Onur Hamzaoglu- Case of Dilovası

The share of industry in gross domestic product of Kocaeli province is over 70%. In recent years, about 15% of total output in manufacturing industry has been produced in this province. Kocaeli province has a share of 30% in Turkey’s total paint and chemical industry output and 20% in metal and metal products. After Çorlu, Kocaeli is the second largest industrial basin in Turkey.

While the level of industrial pollution in the area varies with respect to the type of industrial enterprises, it manifests itself mostly through the emission of polluting gases. This pollution affects not only the close vicinity of industrial enterprises but also more distant areas. We see the proof of this in the case of Dilovası. It is found that PM10, one of the indicators of air pollution, is 1.7 times greater than the limit value in the district of Kandıra in the same province where there is limited source of industrial pollution and 3.5 times greater in Dilovası where the level of industrialization is higher. There exists industrial air pollution in both districts.

While measurements mentioned above were obtained from academic studies, they are mostly ignored by authorities. To show the case of Kocaeli in this regard, we first investigated the causes of mortality in Dilovası district in 2004. We found that 32% of deaths occurring in the period 1995-2004 were caused by cancer. Given that cancer related deaths constitute less than 13 out of 100 deaths both in the world and in Turkey, we shared the findings of the study both with the University and local authorities in the province. Considering the importance of the issue we launched another study in the early 2005 and found that out of 100 deaths in Dilovası 33 were related to cancer. Further, we found that the risk of dying from cancer is 4.4 times higher among those living in the area for more than 10 years than others living for shorter periods of time and this situation is not affected by such factors as age and smoking (<http://journals.tubitak.gov.tr/medical/issues/sag-11-41-3/sag-41-3-1-1007-943.pdf>). We shared the findings of the study in academic meetings for discussion and communicated to the university and local authorities. These developments aroused public interest and consequently the Dilovası Investigation Commission was set up in the Grand National Assembly (TBMM DAK). The TBMM DAK completed its work in November 2006 and the report prepared by the Commission was discussed at the assembly in February 2007. The report identified 29 specific problems and suggested 29 solutions. The most important suggestion was not allowing any further industrial capacity increase in the area. This suggestion includes prohibiting any further capacity increase by already existing industrial enterprises as well as avoiding new industrial investments in the area. Suggestions also include the modernization of technology in use, rapid introduction of treatment facilities that most enterprises in the area were found lacking and transition to closed-in production systems. The report aroused much interest and authorities declared they were engaged in intensive work to solve the problem. The Department of Cancer Combat Department of the Ministry of Health proposed us (Public Health Department of Kocaeli University-KOÜ) to conduct a new study on causes of death in Dilovası area. The joint study with the Ministry revealed that 30.4 out of 100 deaths occurring in the area in the period were cancer related. The findings of the study were officially shared with the University, local authorities and Ministry of Health. Given the findings of this study as well as the fact that there was still capacity increase in the area and absence of any improvement despite the suggestions of the TBMM DAK, we planned for a new study. This project was launched in 2009 with me as project manager and a team composed of academic staff from the departments of Child Health and Diseases and Medical Genetics of the Faculty of Medicine, KOÜ. The Presidency of the University decided to support the project by fully covering its costs. It was planned under the project to investigate air pollution and heavy metal in particles in air in Dilovası as the most industrialized area in Kocaeli and in Kandıra where there is almost no industrial enterprise. In the second part of the project volunteer and healthy pregnant women would be followed throughout their periods of pregnancy and existence and level of heavy metal would be investigated immediately after births by taking samples of first breastmilk of mothers and faeces of newborns. In the final phase of the project newborns would be followed until age 1.5 and the project would have been competed 36 months after, in 2012. Having started in 2009, the project was engaged in air measurements while laboratory analyses of samples of faeces taken from newborns and of breastmilk from lactating mothers were in progress.

The survey found heavy metal in breastmilk of mothers in Dilovası and Kandıra above limits defined by the World Health Organization. This pollution starts affecting babies as early as prenatal period. Indeed, such heavy metals as lead, mercury, cadmium, arsenic and aluminium were found in first faeces of newborns in Dilovası and Kandıra.

Starting from October 2010, news spread around that the fourth iron and steel plant in the province would be established in an area very close to the city centre by the POSCO, a South Korean company, a similar investment of which was blocked by local people in India, and its partners from Turkey. The news caused significant unrest among people living in and around the site of the prospective plant along with debates about its possible impact on the environment and people. The public was not adequately informed by local authorities and the people tried to follow the case through the media. In January 2011, one journalist interested in the issue and informed about my earlier studies about the impact of industry on human health asked me about the latest situation in Kocaeli and possible health effects of a new iron and steel. In response, I told the journalist that according to measurements and test results from the research project that far there was air pollution and heavy metals in air and these heavy metals were also found in the breastmilk of women and faeces of newborn children. Immediately upon the coverage of this information by the press, a rather quick campaign of denial was launched both by local authorities and Ministry. It was first said that there was no such pollution. Then they said that the project was yet not completed and accused me of “lying” without having any documentation. Later, the claim was that it was improper to share information about a yet uncompleted study. The Mayor of Kocaeli Greater Municipality accused me for being a “charlatan” in press and visual media. In February 2011 I pledged a complaint with the public prosecutor of Kocaeli for his insulting words targeting me and brought a law suit demanding compensation. The prosecutor found my application proper and referred the case to the Basic Criminal Court. The Court started public prosecution of the Mayor for insulting. I applied to take part in proceedings as complainant, which was accepted by the Court. The first hearing took place on 31 May 2011. The Mayor was not present at the court and the next hearing was scheduled on 15 September 2011.

One or two weeks after having been invited to giving his testimony upon my complaint, the Mayor pledged a complaint with the public prosecutor accusing me for “inciting fear and panic in public” and asking for my imprisonment. The public prosecutor decided for non-jurisdiction and referred the file to the Presidency of KOÜ on 25 March 2011. The KOÜ Presidency started punitive investigation on 12 April 2011. Concomitant with this development, the Cancer Combat Department of the Ministry of Health sent a complaint to the YÖK (Board for Higher Education) accusing me of “misinforming the public about cancer without supporting data and documents and spreading fear and panic.” Upon this complaint, the Presidency of KOÜ started a disciplinary investigation on 25 April 2011, which is not concluded up to this date. Meanwhile, since the KOÜ President filed a complaint with the Board of Ethics of the University for “Making statements about an uncompleted research without the support of scientific data” my testimony was taken on 13 September 2011, two days before the hearing with the Mayor of Kocaeli. The Board gathered a day before the same hearing. In the second hearing on 15 September 2011, the legal counsel of the Mayor informed the court that my case was addressed by the Board of Ethics of the University upon the request of the President; that they heard the decision was against me and requested that the case should be asked from the Board and the hearing postponed. The judge found this request acceptable and postponed the hearing to 24 November 2011.

The KOÜ Board of Ethics informed me about its decision on September 14th and declared to me on October 10th. The text of the notification is as follows:

*“Decision No: 2 The issue was considered with reference to the Regulations on the Board of Ethics of Kocaeli University and the Guide on Academic-Ethic Principles of Kocaeli University.*

*Concerning the case, it is decided unanimously that Prof. Onur Hamzaoğlu failed to observe ethical rules fully by sharing with the media information about a locally and globally sensitive issue based on the partial findings of an uncompleted study.”*

On the same day with this notification, I also received the notification concerning the outcome of the DISCIPLINARY INVESTIGATION started on 25 April 2011. According to this notification, the Vice-President assigned as the investigator of the case had found me in misconduct in his writing dated 3 October 2011 justifying his conclusion with the decision of the Board of Ethics, and proposed the penalization by DISAPPROBATION. The Presidency chose the lighter penalization of DISCIPLINARY WARNING as required by regulations in effect and notified me with its writing dated 5 October 2011. I contested this decision with the application of my lawyers on 17 October 2011.

In the third court session held on 24 November 2011, the Court decided, upon the request of the defence attorney, “asking the KOÜ Presidency to submit to the Court the RATIONALE of DISCIPLINARY WARNING and having the next session on 26 January 2012.”

Since the KOÜ Presidency failed to respond to the objection by Prof. Onur Hamzaoğlu relating to the decision of disciplinary warning within prescribed period of time, on 7 December 2011 an application was made to the Administrative Court in Kocaeli for the annulment of the administrative act no. B.30.2.KOÜ.0.00.00.00–652, dated 5 October 2011 of the KOÜ Presidency envisaging disciplinary warning.

The Turkish Medical Association (TTB) referred the file presented to the KOÜ Board of Ethics by the Presidency and the decision of the Board concerning Prof. Hamzaoğlu for examination by a panel of impartial experts composed of Prof. Betül Çotuksöken, Prof. İoanna Kuçuradi and Prof. Harun Tepe. Having examined the file, the panel communicated its opinion in writing to the TTB on 12 November 2011. To summarize, the panel’s opinion was that Prof. Hamzaoğlu “had done nothing beyond fulfilling his responsibility.”

The PUNITIVE INVESTIGATION launched by KOÜ Presidency on 12 April 2011 is still (21 March 2012) in progress. The KOÜ Presidency informed the Court for the session on 25 November 2011 that it had referred the punitive investigation file to the Presidency of İstanbul University to solicit expert opinion.

For the annulment of the decision of the Board of Ethics of KOÜ ( no. B.30.2.KOU.0.00.00.00/09, dated 29 September 2011) a second case was brought to the Administrative Court on 7 December 2011.

The fourth court session was held on 26 January 2012 the judge who replaced the earlier one who was on leave decided to adjourn the case to 15 March 2012.

On 15 March 2012, in the fifth court session the 2nd Basic Criminal Court in Kocaeli reached a decision. The Decision found İbrahim Karaosmanoğlu, the Mayor of Kocaeli Greater Municipality guilty of defamation for using the term “charlatan” in rejecting Prof. Hamzaoğlu’s act of informing the public about the case in Dilovası. Under Article 125/1 of Turkish Criminal Code (TCK), the Count decided to impose upon the Mayor pecuniary punishment of 180 judicial days. This original decision was then raised to 210 days on the basis of Article 125/4 and finally to 262 days under Article 42 since the act of defamation occurred more than once.

Nevertheless, the court decision held that there were some mitigating factors on the basis of the following: The decision of the KOÜ Board of Ethics taken in its session dated 14 October 2011 upon the application of the KOÜ Presidency accusing Prof. Hamzaoğlu of “making scientifically ungrounded statements concerning a yet uncompleted survey” and some views contained in the report prepared by the person who conducted the disciplinary investigation launched by the Presidency. Upon this consideration of the Court, pecuniary punishment was reduced to 174 days under Article 29 of TCK and eventually Mayor İbrahim Karaosmanoğlu was CONVICTED to a fine of 3,480 TL (20 TL x 174 days) under Article 52, paragraph 2 of TCK providing for judiciary fines.

The article based on survey was accepted by the International Medical Journal (IMJ) on 19 November 2013 to be published and published in February 2014 issue of the journal. <http://www.onurumuzusavunuyoruz.org/images/dilovasi/imj.pdf>

The joint session for the lawsuits against the disciplinary sanction and the decision of the Board of Ethics of KOÜ took place on 19 December 2012. The Kocaeli 2nd Administrative Court overseeing the case apprised its decision, which it had taken on 31 December 2012, on 4 January 2013. The court found the decision of the Board of Ethics improper on the basis that there was no notification of the right to make oral defence before the Board and unanimously annulled it. The presidency of KOÜ then brought the case Council of state for the annulment of the decision of the court.

The court, however, did not consider the warning by the KOÜ Presidency as unlawful on the ground that “plaintiff’s act of making public statement about the project as the executor of the project conducted for the University without informing the University itself was improper.” One judge opposed to this decision of the court. Legal representatives of Prof Hamzaoğlu brought a case to Sakarya Regional Administrative Court on 4 February 2013 for the cancellation of the warning as well.

The Regional Administrative Court examined the case, finding the following: While accusing Prof Onur Hamzaoğlu, the University did not specify which act of Hamzaoğlu breached which rule of discipline together with its evidence; did not legally specify acts that it considered as violation, and failed to act duly in allowing the accused to defend himself whereas according to the Constitution and the European Convention on Human Rights everybody has the right to be informed about charges placed upon himself/herself and its evidence, and no possibility of legal defence can exist unless these are satisfied. On 28 May 2013, the court unanimously decided for the reversal of the decision of the Second Administrative Court of Kocaeli and ANNULMENT of the case *“by accepting the objection of the plaintiff that the disciplinary sanction was placed without listening to the defence of the person in question and that the decision taken by the local administrative court had no legal basis.”* (CASE NO: 2013/962, DECISION NO: 2013/809). The KOÜ Presidency appealed to the Sakarya Regional Administrative Court in July 2013 for the correction of the court decision. On 10 October 2013, the Sakarya Regional Administrative Court unanimously rejected the appeal of the University. (CASE NO: 2013/1615, DECISION NO: 2013/1351).

Kocaeli Mayor İbrahim Karaosmanoğlu and Dilovası Mayor the Mayor had pledged a complaint with the public prosecutor accusing Prof Onur Hamzaoğlu for “inciting fear and panic in public” and asking for his imprisonment. The public prosecutor decided for non-jurisdiction and referred the file to the Presidency of KOÜ on 25 March 2011, which started punitive investigation against Prof Hamzaoğlu on 12 April 2011. Prof Hamzaoğlu had given his defence on5 May 2011 and the University could complete its investigation 55 months after, on 27 October 2015. And finally, it could give its written notification on 17 November 2015. The notification said the following: “The latest Investigation Board found, on the basis of the first investigation report dated 16 October 2015 and all other evidence, that charges based on Article 213 of the Turkish Penal Code-TPC (inciting fear and panic in public), Article 257 of the TPC (duty abuse) and Article 258 of the TPC (disclosing confidential information related to duty) were legally groundless and that the person concerned was not involved in these offences, unanimously decided for NON-SUIT.”

The investigation file has been referred to Council of State by KOU Presidency on December 17, 2015 as required by law. On the same dates, İbrahim Karaosmanoğlu, The Mayor of Kocaeli Greater Municipality and Cemil Yaman, former Mayor of Dilovası who has served in that term appealed against the decision of punitive investigation. First Chamber of the Council of State unanimously voted to affirm non-suit decision by the Investigation Board and to reject the two appeals against this decision as well on April 6, 2016. Thus, the punitive investigation launched on April 2011 by Prof. Dr. Sezer Şener Komsuoğlu, KOÜ President, was resulted after five years, on April 2016 in the conclusion that the accusations by both of the Mayors would not require a criminal case to be filed against Prof. Dr. Onur Hamzaoğlu.

Besides, as in the case of criminal prosecution, a favourable outcome was obtained in the lawsuit claiming mental anguish compensation that has been filed by Prof. Dr. Onur Hamzaoğlu against İbrahim Karaosmanoğlu, The Mayor of Kocaeli Greater Municipality. İbrahim Karaosmanoğlu, The Mayor of Kocaeli Greater Municipality was sentenced to pay compensation at the trial held on May 26, 2016 (CASE NO: 2011/60).

For detailed information and documents concerning the issue, see: <http://www.onurumuzusavunuyoruz.org>.