



Eğitim Yöneticilerinin Hukuk Eğitimi

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ÖZ. Kamu kuruluşu niteliği taşıyan eğitim kurumlarının yönetiminden sorumlu olan tüm eğitim yöneticilerinin hukukun çizdiği sınırlar içinde görevlerini yapabilmeleri için kendilerine yardımcı olacak tür ve düzeyde hukuk eğitimi alması gerekmektedir. Derleme niteliği taşıyan bu çalışmada, öncelikle genel olarak eğitim yöneticilerinin yetiştirilmesi konusuna değinilmiş daha sonra hukuk ilintili eğitim, eğitim hukuku ve okul hukuku kavramları çerçevesinde eğitim yöneticilerinin yetiştirilmesi konusu ele alınmış, son olarak da eğitim yöneticilerinin hukuk eğitimlerinin nasıl olması gerektiği tartışılmıştır.

Anahtar Sözcükler: Eğitim yöneticisi, hukuk eğitimi, hukuk ilintili eğitim, eğitim hukuku, okul hukuku.

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ÖZET

Türkiye’de başta okullar olmak üzere tüm eğitim kurumlarının yöneticilerine “eğitim yöneticisi” adı verilir. Eğitim yöneticisi, çalıştığı kurumun eğitsel amaçlarının gerçekleştirilmesine dönük etkinlikleri planlayan, insan ve fizik kaynaklarını, bu eğitsel amaçların en etkili biçimde gerçekleşmesi yönünde eşgüdümleyen ve denetimini gerçekleştiren bir alan uzmanıdır. Bu yönüyle eğitim yöneticisi, eğitim politikalarının uygulanması, öğretimin gerçekleştirilmesi ve geliştirilmesi gibi etkinliklerde anahtar konumdadır (Hoy and Miskel 1987; Balcı 1988; Everard ve diğerleri, 2007).

Kamu yönetimi gerek kuruluş gerekse işleyiş yönünden hukukla ilişkili olduğu için (Gözübüyük 2002) kamu yönetiminin bir alt sistemi olan eğitim yönetiminin de hukuk kuralları doğrultusunda olması gerekir. Kamu kurum ve kuruluşlarının yönetiminden sorumlu olan yöneticilerin, dolayısıyla çoğu devlet memuru statüsünde olan eğitim yöneticilerinin, kamu yönetimine tanınan yetkileri keyfi kullanmamaları, kendilerine verilen görevleri kesintisiz bir biçimde ve hizmetin gereğine uygun olarak yürütmeleri; kısacası, hukukun çizdiği sınırlar içinde görevlerini yapmaları bir zorunluluktur.

Çalıştıkları örgütleri hukuk kurallarına uygun olarak yönetebilmeleri için, tüm eğitim yöneticilerinin hukuk eğitimi almaları gerekmektedir. Eğitim yöneticilerinin bu eğitimi, hizmet öncesinde, eğitim yönetimi alanında açılmış lisans veya lisansüstü bir program kapsamında almalarında yarar vardır. Bu programda eğitim yöneticilerinin, öncelikle haklarını ve sorumluluklarını bilmeleri ve bir hak ihlali ile karşılaşmaları durumlarda haklarını arayabilmeleri için gerekli olan ölçüde temel hukuk bilgisine sahip olmalarına yönelik dersler verilmelidir. Bu amaca dönük temel hukuk eğitimi genellikle “Hukuk İntili Eğitim” olarak adlandırılmaktadır ve aslında bu eğitimi sadece eğitim yöneticilerinin değil, tüm vatandaşların alması öngörülmektedir (Rowe 1992). Eğitim yöneticilerine yönelik temel hukuk derslerinde, hukuk alanında geçen belli başlı kavramlar tanıtıldıktan sonra, bir eğitim yöneticisinin ihtiyaç duyduğu özel hukuk ve kamu hukuku bilgileri ile özellikle yönetim hukuku bilgisinin verilmesinin önem taşıdığı söylenebilir.

Eğitim yöneticilerinin, genel hukuk bilgisinin verildiği temel hukuk derslerinin yanında, eğitim hukuku ve okul hukuku gibi dersleri de alması gerekmektedir. Eğitim hukuku ve bu dersin devamı niteliğinde olabilecek okul hukuku derslerinde ise eğitim hakkının ulusal ve uluslararası yasal dayanakları incelenmeli, eğitimle ilgili mevzuat genel olarak tanıtılmalı ve eğitim ve okulla ilgili özel alanları düzenleyen hukuk kuralları; örneğin okulun öğeleri (yönetici, öğretmen, öğrenci, veli vb) ile ilgili mevzuat analiz edilmelidir. Bu tür analizlerde, eğitim mevzuatında yer alan tüm belgelerin olumlu ve olumsuz hükümlerinin tartışılması kadar, hiç ele alınmamış ama eğitim mevzuatında yer almasında yarar görülen hükümler ile olumsuz hükümlerin yerine konulabilecek hüküm önerileri de tartışılmalıdır. Ayrıca eğitim ile ilgili davaların, özellikle yüksek mahkemelerin verdiği kararların analizleri de yapılmalıdır.

Ancak hizmet öncesinde yukarıda belirtilen hukuk eğitiminin alınmış olması, eğitim yöneticilerinin tüm meslek yaşantıları boyunca eğitim mevzuatını

uygulamada karşılaştıkları sorunları çözmeye yeterli olmayacaktır. Bu yüzden eğitim mevzuatındaki değişiklikleri tanıma ve tartışma fırsatı verecek kısa süreli hizmet içi eğitimler düzenlenmelidir.

İster hizmet öncesi isterse hizmet içi olsun, eğitim yöneticilerine yönelik hukuk eğitimlerini verecek eğitimcilerin hem alanın kuramsal ve yasal çerçevesini bilen hem de uygulamayı yakından izleyen akademisyenlerden seçilmesinde yarar vardır; çünkü sadece konunun kuramsal ve yasal boyutlarını bilen akademisyenlerin, bu bilgileri uygulamada karşılaşılan sorunlarla ilişkilendirmekte güçlük çektikleri gözlenmektedir. Diğer yandan, sadece alanda yaşanan sorunları bilen ama bu sorunların nasıl çözülebileceğine ilişkin hukuksal açıklamalar getiremeyen uygulamacılar tarafından verilen eğitimler de yine başarılı olamamaktadır.

Ayrıca, hukuk alanındaki yetişmede sadece formal olarak verilen hukuk eğitimleri ile yetinilmemelidir. Bu tür formal eğitimlerin yanında, okul yöneticilerinin hukuk alanında bireysel gelişmelerine olanak verecek, özellikle çağımızın gelişen bilişim teknolojisinin sağladığı zenginliklerden de yararlanılmalıdır.



Educational Administrators' Education in Law

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ABSTRACT. For educational administrators, to perform their tasks within the boundaries drawn by law, they need to receive education in law. This study is a review. Firstly, general education of educational administrators was addressed and the education of educational administrators in the context of law related education, educational / school law was considered in the study. Secondly, how the education in law of educational administrators would be was discussed.

Keywords: Educational administrator, education in law, law related education, educational law, school law.

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INTRODUCTION

Educational organisations are administered by educational administrators. An administrator is a field expert who plans the activities required by the educational objective of schools, coordinates and supervises the human and physical resources for the realization of the educational objective in the most efficient manner. With this aspect, an administrator plays an important role in activities such as practicing educational policies, and the realization and improvement of education at schools (Hoy and Miskel, 1987; Balcı, 1988; Everard et al., 2007).

As required by their nature, people live in societies and the interpersonal relations within societies need to be conducted in a certain order. For this reason, rules for social order have emerged. The purpose of the rules for social order is to arrange individuals' attitudes and behaviours towards each other and the society, and in the same manner, society's attitudes and behaviours towards individuals, and to establish a balance between conflicts of interests (Bilge, 1986; Zevkliler, 1992; Gözübüyük, 1993; Öztan, 2002).

The most influential one among the rules that regulate society is the rule of law when the rules of law are in question, the state imposes sanctions. Law can be defined as the overall rules for social order that regulate people's relations with each other and with the society, and the abidance to which may require sanctions by public force or by the state (Gözübüyük, 1993).

This study is a review. In the study, general education of educational administrators is addressed and the education of educational administrators in the context of law related education, educational / school law is considered. Finally, how the education in law of educational administrators is discussed.

General Education of Educational Administrators

In a general sense, it can be said that education of educational administrators bears great importance (Balcı, 1988). Education of educational administrators involves the efforts for the improvement of knowledge, skills and attitudes required for administrators and prospective administrators to be more successful in their jobs, adopt a modern education understanding, administer their organization in accordance with the rules of laws, and guide their subordinates eligibly (Ataklı, 1991).

In addition to the studies conducted abroad on the education of educational administrators (Waring, 1992; Pounce, 1993; Schlechte, 1995; Thody, 1998), there are also some studies performed in Turkey on the same

topic. For instance, Şimşek (2002) states that in Turkey, the practices for the education of educational administrators and thus, their appointment, follows a three-step stage. These are “apprenticeship model”, “educational sciences model”, and “the model where some additional qualifications are used as reasons for appointment” respectively. The last model could also be characterized as “examination model”.

Article 12 of the Law no. 789 on Education Organization put into effect in 1926 (which is no longer in force) foresees the principle that “the basic issue is teaching in national education”. Besides, according to article 43 of the Basic Law on National Education (no. 1739), teaching is defined as “a field of expertise that undertakes the state's administration tasks on education, education and related topics”. According to this emphasis placed on teaching within the Ministry of National Education, the condition of having acted as a teacher for a certain period of time is sought to become a school principal.

In Turkey, undergraduate degree on educational administration was offered between “1965–2001”. In this undergraduate education, transferring knowledge on basic legal concepts and educational legislation as well as knowledge on educational administration were considered important (Karaman-Kepenekci, 2006). However, since undergraduate study on educational administration is not taken into consideration for appointment as a school administrator, individuals who hold this undergraduate diploma could, unfortunately, not become administrators in schools as long as they did not teach in the system.

Along with the “model where some additional qualifications are used as reasons for appointment”, the examination model was started to be used for the appointment of school principals/deputy principals. As the qualifications and other conditions to be sought to be appointed for administration posts, this need to be regulated with a regulation according to the Law no. 3797 (article 56) in the Turkish Education System, the Regulation on the Appointment and Replacement of Administrators of Education Organizations Affiliated to the Ministry of National Education was approved on 23 September 1998 (which is no longer in force). With this regulation, the appointment of school administrators was based on a two-stage examination system. 34.505 candidates took part in the examination and 1553 of them were successful. The candidates who passed the first stage were provided education in the field of educational administration of 120 hours. In this education programme, in addition to the basic courses in the field of educational administration, only “administrative law” and “human rights and democracy” courses were given about law. For appointment to the first

administrative level, a separate selection and evaluation test was given at the end of this education. 1553 candidates who took this test were graded according to their scores and then, they were appointed as principals to schools available (Ministry of National Education, 1999). In an assessment concerning the scope of this test, Balcı (2003) proposed that regulations for public administration and regulations of national education be included in the test content with a weight of 20% as a separate dimension. In another study, where the administrator education programmes of the Ministry of National Education were evaluated, it was concluded that topics about educational regulations are not dealt with at a sufficient level (Çetin and Yalçın, 2002). The same finding was also reached in another study conducted by Balcı and Çinkır (2002) on school administrators who took part in various educational administration programmes.

The examination model applied in Turkey for school administration was first amended as a result of some regulations. However, later it was totally annulled. This case started the process of transformation to the first stage defined as “apprenticeship stage” by Şimşek (2002) in the selection and education of educational administrators in Turkey. Thus, the Ministry of National Education put the Ministry of National Education Regulation for Administrators of Educational Organizations into effect on 24 April 2008. It attracts attention that in article 11 of the Regulation titled “General Conditions Required for the Ones to Be Appointed as Administrators”, there is no condition set for “having received education in the field of educational administration”. However, in article 12 of the same regulations, it was decided that appointments shall be made in accordance with the “Administrator Evaluation Form” annexed to the regulations. When this form is examined, it is understood that the candidates who would like to be principals are given extra points if they have completed their postgraduate or doctorate studies in the field of administrative sciences; however, having received such education is not a condition, but only a reason for preference. In short, it can be concluded that one of the obstacles in the development of educational administration in Turkey as an autonomous profession is the regulations in force for the appointment of administrators since according to the present regulations, as also stated above, having received some education in the field of educational administration (diploma, certificate etc.) to be an education and school administrator in Turkey, is not compulsory, but a reason for preference.

In that case, based on the present regulations about the selection and appointment of administrators, it can be concluded that the fact that educational administration and teaching are two different professions is not

fully comprehended in Turkey and this case is reflected in the policies for the education of educational administrators in the country. The knowledge base of educational administrators should be classified as practical knowledge and professional and academic knowledge. In Turkey, a very serious policy on the education of educational administrators has not been developed and thus, it has not been possible to eliminate the disconnection between professional and academic knowledge and practical knowledge in the education of educational administrators. Therefore, it can be seen that the professional and academic knowledge produced in the field of educational administration (such as school financing, organizational theory and school regulations) is not well-reflected in practice (Çelik, 2002).

Education of Educational Administrators in the Context of Law Related Education and Educational/School Law

For educational administrators to be aware and conscious of their rights and responsibilities and to claim their rights when they encounter any violation of rights, it is important that they have some knowledge of law at a certain level. Education to this end is generally named “Law Related Education” (LRE) (Rowe, 1992).

The purpose of LRE programmes and curricula is to assist people in understanding and appreciating the law, the legal system, and their rights and responsibilities as engaged citizens. In the programmes, rules of law, legal processes and principles are used in order to be able to help people find practical solutions to problems they might encounter in their daily-lives. Community resource persons working within the legal system constitute an important part of the LRE team. LRE promotes civic responsibility and community participation and thus, it guides people in becoming effective and law-abiding citizens (Utah Law Related Education, 2009). For this reason, LRE is most of the time used synonymously with citizenship education (Idaho Law Foundation, 2009; State Bar of Georgia, 2009).

Rights, responsibilities, contract, negligence, power and, above all, justice are the key organizing concepts of LRE. Legal concept can assist in the review of all laws, legal processes and institutions. The key lesson of LRE is that all individuals have different value systems and a person's justice is another's injustice. When resolving these conflicts of view, evidence, rights of others and processes should be given due weight (Rowe, 1992).

In addition to all citizens, people who work in organizations established for specific purposes have to act in accordance with the rule of law both in general sense and at the organizations for which they work. For this reason,

the staff should not only have information about law to be given through LRE, but they also should acquire law related information at the organization that they work for. Therefore, it would be useful to offer basic education in law to the entire staff, particularly the administrators, of schools including the rules of law they need to abide by both as the citizens of a country and as the citizens of the organization they work for. Educational administrators also need education in law for them to have the command of and interpret the educational regulations, and to perform their duties within the rules set by the educational regulations. Such education is generally given within the scope of “educational law” and/or “school law”. In the literature, there are many studies conducted on educational law and school law (Nolte, 1969; Johnson, 1969; Hollander, 1978; O'Reilly and Green, 1983, 1992; Hudgins and Vacca, 1985; Menacker, 1987; Shoop and Dunklee, 1992; McCarthy and Cambron-McCabe, 1992; Imber and Van Geel, 2005).

No matter how they become principals, board members, superintendents or teachers, for educational practitioners to be prepared to act proactively, they need to go through the intellectual challenge presented by educational law (Russo, 2006). Educational law can be considered as a dynamic and intellectually stimulating discipline, and it constantly evolves to meet educational leaders' needs when they manage the daily activities at schools. The merits of educational law's decisions and the potential impact of those decisions on educational leaders can of course not be ignored. In order to keep abreast of legal changes, recent Supreme Court opinions should also be read. Accordingly, in order to be able to enhance school environments for all of its constituents, it is the educators' duty to develop and implement policies (Russo, 2006). In the pre-service and in-service education of educational administrators, topics on education law and school law should also be included.

In a study he conducted on “Education of Educational Administrators”, Balçı (1988) pointed out that in the education programme to be offered at an undergraduate level for school administrators, it would be beneficial to include topics on educational law such as laws and other legal regulations on the Turkish Education System, rights and responsibilities of school officials, legal aspects of school administration and legal inspection of administration along with the other important topics on educational administration. According to Balçı (2003), education on educational administration for school administrators should be given through pre-service programmes and completed at a postgraduate level. These programmes should be organized jointly by faculties and employment agencies in a way that the relationship

and balance between theory and practice will be ensured. While these programmes may differ among organisations, common topics such school administration and supervision, school law and school financing should be included in the programmes of each and every organisation.

In contrast to the case in Turkey, it is obligatory that prospective principals receive various education on administration and leadership in the USA, Australia and England (Bush and Bell, 2002; Şişman and Turan, 2002). According to Stewart (1998), principals do not need to have degrees in law, but of course they need to have a good command of the aspects of school law relating to their professional responsibilities. For principals to be able to develop and implement efficient strategies for legal risk management, they should have adequate comprehension of school law as part of their overall professional knowledge. For this reason, principals should not only have a good command of legally related matters, and management theory and skills in order to administer their schools, but they should also have comprehensive knowledge about parliamentary statutes and common laws about schools. In a study in which she examined education of school principals in the USA, Pehlivan-Aydın (2002) stated that although programmes related to principals' pre-service education vary among universities, most of these organisations agree on basic issues. One of the agreements is found and draws attention that along with courses such as "introduction to educational administration", "school financing", and "supervision", there is also the "school law" course for prospective educational administrators to comprehend education regulations in university programmes.

DISCUSSION and CONCLUSION

For them to administer their organisations according to the rule of law, all educational administrators should receive education in law. It can be suggested that educational administrators receive pre-service education at an undergraduate or postgraduate level specifically in the field of educational law or educational administration in general, and that this education include courses such as educational law and school law in addition to basic law courses that can be characterized as LRE where general information on law is given. It can be said that in basic law courses for school administrators, it is important that transferring information on private and public law, and particularly administration law should be given following the introduction of main concepts in the field of law.

In educational law and school law courses which can be accepted as the extension of educational law, national and international legal basis of right to

education should be examined, the regulations on education should be introduced in a general sense, and rule of law that arrange specific areas about education and school, such as regulations about the stakeholders of the school (administrators, teachers, students, parents and etc.) should be analyzed. In such analyses, not only the positive and negative articles of all documents found in educational regulations, but also the articles that have not been discussed at all but will potentially be useful and suggestions for articles that may replace negative articles should be discussed. Besides, court cases on education, especially the judgments made by supreme courts should also be analyzed. In other words, it would be beneficial to expand education in law containing information about the process of looking for legal remedies with the analysis of related court cases.

However, with the completion of above mentioned pre-service education in law will not be sufficient for school administrators to be able to solve the problems they will face in the practice of educational administration and regulations during their careers. For this reason, short-term in-service educations that will allow for school administrators to comprehend and discuss the changes in education regulations should be organized occasionally. Such in-service education can be organized during school time in a way that will not interrupt education and teaching, or during the holidays.

Whether it is pre-service or in-service education, it would be useful to choose the educators who will give education in law to educational administrators from among academicians who both have a good command of the theoretical and legal framework of the field and follow the practice closely. According to Russo (2006), due process and equal protection are essential elements for the implementation of sound policies and practices, and focusing on these basic concepts can be taught by faculty members who specialize in educational law to practitioners in order to help to preserve the importance of educational law. In other words, abstract legal principles or theories are certainly important; however, faculty members teaching law education should help practitioners to apply these concepts instead of just memorizing them. As required by the reactive nature of the discipline they work in, faculty members who teach educational law should help school officials to meet the needs of all the constituents from students and parents to faculty, staff and the local community by presenting their subject matter as a tool to be applied in advance. This is because the academicians who just know about theoretical and legal dimensions of the field well will face difficulties in associating this information with the problems confronted in practice. On the other hand, education given by practitioners who know

about the problems in the field but can not present legal explanations for the solution of those problems again fail.

The legal dimensions of a situation should be well-known by educators, and it is the classes in educational law that will provide such awareness for a better discussion of a situation in the case of a legal controversy. In educational law classes, educators should learn how to make use of their substantive knowledge of law and from which sources they can update their knowledge through professional organizations so that they can take part in the development of sound policies for the enhancement of the day-to-day operations of schools. However, since most of the changes produced by educational law are reactive, it becomes complicated to make the law proactive, and it is only after a decision is made via litigation that modifications are made. Law classes should certainly try to balance the tension between the proactive and reactive dimensions of educational law; however, they should not become school of law in educational leadership programmes.

Besides, one should not be contented with only formal education in law. In addition to such formal education, making use of advantages offered particularly by improving information technologies of our age which will also allow for individual improvement of school administrators in the field of law may also be suggested. In these recent years in which we live in an information society, the rising of the level of educational skills features an individual's educating and improving himself/herself, and using his/her individual talents to the full extent (Numanoğlu, 1999). The importance of individual efforts in people's educating themselves is no doubt great.

It has become quite easy for school officials to access information on all developments about education including educational regulations. Thanks to many websites prepared about education, the entire school staffs who have the opportunities and conditions to access information can find the information they are looking for very easily. Studies conducted and services offered with regard to information technologies by the Ministry of National Education have the characteristics of significant resources for those who can make use of these services (Şen, 2007). School administrators may also improve themselves using electronic resources on topics about education regulations. They may also make use of books or periodicals giving information about education regulations in addition to electronic environments. However, in cases where the school administrator believes that he/she improves himself/herself in education regulations through individual readings, misleading results may occur especially when it is necessary to interpret the regulations.

In an organization, daily functions such as announcements, updates and consultations take place during conversations, correspondences, and mainly, meetings (Kaya, 2006). When this advantage is taken into consideration, attending meetings about educational regulations would certainly be an important opportunity for school administrators to improve themselves. In-service education programmes are certainly made use of in educating working staff as the qualifications sought for in personnel change very often today where technology improves rapidly and improvements, and thus information, in social and economic fields increase, and the importance of in-service education for personnel working in such an environment to acquire required qualifications increases day-by-day (Taymaz, 1997).

When the education of school administrator who is currently in office is in question, the most convenient solution for school administrators who perform their duties at the places where their schools are located and who, at the same time, do not have the opportunity to receive long-term in-service education in law, is certainly short-term but intensive programmes to be implemented during holidays. However, it would be beneficial to organize long-term law courses that will not interrupt education and teaching for school administrators who work at large place that have the opportunity to offer in-service education.

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