



APPEALER

DEFENDANT : 1- Interuniversity Board Presidency /ANKARA

ATTORNEY : Atty. Adem ERGÜN - (has a*UETS address)

* National Electronic Notification System

APPEALER

(INTERVENER) (BY THE DEFENDANT) : 2-Serhan ÜNLÜ

ATTORNEY : Atty. ATTORNEY Mustafa USTA - (has a*UETS address)

OPPONENT (PLAINTANT) : Murat ALTAY

ATTORNEY : Atty. Alper ŞAHİN - (has a UETS address.)

SUMMARY OF THE REQUEST : That the decision of the 13th Administrative Court of Ankara, dated 26/11/2020 and numbered B:2019/335, D:2020/2233, regarding the cancellation of the action subject to the lawsuit; **the annulment was requested** by the defendant administrative attorney, claiming that, in terms of procedural; the ethics commission meeting decision was not a final and executable action that can be subject to administrative action, and that on the basis, based on the reports of the expert opinions regarding the allegations, the established transaction is in compliance with the legislation and the law, and it is requested by the attorney of intervener Serhan ÜNLÜ, who participated in the case alongside the defendant administration, that the established transaction be removed claiming that it is in compliance with the legislation and the law, in terms of procedural, that the plaintiff does not have any benefit in filing the case and is not competent, and the established transaction cannot be the subject of an administrative lawsuit, that the decision of the Publication Ethics Commission cannot be the subject of a lawsuit, the lawsuit was not filed within the time limit, and on the basis, that a complaint can be made to the ethics commission about the works in the associate professor application file, that in terms of the work numbered A2, the matter was examined in detail by the defendant administration and it was decided that there was no ethical violation, and that the plaintiff did not file an ethical violation complaint against the other people who signed the aforementioned article, that the claims in the petition of the plaintiff regarding the article in the international ortohopaedica journal are not true, that for the data of the article published in the aforementioned journal were created by collecting only the patients having posterior way from the two orthopedic clinics of the hospital, that it was aimed to create a standard patient group and to compare two different fixation methods in this way, that it was a study independent of the thesis with different patient groups, that the plaintiff did not prefer to perform the hip prosthesis posteriorly, therefore, in the present study, as claimed, there was no patient group operated by the plaintiff.

SUMMARY OF THE DEFENSE : Defending that there is no illegality in the court decision, it is requested to reject the appeal application.

ON BEHALF OF THE TURKISH NATION

The request for a hearing of the plaintiff and the intervener was not deemed appropriate in accordance with Article 17 of the Law No. 2577, and the case file was examined in accordance with the Article 45 of the Law No. 2577 and the case was discussed and considered by the 4th Administrative Case Division of the Ankara Regional Administrative Court which ruled:

The case was filed with the request for the cancellation of the decision of the Interuniversity Board, Health and Sports Sciences Scientific Research and Publication Ethics Commission dated 29/11/2018 and numbered 2018/06, since he determined that his name was removed from the list of authors in two articles that he contributed to their preparations and that false information was included, regarding the rejection of the application made by the plaintiff with the request of a decision of ethical violation.

In the expert report submitted to the file by the Administrative Court, that the action, in the case, that is the subject of the case was established upon the application made with the claim of violation of publication ethics through unfair authorship, and since the nature of the claim and the field of scientific publication, the opinion and idea of the experts on the subject should be taken, upon the court's interim decision dated 4/11/2019, it was decided to conduct an expert examination on the file, The study titled "Treatment Results of Type 31-A Fractures According to AO Classification with Proximal Femoral Nailing Method", which is the subject of the lawsuit; that it was first presented as an oral presentation with the number S23-9 at the 24th Congress of TOTBID (Turkish Orthopedics

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and Traumatology Association) held in 2014, that there were famous writers Yener Gürkan Bilgetekin, Serhan Ünlü, Mehmet Faruk Çatma, Birol Tunç, Murat Altay, Gökhan Ünlü in this presentation, that this study was later published in Bozok Medical Journal Vol 6 Issue 4 December 2016, and the writers of the article published in the journal are Alper Öztürk, Yener Gürkan Bilgetekin, Mehmet Faruk Çatma, Serhan Ünlü, Önder Ersan, that he oral presentation and the printed article have the same title, date of publication, number of cases and all contents, Birol Tunç, Murat Altay and Gökhan Ünlü, who were in the oral presentation, were not included in the published article and Alper Öztürk and Önder Ersan were included in the study, and it was concluded that this article was an "Unfair Authorship Ethics Violation" according to the relevant directive, that in the publication numbered A2 and titled "Comparison of two different methods used for osteotomy fixation in patients who underwent cementless total hip prosthesis on a high hip dislocation ground", determinations and evaluations regarding "that when all the publications are examined, there are similarities and differences found below, that the studies were conducted using the patients of the same center, and the way spacing in the studies was similar, that the number of cases is different but similar, the surgical techniques are defined differently, that there is a difference between the materials used is stated, that it is not possible to evaluate whether there is an ethical violation or not, and to obtain the lists of the patients included in all these studies, that it is necessary to provide radiographs in order to determine whether the operations of these patients were performed with the lateral approach or the posterior approach, to determine whether the prostheses used were 22 heads and 42 cups, and to examine the patient files in which their surgeries were written, that whether the studies were really conducted with the findings of the same patients can only be evaluated in this way, that only the comparison of the mentioned articles is not enough to decide on the ethical violation, that it is a crime of ethical violation to change the patients and their results in the oral statement presented as a result of the study during the transcription and to write the names of the authors by changing them, on the other hand, if it was done with different patients, changing the names of the writer is not a crime of ethical violation, therefore, a decision should be made for the second study and that it should be determined whether the plaintiff Murat Altay's own patients were used in this study, that it is necessary to request the list of patients in these studies for this, that it is necessary to request surgical reports, casts of used prostheses, patient contact numbers, and that re-examination of the patients in the hospital together with the incoming reports of the patients, and evaluation of their x-rays, that it was concluded that it is absolutely necessary to measure the prostheses and confirm whether the surgeries performed are the same as those written" that the expert report has been notified to the parties and although it is seen that the parties and the intervener have objected to the aforementioned report, it has been concluded that the objections of the parties and the intervener party are not appropriate in the face of the technical and detailed explanations in the expert report, that the aforementioned report is deemed to be capable of being taken as a basis for the judgment, and when the dispute is examined in terms of the part of the procedure that is the subject of the lawsuit, established in relation to the publication numbered A2 and titled "Femoral Shortening osteotomy in total hiparthroplasty for severe dysplasia : a comparison of twofixationtechniques", that in the event, in the expert report quoted above, the issues in the file were not sufficient to determine whether there was an ethical violation by the Health and Sports Sciences Scientific Research and Publication Ethics Commission, which was evaluated upon the complaint of the plaintiff, providing lists of patients included in all these studies, whether the studies were conducted with the findings of the same patients, that it is seen and stated that it can be revealed as a result of the provision of radiographs to determine whether the operations of these patients were performed with the lateral approach or the posterior approach, to determine whether the prostheses used were 22 heads and 42 cups, and the examination of the patient files in which their surgeries were written, in addition, that upon the plaintiff's application to the defendant administration on 3/8/2017 with the allegation that there was an ethical violation, expert opinions were obtained as a result of the examination on the intervener carried out by the Inter-University Board Presidency Health and Sports Sciences Scientific Research and Publication Ethics Commission, regarding the work numbered A2, in the expert opinion report one of which is prepared by N.D. that he expressed his opinion as "Murat Altay also stated that some cases were operated by him in these studies, and he also reported the same complaint to the editor of the journal. Looking at the content of the editorial letter, it was stated that they did not care about who performed the surgeries and that they had to apply to the university rector for false or unrealistic statements in numbers, that the differences in the number of cases reported in the studies do not have the information to be questioned in this report, if a detailed investigation is planned on this issue, this should be decided by the Interuniversity Board Health and Sports Sciences Research and Publication Ethics Commission", in terms of the work numbered A2 in the expert opinion report prepared by F.K., that it is understood that the opinion was expressed as "it was concluded that research should be done for all the doctors mentioned in the works, requesting original data and a detailed research is done in line with the articles 4.1.a, 4.1.b, 4.1.c, 4.1.ç, 4.1.e, 4.2.c and 4.2.ç of the ÜAK Scientific Research and Publication Ethics Directive." in addition to the determinations in the expert report, in two of the expert opinion reports in which

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the subject is evaluated, that the existing data regarding the publication numbered A2 are not sufficient for the evaluation of the subject, that a detailed research and investigation should be carried out was stated on the subject, but it was stated that no research was carried out in this direction by the Health and Sports Sciences Scientific Research and Publication Ethics Commission of the Interuniversity Board, in other words, in order to clarify the matter, the aforementioned information and documents were provided, and it was understood that there was no need for any examination in this direction, and the reasons and justifications for not conducting this research and examination were not revealed, for this reason, that either the determination made in the expert report submitted to the file after the expert examination made by the Court, that the issue can be examined fully and properly in case of missing information and documents regarding the work numbered A2, or from the evaluation of the existing data obtained in two of the four expert opinion reports applied during the examination of the issue by the authorized commission of the defendant administration, and the issues that a detailed investigation is required to determine whether a violation of publishing ethics has occurred or not, considering that there is no determination, examination and evaluation regarding the issues mentioned above in terms of the work numbered A2, it has been concluded that there is no lawfulness in the part of the action that is the subject of the lawsuit based on the incomplete examination in terms of the work numbered A2, when the dispute is examined in terms of the part of the case subject to the publication numbered A1 and "Treatment Results of TYPE 31-A Fractures with Proximal Femoral Nailing Method According to AO Classification", in the case, it is seen that the case numbered A1 and the publication named "Treatment Results of TYPE 31-A Fractures with Proximal Femoral Nailing Method According to AO Classification" was not used in the applicant's associate professorship application file, that it is seen it was not included in the list of works and was published after the application date, and the decision of ethical violation was revoked due to the fact that it was outside the scope of the commission's duty and that an allegation of ethical violation was made against the persons named in the application petition submitted by the plaintiff to the defendant administration, afterwards, it was understood that an investigation was carried out on the intervener whose application for associate professorship was still ongoing, that the basis of the dispute does not include an issue regarding the title of associate professor of the intervener, that since the issue of whether the publication ethics was violated by making unfair authorship in two articles allegedly used by the intervener, considering the fact that the Interuniversity Board Presidency Health and Sports Sciences Scientific Research and Publication Ethics Commission was out of the scope of duty in the process subject to the lawsuit, it was determined that there was an ethical violation in the first commission decision and the basis of the application was whether there was an ethical violation, in order to eliminate the hesitation about which institution will make the evaluation in terms of article A1 and in accordance with the principle of the integrity of the administration, the necessary internal correspondence should be made with the Higher Education Council, and the process should be established accordingly, or the file should be sent to the relevant institution that will carry out the ethical review, it is understood that this procedure conveyed in the dispute was not followed, on the other hand, with the decision of the Health and Sports Sciences Scientific Research and Publication Ethics Commission dated 23/2/2018 and numbered 2018/02, which was reported by the Interuniversity Board with the transaction dated 22/3/2018 and numbered E.1985, since pursuant to their legislation the defendant administration did not open an investigation against A.Ö, Y.B, M.F.Ç, Ö.E, Y.A. and M.A.E.A. about whom the plaintiff filed a complaint requesting an examination of the allegations of ethical violation, he applied to the Ministry of Health General Directorate of Inspection Service with two petitions, dated 28/3/2018 and numbered 55573-55575 and requested an investigation be launched against the relevant persons due to ethical violations, thereupon, that the letter of the Ankara Governorship Provincial Health Directorate dated 4/4/2018 and numbered E.2746 and the letter dated 23/10/2018 and numbered E.4905 was sent for the evaluation of the issue by the ethics commission at the Presidency of the Council of Higher Education, that it is understood the plaintiff has been notified that there is no action to be taken as it has been conveyed to the Interuniversity Board Presidency for the relevant action to be taken and since the petitions of the Interuniversity Board Presidency dated 30/7/2018 and numbered E.5506 has been answered before, for this reason, the plaintiff filed a complaint against the defendant administration, stating that there was a violation of publication ethics in the scientific study titled "The Treatment Results of TYPE 31-A Fractures with Proximal Femoral Nailing Method According to AO Classification", published in Bozok Medical Journal, numbered A1, of these, an investigation only about the intervener Serhan Ünlü was initiated by the defendant administration, that an investigation was not initiated about the other persons mentioned in the application petition dated 3/8/2017 because they did not fall within their scope of duty, thereupon, that the above-mentioned procedure was carried out by the plaintiff regarding the other persons, but that since the investigation about intervener Serhan Ünlü was carried out by the defendant administration, this person was not included in the aforementioned procedure, that as a result of the investigation initiated against the intervener Serhan Ünlü, it was determined that there was an ethical violation with the decision of the Interuniversity Board, Health and Sports Sciences Scientific Research

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and Publication Ethics Commission dated 29/9/2018 and numbered 2018/05, considering that the work in question was not included in the associate professorship application file of the intervener and that it was published after the application for associate professorship, upon the objection made to the aforementioned decision, considering that the ethical violation decision was revoked, it is understood that the issue that the examination in terms of the work numbered A1 is not within the scope of the commission has been determined upon the objection made to the decision of the Interuniversity Board Presidency Health and Sports Sciences Scientific Research and Publication Ethics Commission dated 29/9/2018 and numbered 2018/05, considering that the issue of ethical violation was determined in the first decision taken by the commission upon the application's perfection up to this stage, the issue that the evaluation of ethical violation in terms of scientific work numbered A1 did not fall within their scope of duty was upon the determination at the stage of objection made by the intervener against the first decision rendered on the application of the plaintiff in order to make the necessary evaluation and examination, in accordance with the principle of the integrity of the administration, while the subject should be transferred to the relevant unit as a result of the inter-institutional correspondence to be made with the Higher Education Council, the process should be established accordingly, that it was concluded that without following this procedure, the rejection of the claimant's mature application with the aforementioned justification is not legally possible according to the Constitutional principle that the administration is a whole with its establishment and duties, in this case, that after evaluating together the information and documents in the case file and the expert report, the publication numbered A1 and named "Treatment Results of TYPE 31-A Fractures According to AO Classification with Proximal Femoral Nailing Method" was not used in the applicant's associate professor application file, an ethical violation was detected regarding the aforementioned publication with the decision of the Interuniversity Board Presidency Health and Sports Sciences Scientific Research and Publication Ethics Commission dated 29/9/2018 and numbered 2018/05, however, upon the objection, it was understood that the commissions did not fall within their scope of duty, and the defendant administration did not provide the necessary coordination with the Higher Education Council, that it is not legally possible to accept the action that is the subject of the lawsuit against the Constitutional principle that the application of the plaintiff regarding the publication numbered A1 is not included in the associate professorship file of the intervener, in the process of refusal, stating that the administration is a whole with its establishment and duties, regarding the publication numbered A2 and "Femoral Shortening osteotomy in total hiparthroplasty for severe dysplasia: a comparison of twofixationtechniques" used in the associate professor's file of the intervener, it is understood that the assessment that there was no violation of ethics was based on an incomplete examination as detailed above, that in the decision of the Interuniversity Board Health and Sports Sciences Scientific Research and Publication Ethics Commission dated 29/11/2018 and numbered 2018/06, it was decided to cancel the action subject to the lawsuit on the grounds that there was no compliance with the legislation.

In the sixth paragraph of clause (b) of Article 11 of the Higher Education Law No. 2547, the duties of the Interuniversity Board also includes "Establishing juries in the field of science or art in associate professorship applications, evaluating the publications and studies of the candidates within the scope of the principles and procedures determined by the Higher Education Council, and awarding the title of associate professor to the candidates with sufficient publications and studies"

Article 2 of the Interuniversity Board Scientific Research and Publication Ethics Directive, titled "Scope", states that the regulation of "This directive covers all kinds of scientific research and studies conducted by candidates applying for associate professorship in accordance with the provisions of the current legislation, scientific activities carried out, research and publication ethics related to supported and/or conducted scientific research - development projects." has been included, In article 4 titled "Acts Contrary to Scientific Research and Publication Ethics", "(1) actions against scientific research and publication ethics are as follows:

- a) Piracy: To present the original ideas, methods, data or works of others as their own work, in whole or in part, without attribution in accordance with scientific rules,
- b) Fraud: Using data that does not actually exist or that has been falsified in scientific research,
- c) Distortion: To falsify research records or data obtained, to present devices or materials that are not used in the research as if they were used, to falsify or shape the research results in line with the interests of the people and institutions that receive support,
- c) Republishing: To present the repetitive publications as separate publications in academic appointments and promotions,
- d) Slicing: To present the results of a research as separate publications in academic appointments and promotions, by dividing the results of a research in a way violating the integrity of the research and in an inappropriate way, and publishing them in more than one issue,

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ONAT TERCÜME | Mersiyet No. Mersiyet Cd.
BİL.TEK.DAN.REK.İTH. | 5/12 06420 Çankaya
SAN.VE. TIC.LTD.ŞTİ. | Tel: 0312 863 12 10 ANKARA
e-posta: bilgi@onatpro.com www.onatpro.com

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e) Unfair authorship: Including people who do not have an active contribution among the authors or not including those who do, changing the order of authors in an unjustified and inappropriate way, removing the names of those who contributed actively from the work in subsequent editions, using his influence to include his name among the authors, even though he has no active contribution,

(2) Other types of ethical violations are:

a) Not specifying the people, institutions or organizations supporting them and their contributions in the publications made as a result of research carried out with support,

b) Using the thesis or studies that have not yet been presented or defended and accepted as a source without the permission of the owner,

c) Not complying with patient rights in their publications,

ç) To act against the provisions of the relevant legislation in biomedical researches or other clinical researches related to humans", in articles 8/ç and (d) titled "Duties of the commissions", "The duties of scientific research and publication ethics commissions are as follows: ... **ç) To examine the complaint/notification petitions about the persons who have received the title of associate professor, alleging that the work in the associate professorship file is in violation of scientific research and publication ethics, and to present the final decision to the Interuniversity Board.** d) The rule of "To examine the complaint/notification petitions claiming that there is a violation of scientific research and publication ethics about the work in the application file submitted to the Interuniversity Board for the purpose of granting the equivalence of the titles of Doctorate, Proficiency in Art, Associate Professor, and Professorship received abroad, and presenting the final decision to the Interuniversity Board" is included.

After the examination of the file, the plaintiff, who is a professor at Health Sciences University Keçiören Health Practice and Research Center, claiming that there was an ethical violation without stating the reason for ethical violation, since his name was removed from the list of authors of two articles that he contributed to their preparation and false information was included, he applied to the defendant administration on 3/8/2017, thereupon, with the decision of the Health and Sports Sciences Scientific Research and Publication Ethics Commission dated 23/2/2018 and numbered 2018/02, reported by the Interuniversity Board with the transaction dated 22/3/2018 and numbered E.1985, that since the works claimed for ethical violations about the persons named Y., and Ö.E. are not included in the associate professorship application file, that since the persons named Y.B, M.F.Ç. ve A.Ö., against whom a complaint of violation of ethics was filed, did not fall within the scope of the ethics committee as they did not have applications for associate professorship, that it was decided that the investigation was unwarranted, since M.A.E.A., the person in question of the ethical violation complaint was the main jury member of the plaintiff in the October 2015 associate professorship exam and that there was no claim of ethical violation in the report containing the list of works and publications about the candidate, that for the intervener Serhan Ünlü, an investigation was initiated, and as a result of the evaluation of the issue, with the decision of the Interuniversity Board Presidency Health and Sports Sciences Scientific Research and Publication Ethics Commission dated 29/9/2018 and numbered 2018/05, that since the act of wrongful authorship was committed in the publication numbered A1 and titled "Treatment Results of TYPE 31-A Fractures According to AO Classification with Proximal Femoral Nailing Method", which alleged violation of ethics, there was an ethical violation, that in the publication numbered A2 and titled "Femoral Shortening osteotomy in total hiparthroplastyfor severe dysplasia: a comparison of twofixationtechniques", it was decided that there was no ethical violation, and upon the objection of the plaintiff and the intervener, the subject was re-evaluated, with the decision of the Scientific Research and Publication Ethics Commission dated 29/11/2018 and numbered 2018/06, that since it was determined that the article, which was inadvertently stated as publication numbered A1 in the previous decision, was not actually included in the list of works in the associate professorship application file and was published after the application date, and it was outside the scope of the commission, that the part of the decision dated 29/9/2018 and numbered 2018/05 to be removed, it is understood that the lawsuit was filed after it was decided that there was no ethical violation regarding the publication numbered A2.

In the perceptible dispute, alleging that there was an ethical violation, upon the complaint to the defendant administration, filed by Serhan Ünlü, intervener in 2 separate works, since it was decided by the Interuniversity Board Presidency's Health and Sports Sciences Scientific Research and Publication Ethics Commission that, in terms of the work no.A1, on the grounds that "an ethical violation cannot be investigated due to the fact that the aforementioned work is not used in the application for Associate Professorship, and therefore it is out of its scope of duty", and in terms of the work numbered A2, "no ethical violation was

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committed", and since the application was rejected for both publications, albeit for different reasons, the dispute should be resolved by conducting a separate legal audit in terms of both reasons for rejection.

In this context, regarding the part of the work specified as publication no. A1 in the Decision of the Ethics Commission, which is the subject of the case;

When the article 2 and article 8 of the Interuniversity Board Scientific Research and Publication Ethics Directive are examined together; it is understood that the denunciation and complaint applications made to the defendant administration regarding ethical violations can be made limited to the works included in the associate professorship application files, since the Interuniversity Board does not have the authority to conduct ethical violation investigations on the works not included in the associate professorship application files.

Accordingly, the plaintiff's complaint application to the defendant Presidency of the Interuniversity Board, stating that there was an ethical violation regarding the work titled "The Treatment Results of TYPE 31-A Fractures with Proximal Femoral Nailing Method According to AO Classification", according to the information and documents included in the file since the work in question is not included in the Intervener Serhan Ünlü's associate professorship application file, it is not possible to carry out an ethical violation investigation in terms of the Interuniversity Board, on the grounds of this issue justified by the aforementioned administration, the plaintiff's complaint about the violation of ethics was inadvertently rejected in terms of the work specified as A1, and with different evaluations, no legal accuracy was found in the part of the court decision regarding the annulment of the action, which is the subject of the lawsuit.

As for the part of the case regarding the decision of the Interuniversity Board Presidency Health and Sports Sciences Scientific Research and Publication Ethics Commission on the work numbered A2 at the meeting dated November 29, 2018 and numbered 2018/06;

In the 1st paragraph of the 20th article titled "Examination of the Files" of the Administrative Procedure Law No. 2577; "The Council of State, regional administrative courts, and administrative and tax courts automatically conduct all kinds of examinations regarding the cases they are dealing with..." is included.

In Article 281 of the Civil Procedure Law No. 6100, titled "Objection to the Expert's Report", the Court may obtain an additional report from the expert by issuing new questions in order to complete or clarify the deficiency or ambiguity in the expert report, if it deems it necessary to reveal the truth, the Court may also have it re-examined through a expert to be newly appointed.

Expressed in Article 20 of the Law No. 2577, the "principle of ex officio research", is one of the basic principles within this scope; this means that administrative judicial authorities can and even are obliged to do all the necessary research and investigations for the resolution of the dispute, ex officio, regardless of the demands of the parties.

In the incident, in the report prepared as a result of the expert examination made by the court, upon the examination of the work numbered A2 (comparison of two different methods used in the determination of osteotomy in patients who underwent cementless total hip prosthesis on the ground of high hip dislocation);

Considering that there are determinations and evaluations regarding "that when all the publications are examined, the following similarities and differences exist, that the studies were carried out using the patients of the same center, that the way spacing in the studies is similar, that the number of cases is different but similar, that the surgical techniques are defined differently, that there is a difference between the materials used, that it is only stated whether there is an ethical violation, providing lists of patients included in all these studies, which is not possible by evaluating these articles, that it is necessary to provide radiographs in order to determine whether the operations of these patients were performed with the lateral approach or the posterior approach, to determine whether the prostheses used were 22 heads and 42 cups, and to examine the patient files in which their surgeries were written, that whether the studies were really conducted with the findings of the same patients can only be evaluated in this way, that only the comparison of the mentioned articles is not enough to decide on the ethical violation, that it is a crime of ethical violation to change the patients and their results in the oral statement presented as a result of the study during the transcription and to write the names of the authors by changing them, on the other hand, if it was done with different patients, changing the names of the authors is not a crime of ethical violation, therefore, in order to be able to make a decision in the second study, that it is necessary to determine whether the plaintiff Murat Altay's own patients were used in this study, and for this, that it is necessary to request the list of patients in these studies, the surgical reports, the transcripts of the prostheses used, and the patient contact numbers, that it was concluded that it is absolutely necessary to re-examine the patients in the hospital, to take and evaluate their x-rays, to measure their prostheses,

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to confirm whether the operations performed are the same as the ones written, together with the reports of the patients" by having come to the conclusion that the ethical violation examination was carried out incompletely in terms of the issues specified in the expert examination regarding the work mentioned by the defendant administration, although it has been decided to cancel the part of the action subject to the lawsuit regarding the work numbered A2, the aforesaid court decision is not a decision revealing the material and legal reality as to whether there has been an ethical violation in the aforementioned work, in order to reveal the material and legal reality in the matter specified by the court, it is not requested to issue an additional expert report from the experts, it is also understood that no research has been carried out on the issues related to the lack of information and documents mentioned in the report, and considering the fact that the administrative judicial authorities have the authority to investigate ex officio in revealing the material truth, it was concluded that the appeal court decision was taken as a result of incomplete examination.

In this context, with the interim decision dated 29/04/2021 and numbered E:2021/651, our Department decided to conduct an expert examination to determine whether there was an ethical violation in the work in question, in addition, with the interim decision of our Department dated 03/06/2021 and numbered E:2021/651 from intervener Serhan Ünlü "Femoral shortenin osteotomy in total arthroplasty for severe dysplasia, published in International Orthopedics 2016 November 40(11):2271-76: it was decided to request the information of 76 patients who underwent posterior shortened total hip prosthesis due to Crowe type 4 high hip dislocation between September 2009 and December 2013, regarding the article named a comparison of two fixation techniques". In response to the decision of our department dated 03/06/2021, the intervener Serhan Ünlü replied that "it is not possible for him to have the patient's information within the scope of the Law on the Protection of Personal Data, and he is not in a person or institution where he can reach the patient information in this interim decision at his own request", That upon the interim decision of our department dated 29/04/2021, Gazi University Faculty of Medicine Department of Orthopedics and Traumatology Lecturer Prof. Dr. Sacit Turanlı, Ankara University Faculty of Medicine Department of Orthopedics and Traumatology faculty member Bülent A. Erdemli and Hacettepe University Faculty of Medicine Department of Orthopedics and Traumatology faculty member Prof. Dr. Özgür Ahmet Atay were appointed as experts, that the aforementioned experts prepared separate expert reports, in the report dated 25.09.2021 prepared by expert **Prof. Dr.Bülent ERDEMLİ**; "...With the interim decision of our department dated 03.06.2021, he requested the information of 76 patients who underwent posterior shortened total hip replacement due to Crowe type 4 high hip dislocation between September 2009 and December 2013, regarding the article in question from Dr. Serhan Ünlü, Dr. Serhan Ünlü stated in his statement to the court dated 07.07.2021 that he did not have the patient information requested in the interim decision, and that he did not submit the information of the 76 patients in question to the court, again after the examination of the file, the plaintiff Dr. Murat Altay claims that this statement of Dr. Serhan Ünlü contradicts his previous statements and defense and Dr.Serhan Ünlü stated; In the e-mail sent by the responsible author to the Journal Editor; 'That he collected all patient data in the publication in question, scanned patient demographic information from hospital archives and patient files, compiled the duration of surgery from anesthesia records and collected follow-up graphs of patients, took part in the surgical team in most surgeries', claiming in the e-mail they sent to the Journal Editor that he did these duties, although it is mandatory, Dr. Serhan Ünlü's not giving the necessary information to the Court seriously contradicts with the statement that this study was conducted with a different patient group, which they stated in the defense, as stated in the previous Expert's report, changing the names of the authors and removing the author's name during the publication of an oral statement (first name Murat Altay) made in the same clinic, on the same subject, under the same title, is subject to ethical violation due to the crime of unfair authorship, article 4(1 e), that it has been determined that the title of the publication and the oral presentation are the same, The two authors in the article published in the Indian J Orthop journal (first publication on this subject in the clinic, first submitted February 2015) work at Keçiören TRH. That this publication is seen as a joint study involving two hospitals (Dışkapı and Keçiören TRH), where patients are combined, that in the article in the Indian J Orthop magazine, it was determined by checking that 18 of the 25 sources in this publication were used in the subject publication, and many similarities were noted in the content of the two publications; Although one year more operating range (2008-2013) and 22-28 mm head were used, only 26 of 41 hips were reported to be operated posteriorly, in the subject publication; that it is not possible to have 42 hips using only 22 mm femoral head (2009-2013), all made from the posterior, that plaintiff Dr. Murat Altay shows the contradictions between these two publications with a table, Dr. Serhan Ünlü's not showing the different patient group he claimed raises serious doubts about

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the change in the number of patients in this publication, in the examination of the file, that there are only 8 patients eligible for the Plaintiff Dr.Murat Altay's publication criteria, that the first name in the publication is Dr.M.Faruk Çatma and that the only authorized Stryker company supplying prostheses documented with patient lists, that it is understood from the file information that Dr.Serhan Ünlü did not object to these documents; that Dr.Serhan Ünlü declares that he only works with a different patient group, however, despite the request of the ÜAK, the Administrative Court and finally the Department, he could not provide these patient lists, although it was mandatory, and this situation made us think that the there wasn't the number of patients mentioned in the publication in question; as a result; when all statements and documents in the file are evaluated, the number of patients in the aforesaid publication has changed, that the names in the oral statement were changed and removed, that it is understood it contains similarities with the other publication, according to the Interuniversity Board Scientific Research and Publication Ethics Directive; it was determined and evaluated that it is considered as a crime of using the same sources and sentences is plagiarism 4(la), distorting data and increasing the number of patients 4 (lb, c) changing the names of the authors in the oral statement, wrongful authorship 4 (le), ethical violations" and in the report prepared by Prof. Dr. Özgür Ahmet Atay, "As stated in the previous expert's report, if an oral statement on the same clinic and subject is turned into a publication, Changing the author names and the removal of the name of (first name in the oral statement) Dr.Murat Altay complaining about other authors, are considered as ethical violations according to article 4(1e), in the article published in Indian J. Orthop in 2018 (first submission is in J of Arthroplasty, February 2015), that two authors work in Keçiören TRH, and that the related publication is a study in which patients from both hospitals were combined, 18 of the 25 sources in this publication were used in the subject publication, and many similarities were noted in both publications, Again in this article, although 22 to 28 mm head was used between 2008 and 2013, while 26 of 41 hips were operated posteriorly, in the publication that is the subject of the case, it is not possible to have 42 hips, all of which were operated from the posterior between 2009 and 2013 in a single center (Dışkapı TRH) and only 22 mm femoral head was used, the first name in the publication is M.Faruk Çatma, and 8 of the 42 hips from the patient lists declared by the company named Stryker comply with the publication criteria and that Dr.Ünlü's not exhibiting the different patient group that he claimed; first of all to the ÜAK and the administrative court, and finally to our Department, raises suspicion that the number of patients has been changed, that it is understood from the case file that Dr.Ünlü did not object to the patient lists presented by Dr. Çatma and Stryker company, in the case file, International Orthopedics magazine's e-mail sent to Dr. Murat Altay, it was stated that Dr. Serhan ÜNLÜ and Dr.Önder Ersan undertook the task of collecting patient data, anesthesia records, operation times and follow-up graphs of patients from the hospital archive, expressing to the journal editor that he fulfilled these duties, Dr. Ünlü's failure to submit the aforementioned data despite the court decision supports the idea that there are not the number of patients stated in the publication in question, considering the mentioned issues; that the number of patients in the subject publication was reported, that the names in the oral statement were changed and removed, that it was understood that there were serious similarities between the subject publication and the other publication, therefore the subject article was evaluated as ethically flawed, findings and opinions are included that according to article 4.1a,b,c and e of Interuniversity Institution Scientific Research and Publication Ethics Directive, it is considered as an ethical violation, and in the report prepared by Prof. Dr. Sacit Turanlı, "as stated in the previous Expert's report, an oral statement made in the same clinic, on the same subject, on the same title (National Turkish and Traumatology Congress in 2013; Comparison of two different methods used in the detection of osteotomy in patients who underwent cementless hip prosthesis on the ground of high hip dislocation; names: Murat Altay, Mehmet Faruk Çatma, Kadir Hanazay, Serhan Ünlü, Birol Tunç, Yenel Gürkan Bilgetekin, Kasım Kılıçarslan), changing the names of the authors and removing the name of Murat Altay, who made a complaint against the authors, are considered as ethical violations according to article 4(1e), that Dr. Murat Altay is the first name, that according to Dr Altay's claim, one of the studies (Results of Crowe Type İV Developmental Dysplasia of Hip Treated by Subtrochantric Osteotomy and Total Hip Arthroplasty; Indian J Orthop Jul-Aug 2018;52(4):374-379) sent to the journals by the centers working on this subject for review, Dr. Ünlü and his friends plagiarized in the aforementioned article published in the International Journal of Orthopedics, that the article published in the Indian J Orthop magazine was first sent to the J of Arthroplasty Magazine (the publication in question was later sent to the International Orthopedics Magazine) in February 2015 and was finally published in the Indian J of Orthopedics Magazine in 2018, that two authors other than Dr. Altay worked in Keçiören TRH, that this publication is seen as a study involving two hospitals, where patients are combined, that many similarities are noted in the content of the two publications, that although Indian J Orthop. magazine used one year more working range (2008-2013) and 22-28 mm head, it was reported that only 26 of the 41 hips were operated posteriorly, in the publication subject to the case; that it was pointed out

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that the inconsistency of the 22 mm femoral head (2009-2013) and 42 hips in one hospital (Dışkapı TRH) made entirely from the posterior, that the plaintiff Dr. Murat Altay, on the other hand, stated that there were only 8 patients who met the publication criteria, and that he wanted to support his claim by putting the patient lists of the first name Dr. M. Faruk Çatma and Stryker compnay in file, however, it is stated that Dr.Serhan Ünlü refrained from giving the patient information in the aforementioned publication, and although 42 hips were included in the mentioned article according to these lists, 8 patients (22 mm head, posterior technique, prosthesis used, brand and size, and date of surgery) met the publication criteria, that whether the data used in the study reflect the truth or not can be understood only by examining these data, while sending the article to the journals, the tasks of the authors mentioned in the study related to the article are reported to the journal, (1. Author literature review, 2. Author work plan, 3. Author data collection and interpretation, 4. Author writing the article). Consistent with this general information, as it can be understood from the e-mail sent to Dr. Altay from the International Journal of Orthopedics (dated 05.07.2016), the duties of the authors were stated by Alper Öztürk, one of the authors of the study, that according to this email, Dr.Ünlü and Dr.Ersan collected the data of the patients by scanning the hospital archive, the duration of the operation from the anesthesia records and the follow-up graphs of the patients, what is requested from Ünlü is the data mentioned in this e-mail, that he is expected to have these data, that the data requested from the authors mentioned in the study are not personal but scientific data belonging to the patients sent to the journal, and sometimes even journal editors can request this data, in addition to the above-mentioned inconveniences, in my opinion, the fact that the patient's data could not be submitted to the Department or to previous experts indicates that the data in the study mentioned and the article written based on it are ethically flawed and according to the provisions of the Interuniversity Board Scientific Research and Publication Ethics Directive, there are opinions and determinations that it is considered as an ethical violation (Article 4.1a,b,c,e)", since the expert reports were served to the parties, the defendant administration did not object to the reports, but the intervener Serhan Ünlü objected, and the objections made by the aforementioned person were not considered in a way that would affect the scientific quality and result of the expert report, the objection was rejected and the aforementioned expert reports were deemed to be the basis of the judgment.

In this case, when the information and documents in the case file and the findings and opinions stated in the reports prepared as a result of the expert examination made by our Department are taken into account, the plaintiff, who works as a professor at Health Sciences University Keçiören Health Application and Research Center, has filed an application with the petition dated 03/08/2017; since it is considered that the article named "Femoral shortenin osteotomy in total arthroplasty for severe dysplasia:a comparison of two fixation technigues" as ethically flawed, without stating the reason for ethical violation, for the the preparation of which the intervener Serhan Ünlü is claimed to have contributed, who was among the authors and used it in the associate professorship application file Published in "International Orthopedics 2016 November issue 40(11):2271-76, upon the plaintiff's application dated 03/08/2017 that there was an ethical violation in the aforementioned article finally, at the meeting of the Interuniversity Board Presidency Health and Sports Sciences Scientific Research and Publication Ethics Commission, dated 29/11/2018 and numbered 2018/06 in its rejection on the grounds that "there is no violation of the publication number A2", it was not found to be in compliance with the law in terms of the causal element, and the decision of the administrative court regarding the aforementioned article on the annulment of the action subject to the lawsuit was also valid as a result.

For the reasons explained, the appeal applications made by the defendant administration and the intervener Serhan Ünlü, **are partially rejected with the reason given above** in terms of the article numbered A2, and **partially accepted** in terms of the article numbered A1 inadvertently, the decision of the court to annul the article, which was inadvertently stated as A1 by the defendant administration, is annulled and **this part of the case is rejected**, since the case was partially canceled and partially rejected, a judgment was re-established in terms of the court costs and the court and appeal phase, which is listed below, and leaving the court costs of [REDACTED] to plaintiff, which is half of the total [REDACTED] TL in total, incurred by the court and the plaintiff belonging to the appeal phase, taking the other half, 3.853.90 TL from the defendant administration and giving to the plaintiff, and , leaving [REDACTED] TL on the defendant administration, which is the half of the total litigation expenses of [REDACTED] TL, belonging to the stage of appeal made by the defendant administration, taking the remaining [REDACTED] TL from the plaintiff and giving to the defendant administration, and leaving [REDACTED] TL on the intervener, which is half of the [REDACTED] TL litigation expenses incurred by the intervener party, giving the remaining [REDACTED] TL part from the plaintiff to the intervener, and there is no need for a new judgment to be made because the attorney's fee was decided in favor of the plaintiff's attorney at the first degree stage, taking into account the outcome of the case, if it is in favor of

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BİL.TEK.DAN.REK.İTH. | 5/12 00420 Çankaya
SAN.VE. TIC.LTD.ŞTİ. | Tel: 0312 863 13 14
e-posta: bilgi@onatpro.com www.onatpro.com

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the defendant administration, the attorney's fee of [REDACTED] TL determined in accordance with the Minimum Attorneyship Fee Schedule in force at the date of this decision is given to the defendant administration by the plaintiff; the return of the increased advance notice to the parties **when the decision becomes final** pursuant to Article 333 of the Code of Civil Procedure No. 6100, pursuant to paragraph 6 of Article 45 of Law No.2577, it was unanimously decided on 09/12/2021 that **other legal remedies are closed and final.**

Chief Judge
[REDACTED]

Member
[REDACTED]

Member
[REDACTED]

JURISDICTION EXPENSES:

(Court Stage)

Application Fee : [REDACTED]
Decision Fee : [REDACTED]
YD Fee : [REDACTED] TL
Attorney Fee : [REDACTED] TL
Expert Fee : [REDACTED] TL
Postage Expenses : [REDACTED] TL
TOTAL : [REDACTED] TL

EXPENSES OF INTERVENER JURISDICTION:

Application Fee: [REDACTED]
Attorney Fee: [REDACTED] TL
Postage Expenses: [REDACTED] TL
TOTAL: [REDACTED] TL

EXPERT FEE DEPOSITED BY THE APPLICANT AT THE PHASE OF APPEAL: [REDACTED] TL

(APPEAL STAGE) (DEFENSE)

Request of Appeal Fee: [REDACTED] TL
Postage Expense: [REDACTED] TL
TOTAL : [REDACTED] TL

(APPEAL STAGE) (INTERVENER)

Request of Appeal Fee: [REDACTED] TL
Postage Expense: [REDACTED] TL
TOTAL : [REDACTED] TL

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This document is translated from Turkish to English by certified translator M. Hakan YILDIRIM on 21.01.2022.

ONAT TERCÜME Mesrutiyet Mh. Mesrutiyet Cd.
BİL.TEK.DAN.REK.İTH. 5/12 88420 ÇANAKKALE
Tel: 4312 883 12 10 ÇANAKKALE
SAN.VE. TİC.LTD.ŞTİ. Çankaya YD. 062 009 0701 Ankara
e-posta: bilgi@onatpro.com www.onatpro.com