

DISCIPLINARY CRIMES AND PUNISHMENTS IN TURKISH POLITICAL PARTIES LAW: A SHORT ANALYSIS

Türk Siyasi Partiler Hukukunda Disiplin Suç ve Cezaları: Kısa Bir Analiz

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Özet: Siyasi partiler çağdaş demokratik sistemlerin işlerliğini sağlamada çok önemli işlevler üstlenmektedir. Siyasi partilerin bu işlevlerini en iyi şekilde yerine getirebilmeleri için kendi iç düzenlerinin sağlanması gerekir. Bu iç düzenin sağlanması disiplin kuralları ile mümkün olmaktadır. Disiplin kuralları disiplin hukukunun konusunu oluşturmaktadır. Esasında disiplin hukuku denildiğinde akla ilk olarak “kamu personeli disiplin hukuku” gelmektedir. Ancak siyasi partilerin iç işleyişi ile ilgili olan disiplin suç ve cezaları da disiplin hukuku içerisinde yer almaktadır. Bu iki ayrı uygulamaya birbirleriyle ortak noktalar göstermekle birlikte farklılıklar da barındırmaktadır. Bu bağlamda çalışmamızda siyasi parti disiplin ve suçlarının hukukumuz içerisindeki yeri, kamu personeli disiplin hukukuna benzerlikleri ve içerikleri ele alınmıştır. Siyasi partilerde disiplin suç ve cezaları 2820 sayılı Siyasi Partiler Kanunu'nun *Disiplin İşleri* başlıklı sekizinci bölümünün 53. maddesinde düzenlenmiştir. İncelememiz mümkün oldukça anılan hükümler kapsamında yapılmıştır.

Anahtar Kelimeler: Siyasi partiler, siyasi partiler hukuku, Siyasi Partiler Kanunu, disiplin suçları, disiplin cezaları.

Abstract: Political parties play very important functions in ensuring the functioning of contemporary democratic systems. In order for political parties to perform these functions in the best way, their internal order must be provided. Providing this internal order is possible with discipline rules. Discipline rules form the subject of disciplinary law. In fact, when it comes to disciplinary law, “public personnel disciplinary law” comes to mind first. However, disciplinary crime and punishments related to the internal functioning of political parties are also included in disciplinary law. While these two applications show common points with each other, they also contain differences. In this context, the place of political party disciplines and crimes in our law, the similarities and contents of public personnel discipline law were discussed. Disciplinary crime and punishments in political parties are regulated in article 53 of the eighth section of the Political Parties Act No. 2820 titled Disciplinary Affairs. Our study was made within the scope of the mentioned provisions whenever possible.

Keywords: Political parties, political parties law, Political Parties Act, disciplinary crimes, disciplinary penalties.

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INTRODUCTION

The word "party" is a French word and its previous use in our language is "firka"¹. With the 1961 Constitution, the word began to enter legal texts². Since modern democracies can be realized through political parties, political parties have been clarified as the basic building blocks of democracies³. During the 1982 Constitution, political parties were regulated in the Political Parties Act dated 28 April 1983 and numbered 2820. In the third article of the law, the definition of political party is made. According to this article, political parties were established in accordance with the Constitution and laws, and the aim of the country to reach the level of modern civilization within a democratic State and society order, through the election of the President, the deputies and local administrations, and the formation of the national will through their opinions and open propaganda. These are organizations that have legal personality and are organized to operate throughout the country⁴.

In addition to the legal definition, many political party definitions were made in the doctrine. According to Odyakmaz, political parties are private associations that are subject to a separate status, with the aim of seizing power.⁵ According to Gözler, political parties are legal entities operating throughout the country that aim to take power partially or completely by election.⁶ According to Tunaya, political parties are communities that individuals united on a specific program have established, with the aim of realizing this program through normal elections.⁷ The Constitutional Court of Turkey's political parties, "they establish freedom of citizens united in the framework of certain political considerations and are the organizations they leave to join freely. Significant impact on the parties in the formation of public opinion, the citizens of the claims and working to the realization of the aspirations and legal structures that embody political participation" has been defined.⁸

As Özbudun pointed out, modern democracy is party democracy⁹. Therefore, if there is no more than one political party competing for

¹ Özcan, Hüseyin/Yanık, Murat, *Siyasi Partiler Hukuku*, Der Pub., İstanbul, 2007, p. 5.

² İba, Şeref, *Siyasi Partiler ve Seçim Hukuku*, Seçkin Pub., Ankara, 2017, p. 21.

³ İba, supra note, p. 21.

⁴ "Legal nature of political parties; political parties are legal entities. Political parties are not a public legal person, but a private legal entity, frankly, an 'association' organization. In cases where there is no provision in the political parties, the Constitution and the Political Parties Act, the provisions of the Turkish Civil Code and the Law on Associations are applied." Gözler, Kemal, *Türk Anayasa Hukuku Dersleri*, Ekin Pub., 2011, Bursa, p. 161.

⁵ Odyakmaz, Zehra, "Siyasi Partilerin Kapatılması İle İlgili Hükümlerde Uyumsuzluklar ve Güçlükler", *Anayasa Yargısı*, Ankara, 1996, p. 234.

⁶ Gözler, Kemal, *İdare Hukuku*, Ekin Pub., Bursa, 2003, p. 160.

⁷ Tunaya, Tarık Zafer, *Siyasi Kurumlar ve Anayasa Hukuku*, İstanbul, 1982, p. 354.

⁸ Constitutional Court, 2003/1 D., Decision dated 13.3.2003.

⁹ Özbudun, Ergun, *Türk Anayasa Hukuku*, Yetkin Pub., Ankara, 2018, p. 92-93.

power in a country, it cannot be mentioned that democracy exists in that country¹⁰. Because in the modern states, political alternatives should be created by political parties¹¹. For this reason, both the 1961 Constitution and the 1982 Constitution emphasized that political parties are an indispensable element of democratic political life.

Commitment to democracy is possible by establishing the content of political organization and political activities as an example to society¹². However, under good management, political organization and political activities can be carried out smoothly in order. There are also a number of internationally accepted principles that a good management should have. One of these principles constitutes responsibility. Responsibility refers to an obligation within the scope of its duties and powers and to encounter a sanction if a sanction is envisaged.¹³ Being a member of a political party places some responsibilities on the person. For this reason, in practice, individuals can start membership transactions by signing a membership declaration stating their rights and obligations to political parties. Therefore, the person who wants to become a member knows that if he takes any action against these rights and obligations he accepts, he will face a sanction in return. In other words, there is a special commitment obligation to a certain party to which the person is subject to his own consent, and if he opposes, he may face some sanctions.

Political party members are obliged to comply with the Political Parties Act, party by-law and program. Actions that cause injustice in the by-law are regulated as disciplinary offenses and sanctions for these crimes are regulated as disciplinary penalties. Therefore, each party accepts the responsibility of not performing these actions by becoming a member. If he / she behaves otherwise, he / she should know or should know that he / she will be sanctioned. In this study, the subject of narrative or disciplinary punishments foreseen for party disciplinary crimes and those who commit these crimes has been made.

¹⁰ Gözler, *İdare Hukuku*, p. 160-161.

¹¹ Özbudun, *supra* note, p. 92.

¹² Türkiye Kurumsal Yönetim Derneği, *Siyasi Partiler Kurumsal Yönetim Kılavuzu*, (Online)

http://www.tkyd.org/files/downloads/faaliyet_alanlari/yayinlarimiz/kyd_yayinlari/siyasi_partiler%20kilavuzu.pdf, p. 11.

¹³ Kılıç, Abbas, "Siyasi Sorumluluk Kurumunun Hükümet Sistemleri Açısından Değerlendirilmesi", *Uyuşmazlık Mahkemesi Dergisi*, 2017, p. 266-267.

I- FUNDAMENTAL CONCEPTS ON DISCIPLINE CRIMES AND CRIMINALS AND POLITICAL PARTIES

A- Concept of Discipline

"Discipline" as a dictionary means "the condition of a community to strictly and carefully comply with its laws and the written or unwritten rules of order, strict order, order, order bond"¹⁴. Discipline is one of the most important elements that provide the foundation and continuity of the society with the transition to settled life¹⁵. Because collective discipline is required for people to work together for a specific purpose¹⁶. For this reason, it is given the duty and authority to ensure the order in those structures in the upper authority in all kinds of buildings where people are located¹⁷.

In societies with high discipline level, activities carried out by both state and non-governmental organizations are more effective and beneficial. However, in low-disciplinary societies, opposition to the law, arbitrariness and favoritism are frequently observed. Disciplinary rules are applied primarily in public institutions, universities, administrative institutions such as professional organizations, and private school, factory-like, private legal entities¹⁸. Therefore, every institution and structure in which there is a hierarchical structure has discipline rules¹⁹.

B- Disciplinary Law

When it comes to discipline law, public personnel discipline law, which is a sub-branch of administrative law, comes to mind. Public personnel discipline law is a sub-branch of administrative law that deals with situations such as public employees not complying with their obligations in the legislation, performing activities that disrupt the administrative order, not acting in accordance with the determined prohibitions, and what kind of disciplinary enforcement procedure will be handled in these situations²⁰. The disciplinary sanctions mentioned differ in purpose from other administrative sanctions and aim to

¹⁴ Türk Dil Kurumu, *Güncel Türkçe Sözlük*, (Online) <https://sozluk.gov.tr/?kelime=>, Date of Access, February 16, 2020.

¹⁵ Arıcalı, Ahmet Cahit, *Disiplin İşlemlerinde Amaç Unsuru*, Afyon Kocatepe University, Institute of Social Sciences, Unpublished Master Thesis, 2019, p. 4.

¹⁶ Bucaktepe, "Adil, Disiplin Makamlarının Disiplin Cezası Verme Yetkileri Üzerine Bir Değerlendirme", *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, V. XIX. N. 2. 2015, p. 200.

¹⁷ Bucaktepe, *supra* note, p. 200.

¹⁸ Ülker, İbrahim, "Disiplin Cezalarına Karşı İdari Başvuru (İtiraz) Yolu", *EÜHFHD*, V. XIX, 2015, p. 61-62.

¹⁹ Ülker, *supra* note, p. 62.

²⁰ Bucaktepe, *supra* note, p. 201.

eliminate violations related to the internal functioning of the institution²¹.

However, disciplinary law rules take place in all organizations belonging to a certain organization outside the public sector. For this reason, limiting the concept to only public and public personnel narrows the concept. Disciplinary law can be defined as a sub-branch of the law that examines the rules for the establishment and organization of an institution, organization and the preservation of order, and the sanctions to be applied if these rules are not followed²².

Sub-topics of disciplinary law are composed of multiple titles such as actions that constitute disciplinary crime and the sanctions corresponding to these actions, the subject of disciplinary crimes and punishments, disciplinary investigation, and legal remedies against the decisions made. At the same time, in the Constitution, public personnel envisages three basic principles as disciplinary law, namely the principle of lawfulness, the right to defense and the assurance of the judicial (appeal) way²³. These principles should find application for the whole of disciplinary law.

C- Disciplinary Crime

Disciplinary crime in the Turkish Language Institution Actual Turkish Dictionary is defined as "behavior of a person in education and business life contrary to disciplinary regulations"²⁴. In addition to the definition of the Turkish Language Institute, disciplinary crime is defined in many different ways in the doctrine. According to Gözler, disciplinary crime is "flawed acts related to the duty of the officer."²⁵ According to Akyılmaz, disciplinary crimes are "violations of the norms that regulate the internal order, discipline and the status of the service providers, in order to provide the public service regularly and efficiently for the beneficiaries."²⁶

In our opinion, as Dilek also stated correctly, disciplinary crimes refer to the negative situation arising from the fact that people with

²¹ Mücahit Küçük, Çolpan, 657 Sayılı Kanun Kapsamında Disiplin Cezaları ve Ceza Hukuku ile Ceza Muhakemeleri Hukuku Genel İlkelerinin Disiplin Hukukunda Uygulanabilirliği, Gazi University, Institute of Social Sciences, Unpublished Doctoral Thesis, 2019, p. 35.

²² As, Halil, Ceza Mahkemesi Kararlarının Disiplin Hukukuna Etkisi, Ankara Hacı Bayram Veli University, Graduate Education Institute, Unpublished Master Thesis, 2020, p. 7.

²³ Akyılmaz, Bahtiyar, "Anayasal Esaslar Çerçevesinde Kamu Personeli Disiplin Hukuku ve Uygulamadaki Sorunlar", Gazi Üniversitesi Hukuk Fakültesi Dergisi, V. 6. N. 1-2. 2004, p. 241-262.

²⁴ Türk Dil Kurumu, *Güncel Türkçe Sözlük*, (Online) <https://sozluk.gov.tr/?kelime=>, Date of Access, February 16, 2020.

²⁵ Gözler, *İdare Hukuku*, p.686.

²⁶ Akyılmaz, *supra* note, p. 245.

certain status do not comply with the rules that determine this status.²⁷ Because disciplinary arrangements exist not only in the public personnel regime, but also in all the structures in which the hierarchy takes place. For this reason, it is beneficial not to be limited to public officials.

D- Disciplinary Punishment

Turkish Language Institution in the current Turkish dictionary, disciplinary punishment is defined as “the punishment given to anyone who commits one of the disciplinary crimes according to the severity of their behavior”.²⁸ The sanction that will be encountered in violation of the rules determined in order to ensure a certain organization to work efficiently and beneficially and to maintain its order can be expressed as disciplinary punishment.

Disciplinary punishment should be frightening and dissuasive, subjecting his subject to some deprivations. In this way, it is aimed both to ensure the justice before the related community by punishing the action, and to prevent the actions that create contradiction to the future.

E- Political Party Membership

The aim of the political parties is to achieve power through democratic means and to rule the country within the framework of its ideology and program²⁹. This targeted goal is possible by establishing a bond of belonging with citizens and ensuring political participation. By participating in any political party, political participation takes place before the citizen.

Political participation is also guaranteed by the Constitution. According to the 67th article of the fourth section of the Constitution titled “Political Rights and Duties”, which regulates the right to elect, be elected and engage in political activities, “citizens, in accordance with the conditions shown in the law.... it has the right to engage in political activity within a political party”. In accordance with the provision of the Constitution, the Legal Gazette dated April 24, 1983 and Law No. 2820 on Political Parties entered into force. Article 6 of the Law No. 2820 and the second part titled “Membership” regulate the membership and conditions of political parties. According to the 6th article of the Law titled “Being a member and withdrawing from membership”, every Turkish citizen has the right to be a member of political parties and withdraw from membership at any time according to the conditions and

²⁷ Dilek, Muzaffer, “Memur Disiplin Hukukunun ve Disiplin Soruşturmasının Temel Esasları”, TİD, Y. 71, Haziran 1999, N. 423, s. 27.

²⁸ Türk Dil Kurumu, *Güncel Türkçe Sözlük*, (Online) <https://sozluk.gov.tr/?kelime=>, Date of Access, February 16, 2020.

²⁹ Ertürk, Devrim, “Postmodern Dönemde Bir Siyasal Katılım Biçimi Olarak Siyasal Parti Üyeliği ve Aktivizmi”, Mukaddime Dergisi, 2016, N. 7 (2), p. 349.

procedures shown in the law and party statute. However, more than one political party cannot be a member at the same time. If some party has become a member for some reason, the title of membership is deemed to have ended for each party. At the same time, only one organizational unit of the party can be subscribed, and if more than one organizational unit is registered, membership registrations made before the deadline are considered invalid.

According to Article 11 of the Act, any citizen who has reached the age of eighteen and has the capacity to exercise his civil and political rights can become a member. In the second paragraph of the article, it was counted who could not be a member of political parties³⁰. With the Article 12 of the Act, the political parties authorized the determination of the conditions of membership, provided that there were no provisions that differ language, race, gender, religion, sect, family, class and occupation. At the same time, the act stated that requests for membership could be denied without giving reasons, but in this case the right to appeal should be granted.

In addition to legal regulations, membership has an important place in the institutional structures for political parties³¹. Members take an active role in party functioning, structuring, campaigns in elections, in education and relations with the public³².

II- APPLICATION OF THE PRINCIPLES DOMESTIC TO PUBLIC STAFF DISCIPLINARY LAW IN POLITICAL PARTIES LAW

Public personnel disciplinary law includes some Constitutional and criminal law principles that dominate disciplinary crimes and

³⁰ But;

a) Judges and prosecutors, members of the higher judicial bodies, including the Court of Accounts, civil servants of public institutions and organizations, other public officials who do not qualify as workers in terms of their service, members of the Armed Forces and pre-higher education students cannot be members of political parties.

b) 1- Banned from public services,

2- Those accused of simple and qualified embezzlement, extortion, bribery, theft, fraud, fraud, misappropriation of belief, fraudulent bankruptcy such as fraudulent fraud, fraudulent crimes other than exploitation and smuggling, misrepresentation of official procurement and trade or exposing state secrets,

3- Those who are sentenced to five years of heavy imprisonment or five years and more, with the exception of negligent crimes,

4- Those convicted of the crimes written in the first fater of the Second Book of the Turkish Criminal Code or for the crime of publicly provoking the processing of these crimes,

5- Those convicted of terrorist acts,

They cannot be members of political parties and members cannot be registered.

³¹ Ertürk, supre note, p. 349.

³² Ertürk, supre note, p. 349.

punishments. These were developed from the general principles of law, the case law of the Constitutional Court and the Council of State³³. Those principles, which are also applied in the law of political parties, will be briefly explained.

A- Principal of Legality

The principle of legality is the principle of criminal law and it states that nobody will be punished for an action not determined by act and that a punishment not included in the act cannot be imposed on anyone.

The public service officers of the Constitution accept that in the paragraph 2 of Article 128 of the related provisions, the provision of the “qualifications, appointments, duties and powers, rights and obligations of civil servants and other public officials, appointments and other personal affairs are regulated by law” also includes disciplinary offenses and penalties³⁴.

The reflection of the principle of legality on the law of political parties can be seen in the eighth part of the Political Parties Act titled “Disciplinary Affairs”. *The first and second paragraphs of the article 53 titled “Disciplinary Crimes and Punishments” are the punishments that can be imposed by the discipline committees of political parties, excitement, condemnation, temporary or definitive removal from the party or group. It must be determined in the party statute that the sentence will be given* “. Thus, with this regulation, it has both determined the penalties that can be imposed and stated in what form it can be imposed in the regulation. With the legal regulation, the authority to determine the actions that should be punished by softening the principle of legality has been transferred to political parties. In line with the mandatory provision, each political

³³ As, supra note, p. 21.

³⁴ Akyılmaz, supra note, p. 248. Günday, Metin, *İdare Hukuku*, Ankara, İmaj Pub., 2011, p. 237. In this regard, Akyılmaz stated that disciplinary offenses and penalties should be evaluated within the scope of Article 38 where the Constitution regulates the principles regarding crime and punishment. “disciplinary sanctions cannot be taken lightly by considering them as sanctions related to professional life, and it will not be correct to ignore the emergence of certain situations threatening the public order by damaging the state’s reputation and order by the disciplinary action of individuals for the purpose of establishing the institutional order. discretionary powers and punishments should be evaluated within the scope of Article 38 of the Constitution, and the problems that may arise in the field of expertise and technical matters can be overcome with the application of open criminal norms, because the discretionary power is not incompatible with many principles of the rule of law, and the bag provisions that bring the principle of comparison to discipline law, which compels the administration to act in contravention of the law. Regulation by law even if disciplinary offenses and penalties fall within the scope of Article 128, not Article 38 of the Constitution. He expresses that it is imperative to regulate disciplinary offenses and penalties by law, since the principle e has been adopted.” As, supra note, p. 36-37.

party has determined actions requiring disciplinary action in the party statute.

B- The Principle of Non-Retroactivity

Administrative procedures, as a rule, can be applied from the date of entry into force. Disciplinary penalties imposed in the discipline law of public personnel will also be applied on the date they are given and cannot be executed back because they are administrative procedures. This issue is secured in the article 132 of the Civil Servants Law No. 657 with the statement "disciplinary punishment is valid and applied immediately".

In the Political Parties Act, the principle of non-retroactivity for disciplinary penalties is not regulated. However, political parties can regulate their statutes and disciplinary penalties from the date they are finalized.³⁵

C- The Duty to Give Reason

One of the five mandatory elements of the administrative process is the "cause factor". It carries out the situation and reason element that prompts the administration to perform this transaction, stating the reason and necessity of the transaction. In other words, the reason for the administrative transaction is also counted as the reason for the transaction. The administration reveals the reason, how and under what conditions he made the transaction³⁶. In return, the actions, attitudes and behaviors that should be applied to the disciplinary penalty are shown in the relevant legislation. Therefore, the reason for administrative action has been determined in disciplinary penalties. With the determination of these states, the reason for the administrative process is realized.

The rationale principle in disciplinary law has application in disciplinary crimes and penalties in political parties law. The reason for the decision to impose a disciplinary penalty occurs if the actions shown

³⁵ Justice and Development Party By-law, Article 111.17: "A disciplinary decision can yield a result only if it is finalized. Officials and entities of the Party may not delay the implementation of decisions made by disciplinary boards." (Online) <https://www.akparti.org.tr/en/parti/party-by-laws/>, April 5, 2020;

Republican People's Party By-law, Article 71.9: "Disciplinary board decisions, from the date of their finalization It applied. The time spent cautiously is deducted from the penalty." (Online) <https://chp.azureedge.net/722c69c5b6254416995391895ceb6550.pdf>, April 5, 2020.

³⁶ Usaman, Yahya, Kamu Görevlileri Disiplin Hukukunda İdari Usul İlkeleri, Ankara Yıldırım Beyazıt University, Institute of Social Sciences, Unpublished Master Thesis, 2019, p. 62.

as disciplinary offense in the party statute arise from the possibility of being committed³⁷.

D- Principle of Showing Remedies

Disciplinary penalties are transactions involving serious interference with individuals' rights and obligations. The ways of application against these interventions are included in detailed administrative arrangements. At the same time, the application periods are generally determined as short. For this reason, there may be grievances about the right of a person to seek rights. The Constitution introduced the principle of showing the remedies of the Constitution to eliminate the grievances.

Showing Remedies is to inform the concerned person who will use the right to apply against the transaction, how he / she should act³⁸. In the 40th article of the Constitution, it is guaranteed to show the application ways with the regulation "the state has to specify the legal remedies and authorities to which the relevant persons will apply and their duration". As a result of this arrangement, the content of the proceedings related to disciplinary action should include the objection period, the objection authority, the right to sue if it does not get a positive result as a result of the objection, the duration of the proceedings, the official and the competent court³⁹.

In the act, it is not obligatory to show the application ways in the decisions of intra-party disciplinary penalties. However, considering that the regulations and disciplinary regulations of the parties contain different regulations and complex texts, it is also important to show remedies in the decisions so that freedom of seeking rights is not restricted, as these penalties also create severe violations. Thus, each party will be able to use the application ways effectively.

E- Right of Defense

The right to defense is the basic guarantee of fair trial and freedom to seek rights. It is one of the fundamental rights in the second part of the Constitution, which defines the "Rights and Duties of the Person". According to Article 36 of the Constitution, " Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial

³⁷ The reasoning of disciplinary actions and the reasoning of disciplinary decisions are different. Disciplinary decisions should be made with the justification under any circumstances. In the fifth paragraph of the article 53 of the Political Parties Act, it was emphasized that the decisions made by the disciplinary committees shall be notified to the concerned within thirty days at the latest with their reasons, and that the disciplinary penalty decisions should be justified.

³⁸ Şanlı Atay, Yeliz, "İdari İşlemlerde Başvuru Yollarının Gösterilmesi Yükümlülüğü", *Türkiye Barolar Birliği Dergisi*, 2011, N. 96, p. 295.

³⁹ Sarıcalar, *supra* note, p. 50.

before the courts through legitimate means and procedures. No court shall refuse to hear a case within its jurisdiction.⁴⁰ According to Article 129 of the Constitution, " Public servants and other public officials are obliged to carry out their duties with loyalty to the Constitution and the laws. Public servants, other public officials and members of public professional organizations or their higher bodies shall not be subjected to disciplinary penalties without being granted the right of defence.

Disciplinary decisions shall not be exempt from judicial review. Provisions concerning the members of the armed forces, judges and prosecutors are reserved. Compensation suits concerning damages arising from culpas committed by public servants and other public officials in the exercise of their duties shall be filed only against the administration in accordance with the procedure and conditions prescribed by law, as long as the compensation is resorted to them. Prosecution of public servants and other public officials for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law.⁴¹ Thus, the right to defense public officials in disciplinary matters is guaranteed.

In the doctrine, since the disciplinary law is not a judicial power, it is argued that the right to defense is not a right of defense in the technical sense⁴². However, since it is clearly stated in the Constitution, the right of defense of public personnel in terms of disciplinary law should be accepted as a procedural phase similar to judicial procedure⁴³.

The right to defense in the law of political parties is parallel to the discipline law of public personnel. The lawmaker guarantees the right to defense by law. According to the second paragraph of Article 55 of the Political Parties Act, every party that is referred to the disciplinary board has the right to a written or verbal defense. The right to defense is fifteen days starting from the date of notification of the text of the call to defense to the relevant member. This period is seven days in the elections or in disciplinary crimes committed publicly or publicly. The disciplinary punishment requested in the call for defense and the actions that caused this punishment should be clearly shown. Those who do not defend in due time despite being called duly are deemed to have given up their right to defense.

⁴⁰ Anayasa Mahkemesi, "Constitution of the Republic of Turkey", (Online) <https://www.anayasa.gov.tr/en/legislation/turkish-constiution/>, April 10, 2020.

⁴¹ Anayasa Mahkemesi, "Constitution of the Republic of Turkey", (Online) <https://www.anayasa.gov.tr/en/legislation/turkish-constiution/>, April 10, 2020.

⁴² Hafızoğulları, Zeki, "Genel Çizgileriyle Savunma Hakkı", Ankara Barosu Dergisi, 1994, N. 1-4, p. 25.

⁴³ Akilhoğlu, Tekin, *Yönetim Önünde Savunma Hakları*, Ankara, 1983. p. 20.

F- Prohibition of Inflict a Disciplinary Punishment Directly

It is not possible to take disciplinary punishment by taking only the defense of the concerned. A specific process needs to be run, and this process begins with the decision of the relevant disciplinary committee to initiate disciplinary investigation. Disciplinary investigation is a research activity for determining whether there is a pre-determined action, process, attitude or behavior that is against the discipline, by whom and on what date, if any, the sanction to be applied in return⁴⁴. The disciplinary investigation begins with the decision to open an investigation and ends with the notification of the established disciplinary action⁴⁵. The fact that these procedures are determined and known in advance provides assurance to the person concerned.

In the law of political parties, disciplinary punishment cannot be directly imposed by taking only the defense of the person concerned. According to the law, it is necessary to show which party organs and authorities of the party about which members and in which disciplinary board to conduct disciplinary investigation in the party by-law. The fact that this procedure is predetermined and known in the by-law provides reassurance to the parties. In addition, disciplinary committees are not able to start investigation spontaneously, and the referral process is required by the competent body.

G- Ignorance of the Law Excuses No Man (Ignorantia Juris Non Execusat)

“Ignorance of the Law Excuses No Man”, which is a principle of criminal law, finds its application area in disciplinary law. Regulations governing the disciplinary matters of general provision concerning public officials should be published and published in the Legal Gazette⁴⁶. It is necessary to accept that the rights and obligations that have been duly put into effect are known to those concerned. In other words, it does not matter whether it is known that the actions, attitudes and behaviors carried out by the public official require disciplinary action.

In political parties, the practice is parallel to that of public personnel disciplinary law. There are a number of rights and obligations of being a member of political parties. These obligations are imposed by those concerned, regardless of whether the membership registration is completed or not. Therefore, members are expected to act in accordance with party regulations, party programs and regulations, and principles and decisions established by competent institutions and boards. Actions, attitudes and behaviors contrary to these mandatory

⁴⁴ Akyılmaz, Bahtiyar / Sezginer, Murat / Kaya, Cemil, *Türk İdare Hukuku*, Seçkin Pub., Ankara, 2017, p. 765.

⁴⁵ Gözler, *Türk İdare Hukuku*, p. 797.

⁴⁶ (N. 3011) Law on Regulations to be Published in the Legal Gazette, Article 1 / b.

rules can be punished regardless of whether the member knows that he / she is in violation.

III- DISCIPLINARY CRIMES AND PENALTIES IN TURKISH POLITICAL PARTIES LAW

A- Disciplinary Crimes

Disciplinary crime in the law of Turkish political parties is the actions of the members, in return, for which disciplinary action is determined in the by-laws. The elements of disciplinary crime are the action, the casual connection between the action and the member, and the culpa.

According to the action element, a certain action must be attributed to the relevant member in order for disciplinary crime to occur. This action must be shown in the party by-law in accordance with the mandatory provision of the law. For this reason, the actions, attitudes and behaviors that the party by-law has not determined as a crime do not constitute disciplinary crime.

According to the casual connection, the action that occurs must be a action related to its membership to the relevant member. Personal acts in the private life of the sample, which are not related to the membership of the member, do not constitute the element of disciplinary crime.

According to the last element, the culpa element, the act with the casual connection occurring in the outside world must also have occurred as a result of the member's flawed action. If the act cannot be described as defective, disciplinary action will not be committed. In our opinion, the situations that remove and reduce the criminal liability in criminal law should also be applied in disciplinary law. For example, damaging party property and buildings is a disciplinary offense. However, if the concerned party is doing the action that is damaging its property under algebra and violence, its movement will not be deemed as culpa. Therefore, the action will not constitute disciplinary action.

B- Actions and Behaviors Requiring Disciplinary Penalties

Actions that constitute disciplinary crime in political parties are classified according to their penalties in the relevant party by-law. The legislature has authorized the party's legal personality in determining which kinds of situations, which are sufficient to determine the punishments to be imposed, with which disciplinary punishment. Therefore, situations that require a warning penalty in one political party may require condemnation in the other political party. For example, the act of not keeping the books that should be kept according to the Republican People's Party By-law is an action that requires a warning penalty. However, according to Justice and Development Party

By-law, it is an act requiring reprimand. In other words, it is not possible to count the actions that constitute a general disciplinary crime for the parties. For this reason, each party should be examined and evaluated in terms of disciplinary crimes and punishments.

C- Disciplinary Punishments

1. Types of Disciplinary Punishments According to the Political Parties Act

As we have mentioned while examining disciplinary crimes, while the legislature has given freedom to the party in determining disciplinary crimes, it has determined the disciplinary penalties to be imposed against these actions. According to the act, the penalties that the party can give to its members are warnings, reprobation, and temporary or definitive penalties from the party or group.

The warning penalty is the attention of the member in writing. The reprobation penalty is the article containing the member's culpa. The temporary removal penalty is the removal of the member from the party for a certain period of time. The final penalty is the removal of the member from the party indefinitely. In this case, the member is dismissed from the party. It is the heaviest of disciplinary penalties.

2. Subject of Disciplinary Punishments

The party is the subject of disciplinary crime and punishment. In order for a person to become a party member, his application must be accepted by the relevant party body. In other words, membership begins on the date of acceptance of the application. Unfair actions that took place before this date may constitute criminal offense, but not disciplinary action.

D- Authorized Disciplinary Boards in Disciplinary Crimes and Punishments

The legislature has left it to the parties to determine which disciplinary boards the parties will establish, and the authorities and procedures of which authorities can request disciplinary action and conduct investigations and prosecutions. However, he stated that members of the disciplinary boards will be elected by secret congresses by secret ballot. He also stated that the Grand National Assembly of Turkey group of members of the disciplinary committee of the selection should be done in a manner shown in the party statute so that for at least two years.

Each party has determined its own disciplinary bodies within the framework of the authority granted by the act. Names, duties and

powers of these bodies may vary from party to party⁴⁷. However, in general, disciplinary committees; provincial disciplinary committee and central discipline committee consists of the Grand National Assembly of Turkey party disciplinary committee group.

The provincial disciplinary committee is the board that takes part in the organizational structure of the party and constitutes the first-degree disciplinary committee. Each party can determine as many members as it deems sufficient⁴⁸. According to the act, it meets with at least two thirds of the number of members and can decide with the majority of those present. The works to be taken by the provincial disciplinary committee are generally not considered by the parties in the statutes. Central disciplinary committee will look and work the Grand National Assembly of Turkey determined group of party disciplinary boards are made to the remaining work assigned to outside these jobs. The decisions made by the provincial disciplinary committees can be challenged to the central disciplinary committee, which is a higher-level disciplinary committee since the notification, within the period specified in the regulation. This period is usually 10 days from the date of notification of the decision.⁴⁹ The disciplinary committee decision, which is not contested within the period, becomes final.

The Central Disciplinary Board is the highest disciplinary board of political parties. It is established as shown in the law and party by-law. According to the act, the number of members of this board cannot be less than seven⁵⁰. While the central disciplinary committee is the first-

⁴⁷ Justice and Development Party according to Article 103 of by-law these boards, provincial disciplinary committees, the central disciplinary committee of the party Grand National Assembly of Turkey and joint disciplinary committee disciplinary group is based. (Online) <https://www.akparti.org.tr/media/279929/cep-boy.pdf>, April 5, 2020.

Republican People's Party's Disciplinary Regulations based on Article 4 of these boards, high-discipline committee, the provincial disciplinary committee and the Turkey Grand National Assembly consists of the disciplinary committee of the group. (Online) <https://chp.azureedge.net/722c69c5b6254416995391895ceb6550.pdf>, April 5, 2020.

⁴⁸ While this number is 5 permanent and 5 substitute members for the Justice and Development Party, it is 9 permanent and 5 reserve members for the Republican People's Party. (Online) <https://www.akparti.org.tr/media/279929/cep-boy.pdf>, April 5, 2020; (Online) <https://chp.azureedge.net/722c69c5b6254416995391895ceb6550.pdf>, April 5, 2020; (Online) http://content.chp.org.tr/file/chp_tuzuk_10_03_2018.pdf, April 5, 2020.

⁴⁹ According to the by-law on Justice and Development Party, export orders are automatically sent to the higher-level committee for review. According to Article 105 of the by-law, "even if there is no objection against the decision issued by the provincial disciplinary board, the relevant investigation file is sent to the Central Disciplinary Board within 15 days for review by the provincial disciplinary board." (Online) <https://www.akparti.org.tr/media/279929/cep-boy.pdf>, April 5, 2020.

⁵⁰ According to the By-law on Justice and Development Party, it consists of eleven original and five substitute members. According to the Republican People's Party By-law, it consists of fifteen original and eight substitute members. At least eight of the

degree disciplinary committee for some jobs, it is the appeal body against the decisions of the provincial disciplinary committees⁵¹.

Disciplinary Committee of the Grand National Assembly of Turkey Party group in each party groups, organizations, and the board established internal regulations specifying the duties and powers of the group. This committee decides not only disciplinary offenses resulting from group members 'and deputies' actions against the group discipline, internal regulations and the group's binding decisions, but can also deal with all disciplinary actions⁵².

E- Detection of Criminal Action and Initiation of Disciplinary Investigation

Detection of the crime act starts with the complaint of the party to the district presidency where he committed disciplinary crime⁵³. Upon complaints to the other units of the party, the district presidency is informed to take necessary action in this regard. The party then requests the party's complaint about the head of the district from the party in the time and procedure specified in the regulation. During this time, necessary evidence is also collected and witnesses are heard. After the necessary procedures are completed by the district directorate in accordance with the by-laws and disciplinary regulations, the

original members must be lawyers and at least four of the alternate members. (Online) <https://www.akparti.org.tr/media/279929/cep-boy.pdf>, April 5, 2020; (Online) <https://chp.azureedge.net/722c69c5b6254416995391895ceb6550.pdf>, April 5, 2020; (Online) http://content.chp.org.tr/file/chp_tuzuk_10_03_2018.pdf, April 5, 2020.

⁵¹ According to the By-law on Justice and Development Party, these works; the founding members of the party, the chairman of the party, the principal and alternate members of the central decision and board of directors, the general accountant of the party, the chairman and principal members of the provincial administrative boards and provincial disciplinary boards, the provincial and district mayors, the provincial presidents of the subsidiaries, their own president and reserve members, Turkey's Grand National Assembly, former members and former members of the government party, is to make a disciplinary investigation. (Online) <https://www.akparti.org.tr/media/279929/cep-boy.pdf>, April 5, 2020.

According to the discipline regulation of the Republican People's Party, these works; party members of parliament, his president and members of the Grand National Assembly of Turkey and members of the party will review the request of the chairman of the party metropolitan disciplinary offenses constituting acts of parliament and the party decides. Provincial presidents, provincial board members, provincial discipline chairmen and members, provincial and district mayors examine and decide the actions that constitute party crime at the request of the Central Board of Directors. (Online) <https://chp.azureedge.net/722c69c5b6254416995391895ceb6550.pdf>, April 5, 2020.

⁵² Kanadođlu, Korkut, *Siyasi Partiler Kanunu Şerhi*, Beta Pub., p. 258.

⁵³ Central Disciplinary Committee and the Disciplinary Committee of the Grand National Assembly of Turkey Party complained directly decide on issues that should be done to correct this establishment.

information received and the evidence collected are presented to the district board of directors for discussion with the identity and address information of the party to whom the complaint was filed. The county board of directors reviews the file and determines whether the party should be referred to discipline or not. In case of referral, it is sent to the provincial board of directors to decide on the referral. Although an opinion is reached not to refer, the complainant has the right to appeal to the provincial board of directors. The district chair and district board of directors are required to complete this process within the time specified in the disciplinary regulations. Otherwise, the request of the complainant to discipline is deemed rejected. In this case, the complainant reserves the right to appeal to the provincial board of directors.

Disciplinary files sent by the district board of directors are presented at the provincial board of directors meeting. The provincial board of directors decides whether to discipline or not to discipline in order to prosecute as a result of its examination. If it decides to refer, the file is sent to the provincial disciplinary board. The provincial disciplinary board first examines the file in terms of procedure. It evaluates whether it is an officer or an officer, whether the request for prosecution is in accordance with the provisions of the law, by-laws and regulations.

After these initial examinations, the party who is disciplined with a disciplinary decision is requested by the provincial disciplinary board to make a written or verbal defense. The duration for defense is fifteen days starting from the date of notification of the call for defense document to the concerned. This period is seven days in elections or in disciplinary crimes committed publicly or broadcast in public. The actions that cause the request of the punishment and the disciplinary punishment to be implemented should also be indicated in the summons for defense. Those who pass the defense period are considered to have given up their right to defense. After the prosecution is completed, the board decides that there is no room for disciplinary action or punishment. With this decision, the disciplinary investigation is completed and the finalization phase of the decision begins.

Finally, it should also be stated that the period to be made to the authorized disciplinary committees from the date of processing is two years. Therefore, no investigation can be conducted for disciplinary offenses that have not been decided to refer to the competent disciplinary committee within two years of their occurrence.

F- Circumspection in the Process of Disciplinary Action

In case of a disciplinary crime that requires definite or temporary issuance from the party, it can be referred to the relevant disciplinary committee with circumspection. The circumspection is to immediately remove the member from his duties at the party. The relevant member

may request from the disciplinary board to which the decision of the circumspection is referred. The request of the member is decided by the disciplinary board within seven days. At the same time, disciplinary boards can decide to abolish the circumspection at every stage of the investigation. If no punishment is given at the end of the investigation, the circumspection will automatically disappear. Members who have been issued a measure of injunction cannot exercise their rights arising from membership.

G- Sentencing as a Result of Disciplinary Investigation and Serve Summons

Provincial disciplinary boards should decide on the files sent to them within the period specified in the disciplinary regulations.⁵⁴ Along with the reasons for the decision to be made, it is published to the related party in a certain period of time. The decision becomes definitive when the party does not object to the decision or the objection is rejected. High Disciplinary Board and Group Disciplinary Board decisions are final.

H- Remedies Against Disciplinary Action

The party with the disciplined party, who has been sent to discipline within a certain period of time from the notification of the decision against the decisions of the provincial disciplinary committee, may object to the Central Disciplinary Board. The Central Disciplinary Board examines the file upon objection and can listen to the party who has been disciplined if it deems necessary. It is deemed to have given up the demand for rest with the party, which has not been received without an excuse although it has been duly called. The decisions of the Central Disciplinary Board on appeal are final.

In addition to the Provincial Disciplinary Board of the Central Disciplinary Committee and the Disciplinary Committee of the Party Group of the Grand National Assembly of Turkey has disciplinary investigations had been done as the primary official authority. The decisions they have made as a result of these investigations are also final and not appealed.

The legislature has issued a different appeal body due to the severe intervention created by the temporary and definitive penalty from the party or group. According to Article 57 of the Act, the right of the

⁵⁴ This period is thirty days, with the exception of situations arising from mandatory situations in the Justice and Development Party. In the Republican People's Party, two months for provincial discipline boards and four months for higher discipline boards.

relevant person to appeal to the civil court of first instance against these decisions is reserved⁵⁵.

I- Cases That Cansel Disciplinary Action

Disciplinary penalties are among the forgivable penalties before the legislator. Amnesty is regulated in Article 58 of the Law. According to the regulation, the relevant member may be forgiven by showing in which regulations and how the punishments given by the disciplinary committees will be forgiven by the party⁵⁶.

⁵⁵ Article 57- "The party member, who has been given a temporary or definitive penalty from the party or group, with the claim that the duties and incompetence of the body or authority or disciplinary committee referring to the disciplinary committee against this penalty, or the decisions taken are in violation of the law, party regulations and internal regulations in terms of form and procedure. , the party may appeal against the final decision, which is the final decision within 30 days, after the party uses the opposition, to the first instance court, where the authority which made the final decision is located. It is certain. "

⁵⁶ Justice and Development Party By-law according to article 112, "A disciplinary board can not initiate or conduct any interrogation on its own initiative. The authorization to refer members to a provincial disciplinary board is vested in city Administrative Committees; the authorization to refer members to the Central Disciplinary Board is vested in the Central Decision and Administrative Committee and the Central Executive Board; and the authorization to refer members to the Disciplinary Board in Charge of the Party's TBMM Group and to the Joint Disciplinary Board is vested in the Administrative Committee of the Party's TBMM Group, the Central Decision and Administrative Committee, or the Central Executive Board.

A decision for referral to a disciplinary board shall be made by simple majority of all members of the board in charge. The board may, before making such a decision, hear the person in question, and conduct such reviews or researches which it deems necessary through such member(s) as designated by the board for this purpose. If the notifying or complaining individual is a member of the board which is authorized to refer, then said individual may not attend respective meetings and discussions, nor may be assigned any duty to conduct reviews or researches about the matter in hand.

A decision for referral to a disciplinary board has to be made with the indication of justifications thereof including the act or action alleged to have been committed as well as the disciplinary punishment sought therefor."

(Online) <https://www.akparti.org.tr/en/parti/party-by-laws/>, April 5, 2020.

Republican People's Party By-law according to article 72, " The finalized penalties are in the party council of amnesty. The party council uses the power of amnesty upon the written request of the punisher and by taking the opinion of the organization unit referring to the disciplinary committee. The Central Board of Directors submits the request to the Party Assembly along with the discipline file by taking the opinion of the organization unit that sends the request to the disciplinary board upon the written application of the amnesty. In case the sending body is a Party Assembly, the opinion is communicated by the Central Executive Board. The Party Assembly makes its decision by secret vote."

(Online) http://content.chp.org.tr/file/chp_tuzuk_10_03_2018.pdf, April 5, 2020.

CONCLUSION

Political parties constitute one of the basic elements of democracy. For this reason, the effective organization of the political party also means the development of democracy. The effectiveness of the organization of political parties requires the existence of rules that members must obey within the party. Therefore, each political party has set some rules to be followed by its members and it has envisaged to accept these rules as a condition of being a member. Thus, every new member will participate in the party, aware of their rights and obligations. Actions, attitudes and behaviors that are determined to be against the discipline from these rules are regulated as disciplinary offenses in the party statute. The penalties corresponding to these crimes are also left to the legal entity of the party, provided that the actions to be enumerated in the Political Parties Law are regulated in the regulations. This crime and punishment and the procedure to be applied in their implementation bring discipline law in political parties.

In our study, we briefly explained the disciplinary crime, disciplinary punishment, disciplinary law, political party and political party membership in the first title to make the disciplinary offenses and punishments understandable in the law of political parties. In the second title of the study, we explained the principles that are obligatory to be applied in public personnel discipline law to the political parties law. Principles applied and to be applied in this regard; We have determined the lawlessness, backwardness, justification, showing the application ways, the right to defense, the prohibition of direct punishment and not knowing the law as an excuse. In the discipline crime and punishments section of the law of political parties, which is the main part of our study, disciplinary crimes, actions suitable for creating disciplinary crimes, disciplinary penalties, competent disciplinary committees, disciplinary investigation stage, disciplinary punishment, remedies against the decision and the last disciplinary punishment. We examined the institution.

Discipline crime and punishments in Turkish political parties law, which is the subject of our study, are among the subjects that are not studied much in doctrine. This may be because the issue is viewed entirely as internal relations of political parties. However, both these penalties contain severe rights violations and the application routes ending within the party, excluding temporary and definitive issues, require the emphasis on the issue.

The justice against members of a political party that is a candidate to rule a state will set an example for justice against citizens when it gains power. For this reason, it is more appropriate to democratic principles to be clear and clear in which concrete situations and situations and what kind of punishment the party members will face. This is also a requirement of the rule of law. Therefore, every political party is obliged to regulate the disciplinary offenses and punishments and punishment procedure in their by-laws without explicitly interpreting the application routes.

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