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Research Article

Student Disciplinary Investigations in Higher Education Institutions in the Light of Judicial Decisions

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Abstract **–** The purpose of disciplinary penalties in higher education institutions is to ensure peace, tranquility and discipline within the higher education institution, to prevent acts and behaviors that are incompatible with educational and educational activities and prevent the healthy conduct of educational and educational activities. It is observed that when disciplinary investigations conducted in higher education institutions are transferred to administrative jurisdiction, they are usually canceled because they are faulty in terms of procedure. In the audit conducted by the Court of Accounts at a university; when the case files and results transferred to administrative jurisdiction from the investigations conducted against academic and administrative personnel and students alleged to have committed illegal acts within the university were examined, it was found that 17 out of 21 case files resulted in cancellation against the administration. It has been seen that 16 of the cases that resulted against the administration were caused by non-compliance with the investigation procedures. Therefore, in higher education institutions; due to non-compliance with the procedural provisions, cases are lost, trial expenses and proxy fees are paid, the student who should be penalized as a result of cancellation does not receive a penalty, trust in the law is damaged, and the reputation of the institution is weakened. In this study, the issues that investigators should pay attention to when taking statements and defense, sub-punishment and repetition application, time out, application of court decisions, preparation of an investigation report, notification, issuing a punishment by a disciplinary supervisor or disciplinary board, objection, analysis of court decisions made related to investigations were conducted.

Keywords – Student Disciplinary Investigation, Disciplinary Law, Disciplinary Penalties, Procedure For Disciplinary Penalties, Judicial Supervision.

I. INTRODUCTION

There are a number of rules that students must follow in educational institutions and schools, and students who do not comply with these rules may face disciplinary penalties and sanctions. One of the main purposes of disciplinary punishment for illegal behavior is the deterrence effect of punishments. Knowing that compliance with the rules will be subject to a sanction prevents such behavior. Discipline; Punishment of wrong behaviors, self-control of a person, preventing the occurrence of the same type of behavior in the future, are mandatory rules to be followed in order to maintain order. The purpose of disciplinary penalties is to ensure peace, tranquility and discipline within the higher education institution, to prevent acts and

behaviours that are incompatible with educational and educational activities and prevent the healthy conduct of educational and educational activities.

The regulations regarding the disciplinary penalties to be given to students are stipulated in the Student Discipline Regulations of Higher Education Institutions and the disciplinary regulations prepared by the relevant higher education institution. Accordingly, it will be possible to apply for various legal remedies against disciplinary penalties imposed in such a way as to constitute a violation of the provisions of the relevant legislation. Disciplinary punishment should be in accordance with the law in terms of subject, reason, purpose, authority and form, and the authorities conducting the disciplinary investigation should impose a penalty consistent with the nature of the incident when determining the penalty. Otherwise, it is indisputable that excessive or completely unjustified sentences will be unlawful, and it is possible to cancel them through an appeal or cancellation case.

II. THE PUNISHMENT IS GIVEN BY THE DISCIPLINARY SUPERVISOR

Warning, reprimand and suspension penalties from higher education institutions from one week to one month are imposed by the dean of faculties, the director of institutes, conservatories, colleges or vocational schools. The penalties of suspension from the higher education institution for one or two semesters and expulsion from the higher education institution are given by the competent disciplinary board. In the investigations carried out by faculties, institutes, conservatories, colleges and vocational schools, the boards of directors of these units perform the duties of the disciplinary committee. The disciplinary supervisor is free to accept or reject the punishment proposed in the investigation report; he may also impose another disciplinary penalty, if he shows his reasons. The disciplinary supervisor must decide on the penalties of warning, reprimand, suspension from the higher education institution from one week to one month, no later than ten days from the day of completion of the investigation. When looking at the cases that have been transferred to administrative jurisdiction related to the delivery of the punishment by the disciplinary supervisor, the decisions made by the courts in this regard are as follows:

“Supervisors and boards authorized to impose disciplinary penalties should first make an assessment on whether the persons concerned should be punished with a lower penalty according to their past services and registration status and impose penalties according to the result of this assessment” [1].

“In the regulation, warning, reprimand and suspension penalties to be given to students from one week to one month should be given by the dean of the faculty who is the authorized disciplinary supervisor, but it is understood that this penalty is given by the decision of the disciplinary board, compliance with the law in terms of the element of authority in the case, otherwise the court decision did not hit the law” [2].

“The principle of finding a fair balance between the disciplinary punishment that is appreciated, and the action of the concerned person is one of the basic principles of disciplinary law. While establishing this balance, it is necessary to take into account such issues as the manner of occurrence of the incident, whether the person concerned has a criminal intent, the impact of non-voluntary factors on the occurrence of the action…” [3].

III. VOTING AND DECISION

The disciplinary board authorized to impose disciplinary penalties considers the gravity of the actions constituting a disciplinary offense when issuing one of these penalties, whether the student under investigation has previously received a disciplinary penalty, behaviour, attitude and actions, whether he feels remorse due to the act he committed and the act he committed. The disciplinary committee is free to accept or reject the punishment recommended in the investigation report. Another disciplinary penalty may also be imposed, if they show their reasons. Decisions in disciplinary committees are taken with most of the participants in the meeting. In case of equality of votes, a majority is provided in the direction of the vote used by the president. In disciplinary committees, each member is responsible for giving the game by acceptance or rejection. No abstention vote shall be taken. If the investigator is a member of the disciplinary

committee, he cannot attend its meetings. Supervisors authorized to impose disciplinary penalties must decide on warning, reprimand, suspension from a higher education institution for one week to one month no later than ten days from the day of completion of the investigation. In cases requiring the imposition of other disciplinary penalties, the file is immediately transferred to the disciplinary board. The disciplinary committee must decide no later than ten days from the date of receipt of the file. When looking at the cases that have been transferred to administrative jurisdiction related to the delivery of the punishment by the disciplinary supervisor, the decisions made by the courts in this regard are as follows:

"Supervisors and boards authorized to impose disciplinary penalties should first make an assessment on whether the persons concerned should be punished with a lower penalty according to their past services and registration status and impose penalties according to the result of this assessment" [4].

"Of the disciplinary board ... who are the members of the investigation commission to the dated meeting... and ... attended, there are signatures on the minutes of the disciplinary board meeting, although it is stated that the faculty members mentioned in the said minutes did not participate in the voting, they should not participate not only in the voting, but also in the meeting, since it is understood that the disciplinary board was formed in violation of the procedure, there is no compliance with the law in the case" [5].

IV. MORE THAN ONE PUNISHMENT FOR A CRIME

A disciplinary investigation cannot be opened a second time about an act or state that has previously been the subject of a disciplinary investigation and concluded with a disciplinary decision, and disciplinary action cannot be taken. "More than one disciplinary penalty cannot be imposed for the same act. It is appreciated that if the suspect's action requires multiple disciplinary actions, which require the most severe punishment" [6]. In case a single investigation is opened due to different verbs, each verb is evaluated separately.

V. THE STATUTE OF LIMITATIONS

The authority to take disciplinary action in an investigation expires in two ways: 1. Even though the incident was learned by the disciplinary supervisor, the investigation was not started by approving the investigation within a month or three months. 2. Failure to take disciplinary action no later than two years from the date of the commission of the crime. "If the 1-month and 3-month investigation initiation time-out periods stipulated in the disciplinary legislation and the 2-year punishment time-out periods are passed, disciplinary punishment cannot be imposed on the person concerned, these periods are degrading periods, and punishment after these periods are passed would constitute illegality, while other time provisions stipulated in the legislation on the duration of disciplinary actions are periods regulating the internal functioning of the administration, and the fact that these periods have been passed will not cripple disciplinary punishment" [7]. "Since the investigation should have been started within one month from 22.03.2018 (until 22.04.2018), the authority to take disciplinary action has expired due to the fact that it has not been started" [8].

VI. NOTIFICATION

The notification procedure in the investigation is the 27th part of the regulation entitled "Notification and Address Notification". it is done in the ways specified in the article. All kinds of notifications;

1. Hand-delivered in exchange for a signature

2. In writing by registered mail with a refund to the address notified by the student to the higher education institution,

3. By making a notification in the apartment by invitation,

4. By giving an electronic address suitable for notification and sending it electronically to the person who requests notification to be made to this address,

5. In cases where notification is not possible by these means, the notification decision is deemed to have been made by being announced at the relevant higher education institution.

Students who have changed the address they notified when registering at a higher education institution but have not registered it to the institutions they are a member of, or have given an incorrect or incomplete address, are considered to have been notified if notification has been made to their current address at a higher education institution. When looking at the cases that have been transferred to administrative jurisdiction related to the delivery of the punishment by the disciplinary supervisor, the decisions made by the courts in this regard are as follows:

"In the defense request letter notified to the plaintiff by the chairman of the investigation commission, the right to oral defense is not granted, specifying the day, date and time, the plaintiff requests images in writing if he has evidence during the investigation to prepare his defense, but this request is rejected in writing, the information and documents contained in the investigation file should be provided to the plaintiff to enable him to defend himself properly, while the rejection of his request restricts the right to defense" [9]. "The statement taken during the investigation cannot be considered as a defense, and also the documents taken with names similar to "defense statement minutes" and the contents of which are determined by the investigator cannot be considered as a defense" [10].

VII. RECURRENCE OF DISCIPLINARY OFFENSE

It is an article added to the regulation in order to prevent the repetition of the crime requiring the same disciplinary penalty. A degree of severe punishment is applied in the repetition of an action that has caused disciplinary action to be taken. In case of a recurrence of a disciplinary offense, a penalty of expulsion from a higher education institution cannot be imposed. Repeated application is not subject to discretion but is mandatory. In order for a degree of severe punishment to be given due to repetition; the punishment given must be finalized and the same crime must have been committed a second time.

If a student who has received a degree of severe jazz from the repetition of a crime and whose sentence has been finalized commits the same crime later, how is the repetition sentence applied?

For example, a student was warned on 11.03.2024 for tearing up a poster belonging to the dean's office, and on 13.05.2024 he received a disciplinary penalty of reprimand for repeating the crime because he committed a crime on the moon. students who commit the crime of tearing up the poster belonging to the dean's office once or more times on 14.09.2024 will be given a reprimand penalty each time according to the law. The reason for this is that a higher penalty cannot be given during the repetition of the repetition in

How is repetition applied in reduced penalties in case of committing crimes defined in different articles of the Regulation? For example, whether a student received a warning sentence for the verb "tearing up a hanging announcement" on 11.03.2024, received a reprimand for the verb "attempting to copy during exams" on 13.05.2024, and was suspended for one week to one month for the verb "engaging in verbal or written actions that damage the honor and dignity of persons" on 13.09.2024. A repeat crime occurs if the same crime is committed a second time. In the example question, no crime was repeated a second time. In this regard, a degree of severe punishment cannot be given by making a repeat evaluation for three crimes.

In the event that the punishment appears in the form of a lower penalty by the disciplinary supervisor or the disciplinary board, that is, a penalty reduction is applied and a repetition of a penalty previously

received, the principles of repetition are not applied. The decisions made by the Council of State are also in this direction.

a) A higher penalty can be given in case of more than one repetition, and a higher penalty cannot be given in each repetition of the act [11].

b) The concerned person who has not re-committed the crime for which he has received disciplinary punishment before and who has been found to have committed another disciplinary offense cannot be given a higher penalty by applying the repetition provision [12].

c) Even if the disciplinary penalties imposed due to the said acts and situations have been forgiven, the provisions of repetition should be applied to the concerned person [13].

d) When a degree of severe punishment is given due to repetition, a degree of severe punishment can be given, whichever punishment the nature of the crime committed requires, or a penalty higher than the previous penalty cannot be given every time a crime is committed [14].

VIII.IMPLEMENTATION OF COURT DECISIONS

138 of the Constitution. the last paragraph of the article: The legislative and executive organs and the administration may not change the decisions of the court in any way and may not delay their implementation. article 28/1 of the Administrative Trial Procedure Code numbered 2577: According to the decisions of the Council of State, Regional Administrative Courts, Administrative and Tax Courts on the merits and suspension of execution, the administration is obliged to establish proceedings or take action without delay. This period may not exceed thirty (30) days starting from the notification of the decision to the administration in any way. article 28/3 of the Administrative Trial Procedure Law No. 2577: In cases where no action is established or no action is taken according to the decisions of the Council of State, regional administrative courts, administrative and tax courts, a claim for material and moral compensation may be filed against the administration by the Council of State and the relevant administrative court. According to the Turkish Penal Code, the act of not fulfilling the court decision constitutes a crime of abuse of office [15]. The administration has no other option but to apply a judicial decision that is applicable according to material and legal conditions ‘in kind’ and ‘without delay’. 2 of the Constitution. as a natural consequence of the ‘Rule of Law’ principle contained in the article, it is obligatory for the administration to apply the court decision not as a form, but with all its consequences [16].

Do the court decisions affect the disciplinary decisions made?

If the disciplinary offense laid upon him is also a criminal offense according to the criminal code, and he was acquitted at the end of the criminal trial on the grounds that the elements of the crime did not occur or it was determined that the crime was not committed by that person, the binding nature of this acquittal decision in imposing disciplinary punishment is indisputable. However, an acquittal decision made due to lack of evidence is not binding in an absolute sense on the issue of disciplinary punishment. From the point of view of Caza law, the acquittal decision given due to lack of evidence does not constitute full exoneration. For this reason, in the face of the acquittal of the plaintiff due to lack of evidence, the incident should be examined with the evidence collected during the disciplinary investigation and witness statements (Council of State 10. Apartment Decision). The regulation is entitled “Conducting a Criminal Prosecution and a Disciplinary Investigation in Conjunction with Beer” 17. in the article "The fact that criminal prosecution has been initiated against the student due to the same incident does not delay the disciplinary investigation. The fact that a criminal prosecution has been opened against the student, whether he has been convicted or not according to the law, does not constitute an obstacle to the imposition of disciplinary action.” the judgment is contained. According to the decision of the Council of State; sentencing or finding not guilty by a court to a student who has been investigated for the same incident affects the decisions made by the disciplinary supervisor or the disciplinary board. If the Criminal Court makes an acquittal decision on the grounds that the act was not committed by the suspect, this decision binds the disciplinary authorities. In this case, a penalty cannot

be imposed on the suspect due to the committed act. If the Criminal Court makes an acquittal decision due to lack of evidence or on the grounds that a crime written in the Law has not been committed, this decision does not bind the disciplinary supervisor and disciplinary boards. Disciplinary authorities may punish the student due to the committed act. If the Criminal Court also decides that the act considered a disciplinary offense was committed by the suspect, this decision binds the disciplinary authorities. In this case, the disciplinary supervisor or disciplinary boards cannot decide that the crime was not committed by the suspect.

IX. CONCLUSIONS AND RECOMMENDATIONS

In order for a disciplinary penalty, which is an administrative sanction, to be imposed, the act on which the punishment is based must be proved in such a way that there is no room for doubt. In order to make this statement, there must be a disciplinary investigation report prepared as a result of the investigation, which will be conducted impartially and in accordance with the procedure. Disciplinary supervisors and disciplinary boards will only be able to determine whether the act based on disciplinary punishment was committed by a person by evaluating an investigation report and determining the punishment based on this report [17]. Whether the suspect student has been punished before or not, the reward status is officially requested by the investigator from the Student Affairs Department. The received official text is added to the file. A sub-penalty is recommended for the student who has not received a penalty before. The investigator states in his report the reason for not recommending a reduction in the penalty. The fact that the student has not received a penalty before should be taken into account in the determination of the penalty and punished with a penalty that is a sub-penalty of the penalty that is the equivalent of the action [18]. While the preparation of the investigation report, including the investigator's opinion proposal about the investigated person, and the investigation report, in which the incident was revealed with all its reality, should be made a decision about the plaintiff by examining it, there is no legal hit in the disciplinary punishment imposed by taking witness statements and oral defense only at the Supreme Disciplinary Board [19].

If 2 years have passed since the date of commission of the acts requiring disciplinary punishment, disciplinary punishment cannot be given. However, in the acts within the scope of the provision ‘To establish an organization for the purpose of committing a crime, to manage such an organization or to become a member of an organization established for this purpose, provided that it has been finalized by a court decision’; the statute of limitations begins from the day on which the judicial judgment becomes final. In investigations conducted by a faculty, institute, conservatory, college or vocational school, the administrative boards of these units perform the duties of the disciplinary board, while in investigations conducted by the rectorate, the university administrative board performs the duties of the disciplinary board. The authorities authorized to impose disciplinary penalties may, if it is determined that there is a deficiency in the investigation, return the file in order to correct the deficiencies, issue, mitigate or reject the disciplinary penalty proposed by the investigator in kind. The authorities authorized to impose disciplinary penalties; If they deem it necessary, they may also apply to an expert witness, listen to witnesses, make discoveries, conduct examinations and correspond with the relevant authorities in addition to the investigation. More than one disciplinary penalty cannot be imposed for the same act. If the act constitutes more than one disciplinary offense, disciplinary action is taken, which requires the most severe punishment for these offenses. A severe penalty is applied for the repetition of an action that has caused a disciplinary penalty to be imposed after notification of the penalty and during the disciplinary penalty statute of limitations. However, a penalty of expulsion from a higher education institution on the grounds of a repetition of a disciplinary offense cannot be imposed.

Repeated application is not subject to discretion, if there are conditions, it is mandatory to apply. If a disciplinary offense based on repetition is committed again after a degree of severe punishment has been given due to repetition, the punishment that is actually equivalent to the act is not a disciplinary penalty higher than two, but again a punishment that is one degree heavier. Because there is no repetition of

repetition. In cases where a higher disciplinary penalty is given as a result of repeated application, there is no possibility of reducing the lower penalty anymore. Those who commit similar verbs in terms of their qualities and weights to the verbs listed in this Law that require disciplinary punishment are also given the same kind of disciplinary penalties by specifying which disciplinary verb they resemble. If the disciplinary penalty is cancelled by a judicial decision, within the remaining disciplinary penalty statute of limitations from the date the decision reaches the administration, if the statute of limitations expires or expires in less than three months, a new disciplinary penalty may be established no later than three months in accordance with the requirements of the decision. In cases where it is necessary to re-impose disciplinary punishment, the 2-year penalty limitation period rule cannot be applied. The other periods other than the periods determined for the initiation of a disciplinary investigation and the imposition of disciplinary penalties are of a regulatory nature and do not put the disciplinary investigation under the statute of limitations. If it is not specified in the decisions of the supervisor or the board authorized to impose disciplinary penalties from which date they will be applied, disciplinary penalties are applied from the date they are issued.

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