A LANGUAGE OF FREEDOM AND TEACHER'S AUTHORITY

CASE COMPARISONS FROM TURKEY AND THE UNITED STATES

Edited by FATMA MIZIKACI AND GUY SENESE
with YASEMIN TEZGIDEN CAKCAK AND SHARON GORMAN



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Students' Freedom and the Authority of Regulation

The Real and the Ideal

Pelin Taşkın

Both in primary and secondary education, there are mandatory rules in order to carry out educational activities smoothly and without any hindrance. These rules and the status of the students affected by them are established with respect to the way the function of the school is determined. Where disciplinary rules are concerned, if educational institutions are only regarded as an ideological device of the state, the ratio legis (reason) underlying the rules in question will be to unduly control the students and turn them into submissive individuals, who ironically may be ill-suited to be our finest, most courageous citizens and civic leaders. Even in "simple" conditions, as in the ordinary keeping of school, educational activities cannot be practiced in a way that ignores or abrogates the basic rights and freedoms of beneficiaries, because students have basic rights and freedoms as human beings and citizens. Valuing such rights is the strongest reason why as citizens they come to appreciate the obligation to serve as citizens, representatives, military and other service positions. We can also see this in legal texts about human rights such as United Nations (UN) Universal Declaration of Human Rights, European Convention on Human Rights, and UN Convention on the Rights of the Child.

In this chapter, students' freedom of thought and speech, freedom of assembly and peaceful demonstration in Turkey is our subject, including discussion where these rights have been violated or even simply ignored.

These are examined and discussed regarding whether exercising these freedoms should result in punishment and if so when, or when not. First, brief definitions of these freedoms are provided, and then, example incidents from Turkey are cited. Finally, what the disciplinary board and courts could do about the issue in question is examined and any possible extra-judicial means are sought.

THE FREEDOM OF THOUGHT AND SPEECH

Freedom of thought and speech are the individual rights preventing being condemned or accused for one's declaring his thoughts (Teziç 1990, 33). We can see that freedom of thought and speech is assured in Turkish law and also the in the counterpart U.S. constitutional context presented in this volume, because "freedom of speech is essential to democratic self-governance, vital for the protection of human dignity and autonomy, and supportive of the search for truth through a 'marketplace of ideas'" (Varel 2013, 431). Freedom of thought and speech gives an opportunity to express oneself and protects the dignity of human honor for each individual. In addition, the justification behind the very "marketplace of ideas" for the freedom of thought and speech is that it would be possible to appreciate different opinions in a free discussion atmosphere and express different demands so that all may be enabled to explore and discover the truth. This is very important both for the individual and the community. The freedom of thought and speech constitutes the basis of free democratic states (Karagöz 2004). These rights go to the very heart of the program of public education in democratic societies.

THE FREEDOM OF ASSEMBLY AND PEACEFUL DEMONSTRATION

Freedom of assembly and the right to peaceful demonstration facilitate the exchange of ideas and opinions between individuals and help to defend common interests by coming together to express and help influence public opinion and to affect political decision-making organs (Kara 2005; Kaboğlu 1992, 118). The assembly and peaceful demonstration freedoms can be used to express public wishes on any political, social, cultural, professional, or economic issue or to protest any regulation and practice (Gülhan 2006; Kaboğlu 1992, 118).

INCIDENTS FROM TURKEY

In Turkey, there are various incidents that limit or even ignore students' freedom of assembly and peaceful demonstration. These incidents are in

the daily newspapers and news pages on the Internet. Some of them have been taken to court. We discuss some key examples here.

The following incident is about the students' freedom of assembly and peaceful demonstration. Secondary school students between the ages of twelve and fourteen were arrested by the police and sued in court one year after the incident just because they protested their idle classes[1] with signs that read "We need teachers," "Budget more for education," "Having a teacher is our right and we will get it!" (*Hürriyet,* December 27, 1999). In this incident, students enjoyed their freedom of assembly and peaceful demonstration to get their right to education. However, these students assembling and acting in peaceful demonstrations were considered in offense, and soon an action was brought against them by the authorities.[2]

Another incident making it to the news headlines in 2010 was about the students who held a demonstration. On February 25, 2010, about one hundred students gathered in the schoolyard and supported *Tekel* (tobacco) workers' protests in Ankara with a sit-in during their class break. Some of the students who had no class at that time also supported the sit-in. As a response to these protests, the school management filed a disciplinary report demanding the students should be expelled from the school and sent the file to District National Education Directorate responsible for approving the disciplinary punishment (*Cumhuriyet,* March 18, 2010).[3] Twenty-four of them were suspended from school. In this incident, students were punished only because they expressed their personal ideas about a case at the school that is not directly related to them but one that occupied the agenda of the society for some time. At this point, the question that might come to mind is whether the students would have been punished, had they performed this act outside the school. But due to Turkey's restrictive attitude against the freedom of peaceful demonstration, it is difficult to answer this question in the affirmative.

Another incident took place in an Industrial Vocational High School in Istanbul. Students started boycotting the school cafeteria as the prices were too high for their customary pocket money, and against the school management which had banned meal delivery to the school during the lunch break. On March 7 2012, they set up "sharing desks," four in each assemblage, set with the food they brought from home. However, the principal stormed the class with agent police officers and got the tables removed. Then the management launched a disciplinary investigation about seventeen students who had distributed leaflets that read, "We cannot feed ourselves for nine hours in our high school. And we cannot eat properly because of the high prices in the canteen" (Milliyet, April 3, 2012). This incident reveals that although students did not express a direct demand for their right to education specifically, they expressed their reaction to the high prices, which would be disadvantageous to some students and cause unfairness. This was also considered within the

framework of their right to education generally and conditions that foster learning. However, the act of "sharing desks" perhaps suggested, "communism" and met with the management's intervention. Speaking of, discussing, and supporting politics or ideologies and acting reactively in protests in the secondary schools in Turkey, is not allowed.

In June 2014, Işıtan Önder, who graduated from İzmit Gazi Anatolian High School with honors, delivered a speech about the Gezi Park protests by saying, "Police had destroyed our lives. It is impossible not to mention Berkin Elvan[4] or Ali İsmail Korkmaz[5] here. Please keep in mind that people like Berkin Elvan, Ali İsmail Korkmaz would be sitting on these desks forever." Berkin Elvin, a boy who had died during an attack in Gezi and had become an especially recognized national symbol for the resistance. After the speech, he received a disciplinary punishment and his honor roll status was taken away. With the support of the Eğitim-Sen—the teachers union—Önder's family pressed charges against the school at Kocaeli Administrative Court for not recognizing the larger scores which he was supposed to receive because of his honor roll status (*Hürriyet*, June 18, 2014).[6]

In some cases, an "act" is prevented regardless of its aim and in others "ideas" are prevented to be uttered as they are found to be politically "inconvenient." In practice, disciplinary penalties apply to expressing ideas or collective acts such as demonstration march and boycott; penal actions are taken against these acts as in the above-mentioned cases. It should be considered that children at school age will be the citizens of the future, and equipping them with skills to make consistent and just discussions only possible in a democratic school environment. However, Gutmann argues that governments tend to restrict students' freedoms more when compared to adults (Gutmann 1999, 50–51). In the eleventh article of the Basic Law of National Education, education for democracy is included among the main principles of national education in the following way: "In order to establish and maintain a stable, strong, and free social order, the knowledge of democracy that citizens need to possess, in addition to the knowledge pertaining to the governance of the nation-state and the sense of responsibility regarding the understanding of, and respect for, the traditions should be taught to and advanced among the students in the national education system." Furthermore, with the following expression it states: "As a matter of fact, any kind of political and/or ideological undercurrent which contradicts Atatürk's concept of nationalism as expressed in the Turkish constitution must be barred from access to state educational institutions." Again it is important to know that the founder of modern Turkey, Atatürk (Mustafa Kemal) established with the original revolutionary government and the basic principles of democratic constitutionalism in Turkey. It is possible to think that the given article justifies Gutmann's view (1999, 50–51). Because in the given provision, although students are expected to have an awareness of de-

mocracy, but only daily and political issues that are not against Atatürk's concept of nationalism could be discussed. But it should be noted that "no matter how natural and inalienable natural rights might be, without the capacity to express them or to participate in their enforcement, they are little more than brave words" (Vasillopulos 2011, 24).

THE PROBLEM OF UNCONSTITUTIONAL DISCIPLINARY REGULATIONS

There is no discrimination in the Turkish Republic Constitution between adults and children/students in terms of basic rights and freedoms. According to the Constitution, "Everybody has personal, inviolable, untransferable, irreplaceable basic rights and freedoms" (Constitution Article 12/1).

However, there are disciplinary sanctions[7] in provisions to sustain order at schools; if students perform any of these actions, they receive disciplinary punishments. The students could receive any of these disciplinary punishments: secondary school students could be given warning, denunciation, and be transferred to another school; high school students could get be "denounced," suspended from school for between one and five days, forced to change schools or expelled altogether from the formal education system. The suitability and efficiency of these punishments is an important issue. But the important thing with regard to this study is whether those disciplinary behaviors can be assessed in relation to student rights and freedoms.

The first point regards disciplinary punishment; whether we can arrange a disciplinary punishment with merely an administrative regulation. The disciplinary issue in the Turkish law is generally approached within the framework of civil servants code because Article 124 of the Civil Servants Law states the conditions in which disciplinary punishments can be practiced.[8] For the regulation in his article, Karahanoğlu (1999, 54) states that it is the social values and interests that are protected with the disciplinary punishment. National education is also a public service. However, disciplinary actions against students do not punish those responsible for the public service; for various reasons[9] it is mostly the students, who benefit from the service, that receive the punishment. Since the disciplinary offense is an action that disturbs the public order (Yüce 1994, 5), disciplinary punishment is inflicted when the public order, in students' case the school order, is disturbed.[10]

Within the framework of the Civil Servants Law Article 124, problems related to the disciplinary law are discussed by attorneys. One of the important ones about student discipline is the relationship between "disciplinary actions and legality." With a general evaluation of terms in the criminal law, the legality principle states that no one can be punished for

an action that is not an offense in the law and no punishment can be given if it is not stated in the law, but it is controversial whether this principle is valid for disciplinary punishments or not (Akyılmaz 2002, 6). Yüce states that the legality principle is valid in disciplinary law, but disciplinary law's unique regulatory style must be followed when this principle is practiced. (1994, 9) Nevertheless, as Karahanoğlu states (1999, 76), the disciplinary punishments lead to serious consequences for personal rights and freedoms. Especially when we think about disciplinary punishments practiced on students, the student is suspended from school because of the punishment and they are forced to change school or have to further their education in distance education high schools. These punishments lead to serious consequences on students' right to education in this regard. Because of both the legality principle and the Article 13 of the Constitution that reads, "without disturbing their essence, basic rights and freedoms can only be limited depending on the related causes in related articles of the Constitution," the disciplinary actions against students must be regulated not with a regulation but with a law.[11]

The second issue to be mentioned here about the disciplinary punishments against students is that whether any disciplinary punishment could be given if students conduct activities without prior permission, which are within the right to freedom of thought, speech, freedom of assembly and peaceful demonstration. The following regards regulations about the freedom of speech and thought, freedom of peaceful assembly in the Regulation on Secondary Education Institutions. According to this:

> Any demonstration, activity, meeting without prior permission, and attending any of these activities, requires suspension for a short time. (Art. 164/2 ç)...
>
> Any political and ideological protest in an educational environment, provoking others to organize such protests and attending any of these protests require changing schools. (Art 164/3/k)

Constitution Articles 26 and 34 states that everybody can benefit from these freedoms and Constitution Article 13 and 34/II states that these freedoms can only be limited by a law, so these two provisions in the Regulation cannot be counted as constitutional. Moreover, when we take the international agreements that Turkey abides by into consideration, these freedoms cannot be limited within a regulation alone. In addition, European Court of Human Rights—whose judiciary power Turkey obeyed—ruled about Ezelin-France13, which stated that attending a peaceful demonstration cannot be given even the least disciplinary punishment. When we take legal regulations and the court decision above, subjecting a peaceful demonstration to permission, practicing a disciplinary punishment for an unauthorized protest are outdated practices. Moreover, it is very difficult to determine what "political and ideological

motives" are, for example whether criticizing a present governmental policy about education could also be counted within this context.

Opposing the very idea of the regulation itself would prevent the practice of governmental policies with an administrative action. Instead of regulations about disciplinary punishments, there should be applicable legislation, since preparing a law to be executed in the future requires students' rights, freedoms, and related restrictions to be discussed in view of the public. As such, regulatory actions—which the Ministry of Education, the very practitioner of educational policies, will have the bureaucrats "be-hind the scenes" write—will have no legal binding. Thus, it will be possible to prevent unjust practices when they occur. One of the important factors that will make this possible is the responsible board's point of view when meting out disciplinary punishment. At this point, it is necessary to discuss the disciplinary board and its authority.

THE DISCIPLINARY BOARD AND ITS AUTHORITY

The board that is appointed for giving disciplinary punishment in Turkish schooling system is the "The Board of Student Reward and Punishment" at schools. This board consists of the vice-principal, two elected teachers, the second president of the honorary committee (who is a student), and a parent who is elected among the members of the parent-teacher association. As can be seen, most of them are teachers (three members out of five).

It should be questioned whether having just three teachers in this board are acceptable. My personal point of view is that the classroom teacher and the guidance counselor of the student sent to the disciplinary board, should be the natural members of the board and they should take part actively in the whole disciplinary process. The important things to be considered if the disciplinary action is repeated are stated in the Regulation Provision 168 (1). In this provision, the class guidance counselor, other teachers—if necessary—and student's parent would give their own opinions on the incident. I think if these teachers, who know the student better, get involved in the board and follow the whole process closely, it would be better than just giving their opinions.

The following factors must be kept in mind when determining punishment according to the regulation: that a student is a minor until eighteen years of age; student's best interest, privacy policy, class guidance counselors, teachers' and parents' opinions if necessary, information about the parents and the social environment of the student, personal features and psychological state of the student, under what circumstances the disciplinary action was committed, provoking factors, student's age and sex, student's interest and success in the lessons, whether the student has any prior punishment.[12] But in practice, it is doubtful

how much these factors are taken into consideration. Whether the disciplinary boards have violated the rules of procedure and laws that include their own judicial discretion (or how often they violate) is not known because there is no such data or research.

On the other hand, in the above-mentioned incident of Işıtan Önder, whose scholastic honor roll status was taken away, one might argue that the disciplinary board did not give sufficient consideration to these factors, given that Önder, because of his closing speech at the end of year ceremony, was posthaste punished unjustly, removed from the honor roll and his score used for university application, lowered. For this reason, it could be stated that the teacher authority is ignored in the articles regarding the authority of the board; in other words, the members of the board should be responsible for imposing the positive law,[13] which are the punishments in the Regulation, so the teachers are not made to assume the roles of police or "guardians" responsible for the realization and the implementation of government's educational policy.

What we can surmise from the disciplinary board is the way teachers see themselves during the disciplinary procedure; in other words, how they play their roles and use their own authorities. Kumaravadivelu (2003, 8) divides teacher roles into three: Teachers as passive technicians, teachers as reflective practitioners, and teachers as transformative intellectuals. Depending on how they perceive their roles, teachers may assume different positions in disciplinary boards. While a technicist teacher may follow what is written in the regulation without any critical judgment, a reflective teacher might take into consideration the above-mentioned factors in reaching a decision.[14] A transformative intellectual would in turn question the very existence of the board of discipline and work against such an attempt to "discipline" the students. When it comes to the roles attributes to teachers in Turkey, in his assessment of the transformation of teaching profession in Turkey, Yıldız (2013) makes a categorization similar to this triple categorization and states that teaching in Turkey has transformed from being an enlightening modernizing teacher into a technician teacher preparing students for exams. Yıldız's analysis is also valid in the case of the disciplinary rules because when we talk about the discipline, pacifying the teaching profession is no less present. The teacher is thereby neutralized and forced to turn a blind eye to the literate, intellectual, or transformative side of their authority. In the disciplinary boards, teachers are asked to leave aside their roles of supporting students, standing along with the students and looking for solutions to student problems together with the students. They are turned into authority figures and/or even into police officers who judge and punish students. However, a critical teacher is not a person who suppresses students; in contrast, they are the individuals who educate the students as critical citizens and help them to become much freer (Tezgiden Cakcak 2016, 67). In fact, as Freire put it (2014, 65), if the teachers were

not just teachers but also learners who teach their students through dialogue and who learn with the students and if these students also became teachers, truths based on mere, or base authority would not be valid anymore. In this kind of situation, the authority would have to be in the same epistemological category as freedom itself in order to have an effect working toward justice. Without this link the teacher is led to become a mechanical practitioner of the oppressive ideological state apparatus (Althusser 1991, 27).

Considered within the given context above, teachers in the disciplinary boards should not only look into whether the student did the act in question. For example, in a disciplinary board, teachers should be able to discuss whether it is just to punish students for an activity or a short talk carried out to attract attention to an event in the country, for example the crisis of safety in a mine disaster, which is carried out without the permission of school management but which however, does not block the educational activities. It means that they should be able to discuss the appropriateness of the rule in the Regulation on Secondary Education Institutions that envisages that students who "organize unauthorized demonstrations, activities and meetings, and participate in such demonstrations, activities and meetings" should be suspended from the school for one to five days in terms of justice and public conscience and should be able to reject the police duty attributed to them. Thus, as Giroux (quoted in Yıldız 2013, 1) states, the teachers are able to reject the new model imposed upon them; the model which prevents them from engaging in ethics and justice questions.[15] For this reason, teachers should have a humanist and revolutionary approach as Freire (2014, 60) said, and they should be together with their students in their struggle to be free as their partners rather than their punishers. They should try to overcome the superficiality of the educational program which is "the thinking is taught out of the daily experiences, apolitical, and culturally sterilized" (McLaren 2011, 349).

CONCLUSIONS AND DISCUSSIONS

The incidents experienced by Turkish students due to disciplinary actions or other judicial punishments causes the freedom of thought and speech and the freedom of assembly and peaceful demonstration to remain unrealized. At this point, the Jurisdictions, that of the Administrative Courts and Council of State (which is the trial court and the chancery), have a great responsibility towards protecting the basic rights and freedoms. However, when we look at the decisions of the Council of State has made, it can be seen that what it understands from education is just having a diploma (i.e. Decision of Council of State Eighth Chamber's numbered E.1995/33322, K. 1997/2855, dated 15.10.1995).[16] Such decisions

could create a kind of pessimism in students, and a lack of faith in justice itself. At this point, high courts like the Council of State should check how these problems have been solved abroad by benefiting from the comparative law. For example, the German Constitution (Grundgesetz Art. 15) guarantees the student freedom of thought and speech. To help students build skills to develop a perspective on matters and to be able to defend a point of view are cited among the important functions of schools; and the school that interferes with personal freedom and the freedom of speech is believed to contravene its educational duties (Avenarius 2001, 105).[17] On the other hand, the Law of United States has court decisions judging directly the students' basic rights and freedoms and their limits. The most first important one among them is Tinker v. Des Moines Independent Community School District case. Since American Law has a case law feature, each incident is assessed within its own context, related to precedents, and student freedom of speech and assembly are not totally rejected but connected to the developed history of appropriate justice in school contexts.[18] If Turkish law benefited from this case law feature, the educational law which is still in development will greatly improve.

At this point, courts might be expected to discuss: what is the objective of education? Are the schools expected to encourage the shared values Are the schools expected to encourage the shared values of a civilized social order "awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to environment" (Wright 2008, 118)[19] or are they just expected to educate the test takers for the university entrance exam, rather than using their thinking skills to criticize policy makers? The answers to these questions are critical, concerning protection of freedom of thought and speech along with the freedom of peaceful demonstration.[20] Both the teachers and the judges should refrain from urging students to be only "'system-friendly persons' for the sake of creating artificial environments" (McLaren 2011, 349). Without any doubt, the independence of the courts and judges should be established if we want to see more just outcomes at court.

The unions also have considerable responsibility regarding students' fundamental rights and freedoms. As we saw from the above-mentioned cases, the unions provide financial and emotional support for those who experienced a loss of rights. Also, when there is a huge public support and the media involvement, we see that the state institutions have to step back from their decisions (Ö. Urfa, personal communication, December 6, 2015).

Apart from the things the courts and unions can do, if the laws project a punishment for the students but the punishment hurts the public's sense of judgment, there should be other solutions. One of the ways is to doubt the values that social science positivism projects and to adopt view closer to the "natural law." A Natural Law approach adopts the idea that,

rather than merely following the law uniformly, judges can make a decision with their own conscience and social context as a guide. Following this, as it is associated with natural law, we can consider postmodernism as a somewhat related philosophical position to defend the students' rights and freedoms. Those who support postmodernism advocate that the basic function of law is to administer justice, and people have the right to object. For example, objections come in the form of demonstrations against what are now outdated disciplinary practices towards students, such as extreme forms of discrimination, or exclusion or violent physical punishments; these were "against the grain" at the time but were the beginning of new improved forms of social justice, that we now take for granted. Rawls (2014, 56) defines civil disobedience as "nonviolent, conscientious, wide open public, but illegal protest that aim to change the law or government policy." Rawls (2014, 56) counts civil disobedience as a peaceful protest because it is performed with respect to the law despite being illegal. For him, the highest authority to apply is not the execution and judiciary; it is public opinion. In compliance with these ideas of Rawls, we can accept students' and their parents' reaction in order to stop unjust disciplinary practices, i.e. not attending classes or not sending their children to school for the first week of the semester. For Habermas (quoted in Güriz 1999, 479), a constitutional state is an incomplete structure. Since it is a project that needs renewal, and protection under stable conditions, civil unrest can be the last resort to apply to correct the problematic part of the law, to alert and mobilize the public. Cautious and temperate civil disobedience contributes to the protection and empowerment of the judiciary institutions if there are regular and free elections along with a Constitution (not necessarily in a written form) to be interpreted by independent courts (Rawls 2014, 56).

Finally, in a nod to the critical literature on the problem of human freedom and the administration of justice, we can imagine Kafka's Officer, his character from "In The Penal Colony," defending that the disciplinary machine he operates is an "irreplaceable" device. Kafka implies we should look closer at the "machines" of administration, of discipline, sometimes so automatic, and at the subjects of this "justice," and say with The Traveler of the same story, "I do not find your way decent" (2014, 41). Our best laws and disciplinary codes are made to provide a decent world, and these public cries of "indecency" are actually a first step to improved justice. Sometimes they are inconvenient, but they also can be a demonstration of civic courage and commitment, which are important sources for the true national character of all our modern states. First teachers, together with unions; the concerned public, and then the judges, will as such wisely react with reasoned criticism against governmental policies that unfairly can turn freedoms into offenses and also be on guard against the ideology which claims it is for our best interest.

NOTES

1. Turkey has a teacher shortage. According to the minister of education, "We need 126,000 teachers to fill all the teacher vacancies at all schools of the Ministry" (*Sözcü*, March 21, 2013).

2. According to Article 31 of the Turkish Penal Code, criminal responsibility starts with attaining the full age of twelve.

3. The information taken from the student's lawyer concerning the incident: The lawyers first met with the principal together with the parents and students, but could not get anything. Then objections to the District National Education Directorate were also vain and rejected. And finally they went to the Provincial Directorate for National Education. The objections were accepted and students turned back to their school. Their suspension punishments also became void without filing a suit (Ö. Urfa, personal communication, December 6, 2015).

4. Berkin Elvan, born on January 5, 1999, was badly injured by a police canister fired by the state police during the Gezi Park protests interventions on June 16, 2013. On March 11, 2014, he died (Wikipedia 2015b).

5. Ali İsmail Korkmaz, a first year student at Anatolian University, fled to alleys after the police intervention on the marches supporting Gezi Park protests, but he was battered by the police and then by a passer-by group with sticks twice. After the incident, he went to hospital but he could finally get the necessary treatment after twenty hours. Korkmaz who had an apoplexy, stayed in a coma for thirty-eight days and died on July 10, 2013 (Wikipedia 2015a).

6. The court adopted a motion for stay of execution and the student benefited from the extra point advantage.

7. Sanctions for primary education students are regulated by the Ministry of Education "Regulation on Pre-School"; primary school sanctions for high school students are regulated by the Ministry of Education "Regulation on Secondary Education Institutions"; sanctions for university students are regulated by the "Higher Education Institutions Regulation on Student Discipline."

8. The regulation states: "To provide the public services to be given smoothly; those who do not obey the obligations inside the country and abroad in laws, codes and regulations or those who do not perform the obligatory duties get one of the disciplinary punishments from Article 125 according to the degree and quality of the disciplinary act."

9. These reasons can be found in "Regulation on Secondary Education Institutions."

10. But for instance, "Legitimate measures can be taken in order to maintain the order of the courses against a sit-in in front of the lecture hall's door on condition it hinders the lecture because legitimate measures can be taken toward any activity that hinders the lectures. However, the real purpose of the authority should not be to oppress the content of the thought, it is there just to ensure the performance of the lecture. The authority would restrict the freedom of thought if it does not allow a protest during no-class hours or if it allows a particular ideological event but not the other ones" (Aydın 2011, 46).

11. In two of the basic laws about education, which are the Law No. 1739 National Education Basic Law and Law No. 222 Primary Education Law, we cannot see any provisions about the disciplinary punishments to students. However, the disciplinary punishments for the students should be written just like the Law No.2547 Higher Education Law.

12. In fact Hughes (2012, 231) too says that in the questioning of the student, if there is a threatening student speech, "the school officials should take into consideration the student's age, maturity, academic record and whether other violent incidents might have influenced the student." In this context, the regulation tries to be as objective as possible.

13. Law that encompasses the legal rules introduced by the competent bodies of the state (laws, decrees, bylaws, regulations etc.); the principles of the common laws accepted and practiced by the courts; and binding jurisprudences; and which is ensured to be valid throughout the country by the state is called the positive law (Güriz 2011, 40).

14. We see the Eğitim Sen Union support in Işıtan Önder case. Also on July 1, 2015, EğitimİŞ Union filed a suit against the changes made in the Regulation on Secondary Education Institutions for disciplinary punishments.

15. Instead of creating economic, social, and pedagogical environments for teachers by combining autonomy and creativity, this new model suggests standardization instead of creativity and deskilling of educators. According to Giroux, the teachers should object to this new model, which prevents them from doing fair and ethical inquiries (quoted in Yıldız 2013, 1).

16. In this provision the Council of State decided "Another claim of the prosecution is that a suspension punishment is against the Constitution Article 'no one can be deprived of education'; but the National Education Constitutive Law Article No.18 reads that the Turkish educational system is comprised of two parts as formal and informal education. A suspended student from the system of formal education can follow the studies in informal education, so no violation of educational right can be spoken of here." Council of State repeated that decision again in Eighth Chamber's decision No E. 2007/3978, K. 2008/7492, November 17, 2008.

17. But a student's freedom of speech and thought is not limitless. The teacher is responsible for preventing such behaviors (Avenarius 2001, 105).

18. At this point, in *Fraser* decision, the judgment was that constitutional rights of the students at public schools are not equal to the adults. This is worth criticizing (Lunenburg and Ornstein, Educational 2013, 349).

19. Related court decisions are as follows: *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 272 (1998) (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U. S. 675, 683 [1986]); (quoting *Brown v. Bd. of Education*, 347 U. S. 483, 493 [1954]). See Wright (2008).

20. According to Kumar, "it is possible to use the courts as a powerful tool in explicitly recognizing free speech rights." Because "it immunizes the issue (of the case) from political pressure" (Kumar 2006, 361).