

## Major And Aggravated Cases Of Deprivation Of Liberty In Turkish Penalcode

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| Article Info  | Abstract  |
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| <p><b>Article History</b></p> <p>Received:<br/>January 14, 2020</p> <p>Accepted:<br/>April 05, 2021</p> <hr/> <p><b>Keywords :</b><br/>Deprivation Of Liberty,<br/>Freedom Demarcation<br/>Offense, Freedom Of<br/>Movement, Person<br/>Freedom</p> <p><b>DOI:</b><br/>10.5281/zenodo.4663401</p> | <p><i>The purpose of this study is to express how the Deprivation of Liberty Offense the Turkish Penal Code (Turkish Pc Art.109) is regulated in the law, and examine it within the scope of the doctrine and the decisions of the Turkish Supreme Court. With these aspects, this study is considered to be important. As a method, the deductive method has been adopted. Inductive method was also used in matters related to conclusions and inferences. The study consists of three parts. First of all, the crime of deprivation of liberty was declared and the legal benefit preserved was revealed. Later, the qualified and aggravated forms of this crime were examined under separate headings. In these examinations, both the opinions of the authors and the doctrines have been benefited and the decisions and case law taken by the Turkish Supreme Court on these issues are given as an example. In the conclusion part, the general equivalent of the crime of deprivation of liberty in Turkish law is interpreted.</i></p> |

### Introduction

Freedom, which has a high importance in theology, law, social sciences, and philosophy, is a topic that has been discussed for a long time but cannot be settled in either definition. This is due to the fact that this definition has many aspects and, as a result, can be diagnosed in a number of forms. This also causes a behaviour that violates freedom from being seen as such in another field. As a result, the crimes regulated in the section of crimes against freedom in legal frameworks vary greatly.

The concept of freedom in general means that a person should do whatever he or she wishes without being exposed to external influence or oppression. While there is no universal meaning, the concept and need for freedom dates back to the dawn of time. People have suffered great losses as a result of great struggles for freedom, especially in medieval times. With these setbacks, the demand for freedom was acquired to some degree, and the fundamental values that would shape today's conception of freedom were created. Freedom is now one of the most basic individual rights embodied in all state constitutions, and it is predicated on the assumption that everyone will be equal. This protection is not only left to the countries' initiative, but it is also assured by international legislation. In particular, one of the most important factors of the person's liberty covered by constitutions and foreign laws is the crime of deprived him or her of his or her liberty. That a legal norm cannot be carried out if a right is accepted without penalties.

The acceptance of offences against freedom, on the other hand, guaranteed the protection of individuals' liberties in their interactions with one another and with the state. In other words, it was considered important not only to recognize liberties as legal in order for them to be extended to life, but also to create a mechanism that would prevent offenses against liberty. About the fact that penalties have been extended to crimes against liberty since Roman law, it can be noted that the classification of crimes against liberty as a separate category is recent in the historical process. Our matter of question is the crime of depriving a citizen of his liberty within the scope of the offenses of "crimen vis" (use of force) and "injura" (illegal activities) in Roman law.

In this case, the act of deprived a person of his liberty is enforced in order to protect the person's liberty, which is one of the constitutional rights. The law of freedom and protection of individuals is included in the second part of the Constitutional Rights and Assignments portion of Article 19 of the Turkish Constitution, named Rights and Assignments for People. The crime of deprivation of liberty is described in Article 109 of the Turkish Penal Code (TCK) No. 5237. According to this article, anyone who physically prevents another person from going anywhere or stopping somewhere will be prosecuted for depriving the other of his or her rights. In the following part of this law, it is mentioned that the punishment will be aggravated if the force, threats or deception against the victim is used to commit the crime; the crime is carried out together with more than one person with a gun; the person is a victim of the crime due to his/her public duty or performs this crime by using influence due to public duty; the person who commits the crime commits the crime against ascendant,

descendant or spouse; the victim causes a great economic loss; the crime is committed for sexual purposes and the victim exceeds the level of violence that is an element of the crime.

As previously said, the key rationale for assessing the crime of false imprisonment as our study subject is the individual's liberty and the value of protecting such liberty. As a result, this crime, which we encounter often in practice and in our everyday lives, was a motivating factor in selecting this subject. However, the fact that the value protected by the crime of deprivation of liberty is significant enough to be included in the Constitution and includes sensitive issues in legal legislation informed the research topic's selection.

The paper will be divided into three sections. First, the act of depriving a citizen of his or her liberty will be explained, followed by the legal benefit that has been maintained. The competent and aggravated cases of deprivation of liberty would then be investigated separately. In these reviews, the writers' views and doctrines will be included, and the rulings and case-law of the Turkish Supreme Court on these topics will be used as examples. The general clause of the crime of depriving a citizen of his liberty in Turkish law will be interpreted in the conclusion section.

### **Crime Of Deprivation Of Liberty In General**

Article 109 of the Turkish Penal Code No. 5237, the articles in the Deprivation of Liberty section are as follows:

- Any person who unlawfully restricts the freedom of a person to move, or to remain, in a particular place shall be sentenced to a penalty of imprisonment for a term of one to five years.
- , Where a person, uses force, threats or deception in order to commit an offence (or during the commission of the offence) then a penalty of imprisonment for a term of two to seven years shall be imposed.
- Where this offence is committed: a) with use of a weapon, b) together with more than one person, c) against a public officer as a result of the performance of his public duty, d) by misusing the influence derived from public office, e) against a direct antecedent, direct descendants or spouse, f) against a child or a person who cannot defend himself physically or mentally, the penalty to imposed according to the above paragraphs shall be doubled.
- Where this offence results in the significant economic loss to the victim, an additional penalty of a judicial fine up to one thousand days shall be imposed.
- Where the offence is committed with a sexual purpose, the penalty to be imposed in accordance with the above paragraphs shall be increased by one half.
- Where an aggravated injury on account of its consequences is committed in order to commit this offence (or during the commission of this offence), then the provisions relating to intentional injury shall be additionally applied. (Artuç, 2018: 600).

According to Article 109 of the Turkish Penal Code, the crime is constitutively a portable crime since the individual is deprived of the right to live or move. As a form of crime, it is a full crime (Tezcan et al. 2017: 489; Artuk et al. 2017: 263). It is vital in this offense to hinder the individual's freedom of movement, and it makes no sense what sort of acts are used to do this.

Absolute personal freedom is the moral advantage held in the offence of depriving a citizen of his freedom. Its aim is to protect the victim's will in general, as well as the person's rights. The right of citizens to protection and freedom is recognised in Article 5 of the European Convention on Human Rights as a part of fundamental humanitarian principles. Freedom, the most basic human right, may be regulated in certain cases stated in the convention and in compliance with the legal procedure. Article 19 of the 1982 Constitution, as amended in 2001, governs the freedom and protection of people may be limited in certain cases by methods defined in the legislation in compliance with Article 5 of the ECHR. In such defined circumstances (such as making a prosecution decision, punishing the person who breaches the law, arresting him/her, prohibiting him/her from committing a crime, enforcing the measures necessary for the minor's education), the person's rights will be restricted in accordance with the law. In the situations contained in the ECHR, freedom of citizens is limited for the purposes of social security and health safety. Aside from these cases, the limitation of a person's rights who is not in line with the law is expressed as a form of crime due to the need to maintain the person's safety.

The crime of restricting freedom is described as the restriction of the right to move to or live in a particular area. The fundamental benefit covered by the offence of depriving a citizen of his or her rights is the individual's freedom and right of movement and displacement (Koca and Üzülmöz, 2017: 401). The right of movement requires both the freedom to move and the freedom not to move (Özbek et al. 2018: 419). People have the freedom to choose where they want to live or go, and they are entitled to do so. This violence, however, violates people's rights (Toroslu, 2018: 86; Çakmut, 2013: 589).

### **Major And Aggravated Cases Of Deprivation Of Liberty**

In paragraph 2.3.4.5 of Article 109 of the Turkish Penal Code, major situations related to deprivation of liberty have been determined. As a consequence, whether a person uses deception, intimidation or coercion, or threat to carry out an operation or during its execution, a prison sentence of two to seven years is imposed. Where this offence is committed: a) with use of a weapon, b) together with more than one person, c) against a public officer

as a result of the performance of his public duty, d) by misusing the influence derived from public office, e) against a direct antecedent, direct descendants or spouse, f) against a child or a person who cannot defend himself physically or mentally, the penalty to imposed according to the above paragraphs shall be doubled. Where the offence is committed with a sexual purpose, the penalty to be imposed in accordance with the above paragraphs shall be increased by one half.

The crime of depriving the person defined in the Turkish Penal Code of his rights, as well as the manner in which more than one crime existed, were specified within the framework of the same clause, and the crime was ensured to be plain and clear in its entirety. Moral value assessments indicating the severity and significance of the crime with the crime of deprivation of liberty, which has a constraint on the will, and crime circumstances that arise by making use of the conditions that allow the crime to be realized in a simple way, have been identified as situations requiring more extreme application of the penalty.

Where this offence is committed with use of a weapon, together with more than one person, against a public officer as a result of the performance of his public duty, by misusing the influence derived from public office, against a direct antecedent, direct descendants or spouse, against a child or a person who cannot defend himself physically or mentally, the penalty to imposed according to the above paragraphs shall be doubled.

In the Turkish Penal Code, economic damage has been assessed alongside deprivation of liberty as a whole. The magnitude of the economic damage would necessitate imposing fines on the perpetrator in addition to imprisonment. The provision is regulated to raise the sentence by half in offenses against sexual integrity, which are very critical from a social standpoint. Since any movement within the framework of the general structure of the law is viewed as a felony, a separate assessment would be made of the injuries that may result from deprivation of liberty.

### **Use Of Force, Threats Or Deception**

Article 109/2 of the Turkish Penal Code defines major status as imprisonment for two to seven years if the individual uses force, threats or deception in order to commit the act or while performing it. The elements of force, threats or deception do not have to coexist in order for this major situation to be implemented. For the major case, the presence of one of them in the crime is necessary. However, if at least two elements of force, threats or deception, are present, it might be necessary to decide from the lower limit when sentencing.

As can be deduced from the article's reasoning, the lawmaker has determined the use of force, threats or deception as a way of depriving the defendant of his/her rights or increasing the punishment. To apply this competent state, the presence of one of the optional movements is certainly not pursued after the completion of the compliance acts, and after the restriction of the victim's rights, the punishment is raised in order to ensure the continuity of the act while the perpetration of the act persists, or in referring to the mentioned means during this period (Artuk, Gökçen, Alşahin, Çakır, 2018: 364).

Force has been determined as a crime in Article 108 of the Turkish Penal Code and Threat has been determined as a crime in Article 106 of the Turkish Penal Code. Since the crime of depriving the person of his freedom is determined as qualified state in the second paragraph, it is also impossible to punish these crimes. The Criminal General Assembly of the Court of Cassation stated in its decision dated 10.04.2018 and numbered 2016/6-1446 and 2018/153 that if the force is aggravated due to the result of intentional injury, it shall also be held liable for aggravated injury due to the result, and the injuries that can be eliminated by simple medical intervention shall be considered as compound crime within the force determined in the second paragraph.

We can say the most common acts of force in practice such as forced use, being forcibly detained while the crime is being discussed, for example, preventing the victim by using force, for example by tying his/her hands, even though he/she wants freedom. Force term means difficulty. In other words, it is called forcing a person to perform an act contrary to his/her wishes or not to perform it (Yılmaz, Ejder, 2017: 136). We can express all the acts that have a compelling effect against the limitation of freedom in all forms in order to reduce the resistance of those who want to limit freedom or to prevent resistance in committing the crime afterwards (Tezcan, Erdem, Önok, 2017: 407). While force is defined as actions of manipulation that minimize or negate the victim's resistance, this resistance does not have to be understood by the victim and placed as a warning (Önder, 1994: 344). In other terms, there is a chance of occurrence in the context of spiritual and material force, mental pressure refers to the danger, and material pressure is the physical force used to remove the current barrier (Toroslu, 2018: 74). If force has gone through intimidation during the commission of an offence, that is, if there is an accident that cannot be eliminated by basic medical care, a sentence may be imposed in compliance with the current rules of common law. Substances related to the crime of intentional injury are often used whenever they become compounded as a result of the crime of intentional injury for the purpose of committing the crime or during the crime, according to subsection 109/6 of the law. In other words, it is described as physical force on the victim within the context of a deprivation of liberty statute. (Artuk, Gökçen, Alşahin, Çakır, 2018: 364).

The act of contemplating potential harm to the victim or anyone close to him/her is referred to as a threat. There are actions that would critically cause anxiety in the survivor, which involve the mention of causing collateral

damage. The use of metaphors like "If you resist, I will burn you; if you run, I will kill you" to the individual whose freedom will be restricted will also result in this offence (Tezcan, Erdem, Önok, 2017: 408). A major status is often enforced if the perpetrator acts to limit rights by using expressions such as pointing a knife at the victim and telling I'm going to murder you, or by using terms such as hurting their children. (Artuç, 2008: 850). While the threat crime is still described as a crime in the Turkish Penal Code (art. 106), the compound crime listed above is used here and the threat crime will not be prosecuted because it is classified as major status. The nature of the threat should be taken into account according to the terms of the specific conflict, and Court of Cassation dated 12.04.2011 and numbered 2011/2970 and 2011/4134 reported that there was no crime of deprivation of liberty and sexual harassment under continuous threat and pressure for 9 months and that the concrete dispute should be interpreted within itself.

Deception can be expressed as deliberate fraud of the victim by act, verbal or other means. Since a different idea occurs in the victim as a result of fraud, he/she is basically forced to take a certain action (Artuk, Gökçen, Alşahin, Çakır, 2018: 365). In addition, if there is a situation where the victim would not be able to perform an unexpected action if he/she knew the truth, it is possible to talk about the violation of one's freedom by fraud. (Üzülmez, 2007: 58). Deception can be committed directly against the victim or through another person. For example, it may be that a third party is called through his/her friend and his/her mother is sick and causes the victim to go out in this way (Tezcan, Erdem, Önok, 2017: 408). Factors such as the current conditions, age, mood, perception of the victim are effective in determining the deception and these factors should be determined by considering them together. Victim-oriented deception should be of such weight and level as to deceive him/her and in such a way that the victim will not have control. For example, deception occurred when the perpetrator pretended to be a cop and told the victim that he would be brought to the police station for some procedures and put him in the car and took him to another place (Artuç, 2008: 851). Court of Cassation dated 28.10.2018, Case 2018/4959 and Verdict 2018/4778 stated that the victim who was called to the scene by using the name of another acquaintance was qualified in the case of deprivation of liberty and stated that this should be applied.

It is also decided that the words such as "Let me show you around the defendant, (Court of Cassation 14. Criminal Chamber, 12/12/2017, docket 2017/5414, decision 2017/6371) let's study at home" (Court of Cassation 14. Criminal Chamber, dated 14.05.2018, basis 2015/2514, decision no. 2018/3648), will not constitute the element of deception.

#### **Armed Crime**

The fact that the crime is committed with a pistol has been designated as a major status in paragraph an of the third paragraph of Article 109, which defines the crime of depriving a citizen of his rights. What the arms reflects According to the statute, the statement are derived from the word weapon: 1. Firearms, 2. Any piercing, cutting, or bruising instrument designed for use in assault or defending. 3. dynamite, 4. Constantly causing poisonous, electrical, medical, and chemical compounds that burn, suffocate, are corrosive, acidic, and injure. 5. Other matters that are actually appropriate for use in attack and protection are known, even though they are not created for those purposes.

It has been designated as a competent state because it facilitates the deprivation of liberty and decreases opposition due to its impact on the victim (Artuk, Gökçen, Alşahin, akr, 2018: 365). Having more intimidating force has been recognized as a competent condition that it simplifies the realization of the crime because it does more damage to the victim's freedom. (Tezcan, Erdem, Önok, 2017: 408).

Acts such as the use of one of the means mentioned in Article 6 of the Turkish Penal Code to harm the victim while committing the crime and the show of a weapon are for the competent state's enforcement. In other words, it is sufficient to use the pistol to ensure that it has a terrifying impact on the victim. As a result, even though it is in the sheath, if it affects the victim, an eligible condition is now used (Artuk, Gökçen, Alşahin, Çakır, 2018: 365). It is not required that the perpetrator may have taken and used the gun, (Artuk, Gökçen, Alşahin, Çakır, 2018: 365), and if the victim knows that the perpetrator has a gun and is willing or afraid to restrict his/her freedom, the penalty cannot be increased due to qualified condition if the gun is visible in the vehicle or in the perpetrator's waist and has not been used by the perpetrator in the offence.

In other words, the knife, as in other offences, affects the victim's resistance, raises his/her anxiety, and affects his/her inner life. It should be used to influence the actions of the crime of limiting freedom in terms of depriving the citizen of his or her freedom. The competent state should only be used if the suspect has a pistol on him. In other words, it can be used to restrict freedom in some way. One of the elements that should be articulated here is what will happen if the firearm is used in accordance with the threat that we previously identified as an eligible state. In this instance, for example, if the target is threatened that if he does not come, I will kill him, and if a gun is pointed at or shown to him, both the threat stated in the second paragraph and the gun specified in the third paragraph will be used together. It is no longer possible to prosecute the attacker because he or she is armed only with a pistol and has no control on the victim.

In the case of a crime of depriving the victim of liberty by threatening with a knife and other offenses of looting performed simultaneously, the armed threat would be considered major both in terms of depriving the individual

of liberty and the crime of looting. This is how the Court of Cassation operates. Since the accused persons' acts during their detention in the form of making threats together and with weapons are causes of deprivation of liberty and eligible looting crimes, it is crucial not to focus on the fact that they are not prosecuted for the threat crime.

#### **Multiple Persons Committing the Crime Together**

In the event that the crime of depriving a citizen of his/her freedom occurs in accordance with more than one person as specified in the c paragraph of the third paragraph of Article 109 of the Turkish Penal Code, the punishment is major and increased. When we look at the reasoning for Article 109 of the Turkish Penal Code, we can see that the acts of execution of the crime should be committed by more than one individual at the same time. In other words, if there is a joint suspect in terms of crime commission, this eligible question arises. However, it is specified that the punishment amount cannot be raised in this paragraph if the other accomplices are aiding or persuading against the fact that the execution movements of the offense are committed by only one person. According to Section 37/1 of the Turkish Penal Code, each person who commits the crime together in the text of the law shall be held liable as the perpetrator, and those who commit the crime together shall be joint perpetrators and all of them shall be held liable.

According to the article's justification, since the crime is committed by more than one person, the execution movements of the crime of depriving the person of his/her rights would be held responsible as joint perpetrator. If the act of limiting independence happens by persuading another citizen or by acting as a helper for the specified cause, the punishment will not be raised as a result of this qualified situation, and the qualified situation will not be enforced. The term "together" can be translated to mean that they work together in the conduct of the offense in such a manner that prior arrangements became unnecessary. (Artuk, Gökçen, Alşahin, Çakır, 2018: 366).

As in other offences (resistance to avoid execution of service, article 265, sexual harassment, article 102, sexual exploitation of minors, article 103, threat, article 106), it becomes eligible to occur with more than one individual; what is intended here is not to occur in attendance, but to occur with more than one person during the commission of the offence. (Özbek, Kanbur, Bacaksız, Doğan, Tepe, 2014: 385). As a result, the minimum number is not included in the decision of more than one person who assists and persuades. However, where the offence of depriving a person of his or her rights is committed by more than one person at the same time, the competent state should be extended to the person who learns about it, that is, who assists and persuades it to happen by more than one person (Tezcan, Erdem, Önok, 2017: 409). The Court of Cassation 14. Criminal Chamber claimed in its verdict no. 2016/8103 dated 28.11.2016, case no. 2016/9637, that it would not be taken into account in deciding the number of joint criminals who joined in the crime as persuaders or aides, and that the major condition would not arise if there were others who aided the single perpetrator.

Since it is mentioned in the legislation that it should be processed by more than one citizen, the actors in the compliance movements should be the lowest two persons. Naturally, where more than one individual collaborates, it is regarded as a competent state because it has a large impact on the perpetrator and reduces resistance power. For example, the 14th Criminal Chamber of the Court of Cassation stated in its verdict dated 25.04.2016 and numbered 2016/5 and 2016/4191 that the perpetrator's act of sexual assault and depriving the person of his/her freedom should be regarded as an aide within the framework of Article 39 of the Turkish Penal Code, therefore the act of depriving the person of his/her freedom together with more than one person will not be qualified.

If we give another example of depriving the person of his/her freedom together with more than one person, in the act of kidnapping a girl in public, one perpetrator closes his/her mouth, the other forces him/her to force him/her to get in the car or one of the perpetrators forces him/her to get in the car and the other perpetrator waits in the car and holds it in a way that reduces his/her resistance after getting in, it will be accepted that it happened with more than one person.

#### **Against a Direct Antecedent, Direct Descendants or Spouse**

According to paragraph e of the third paragraph of Article 109 of the Turkish Penal Code, if the crime of depriving a citizen of his/her freedom happens against a direct antecedent, direct descendants or spouse it will be considered a competent state, and the punishment will be increased.

Article 17 of the Turkish Civil Code specifies what can be known from the lower lineage - upper lineage distinction (Sezgin, 2014: 1396). According to the constitution, blood kinship is determined by the number of births that connect relatives. There is descendant lineage among those who come from the other; there is descendant lineage among those who do not come from the other but come from the same root. As seen from this perspective, the parent, grandparents, and grandfather's father, for example, can be expressed as upper lineage, whereas the bond between their children can be expressed as lower lineage. The validity of the superior-subgeny relationship is more significant than its formality in this regard (Artuk, Gökçen, Alşahin, akr, 2018: 367). There is such a qualified condition in the crime of deliberate killing, and while it is often articulated as a qualified situation against the sibling, it is determined as a sibling state in the crime of depriving the individual of his or her rights. (Özbek, Kanbur, Bacaksız, Doğan, Tepe, 2014: 387).

The concept behind the resolve of this competent state can be articulated as being able to benefit from the comfort that comes with fulfilling family obligation and influencing the perpetrator (Gülşen, 2002: 113). Despite the fact that the adoption and child were formed in compliance with the requirements specified in the Turkish Civil Code, this competent state would not exist if the crime of depriving the person of his/her freedom happens against the adoption because the law specifically specifies the descendant lineage. (Gülşen, 2002: 114). 14th Criminal Chamber of the Court of Cassation of First Instance, dated 15.10.2015, numbered 2013/9181, and 2015/9386 has agreed to punish the person against the descendant for depriving him of his freedom in the case that the father captured the girl and brought her home and locked her in the bathroom.

If the perpetrator commits the act against the partner, the parties must be together as husband and wife at the time the action is carried out in order for the qualified situation to be extended. In the case of husband and wife, an official marriage should take place in compliance with our Turkish Civil Code and should not be disabled. This qualified condition, in this opinion, is not acceptable for those who are married as a result of religious marriage. (Artuk, Gökçen, Alşahin, Çakır, 2018: 367).

This major condition will arise if one of the partners limits the rights of the other. As is well known, the judge has the power to order a divorce between the parties. According to the applicable Turkish Civil Code 170/final rule, if the situation is linked to divorce, a separation decision will only be taken if the relationship can be rebuilt. The probability of developing a common life should be used to make a separation decision. According to the 171<sup>st</sup> clause of the Turkish Civil Code regarding the separation period (Sezgin, 2014: 1417), the separation period will vary from one to three years. This period begins with the completion of the divorce judgment. When deciding whether the qualified state will be applied when the couples make the decision to divorce, the decision to separate does not preclude the occurrence of the qualified state so there is no justification to terminate the marriage (Çakmut, 2013: 595).

It is difficult to extend the major state if a divorce case is filed between the parties or if the divorce decision is not finalized (Artuk, Gökçen, Alşahin, akr, 2018: 367). When a divorce action is filed, normally one of the parties leaves the house and does not live together. In this instance, where the man or woman who wishes to leave the house is stopped by the other and there is a lengthy and specific period of time, there is questioned if this felony can arise and there is a possibility of a major state. (Artuç, 2008: 853). 14th Criminal Chamber of the Court of Cassation dated 06.06.2018, case 2018/4774, numbered 2018/4263 decided that this qualified situation would occur if the wife who tried to escape from the house was kept in the house for two hours by tying her arms.

There should be a distinction made between the crime of deprivation of person against the spouse and the other offenses committed against the spouse. It is important to decide if the defendant behaved with the intent of suppressing his wife's freedom. The 14th Criminal Chamber of the Court of Cassation ruled in its decree dated 05.10.2015 and numbered 2013/9822 and 2015/8846 that in the act of beating the accused's spouse, the intention was injury and there was no deprivation of liberty.

Again, when discriminating between acts of restricting freedom and crimes of sexual assault or rape, it is important to recognize the manner in which the event happened as well as the force used in the perpetrator's actions. In its decrees dated 14.10.2014 and numbered 2014/6984 and 2014/11064, the 14th Criminal Chamber of the Supreme Court of Cassation claimed that there was no offence linked to deprivation of liberty in sexual harassment against the partner.

In its decree dated 21.01.2014, the 14th Criminal Chamber of the Court of Cassation made a related opinion, docket no. 2012/83 and decision no. 2014/584 it is stated that a crime of depriving an individual of his/her rights can be committed against the perpetrator's spouse by locking the perpetrator's spouse in the house; moreover, if the spouse may exit the house at any moment, the crime would not occur. Again, it is important to differentiate between the crime of ill-treatment identified in the Turkish Penal Code and this major case, and Criminal Chamber decisions dated 12.12.2013 and numbered 2011/22259 and 2013/13228 specified that the length and manner of the incident should be considered.

#### **As a result of the performance of a public officer's public duty,**

The major form of the crime is depriving a citizen of his or her rights as a result of the victim's public service. It is mentioned in Article 6 of the Turkish Penal Code who are public officials. As a result, he is an elected official who is indefinitely, temporarily, or temporarily engaged in the exercise of a public function by nomination, promotion, or some other means. In order for this article to be enforced, the act of depriving a public employee of his or her rights would result from the execution of this duty. Under this case, the victim must be a public employee, perform this task, and thereby be stripped of his or her liberty. (Yurtcan, 2012: 114). According to the 14th Criminal Chamber of the Court of Cassation, 2013/1813 E, 2014/12123 K, the motive that drove the suspect to commit this crime is the public employee's responsibility. However, there is no provision that the public employee be deprived of his or her freedom as a result of his or her obligation, and whether he or she is deprived of the freedom of a spouse as a result of this duty, the perpetrator may be penalized in accordance with this article (Koca ve Üzülmöz, 2017: 416). And what matters here is the perpetrator's motivation. The case of a relative's deprivation of rights occurs as a result of the public employee's duty-related work. It makes no

difference if the persons engaged in the execution of public duties are paid or receive other types of financial compensation, or whether they do this job temporarily, temporarily, or indefinitely. Experts, notaries, and attorneys practicing their careers, as well as military personnel, are examples of elected officers. This clause can be invoked only if a public official is stripped of his or her liberty as a result of performing his or her duties in compliance with the statute. (Meran, 2014: 138).

The word "public official" as described in Article 6 of the Turkish Penal Code is more general than "civil servant." A public official is someone that is interested in public transactions. According to Article 128 of the Republic of Turkey's Constitution, civil servants and all public officials, not just civil servants, perform the permanent and primary duties required by the public activities of the public official state's public economic enterprises and other public legal entities, which they are responsible for doing according to the general administrative rules. As can be observed, it is broader than the word civil servant, and the person who does not have the title of civil servant but is a specialist in the case files has the title of public servant and will be charged with depriving the person who will take action against the expert of his or her rights. If the victim was an elected officer at the time of the offence and is unable to exercise his or her duties owing to leave, dismissal, or retirement, the sentence may be exacerbated. For eg, if the child is abducted as a result of the retired judge's ruling, an aggravating clause will be enforced. (Parlar ve Hatipoğlu, 2010: 904).

If the offence has arisen as a result of the public official's wrongdoing, the eligible situation will not be extended. This can lead to unfair provocation. (Tezcan, Erdem, Önok, 2017: 499). That the competent status in this article will be extended if the public official is stripped of his or her rights in compliance with the legislation when doing his or her public service.

#### **By Misusing The Influence Derived from Public Office**

In paragraph d of Article 109, which defines the crime of depriving a citizen of his or her rights, it is decided that the crime is committed by violating the power offered by public service. The term control can be expressed in two ways: affecting and influencing. (Yılmaz, Ejder, 2017: 574). In fact, the Turkish Penal Code makes no distinction between any individual or entity in the crime of depriving a person of his or her rights. However, the misuse of power given by the public employee and the responsibility has been decided as a competent state in this qualified state. (Tezcan, Erdem, Önok, 2017: 411). In this case, we can consider the eligible condition mentioned in Article 109 of the Turkish Penal Code among the crimes that can only be perpetrated by those people, including public servants, such as neglect of duty, embezzlement, and extortion. In other words, this qualified state is a one-of-a-kind qualified state that state employees can achieve.

In terms of charging and investigating authorities, the Criminal Procedure Law (CMK), the Police Duty and Compliance Law (PVSK), and other laws granted law enforcement power, attorneys' detention authority, and judges' arrest authority. Capture, imprisonment, and arrest have all been decided within the framework of security measures in CMK, and the terms under which they will be issued are explicitly specified in the statute. These precautions can be defined as depriving the individual of his or her rights. In order for this to occur, the person's rights must be limited in an unconstitutional manner, and the criminal must have the desire and motivation to commit a crime. Within the scope of these statements, if the act of arrest is unlawful, for example, if the perpetrator has been arrested despite the prohibition of arrest and the perpetrator has been arrested with the idea that it is unlawful and intentional, if the defendant has been arrested as a lesson or due to a disagreement between them, it will be possible to deprive the person of his/her freedom by using the influence provided by the public duty. (Özbek, Kanbur, Bacaksız, Doğan, Tepe, 2014: 386). The action must be carried out by a public official in order for this competent state to find an area of use. For eg, a person who falsely portrays himself/herself as a public official will not be entitled if the victim trusts in this and eventually the defendant restricts the victim's freedom in this manner, but will be obligated to rob the person of his/her freedom through deceit due to the fraudulent occurrence of the behaviour. (Tezcan, Erdem, Önok, 2017: 411).

When all factors are considered, those with the power to limit rights can be criminals in the implementation of this competent state. That it would not be sufficient for the purpose of regulating that those that do not have these rights may not have as much control as those who have jurisdiction over the victim, that the purpose of including the qualified state in the statute is to manipulate the victim, that the offense is simple to commit, and that those who do not have authority will execute this qualified state. Of course, where someone who do not have the right to limit rights deny the citizen of his or her freedom, other eligible cases should be determined depending on how the case happens. According to the 14th Criminal Chamber of the Court of Cassation's decrees dated 21.03.2013 and numbered 2013/259 and 2013/3060, there is no need for trial and investigation permits since the crime of depriving a citizen of his rights is a personal crime rather than a duty crime. As a consequence, while we state that this competent state would be considered a particular crime, it does not translate the crime of depriving a person of his or her rights into a duty crime in the same manner as specific crimes do.

Furthermore, misuse of power given by public service and abuse of office are separate acts, and two separate offences will be committed if a public official commits the act of depriving a person of his or her rights pursuant to public authority. In this case, if an action involves multiple offences mentioned in the Turkish Penal Code,

the most severe penalty will be imposed, and the perpetrator will be punished for depriving himself/herself of freedom by abusing the power provided by public service. Furthermore, Article 109/3-d of the Turkish Penal Code is a more specialized law than Article 257 of the Turkish Penal Code which will be enforced sooner. If people detained by the police after a mass rally or agitation are not left waiting for an extended period of time and no arrest warrant is given for them, we will discuss the incidence of this eligible scenario involving those kept under supervision on the bus. (Özbek, Kanbur, Bacaksız, Doğan, Tepe, 2014: 387).

#### **Against A Child or A Person Who Cannot Defend Himself Physically or Mentally**

If the crime of deprivation of liberty is committed against a citizen or child who is unable to protect himself mentally or physically, the punishment is raised in compliance with paragraph f of Article 109 of the Turkish Penal Code. The acts listed herein are called eligible states because they help in the realization of the offense.

The victim's inability to protect himself or herself means that he or she is unable to prevent the crime due to factors such as mental instability, mental impairment, chronic illness, or disability. It is not necessary for the survivor to be in a position where he or she is unable to protect himself or herself, and it is appropriate for this condition to arise during the act. There is no justification for the attacker to place the victim in this situation. For instance, if the victim is intoxicated and unable to protect himself/herself, this eligible condition should be used. (Tezcan, Erdem, Önok, 2017: 498). Again, if the offense happens when the victim is bedridden due to a serious illness, a major situation may be qualified.

Expert assessment during the trial will decide if the victim is mentally and physically incapable of defending himself/herself. For example, anyone with a severed leg and arm cannot protect against the verb, and anyone whose recently operated sutures have not yet been removed cannot challenge it. In the case of serious heart failure and mental retardation, it can be expected that the victim would be unable to oppose, and the court can perform specialist analysis to assess these. And if the suspect is unaware of this, it is important to accept that he or she behaves with probable motive if he or she acts despite the lack of a circumstance to be concerned (Meran, 2014: 165). In this case, the errors mentioned in Turkish Penal Code Article 30/1 are used. As a result, the punishment for the attacker who acts unintentionally without understanding that the victim is unable to protect himself will not be increased.

The execution of an act against a child is a qualified case, and according to Turkish Penal Code section 6/1-b, a child is a person who has not yet reached the age of 18. Whether the victim is older than the suspect, even if the victim has not reached the age of 18, a qualified situation may be enforced. It is not sufficient to state definitively that the competent state would be enforced in this offense because the justification for the penalty of the action against the child is that the child is in an unprotected position, is more affected by the act, and there is ease in the movement against the child. However, others argue that this justification should not extend to the offense committed by a child, but that this competent state must be extended due to a definite statement in the Turkish Penal Code. (Tezcan, Erdem, Önok, 2017: 498).

Aging is a personal cause that removes or decreases defects. To be applied, a certain age restriction has been imposed for the child who is the victim of the offense. As a result, it has been decided in Article 31 of the Turkish Penal Code No. 5237 that children who have not completed the age of 12 and children between the ages of 12-15 who do not have the ability to defect are not penalized, while children between the ages of 12-15 and children between the ages of 15-18 who have the ability to defect are penalized. In this case, being underage is seen as a justification that decreases the penalty requirement. (Aslan, 2012: 32).

The boy should be treated in compliance with the crime of depriving a citizen of his or her rights, and the perpetrator's descendants should be treated in accordance with Turkish Penal Code Article 109/3 - (e). Since the child is the perpetrator's descendant, he is not a stranger, contrary to the perpetrator. (Koca ve Üzülmöz, 2017: 417).

The detention of a child leaving the house without telling his/her family or the competent authorities is described as a separate crime article in paragraph 3 of Article 234 of the Turkish Penal Code. There is a risk that this form of felony may be confused with the act of violation of liberty. Anyone under the age of eighteen is considered a minor in the sense of the Turkish Penal Code. It is in the best interests of the child for the guardian, legal officer, or parents to have the authority to forbid the child from being in a certain position and from leaving a place against his or her will. If a child leaves the house against his or her own interests, Article 234/3 of the Turkish Penal Code defines it as a felony if he or she is exposed to greater dangers due to his or her inexperience. Keeping a child in such a house without telling his or her relatives or competent authority is punishable by imprisonment in the event of a lawsuit. In this situation, the event of liberty deprivation due to the infant leaving the house would result in the execution of intellectual property law papers. According to the 44 rules of the Turkish Penal Code, the imprisonment for violation of liberty would be multiplied with further fines. Thus, the truth of the child's need to leave the home, the presence of force, threats or deception will all be explored (Karagülmez, 2010: 75). If the permission is accepted, the person who detains the child without telling the appropriate authority or his or her family will face consequences. First and foremost, the person involved must be able to agree in order for the act to be carried out in compliance with the legislation. Those with the authority to contest the consent declaration are competent. Anyone with the right to consent should consider the



scope, value, and sense of waiving a right. If the law expresses the victim's age in terms of his or her driver's license, it is no longer accepted, even if these minors have a driver's license. In the offence of violation of rights, no age decision has been made for approval in terms of driving license. As a result, if the nature of the freely saved and freely expressed consent by the competent individual is established, and if the child leaving the house in compliance with this consent is held in a position without telling the appropriate authority or the family, in the presence of the complaint, it would constitute a crime under Article 234 of the Turkish Penal Code. If it is concluded that there is no consent, the qualified form of deprivation of freedom should be applied. (Akdüzen, 2018).

As stated in the Supreme Court of Cassation decree 14.CD, 2017/8150 E, 2017/6640 C; the fact that the crime of depriving the person of his/her freedom occurs against the child is more general than the crime in Article 234 paragraph 3 of the Turkish Penal Code. In the event that the occurrence of both crimes is evaluated together, the intellectual property enforcement articles in Article 44 of the Turkish Penal Code shall be taken into consideration. Anyone who imposes a heavier criminal sentence will have to be deprived of his liberty.

### **AsSexual Crime**

When the victim commits a felony for sexual intent, the perpetrator is assigned a different status. In this case, a competent state has been established in accordance with the perpetrator's intent. Being stripped of his/her rights due to a need for sexual fulfilment is a qualified condition in and of itself. Other qualifying cases may have been processed concurrently with this eligible condition. Force, threats or deception, as specified in paragraph 1 of Article 109 of the Turkish Penal Code, may have been used or occurred during the commission of the crime for sexual purposes in the cases mentioned in the jokes. In this case, after determining the penalty in compliance with the preceding paragraphs, the penalty to be applied for Paragraph 5 shall be raised by half. (Yurtcan, 2012: 118).

Marriage or abducting and detaining an individual for sexual reasons deprives the person of the freedom to go somewhere. The attacker is acting for a sexual intent in order to satisfy his/her sexual desire when executing the action (Çakmut, 2013: 598). In this situation, it is necessary for the perpetrator to act purely for sexual purposes; the aim does not need to be realized (Tezcan, Erdem, Önok, 2017: 501). If the offense must be committed with specific intent and the special intent is not decided or committed for the purpose of retaliation, the sentence shall not be increased in compliance with this paragraph. For eg, if a woman is arrested because she owes money, it is clear that there is no sexual motive. This eligible state should be decided depending on the circumstances of each situation. (Meran, 2014: 168). If the victim is abducted for the purpose of marriage, there will be a penal increase in the marriage since it is sexual. Criminal Chamber, 9.7.2014, 2012/13315, 2014/9362. However, there are those who claim that where there is proof that the purpose of marriage does not always fulfil the sexual purpose specified in Article 109/5 of the Turkish Penal Code and that one of the crimes against sexual immunity exists, this competent state would be extended. (Tezcan, Erdem, Önok, 2017: 501).

If the perpetrator's time to limit the victim's freedom is equal to the time of sexual intent action, the crime in Article 109 of the Turkish Penal Code will not occur; if the freedom is limited before or after this date, the crime in Article 109 of the Turkish Penal Code will occur, and this period will be decided by the court. (Yaşar, Gökcan, Artuç, 2014: 3629). According to the 5th Criminal Chamber of the Court of Cassation, 20.5.2008, 11696/4617; where the victim is taken to a position where the offence occurs and sexual intent is met in this place, the enforcement of Article 102 of the Turkish Penal Code and Article 109/5 of the Turkish Penal Code is specified in accordance with actual implementations.

There is no classification of the victim's nature or status in the crime of depriving the victim of rights for sexual purposes. However, Article 31 of the Turkish Penal Code makes a distinction depending on the perpetrator's status. The damage done to the individual and society is undeniably greater in sexual offences against minors. The key priorities of this type of crime are the regulation of crime and penalties, as well as the maintenance of justice. The penalty for an offense against a minor victim should be raised in proportion to the gravity of the incident. As a result, it is necessary to enforce penalties progressively in crimes involving underage victims committed for sexual reasons.

Regarding the charge of violation of sexual liberty for a minor victim, provided the classification of the provision, statutory penalties against minors aged 0 to 12 should be more severe. It is possible to make a simple punishment determination based on the general punishment rates of TCK 109 in violence against victims aged 0-12. (Akdüzen, 2018).

### **Due to The Consequence of Aggravated State**

Injuries that may arise to the victim during the commission of the crime or for the reason of committing the crime have been designated as a separate crime in the law code. It is therefore determined that the crime of deliberate damage happens where the victim is injured in the crime of violation of rights. One of the effects mentioned in Article 87 of the Turkish Penal Code should be caused in order to note the victim's aggravated injury. (Toroslu, 2018: 93). Y.6.CD, 2014/2813 E, 2017/814 K. And Y.14.CD, 2016/11621 E, 2017/2485 K. in its decisions, it did not include the aggravated injury crime within the scope of force. (Hafizoğulları ve Özen, 2016: 193).

If the offence is committed before or for the purpose of committing the offense, whether it is a straightforward type of intentional injury crime aimed against the victim, no additional punishment for intentional injury crime shall be applied. To be considered as current, intentional accident offense must be one of the competent states of the injury act. In the case of simple harm, it can be regarded as evidence that the act of algebra was done in relation to the act of liberty deprivation. The punishment imposed on the perpetrator of a forceful crime for actions directed towards a victim who is wounded by simple accident will be raised. However, there would be no consideration of deliberate injuries (Akdüzen, 2018).

If the use of force in the commission of the offence constitutes the injury crime as defined in Article 86 of the Turkish Penal Code, the criminal will be convicted for a single crime because it is a material feature linked to the eligible form of the crime of using force and deprivation of freedom as defined in Article 42 of the Turkish Penal Code as a compound crime. Since there is a compound offence in Turkish Penal Code Article 42 (Gündel, 2009: 2611). If a person's condition worsens as a result of the injury specified in Article 87 of the Turkish Penal Code while being detained or deprived of liberty, both the injury in Article 87 and the deprivation of liberty in Article 109 will be treated separately. First and foremost, the judge can sentence aggravated cases by taking into account the manner and effects of deprivation of liberty, and where there are aggravated cases as a result of the result decided in Article 87 of the Turkish Penal Code in the second level, 87. shall decide the punishment acceptable to the circumstances in the article and finally incorporate all penalties.

In case of occurrence of one of the situations stated above in Article 87 of the Turkish Penal Code, in which aggravated cases are determined due to the result of intentional injury during the crime of deprivation of liberty, in addition to the article related to deprivation of liberty in accordance with Article 109/6 of the Turkish Penal Code, the perpetrator shall be punished in accordance with Article 87 of the Turkish Penal Code. Article 23 of the Turkish Penal Code should also be considered in order for the defendant to be held responsible for the exacerbated form as a result of malicious damage. (Koca ve Üzülmmez, 2017: 422).

If it is decided that the act of aggravated injury happened as a result of depriving the victim of his/her rights, the existence of the perpetrator's will for the occurrence of this offense should then be determined, once the determination on the current crime has been created. Article 109/6 of the Turkish Penal Code shall not be enforced where there are no aggravated cases as a result of the result specified in Article 87 of the Turkish Penal Code. (Yurtcan, 2012: 121).

#### **Causing a Significant Economic Loss to the Victim**

In the fourth paragraph of Article 109 of the Turkish Penal Code, a judicial fine of up to one thousand days can be imposed if the offence causes significant financial harm to the victim.

There should be no justification for the perpetrator to request this outcome, and he or she should be irresponsible in light of the serious repercussions. (Artuk, Gökçen, Alşahin, Çakır, 2018: 372). In reality, since there is no outcome as a founding factor in the offense, but rather a result used as an aggravating factor in the penalty, the perpetrator's motive is not pursued in terms of desiring the result, and his incompetence is deemed adequate for the major state. (Toroşlu, 2018: 92).

Since this major condition is perceived to be aggravated as a consequence of some records, it should be assessed within the context of aggravated state as a result. According to Article 23 of the Turkish Penal Code, if an act results in a more extreme or other outcome than expected, the individual must at the very least act negligently in terms of this result in order to be held accountable. Based on this report, and it is supposed to behave at least recklessly, substantial financial risk should be predictable. (Tezcan, Erdem, Önok, 2017: 412).

To find an area of use for the competent state, the victim's harm to deprive the citizen of his/her freedom must be serious. In the other hand, there should be a causal relationship between the harm incurred by depriving the individual of his/her freedom and the perpetrator's act (Tezcan, Erdem, nok, 2017: 412). The court will recognize this when considering the victim's circumstances in the specific situation. For eg, if the victim's mobility is limited, he could miss a crucial job interview. (Özbek, Kanbur, Bacaksız, Doğan, Tepe, 2014: 388). The value of harm to each survivor under his or her own circumstances can vary.

The perpetrator's motive is crucial for the qualified state's execution. However, if the defendant intends to commit a more serious offense, actual jurisprudence will be extended to distinguish between the form of crime to which the motive is directed and offences of violation of liberty, which will be punished separately. (Tezcan, Erdem, Önok, 2017: 412). Financial damages that have no economic importance or are not very significant despite having a financial value that we would see as valuable for the victim cannot be measured within the context of eligible status. For eg, if a mother knows about the victim's limitation of independence and has a heart attack and dies, a competent state cannot be enforced so we cannot address economic worth. (Artuç, 2008: 854).

#### **Conclusion**

The form of crime of depriving a citizen as specified in Article 109 of the Turkish Penal Code No. 5237, as well as the right of persons to behave freely, have been maintained. In order for this offense to exist, it would be assumed that the suspect initiated the disciplinary acts, rather than the victim's will. Individuals' freedom to act

of their own free will is one of the most basic rights, and this article protects and punishes the restriction and destruction of this freedom by actions that are not in compliance with the law. The crime of depriving a person of his rights is a direct attack on the concept of the crime that happens by behaving against the person's will. Its aim is to protect freedom, which is one of the basic human rights. Anyone may be the suspect of this case. However, the fact that this offense is committed by abusing the power of public service distinguishes it as a distinct crime. Crime may be committed by denying the victim the freedom to go anywhere or by denying the victim the freedom to stay somewhere. The form of offense is discretionary in this regard.

Depriving a person of his or her freedom is a crime that may be done deliberately, and the general motive is necessary for the crime to occur. Special motivations are pursued if the crime is committed for sexual reasons. The Supreme Court agrees that the crime of depriving a person of his or her rights for personal reasons would arise if a person is abducted or captured for the intent of marriage. The aggravated condition is deemed as a consequence of the substantial economic harm sustained by the victim as a result of the crime of depriving the individual of his/her rights. In this context, it is known that the economic damage should be substantial under the provisions of Turkish Penal Code 109/4, even though this is not specified or defined. Given that it is intended to protect a person's free will, it is understood that the victim's economic loss is significant. It will be necessary to assess the economic importance of the loss by considering the victim's economically important damage as a result of the crime, the buying value of the money at the time of the crime, the victim's socioeconomic status, and the expenditure invested on his/her livelihood. The clause of 109/4 of the Turkish Penal Code indicates that the economic component of voluntary crime is taken into account by attributing economic harm to a different sanction. As a consequence, in the form of offense subject to penalty, the victim's loss of rights is measured alongside the victim's economic harm ratio. Two forms of sanctions are used to secure victim freedom and economic harm. As a result, it is inferred that Article 109 of the Turkish Penal Code is a form of crime appropriate for the time that requires the determination of total deprivation of liberty.

Article 109 of the Turkish Penal Code ensures that the kinds of actions that deny freedom are described collectively. Verb committed the act of violation of liberty. The defendant performs the offense by behaving in a manner that restricts the victim's ability to stay or go anywhere. Section 109/3 of the Turkish Penal Code includes major cases of the offense. The determination of such major cases within the framework of Turkish Penal Code Article 109 guarantees that the offense is seen as a whole.

There is no clarification whether the victim is a child of the crime determined in a major manner. The age and qualification of the child are specifically specified in the legal regulation. According to Turkish Penal Code Article 6/b, a child is described as a person under the age of 18. Since the qualification or age of the child is not measured in Turkish Penal Code Article 109, it should be determined that the expression of the child as a victim excludes those under the age of eighteen. However, the description of the victim's age was recognized in Article 31 of the Turkish Penal Code. It is not possible to attribute this definition to the survivor due to the restrictions of comparison. According to Turkish Penal Code section 109/3-f, a victim under the age of 18 is considered an appropriate principle for the declaration of eligible status. Is it appropriate to recognize the victim as a minor because he or she is under the age of 18 but has the capacity to distinguish? Would it be reasonable to recognize the victim as a child and apply competent status only for this purpose, that is, as a child, if there is no weakness in the event of the crime and the child is at the level of consciousness where he/she can partly defend himself/herself? Given the legal framework, it is important to interpret the child definition and consent in conjunction. In the event of a felony, the fact that a person under the age of 18 who is not consenting of his or her own free will is a victim is sufficient for him or her to apply the competent form of the crime.

The incidence of sexually motivated crime has been described as a distinctive feature. The public's sense of crime-related explosion would undoubtedly increase if a crime with sexual intent happens. As a result, it is reasonable for an offense committed for sexual reasons to be sanctioned with a higher punishment as a competent society. However, it would be more fitting to include the victim's age as a sanction of a criminal offense.

The act of deprivation of liberty is a violation of a person's basic human rights. Given the importance of the individual in social life and the fact that social institutions want the person's survival and growth, the crime of depriving the person of his or her rights becomes even more serious. This form of crime attempts to defend a person's civil right, which is one of the most essential facets of social tissue. As a consequence, a clause prohibiting the use of legitimate grounds that would result in a decrease in the punishment of the offense, such as reasons for unreasonable provocation and discretionary reduction in the crime of deprivation of liberty, may be identified.

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