

**CRIMINAL
INVESTIGATION GUIDE**



EMPLOYEE PUNISHMENT INVESTIGATION

In accordance with the relevant provisions of the Higher Education Law No. 2547, higher education institutions organizations with higher education institutions managers, regular And contractual teaching elements of And This establishment And institutions 657 numbered State Officers According to the Law subject to alleged to have been committed by officers in connection with or during the performance of their duties It is not possible for the Prosecutor's Office to directly initiate an investigation against them for these crimes. 2547 numbered Higher Education The Law of 53/c in the article organized to the provisions according to Presidents and members of higher education institutions and administrators of higher education institutions, permanent and contracted teaching staff and these organizations and institutions are subject to the State Law No. 657. Officers To the law subject to of officers duties therefore either in their duties what they did in line Authorities may initiate an investigation into the crimes they are alleged to have committed. as a result of the decision to open an investigation or to directly start an investigation Whether or not a final investigation will be opened against them (according to the suspect's job title) mentioned In the article of the law organized by the boards the decision is made.

1- To the investigation official Chiefs And of the investigation opening

According to the regulation in Article 53 of Law No. 2547, the authority to initiate an investigation chief, Council of Higher Education President or other are disciplinary officers.

The authority authorized to investigate is the personnel working in the higher education institution, committing a crime during or arising from his/her duty, through reporting, complaint, press publication or directly to crime witness learning as In the event of a violation of Article 53/c-1 of Law No. 2547 According to article 10, the authorized officer initiates a criminal investigation against the personnel. The authorized officer initiates the investigation investigation is carried out by the investigator. The investigation will be signed by the disciplinary officer. A copy of the investigation approval is sent to the Personnel Department for information. is sent.

In the investigation approval, the name of the person being investigated should be stated. if unknown in approval from the investigator if any the perpetrator Determination should be requested And investigation subject It should be clearly stated what the act consists of. The crime attributed to the approval Turkish Penalty The law Which Article in the scope of will be evaluated expression not to be done should.

2- Investigators Qualities

The investigator duty And degree either in academic title, investigation done officer's duty And from the degree of either in academic of staff from the title more high either in same Title equality should also be applied in investigations regarding managers and administrative staff. is sought. Strange in status of staff together crime processing in subordinate, top about investigation according to procedure is subject to.

3- The investigation to be done

Investigation approval with assigned Investigator, investigation Your order to examine

by means of Which Subject And on the subjects, who or Who about conducting an investigation is wanted Complaint petitions, notice letters and other documents, if any, included in the investigation approval annex Records and documents are carefully examined and the necessary information and documents regarding the allegations are submitted to the relevant authorities. from people recruitment by saying in the file balls. Necessary what he saw in case discovery does, expert examination may want And need heard all evidence can collect. Discipline And punishment If the investigation is conducted together, the procedures for both investigations shall be followed. The investigator Their duties are as follows:

a) The complainant To the expression Calling And His expression Receiving: Complainant, to the investigation to give a statement on a predetermined day, time and place with an invitation letter containing the subject matter Invitation is done. Invitation writing to the complainant Returnable registered by letter either in by hand notification It is done And to the notification The relevant document is placed in the investigation file. If there is a signature on the complaint petition, the complainant to himself Belonging is It is not by asking, the expression to be taken begins. The complainant, All complaints were recorded and recorded with the identity information of the investigator and a court clerk. The prepared report is signed by the investigator, the complainant and the court clerk. Two copy aspect prepared the one which... the minutes One example demand in to the complainant is given And Investigator remainder copy over, other copy by hand what you received related signature is taken. The complainant's statement is taken before the statements of the suspect and witnesses. While taking the statement, the complainant oath not offered.

If the complainant wishes, he/she may submit his/her statement in writing, but not in the presence or by rogatory. identity Detection should be done, to the minutes expression written to give he wants matter by writing, clear One durations should be given, this period in the minutes the complainant also approval must be stated.

b) Summoning and Taking Statements of Suspects: The suspect is subject to investigation. The invitation was prepared in such a way that he could see exactly what was happening and therefore what he was accused of. writing with previously set day, hour And on the ground to the event related his defense to do as follows Invitation The invitation letter is served to the suspect by registered mail or by hand and the notification is The relevant document is included in the investigation file. Invitation In his article, he made his defence during if he wishes next to you One lawyer can be kept matter with expression to give as follows not coming in hardly will be brought Warning place takes. To the suspect, request to do in his defense A reasonable period of time is given for the preparation of the disciplinary and criminal investigation. However, together execution in discipline in their investigations Procedure also to be followed It is mandatory. The durations in your account Invitation of the article notification was made day to account does not participate. The suspect, the identity information and all defenses were heard in the presence of the investigator and a court clerk and recorded in the minutes. is passed. Prepared record investigator, suspicious, if any lawyer and minutes by the clerk is signed.

If the suspect wishes, he can submit his statement in writing, but not in the presence or by letter rogatory. Identification must be made, and the suspect's written statement of defence

must be recorded in the minutes. A certain period of time should be given for the defense, and the suspect should also approve this period in the minutes. A copy of the report prepared in two copies shall be given to the suspect upon request. is given and the copy remaining with the investigator is signed by the investigator stating that he received the other copy by hand. Before or after taking his/her defence, the suspect is asked whether he/she is telling the truth. Absolutely no oath is offered.

c) Witnesses To the expression Calling And His expression Receiving: Witness, to the investigation Subject To provide information about the event on a predetermined day, time and place with an invitation letter containing the event. The invitation letter shall be sent to the witness by registered mail or by hand delivery. The document regarding the notification is added to the investigation file. After the witness's identity information is recorded in the record, The witness is then sworn to tell the truth about what he knows about the incident. oath from doing Refrain to do in case of This matter to the minutes is passed. Two copy prepared the one which...the minutes One example demand in to the witness is given And Investigator remainder copy over, other The witness' signature is taken stating that he/she received the copy by hand. If the witness does not come to testify, he/she is forced to to be brought to provide Subject to the Rectorate is reported.

If the witness wishes, he/she may submit his/her statement in writing, but not in person or by letter rogatory. The person to be applied for is outside Ankara or due to reasons such as military service or detention. If he/she is unable to give his/her statement, his/her statement shall be given to the civil or administrative authority to which he/she is affiliated. or in case of detention, upon request by the prison prosecutor) Detection should be done, written your statement to the truth related according to procedure suitable oath should be made, to the minutes The matter that the person wants to give his statement in writing should be written down and a certain period of time should be given. This period should be stated in the minutes. Witness in approval must be stated.

c) Other The evidence Collection: The investigator, investigation subject incident to the open He has to collect all the information and documents he needs, except the statements, to reach the is, legal limitations outside each various to authority also has. Need when you hear discovery can do, may have an expert examination. Essentially, due to the special provision in Law No. 2547 Investigator, investigation in the scope of Republic The prosecutor's office owner is all to the authorities owner whereas also in practice This situation much A lot person And establishment by because it is unknown Investigators are experiencing difficulties. In this regard, external discovery and expert witness review to be done when necessary transactions Rectorate Position through execution ease provides.

The investigator decides whether an expert examination or discovery is needed in the file. in the scope of itself decision will give. However especially also medical from error originating from Having an expert examination from outside our University in investigations, Council of State decisions within the framework of One It is a must. This on the subject To the Rectorate sent request in his article Which in the field the need for an expert witness and the issues that need to be examined by an expert what that it is explanation and copy of the file

to the article needs to be added.

d) Preparation of the report: During the investigation phase, the complainants, suspects and all After witness statements have been taken and all necessary evidence has been collected, the investigator by, to himself investigation duty giving to the superior to be presented as follows summary of proceedings is prepared. The indictment includes the institution that opened the investigation, the incident to be investigated, and how the investigation will be carried out. started, suspects Names (suddenly more suspicious if any all suspects only only should be listed) nature of the crime, evidence, summary of statements, evaluation of evidence, opinion and request sections The notification documents, all statements and all written or visual evidence are included in the annex of the indictment. place takes. Request In the section, Investigator by, suspicious either in suspects, to be tried being the place that it is not (necessary reasoning either in semen reasoning) related opinion is reported.

In the indictment each One suspicious, event either in evidence separate should be evaluated, opinion It should be justified. While stating the opinion in the request section, the names of the suspects are given one by one. should be written.

4- The investigation finalization

The investigator, investigation by completing prepared by summary of proceedings And file relating to upon submission to the authority that ordered the investigation to be sent to the competent board, The report and its annexes are sent to the board authorized to make decisions by the competent authority. Now we have reached the stage of making a decision about the suspect. From the initial investigation stage later last of the investigation opened up not to open decision will give Boards 2547 numbered The law 53/c-2 in the article place is taking.

- a) University, faculty, institute And college management Board members, faculty Deans dean assistants, institute And college Directors And with his assistants university general Secretary about, the rector under the chairmanship of Rectorally assigned rector from his assistants will occur fly board of persons,
- b) Teaching elements, faculty institute And college Secretaries about university management Board members Amongst will be created fly personality board,
- c) 657 numbered State Officers According to the Law subject to Officers about, locus As of official province administration Board by last of the investigation opened up will not open decision is given.

The decisions made by the authorized boards will be given by the authorized department of the Council of State. your decision to its type according to objection over or spontaneously Ultimately to the decision is connected.

The main and substitute members to be appointed to the board to be formed by the University Board of Directors members One for the year are elected. Duration end the saints again are possible to be elected.

Last of the investigation opened up not to open decision will give Boards member full number of with Investigators, complainants and suspects cannot attend the boards, provided that they are members. Deficiencies is completed with substitute members.

In the boards, each member is responsible for giving his/her vote by accepting or rejecting it. Abstaining from voting cannot be used. The majority vote principle is applied in decisions. If the decision is taken by majority vote, to the decision non-participant member signature next did not participate must be specified And Moreover disagreement justification in writing should give.

5- Official Boards with Council of state will be given by decisions And objection

2547 numbered The law 53/c In the article, above counted decision by the boards last of the investigation opening (necessary reasoning) or last of the investigation not opening (semenreasoning) decisions will be made.

a) The need for judgment (last opening of investigation) decision

According to Article 53 of Law No. 2547, the suspect has committed a predicate crime. the necessary prosecution to ensure that the suspect is tried if there is convincing and sufficient evidence decision is given.

Official Board in their decisions, suspect's ordinary, last name, Supporting crime processed Next civil servant title and duty, crime subject that requires criminal prosecution against suspects what the action consists of and on what date the actions that are the subject of the crime were committed, action about given the reason for the decision, given your decision vote Unity with Is it or? vote multiplicity withIs it given And evidence is shown.

Necessity reasoning decisions to the suspect And to the complainant notification is done. The suspect In case of absence, by means of notification as specified in the Notification Law No. 7201. Notification is done.

Necessity reasoning to the decision opposite suspect's 10 day inside objection right is located. The objection petition can be submitted directly to the Presidency of the Council of State or sent to the Council of State. It may also be given to the authority that opened the investigation. In case of an objection against the decision, the decision the report, the authorized board decision and the objection petition, with the documents related to the notification attached. investigation file To the Council of State be sent as soon as possible Rectorate To your position is transmitted. If no objection is made within the legal period or if the decision is approved by the Supreme Council (Council of State), it becomes final and the file is not appealed. if it has been finalized by the Presidency of the Council of State, if it has been finalized without any objection Rectorate By authority official To the Chief Public Prosecutor's Office is sent.

The board, which reviewed the decision after the objection, overturned the necessary trial decision and decided to prosecute the suspect. semen to his reasoning decision can give. This in case whereas suspicious not judged And This decision It is definite. Notification of final decisions to the complainant and suspect and for information to the Personnel Department And sending the suspect to the department head should.

b) Semen reasoning (last of the investigation not opening) decision

The suspect is not found guilty, the legal elements are not established, the crime is not attributed to the suspect. cannot be attributed either in event crime being together suspect's

crime processed about public of the case to be opened will suffice To some extent evidence in hand if it cannot be done semen reasoning decision is given.

Semen reasoning decision, suspicious about last investigation to be done prevents And This decision to the suspect And if any to the complainant is reported. Complainants This to the decisions 10 day inside objection they can. The objection petition can be submitted directly to the Presidency of the Council of State or sent to the Council of State. In case of an objection against the decision, it may also be given to the authority that opened the investigation. the report, the authorized board decision and the objection petition, by attaching the document related to the notification The investigation file is sent to the Rector's Office to be forwarded to the Council of State. Objection should be made Whether or not the decisions to prohibit the trial are automatically referred to a higher board for review. If the case goes to the Council of State and the decision is approved as a result of the investigation, the decision to ban the trial is taken. becomes final.

The Council of State may overturn decisions preventing prosecution and may also issue decisions requiring prosecution. The decisions made by the Council of State are final and no appeal can be made against them. Notification of final decisions to the complainant and suspect and for information to the Personnel Department And suspect's apartment be sent to the superior should.

c) To prosecute place that it is not related decision

Official boards, the defendant death, general amnesty, statute of limitations, follow-up based on complaint In crimes where the complainant fails to submit a petition within six months, the complaint is dismissed before a decision is made the act is not a crime under the Turkish Penal Code, the suspect is responsible for his duty or it does not arise from an action taken while performing his duty. someone's in case of existence to prosecute there is no place decision on they can give.

This decisions in The Council of State to the review subject to is semen reasoning in his decision stated to the Rectorate to be forwarded to the Council of State by the authority that initiated the investigation in accordance with the procedure The decision of the Council of State is final. The decisions are notified to the complainant and the suspect and the information is for Employee Department To the Presidency and suspect's circle must be sent to the superior.

c) Decision to be given place that it is not related decision

There is an investigation initiated before this investigation about the action and person in question. investigation either in given One decision if any "decision to be given place "it is not" decision should be given. This your decision too to the suspect And to the complainant notification needs to be done.

This decision is also subject to the review of the Council of State and is stated in the decision to prevent prosecution. by method investigation Opener position by To the Council of State is sent. The Council of State given the decision is final. Finalized decisions complainant And to the suspect Notification with information for Employee Department To the Presidency And suspect's apartment to your superior must be sent.

d) The file back decision to convert

The authorized board that examines the file (Provincial Administrative Board or University 3-person Board) Failure to take the investigation order in accordance with the procedure, and the inclusion of other suspects in the investigation. including to be done, suspect-witness expressions none or according to procedure suitable not taken, action expert review requiring One crime be in expert report unedited to be, of the investigation to the law And Procedure without being followed to be done like situations existence in deficiencies be eliminated as follows the file back to be translated decision can be given. This in case Investigator by, in the decision stated deficiencies is resolved And again summary of proceedings by arranging file, The investigation is submitted to the authority that opened the investigation. The authority that opened the investigation will re-open the file to the competent authority. dry sends.

As a result of the investigation carried out by the Council of State, the above-mentioned deficiencies existence, the authorized bodies not being formed and convened in accordance with the law and procedure and irregular decision, deficiency in the decision, opposition in decisions taken by majority vote the opinion is not written, the signatures are missing in the decision, the investigator is not a member of the decision-making body failure to make written notifications as required by law, failure to submit the file to another One dry sending should be accidentally unauthorized And off duty dry sending in cases of the file back to be translated decision can be given. This in case in the decision stated deficiencies by eliminating again decision is given And file according to procedure suitable aspect To the Council of State is sent.

6- Exceptions

Investigation into all crimes committed by higher education personnel 2547 Some crimes are not carried out in accordance with the provisions of the Law No. 1. According to the general provisions of the Republic By the prosecutor's office They are investigated. These exceptions are as follows: We can list:

- a) 2547 numbered The law 53/c-7 in the article counted crimes: Ideological with purposes In the constitution place area basis right And their freedom, the state country And with his nation indivisible integrity or based on language, race, class, religion and sectarian differences, the Constitution does not recognize the characteristics of to abolish the stated Republic Crimes committed with the intention of committing crimes and crimes related to them, institutions that directly or indirectly restrict freedom of learning and teaching, boycott, occupation, obstruction, encouragement and incitement that disrupt peace and working order, anarchy and ideological to events related crimes with heavy punishment requiring red-handed cases,
- b) 5816 numbered Ataturk Against Processed Verbs Follow up About You Law Provisions
- c) Exceptions to Article 160 of the Turkish Penal Code, de facto President attack, To Turkishness, to the MPs And To constitutional institutions And to the laws swearing verbs,
- d) 1402 numbered Martial Law 13, 14 And 15. in the articles stated verbs,
- e) Declaring Assets, Combating Bribery and Corruption Law No. 3628 The Law of In

article 17 written crimes,

This in cases investigation prosecutor directly does.

7- Law no. 4483 on the trial of civil servants and other public officials the law Law no. 2547 Subject to personnel implementation

Article 53 (c) of the Higher Education Law No. 2547, amended by Law No. 2653 in the clause; Higher Education top organizations minister And members with higher education institutions administrators, permanent and contracted academic staff and 657 of these organizations and institutions Civil servants subject to the Civil Servants Law No. 1 due to their duties or in order to perform their duties criminal investigation into the crimes they are alleged to have committed during their procedure has been regulated. Accordingly, in subparagraph 2 of the aforementioned clause; the above-mentioned public The boards that will decide whether to open a final investigation into the officers are sub-committees numbered 4. in the clause; last of the investigation opened up not to open related decisions examination to the authority owner the one which...The supreme boards are listed and in the subparagraph number 8 of the said clause; "not included in this Law on matters 4 February 1329 dated The officer His reasoning About Law provisions of "will be applied" has been stated.

4483 numbered Officers And Other Public Of the officers The trial About The law
Article 2 states that "This Law is based on the general administrative principles of the State and other public legal entities. according to they conducted public of their services required original And continually duties performance who Officers And other public of the officers duties reason with they processed crimes about will be applied, those who are subject to special investigation and prosecution procedures due to their duties and titles investigation and prosecution as specified in the laws in terms of the nature of the crime and the provisions of the law to their methods related provisions hidden "is", 6. in the article also; "Front examination with assigned person And persons, ministry inspectors with themselves Commissioned by Your Mercy all to their authority havingIn matters not covered by this Law, proceedings are carried out in accordance with the Code of Criminal Procedure. "what they can do" ruling has been connected.

Beyond from the side 4483 numbered The law 16. In the article; "In the laws The officer His reasoningAbout The law The Temporary will be applied stated in cases, 4483 numbered Law provisions of "will be applied" has been stated.

Therefore 2547 numbered The law 53. Article of (c) in the clause counted public OfficersIn criminal investigations to be carried out regarding; the provisions related to the subparagraphs of the said clauseThe possibility of applying the provisions of Law No. 4483 to these personnel does not exist. Only 2547 numbered In the law place didn't take the one which... on matters 4483 numbered LawThe provisions of the Criminal Procedure Law shall apply, in cases where there is no provision in either Law. The method The provisions of the law shall apply.

ISSUES TO BE CONSIDERED IN PERSONNEL CRIMINAL INVESTIGATIONS

Criminal investigations into crimes committed by our university administrators, faculty members and civil servants subject to the Civil Servants Law No. 657, due to or during the performance of their duties, are conducted in accordance with the procedure regulated in Article 53, paragraph (c) of the Higher Education Law No. 2547.

The 8th clause of paragraph (c) of article 53 of Law No. 2547 states that “the provisions of the Law on the Trial of Civil Servants shall apply to matters not included in this law.” The MMKHK was repealed by article 18 of Law No. 4483 on the Trial of Civil Servants and Other Public Officials, which entered into force on 04.12.1999. However, since article 16 of the same law stipulates that “in cases where it is stated in the laws that the Temporary Law on the Trial of Civil Servants shall apply, the provisions of this law shall apply,” the reference made in article 53 of Law No. 2547 should be deemed to have been made to Law No. 4483.

In terms of personnel subject to the Higher Education Law No. 2547, first of all, the provisions of Law No. 2547 will be applied, and in matters not covered by Law No. 2547, the provisions of Law No. 4483 on the Trial of Civil Servants and Other Public Officials will be applied; and in matters not covered by Law No. 4483, the provisions of the Code of Criminal Procedure will be applied in accordance with Article 6 of this Law.

In its decision dated 13.05.2004 and numbered 2004/332 E. - 2004/442 K. of the Council of State 2nd Chamber, it was stated that "before an investigation order is given, the competent authority should examine the alleged issues or have them examined by an authorized person to be assigned by it, and after determining the defendants and the alleged crimes as a result of this examination, it should evaluate whether a criminal investigation will be opened or not."

The "Preliminary Investigation" procedure included in Law No. 4483 on the Trial of Civil Servants and Other Public Officials would be more appropriate for the purpose, considering Law No. 2547, and conducting a preliminary investigation on higher education personnel, and opening an investigation if deemed necessary. At the end of the investigation, it may be understood that the action does not require opening a criminal investigation, only a disciplinary investigation, or that there is a crime that should be investigated by the Public Prosecutor's Office according to general provisions, or that there is no action that requires opening an investigation. In such cases, a criminal investigation order is not issued and the situation is recorded in a report.

An investigation should not be launched unless it is determined that there is a crime that requires an investigation. Once an investigation order has been given, it cannot be withdrawn.

1- Initiation of investigation by competent authorities

According to the regulation in Article 53 of Law No. 2547, the authorities authorized to initiate an investigation vary depending on the status of the suspect. Accordingly:

- An investigation is carried out for the President of the Council of Higher Education by a committee of at least three members, consisting of members of the Council of Higher Education, at a meeting chaired by the Minister of National Education, in which the President does not attend.
- An investigation is conducted for the members of the Council of Higher Education and the President and Members of the Higher Education Supervisory Board, either directly by the President of the Council of Higher Education or by an appropriate number of investigators assigned by him.
- For other personnel of the Council of Higher Education, investigations are conducted by the President or other disciplinary officers directly or through an appropriate number of investigators to be assigned by them.
- The first investigation for crimes committed by civil servants or other personnel other than the personnel specified above shall be conducted by the President of the Council of Higher Education or other disciplinary officers directly or by a suitable number of investigators to be assigned by them. The authorities authorized to conduct an investigation or to order an investigation shall initiate an investigation in accordance with Law No. 2547, in the event that they learn through a tip-off, complaint, the press or directly (during an inspection) that a higher education personnel has committed a crime during or arising from their duties. The authorized authorities may conduct the investigation themselves or may have it conducted by an investigator.

If an investigator is appointed from among academic staff, it is essential that they have an academic title equal to or higher than the title of the academic staff about whom the investigation will be conducted. In addition, the investigator(s) must be selected from impartial individuals who are not related to the incident. In cases where personnel with different statuses commit a crime together, the subordinate is investigated in a subordinate manner to the superior. The person authorized to conduct or have an investigation conducted regarding the superior is also authorized regarding the subordinate. The Authorized Board that will make the decision is also the board that will make the decision regarding the superior.

Personnel deputizing for a task are subject to the investigation procedure of the task they are deputizing for. The authority authorized to investigate the title of the deputized position is also authorized to investigate the personnel acting as such.

At the same time, personnel who perform several duties together are subject to the investigation procedure applicable to the duty from which the crime arose. In the event that non-civil servants participate in the crime committed by higher education personnel, the preliminary investigation is conducted separately and in accordance with general provisions for the person who participated in the crime. It is not possible to apply the procedure in Article 53 of Law No. 2547 to such persons. However, the final investigation (trial) is conducted in the court to which the higher education personnel with whom the crime was committed is subject.

In the initial investigation phase to be conducted in accordance with Article 53 (c) of Law No. 2547, the investigator shall act in accordance with the procedures and principles applied by the Office of the Chief Public Prosecutor in the preliminary investigation, virtually taking the place of the Public Prosecutor and carrying out the same procedures and exercising the powers that the Public Prosecutor would perform. However, the powers pertaining to the use of force shall be exercised through the Office of the Chief Public Prosecutor.

2- Main procedures to be performed by the investigator

There is no regulation regarding the authorities of investigators in Law No. 2547 and Law No. 4483 to which it refers. However, the regulation "they can take action in accordance with the Code of Criminal Procedure in matters not covered by this law" is included in Article 6 of Law No. 4483.

Powers of the investigator:

The powers of the investigator are regulated in Article 53/A (g) of the Higher Education Law No. 2547.

3- Summoning the suspect and taking his statement

The new Criminal Procedure Code No. 5271 has deemed the person investigated during the preliminary investigation phase as a "suspect" rather than a "defendant". Therefore, care must be taken in using the term "suspect" during the investigation process.

During the investigation, correspondence with individuals (suspects, witnesses, complainants, etc.) must be made by "registered delivery". If the document is delivered by hand, a signed document (notification report) must be obtained and kept in the file. If the suspect's address is unknown, an address search is conducted. If the suspect cannot be found despite this, or if the suspect does not receive the notification (invitation), or if he/she does not appear on a certain day and time despite receiving the notification; a decision can be made without taking a statement.

The suspect is never sworn in when his/her statement is taken. The suspect is summoned with a summons (invitation). A reasonable period of time (5 days) is given to give his/her statement. If the suspect cannot give his/her statement within the specified period (provided that he/she has a valid excuse), he/she must immediately notify the investigator.

If the suspect, complainant or witness is somewhere else, his/her statement is taken by means of a letter of rogatory. The investigator may appoint a person outside the location as his/her proxy and perform the procedure. In this case, the investigator shall write an instruction to the person appointed as his/her proxy by means of a letter of rogatory and shall state the tasks to be performed. In such cases, the investigator shall remind the proxy to act in accordance with the procedure in having a sworn clerk and in preparing the minutes.

While taking the suspect's statement within the scope of the initial investigation, the investigator must fulfill the requirements set forth in Article 147 of the Code of Criminal Procedure.

These:

- a) The suspect's identity is determined. The suspect is obliged to answer questions regarding his identity truthfully.
- b) The crime attributed to him is explained.
- c) He/she is informed that he/she has the right to choose a lawyer and can benefit from his/her legal assistance, and that the lawyer can be present during the statement. If he/she is not in a position to choose a lawyer and wishes to benefit from the assistance of a lawyer, a lawyer is assigned to him/her by the bar association.
- d) It is said that it is his legal right not to make a statement about the crime he is accused of.
- e) It is reminded that he/she may request the collection of concrete evidence to get rid of suspicion and is given the opportunity to eliminate the reasons for suspicion against him/her and put forward the issues in his/her favor.
- f) Information is obtained about the personal and economic situation of the person giving the statement.
- g) Technical facilities are used in recording the statement transactions.
- h) The statement is recorded in a report. The following points are included in this report:
 - 1. Place and date of the statement taking process.
 - 2. The names and titles of the persons present during the statement taking and the clear identity of the person giving the statement.
 - 3. Whether the above procedures were followed during the statement taking process, and if not, the reasons.
 - 4. The contents of the report were read by the person giving the statement and the defense counsel present, and their signatures were taken.
 - 5. Reasons for refusing to sign

During the taking of statements, the investigator must take into consideration the issues listed as “prohibited procedures in taking statements” in Article 148 of the CMK. These are:

- 1) The suspect's statement must be based on his/her free will. No physical or psychological interventions such as ill-treatment, torture, drugging, tiring, deceiving, using force or threats, or using certain tools can be made to prevent this.
- 2) A benefit contrary to the law cannot be promised.
- 3) Statements obtained through prohibited methods cannot be considered as evidence, even if they were given with consent.

4- Calling witnesses and taking their statements

Witnesses are summoned with a summons (invitation). This call can also be made by using means such as telephone, telegraph, fax. However, if the witness does not comply with the

call, he/she must be summoned through the Office of the Chief Public Prosecutor. If the witness is somewhere else, his/her statement is taken by way of a rogatory. During the investigation, according to Article 53 of the CMK; “the importance of telling the truth before being heard, that if he/she does not tell the truth, he/she will be punished for the crime of perjury, and that he/she will swear to tell the truth” is explained. Witnesses must be heard separately, and according to Article 54 of the CMK, “separate oaths must be given to the witnesses” is mandatory. Before the witness begins to give his/her statement, he/she swears, according to Article 55 of the CMK, “I swear on my honor and conscience to tell the truth as I know it.” Everyone stands up while the oath is being taken.

According to Article 45 of the CMK, the following persons may refrain from testifying:

- a) The suspect's fiancée.
- b) The spouse of the suspect, even if there is no marriage bond.
- c) The suspect's lineage or lineage through blood kinship or in-law relationship.
- d) The suspect's blood relatives, including the third degree, or in-law relatives, including the second degree.
- e) Those with whom the suspect has an adopted relationship.

It is mandatory to inform those who may hesitate to testify that they may hesitate to testify before being heard. These people may always hesitate to testify while being heard. If they have declared that they will testify, the witness is subject to an oath in accordance with Article 55 of the CMK.

Article 46 of the CMK specifies those who may refrain from testifying due to their professions and ongoing activities, as well as the subjects and conditions for refraining.

- a) Information acquired by lawyers or their trainees or assistants in their capacities or due to the judicial duties they undertake.
- b) Information learned by physicians, dentists, pharmacists, midwives and their assistants and all other members of the medical profession or arts about their patients and their relatives in their capacity.
- c) Information learned by advisors and notaries assigned to financial affairs about the people they serve in their capacity.

Persons other than those specified in subparagraph (a) of the above paragraph cannot refrain from testifying if the person concerned consents. The lawyer or his interns or assistants may refrain from testifying even if the person concerned consents.

According to Article 48 of the CMK; The witness may hesitate to answer questions that may subject him or the persons listed in Article 45 to criminal prosecution. The witness is informed in advance that he or she may hesitate to answer.

According to Article 50 of the CMK, the following persons may be heard without taking an oath:

- a) Those who have not reached the age of fifteen at the time of rest.
- b) Those who cannot understand the nature and importance of the oath because they do not have the power of discernment.
- c) Those who are suspected, accused or convicted of participating in crimes that are the subject of investigation or prosecution, or of favoring the criminal due to these crimes, or of destroying, concealing or altering criminal evidence.

According to Article 58 of the CMK:

- 1) The witness is first asked about his/her name, surname, age, occupation and place of residence, the address of his/her workplace or temporary residence, and telephone numbers, if any. If necessary, questions are asked about the extent to which his/her testimony can be trusted, especially questions about his/her relationship with the suspect, defendant or victim.
- 2) If the identities of the persons to be heard as witnesses are revealed and this would pose a serious danger to themselves or their relatives, necessary measures are taken to keep their identities confidential.

The witness whose identity is kept confidential is obliged to explain the reason and the means by which he/she learned about the events he/she witnessed. In order to keep his/her identity confidential, the witness's personal information is kept by the investigator.

5- Summoning the complainant and taking his statement

The investigator invites the complainant with a summons (invitation) in accordance with the procedure and takes his statement. He asks whether he continues his complaint. This procedure must be carried out as it will affect the investigation result in crimes related to the complaint. The complainant is not sworn while taking his statement. If the complainant is in another place, his statement is taken by rogatory.

6- Conclusion of the investigation (preparation of the indictment)

If the same persons are assigned for both criminal and disciplinary investigations, the investigator must prepare 2 separate files (investigation report and indictment) for the disciplinary investigation and the criminal investigation; he/she cannot conduct these investigations together on a single file. The investigator must number the statements of the suspects, sworn witness statements, and documents related to the crime he/she is accused of, using the powers mentioned above, and must list them in a sequence sheet, and must attach the sequence sheet to the indictment.

After summarizing the information and documents related to the alleged crime, the statements of the suspect, the complainant and the sworn witnesses, the documents, the sworn witness statements, the suspect statement and the legal basis should be evaluated as a whole in the evaluation section of the indictment. At this stage, whether a causal link can be established between the alleged crime and the suspect, what the events are against the legal basis and whether the crime has been statute of limitations should be discussed one by one and a conclusion should be reached. In the conclusion section of the indictment; all the information and documents and the suspect statement should be evaluated together and the investigator

should state his/her opinion (in the direction of preventing or necessitating prosecution) on whether the crime has occurred.

The investigation file and the summary of proceedings must be submitted to the authority that ordered the investigation to be sent to the relevant authorized board. When the summary of proceedings and its annexes are sent by the authorized authority to the decision-making board, the decision-making stage regarding the suspect is reached. As a result of the examination, the suspect's actions are evaluated by taking into account the characteristics and requirements of administrative work, and the final decision determines whether the suspect should be tried or not.

Committees to Conclude the Investigation and Forms of Formation

1. Decision making boards

The rules that will decide whether higher education personnel will be tried in the first stage are listed in Article 53/c-2 of Law No. 2547, according to the duties of the suspects, as follows:

- The 2nd Chamber of the Council of State regarding the President and members of the Council of Higher Education and the President and members of the Higher Education Supervisory Board,
- A three-person board consisting of members of the Council of Higher Education regarding university rectors, vice rectors and general secretaries of higher institutions,
- A three-person board consisting of vice rectors appointed by the rector under the presidency of the rector regarding the members of the university, faculty, institute and college management boards, faculty deans, vice deans, institute and college directors and their deputies, and the general secretary of the university (if the board cannot be formed due to the absence of two vice rectors, an authorized board consisting of members of the Council of Higher Education)
- A three-person board to be formed from among the university board members regarding the teaching staff, faculty, institute and college secretaries,
- Provincial administrative board with local jurisdiction regarding civil servants subject to the Civil Servants Law No. 657.

Decisions made by the 2nd Chamber of the Council of State in the first stage are finalized by the Council of State Administrative Affairs Board; decisions made by other boards in the first stage are finalized by the 2nd Chamber of the Council of State, either on appeal or on its own, depending on the type of decision.

The principal and substitute members to be assigned to the boards established by the Council of Higher Education and the University Executive Boards are elected for a period of one year. Those whose terms have expired may be re-elected.

The boards that will decide whether or not to open a final investigation shall meet with the full number of members. The members who conducted the initial investigation (investigator) and the members about whom a decision will be made cannot attend the boards. The absences

shall be completed by substitute members.

In the boards, each member is responsible for casting his/her vote by accepting or rejecting. Abstentions are not allowed. The principle of majority vote is applied in decisions.

2. Decisions to be made by authorized bodies and courts and objections

Article 53-c of Law No. 2547 states that the above-mentioned decision-making boards will decide on opening a final investigation (necessity of prosecution) or not opening a final investigation (prohibition of prosecution). The Council of State Administrative Affairs Board is of the opinion that the decision-making boards may also make decisions other than the aforementioned decisions.

a) Decision to initiate a final investigation

According to Article 53 of Law No. 2547, if there is convincing and sufficient evidence that the suspect committed the crime, a preliminary hearing decision is made, which determines the trial of the suspect.

Accordingly, the decisions made by the authorized board regarding the necessity of a “necessary trial” trial, which is the basis for the filing of a public lawsuit, are of the nature of an “indictment”. Therefore, the decisions to be made by the authorized boards shall indicate the suspect’s name, surname, civil service title and duty at the time of the crime, the nature of the act that is the subject of the crime requiring criminal prosecution against the suspect and the crime attributed to him, the date on which the acts that are the subject of the criminal prosecution were committed, the reasoning behind the decision made regarding each act, whether the decision was made unanimously or by a majority vote, the evidence and the article of law that will be applied to the crime according to this evidence, and the court where the trial will be held.

Necessary court decisions are notified to the suspect in person. If the suspect cannot be found, notification is made through the public notification method specified in the Notification Law No. 7201.

The decision of necessity for prosecution is reviewed by the superior board upon the objection of the suspect within 10 days. If no objection is made to the decision within this period or if the decision is approved by the superior board, it becomes final and the file is sent to the board that made the decision in the first stage for the final investigation of the suspect in the competent court and from there to the authorized Public Prosecutor's Office. These decisions are in the nature of an indictment and are deemed to have been filed when the decision is made and the trial is started and concluded with priority when it reaches the court.

The board, which examines the decision as a result of the objection in the second stage, may overturn the decision to prosecute and decide to bar the suspect from prosecution. In this case, the suspect will not be tried and this decision is final.

b) A decision to prohibit prosecution (not to open a final investigation) is made if no evidence of guilt is found against the suspect, if the legal elements are not present, if the crime cannot be attributed to the suspect, if the incident is a crime but the suspect cannot even be held guilty, or

if sufficient evidence cannot be obtained to open a public lawsuit regarding the crime.

A decision to prohibit prosecution prevents the final investigation of the suspect. Prosecution decisions, if any, are notified to the complainant. The relevant parties may object to these decisions within 10 days. Whether or not an objection is made, prosecution decisions are always reviewed by a higher board and if the decision is approved as a result of the review, the prosecution decision becomes final.

The Supreme Board may overturn the decision to prevent prosecution and may also make a decision to initiate prosecution. These decisions are final and cannot be appealed. A decision to prevent prosecution is not a final judgment. If new evidence is obtained in the future that a crime has been committed, a new investigation may be conducted and a different decision may be made.

c) Decision on non-prosecution The decision boards may decide on non-prosecution in the event of the death of the suspect, declaration of general amnesty, statute of limitations, failure of the complainant to submit a petition within 6 months for crimes subject to prosecution or withdrawal of the complaint before the decision is made, by specifying the articles specified for these situations in the Turkish Penal Code. These decisions are also subject to review by a higher board. The final decision is made by the higher board. The decisions must be notified to the complainant.

d) Decision regarding no need for a decision: It is not possible to come across a type of decision regarding no need for a decision in Law No. 4483, the MMKHK and the CMK. This decision is a type of decision that emerges from practice. This decision is given in cases where the act under investigation is not a crime, the act requires disciplinary investigation, is not related to duty or arises outside of duty, is compensatory, is of a nature that may be the subject of an administrative or legal lawsuit, is not a crime that requires criminal investigation during or arising from duty within the scope of Article 53 of Law No. 2547, and a final decision has been given on the same subject before. This decision is also subject to review by a higher board. The final decision is given by the higher board. The decision is notified to the complainant.

e) The decision to reject the file is one of the types of decisions made by the second degree decision boards. The file is rejected in cases where the investigation order is not obtained in accordance with the procedure, the investigation is extended to other suspects, suspect-witness statements are not taken or not taken in accordance with the procedure, the investigation is incomplete, if the act is a crime requiring expert examination, an expert report is not prepared, the investigation is conducted without complying with the law and procedure, the decision boards are not formed, convened in accordance with the law and procedure and make irregular decisions, there is a deficiency in the decision, the dissenting opinion is not written in the decisions taken by majority vote, the signatures are missing on the decision, the investigator participates in the decision body as a member, written notifications are not made as required by law, the file is sent to another board but is inadvertently sent to an unauthorized and unauthorized board.

When the file is returned to its place, depending on the deficiency, sometimes the decision is overturned and sent back. In such cases, the decisions are final. No objection can be

made. In such cases, the deficiencies stated in the overturning decision are remedied, a new decision is made about the suspects and the necessary notifications are made again.

3. Place of trial

The trial of the President and members of the Council of Higher Education and the Higher Education Supervisory Board, whose necessary judgments have become final, belongs to the relevant criminal chamber of the Supreme Court of Appeals, the appeal review belongs to the General Criminal Assembly, the trial of other officials belongs to the courts of justice where the crime was committed, and the appeal review belongs to the relevant criminal chamber of the Supreme Court of Appeals.