this Project. In first place it is meaningless to accuse Bülent Şık for “*revealing confidential information concerning the duty*” and “*obtaining prohibited information*” simultaneously. Is this information obtained or given by the State to Bülent Şık due to his mission? Under these circumstances, Ministry of Health is committing a crime in accordance with “*slandering via complaint*” (Turkish Penal Code Article 267) by filing a criminal complaint.
2. By virtue of Bülent Şık’s personal qualities and considering the scientific qualities of the Project, accusations to the article series – although not caused a sanction yet - is the breach of scientific freedom of expression enacted in Article 27 of the Constitution. Also, freedom of the press enacted by Article 28 of the Constitution has also been breached since the series published in a newspaper.
3. Ministry of Health did not fulfill its duty of “... *protecting the health of individuals and communities and for this purpose making plans and programs covering the country, as well as implementing and enforcing them, taking all kinds of measures, establishing the necessary organization and have them being established*” specified in the first article of the decree where the missions are being arranged. Government official that is not fulfilling this mission is committing an offense of “*misconduct in office*” (Turkish Penal Code Article 257) by misconduct in office via neglecting the duty.

\*\*\*\*\*

### JUSTIFICATION

Within the scope of freedom of expression, there are two vital areas in the decision: Scientific freedom of expression, and the freedom of the press. Scientific freedom of expression is one of the perspectives of the freedom of expression that secures the sharing of ideas of a scientist regarding a research carried out about a scientific subject; the data of a scientific study, the assessment of the data or their results.

Assistant Professor Bülent Şık is a Food Engineer and was an academician in Akdeniz University during the course of studies; and was working at Food Safety and Agricultural Research Center which was having an agreement for organizing the data gathering of the research study and by considering the qualities of the study shared with public via a series of articles; it is clear that this article series that subject to trial have to be evaluated within the scope of scientific freedom of expression.

Also, gathered information “is not obtained from other places” as stated in the indictment, on the contrary it can be said that information obtained as a result of the assessment of data by Bülent Şık and said data collected during the course of the research study which Bülent Şık was also involved. Informing the public regarding the scientific study, which Bülent Şık was also involved as a scientist, is not a crime; on the contrary not sharing the results of such study executed by the Ministry of Health is a crime. Because, considering the information revealed by Bülent Şık in his defense, there are around 7 million people that might be affected by the results of this comprehensive study composed of many sub projects and 1,300,000 of these people are between the ages of 0 to 18. Ministry of Health is responsible for the protection of public health and taking measures intended for the protection of the people prior to diseases. No statements have been made and questions submitted regarding the subject have not been answered yet; although more than 3 years have passed since the conclusion of the research; taking the digital data regarding an issue having clear public interest. It can be said that not only just a single government official, but also Ministry of Health as a part of the government (even though this type of a situation is not enacted in Turkish Penal Code) is having a misconduct in office via negligence.

It should be said that the case is also related to the freedom of press considering the indictment of managing editor Faruk Eren of Cumhuriyet Daily Newspaper, where the article series was published, together with Bülent Şık. Restrictions imposed prior to the publication for the Press are subject to a strict control within the framework of both proportionality and legal projection as well as legitimate purpose criterion since this is the most serious threat for the free flow of information and for a meaningful discussion among the public. This criterion have to be applied while the articles/news etc. originated from the usage of a right within this scope become a subject of trial. As Bülent Şık specified in his defense submitted to the Court; while this series were being prepared, the target was to inform the public about this public health study that was kept confidential, and to mobilize public institutions responsible for solving problems. This target as being one of the motives that forming the basis of freedom of press, has been protected by 26<sup>th</sup> and 27<sup>th</sup> Articles of the Constitution and Article 10 of European Convention on Human Rights.

Considering that Bülent Şık has been dismissed via a governmental decree for being a signatory of the peace declaration and being the brother of a well-known journalist Ahmet Şık, it can be said that the infringement of “*personality in crime and punishment*” principle has become a regular practice from the point of view of Communitarians especially after the attempted coup on 15<sup>th</sup> of July 2016. Reflections of this method and similar others working against the constitutional state and named as “*Klan Law*” in the doctrine can be observed in this case. When the events and the people are being analyzed from this perspective, serious doubts are being formed regarding the behavior against “equality” principle enacted in Article 10 of the Constitution in addition to principle of personality in crime and punishment.

In conclusion; it can be said that as a scientist information and assessments expressed by Bülent Şık are intended for the public weal, that Ministry of Health has not performed its duty by not making Bülent Şık’s scientific study public, and that article series are within the scope of freedom of expression in general and within the scope of the freedom of press in private. Although the indictment prepared by Press Offences Investigation Bureau was sent back to the Prosecution Office, same indictment was re-submitted by Terror and Organized Crime Investigation Bureau without making any changes and its acceptance by the Court is indicating the malicious intentions or negligence of the Judicial Institution. We don’t know which one is worse.