

Evaluation of the "School Change" Penalty for Secondary School Children in the Turkish Penal Code

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ABSTRACT

It is stated that the "School Change" sanction should be applied to secondary school students if the acts listed in Article 55th of the Regulation on Pre-School and Primary Education Institutions of the Ministry of National Education are committed. Although the aforementioned Regulation states that the student behavior evaluation board should consider the student's age, developmental characteristics, and problems in implementing this sanction, it is known that the "School Change" sanction is applied in practice. The "School Change" sanction foreseen especially for students under the age of 12 in secondary schools may adversely affect the psychological, economic, and academic success of the child. However, in the TPC, it is stated that the child under the age of 12 does not have a criminal capacity and cannot be punished, as she cannot foresee the legal meaning and consequences of the act committed. On the other hand, there are differences in the evaluation and implementation of acts that require disciplinary punishment and those that constitute a crime. Even in terms of discipline, if a child under the age of 12 cannot perceive the meaning and consequences of an act, imposing a punishment that will negatively affect her future may cause irreparable consequences. For this reason, it is recommended to apply the "Condemnation" sanction instead of the "School Change" sanction for students younger than 12 years old.

Keywords: child, criminal liability, secondary school, "school change sanction"

Ortaokul Çocukları için Düzenlenen "Okul Değiştirme" Cezasının, Türk Ceza Kanunu Kapsamında Değerlendirilmesi

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ÖZET

Milli Eğitim Bakanlığı Okul Öncesi ve İlköğretim Kurumları Yönetmeliği'nin 55. Maddesi'nde sayılan fiillerin işlenmesi halinde, ortaokul öğrencilerine "Okul Değiştirme" yaptırımının uygulanması gerektiği belirtilmektedir. Adı geçen Yönetmelik'te her ne kadar bu yaptırımın uygulanmasında, 'öğrenci davranışlarını değerlendirme kurulu' tarafından öğrencinin yaşı, gelişim özellikleri ve sorunlarının dikkate alınması gerektiği belirtilmekte ise de, uygulamada "Okul Değiştirme" cezasının verildiği bilinmektedir. Ortaokullarda özellikle 12 yaşın altındaki öğrenciler için öngörülen "Okul Değiştirme" yaptırımının, çocuğun psikolojik, ekonomik ve akademik başarısını olumsuz yönden etkilemesi muhtemeldir. Oysa TCK' da 12 yaş altındaki çocuğun işlediği fiilin hukuki anlam ve sonuçlarını öngöremediği için ceza ehliyetinin olmadığı ve ceza verilemeyeceği belirtilmektedir. Disiplin cezasını gerektirecek fiillerle suç teşkil eden fiillerin değerlendirilmesi ve uygulanmasında farklılıklar vardır. Ancak disiplin yönünden bile olsa 12 yaşın altındaki bir çocuk, işlediği bir fiilin anlamını ve sonuçlarını algılayamıyorsa, geleceğini olumsuz yönde etkileyecek bir cezanın verilmesi, telafisi mümkün olmayan sonuçlara neden olabilir. Bu nedenle 12 yaşından küçük olan öğrenciler için "Okul Değiştirme" yaptırımı yerine "Kınama" yaptırımının uygulanması önerilmektedir.

Anahtar Kelimeler: "Okul değiştirme yaptırımı", ceza ehliyeti, çocuk, ortaokul

INTRODUCTION

The Basic Law on National Education, Art 22 stipulates the range of 6-14 years old as the age for compulsory elementary education. Article 54 of the Ministry of National Education (MoNE) Regulation on Preschool and Primary Education Institutions, under the heading "Negative behaviors of students and sanctions to be applied", states that secondary school students will be sanctioned with one of the following sanctions: "warning", "reprimand" and "changing schools", depending on the nature of their negative behaviors. The purpose of sanctions is stated as "to make students aware of their negative behaviors and to ensure that these behaviors are corrected in a positive way".

The aim of this study is to determine the negative effects of the sanction of "School Change" given according to the characteristics of some negative behaviors of secondary school students, and to reveal from a different perspective why it should not be applied by evaluating it within the scope of the Turkish Criminal Code's minority - culpability.

The Implementation Process of the "School Change" Sanction in Turkey

"School Change" is the most severe sanction that can be imposed on secondary school students and involves the transfer of the student to another school. Although Article 56/1 of the Regulation on Preschool and Primary Education Institutions of the Ministry of National Education states that when assessing the sanction, the nature, importance and conditions under which the student's behavior occurs, many characteristics of children, and whether it is repeated or not should be taken into consideration, it is known that this punishment is given in public and private secondary schools in practice (Canoğulları, Ünlü & Şaşmaz, 2021).

The Negative Effects of "School Change Sanction" on Students, Practices and Research Conducted Abroad

Children whose schools are changed because of their negative behaviors may have a negative impact on their self-perception and may feel stigmatized as bad and problematic. This can have even more devastating effects in the schools where the students go because of the negative prejudices of their teachers and peers about them. The student feels guilty about being in another school as a punishment. Punishments can sometimes even reinforce students' negative behaviors (<https://report.texasappleseed.org/suspended-childhood-updated>). In order for children to follow the rules and take responsibility for their behavior, some sanctions need to be applied. However, it is expected that punishments should be deterrent and should not negatively affect children's development and achievements.

If the student sanctioned with "School Change" is studying at a private school, other private schools may not want to take the student on the grounds that he/she is problematic. More importantly, school administrations may want to impose the sanction of "school change" in order to expel students with problem behaviors instead of winning and helping them. All these factors indicate that students who change schools will be negatively affected psychologically, economically and in terms of academic achievement.

Studies abroad confirm that such sanctions have a significant impact on students' academic achievement and school absenteeism; A meta-analysis of 53 cases in 34 studies between 1986 and 2012 found a significant and negative correlation between "school change" or "suspension" sanctions imposed on students and their academic achievement (Noltemeyer, Ward & McLoughlin, 2015).

Another study conducted by Skiba & Rausch (2004) found that students who were sanctioned with school change and suspension had significantly lower achievement on national achievement tests than students who were not sanctioned. In particular, the fact that there is a significant negative correlation between the mathematics or reading achievement of students who were sanctioned to change schools in the 6th grade and their achievement in such courses in the 7th and 8th grades is important in terms of revealing the negative effects of the sanction of "school change".

In 2014, the US Department of Education, Health and Human Services reported that young students who changed schools were 10 times more likely than other students to drop out, fail academically and repeat grades, develop negative attitudes towards school and commit crimes. The same report states that positive behavioral interventions and supports, research-based alternatives such as mindfulness, meditation and restorative discipline, improve student behavior, rather than sanctioning school change (Demissie & Brener, 2017). These results are promising in terms of showing that children's problematic behaviors can be solved without punishment.

Evaluation of the Sanction of "School Change" in terms of Turkish Criminal Code (TPC)

Students who are sanctioned with "School Change" for acts committed at school are children between the ages of 10-14. A child is considered to be "a person who has not yet reached the age of 18", even if he/she has otherwise attained puberty. Minority is a reason that reduces or eliminates the ability to fault and, in this respect, determines the limits of the child's criminal capacity. The absence or diminished ability of a child, who commits a crime to perceive the legal meaning and consequences of the act he/she commits and to exercise his/her will, indicates that the child lacks criminal capacity.

TPC, Article 31/1 states that "Children who have not completed the age of 12 at the time of committing the act are not criminally responsible. These persons cannot be prosecuted criminally. However, security measures

specific to children may be applied". The imposition of the sanction (penalty) of "school change" on secondary school students under 12 years of age, if they commit one of the acts specified in Article 55 of the MoNE Regulation on Preschool and Primary Education Institutions, contradicts the practice of "no punishment for children under 12 years of age" stated in Article 31/1 of the Turkish Penal Code, which is applied to children under 12 years of age who are considered to be absolutely incapable of fault. One of the most fundamental solutions would be not to impose the sanction of "school change", which would negatively affect the educational processes and personal development of children under the age of 12, who are considered to be absolutely incapable of fault, and to take the necessary educational measures and solve the disciplinary problems in the school where they are located.

According to Article 3 of the UN Standard Minimum Rules (Beijing Rules), the age of criminal responsibility is considered to be the age of minimum emotional and mental maturity. This limit is 15 for Unesco, 12 for the UN, 14 in the UK, Germany and Italy, 13 in France, 16/17 in the USA, 16 in Canada (Yılmaz, 2015). In Canada, students must be 16 years of age or older to be subject to school transfer or suspension (<https://www.sd44.ca/Board/PoliciesProcedures/Series600/Policy606/Pages/default.aspx>)

The legislation of some countries provides for school transfers and school suspensions for students under the age of 12. (Iselin, 2010). However, even in these countries, there is a large body of research showing the drawbacks and negative effects on students' development of the use of school transfer or suspension sanctions (Christle, Jolivet, and Nelson, 2005; Costenbader and Markson, 1998; Skiba et al., 2008).

Profiles of Students Sanctioned with School Change or Suspension

In Turkey, no research has been conducted on the profiles of students and schools that have been sanctioned to "school change" in secondary schools. However, it is seen that a large number of studies have been conducted on the subject in the USA. In a 2010 study (Iselin, 2010) that determined the profiles of students, schools and school staff who were sentenced to 'school change' or 'suspension from school', the characteristics of the students were as follows;

"Students with emotional, behavioral or learning disabilities are more likely to be suspended from school than students without disabilities (Krezmien, Leone, & Achilles, 2006), students with attention deficit/hyperactivity disorder (ADHD) or "emotional behavioral disorder", those with disabilities and those with "learning disabilities" are more likely to be punished (Achilles, McLaughlin, & Croninger, 2007), underage adolescents are more likely to be disciplined (Skiba & Sprague, 2008; Christle, Jolivet, and Nelson, 2005; Costenbader and Markson, 1998; Skiba et al. , 2000; Gregory, Skiba, and Noguera, 2010), students with low socio-economic status, who receive free and reduced-price lunches, and who have low levels of parental education are more likely to be punished (Skiba et al, 2000; Wu et al, 1982), having antisocial friends, low academic achievement, and poverty level (Nicholson-Crotty, Birchmeier, and Valentine, 2009; Hemphill et al, 2006).

In addition, in the same study, "the characteristics of the schools where students who were sanctioned with school change and suspension were educated were also determined.

It has been found that class sizes and student absenteeism are high (Christle, Jolivet, & Nelson, 2005), teachers' average years of teaching experience and student/teacher ratio are effective, students are more likely to be punished for changing schools or being suspended from school, cleanliness, neatness and order are not good in schools (Skiba & Sprague, 2008), punishments are increased in schools with strict school rules, and relations between teachers, administrators and students are negative and hostile (Christle, Jolivet, & Nelson, 2005).

The findings of the research, which examined the profiles of students, schools and staff who were sanctioned to 'school change', also include suggestions for solutions. In numerous studies conducted on the subject, it has been determined that as an alternative to school change or suspension, it is necessary to comprehensively evaluate the needs of the school and students, take proactive measures at school and in the family, increase support programs, provide conflict resolution and sensitivity trainings, make school guidance services more active, implement educational activities on violence prevention, and cooperate closely with parents (American Psychological Association Zero, 2008; Theriot, Craun, and Dupper, 2010; Coleman and Fisher-Yoshida, 2004). These recommendations are broadly in line with the results of research conducted in 2013 based on the data from Australian Government Department of Security (Cobb-Clar, Kassenboehmer, McVicar & Zhang, 2015). In summary, children's problem behaviors should be solved and helped through guidance and support activities, which are an unconditional requirement of education, instead of punishing them with sanctions that will further victimize them.

CONCLUSION

Article 55 of the Ministry of National Education Regulation on Preschool and Primary Education Institutions states that secondary school students should be sanctioned with "School Change" if they commit the acts listed in Article 55.

Secondary school students are between the ages of 10-14. Article 31/1 of the TPC states that children under the age of 12 are not criminally responsible, and the criminal responsibility of children who have completed the age of 12 but have not completed the age of 15 is evaluated according to their ability to perceive the legal meaning and consequences of the act committed and to direct their behavior related to this act.

There are studies showing that the sanction of "School Change" in secondary schools, especially for students under the age of 12, negatively affects the psychological, economic and academic success of the child. The Turkish Penal Code states that a child under the age of 12 has no criminal capacity and cannot be punished because he/she cannot foresee the legal meaning and consequences of the act he/she commits. There are differences in the evaluation and application of acts that require disciplinary punishment and acts that constitute a criminal offense. However, even in terms of discipline, if a child under the age of 12 cannot perceive the meaning and consequences of an act he/she commits, the imposition of a punishment that will negatively affect his/her future will cause irreparable consequences. For this reason, it is recommended that "Reprimand" be applied instead of "School Change" for students under the age of 12.

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