Fundamentals Of Law(V)

Branches of Public Law
 Administrative Law
 Criminal Law
 Judicial Law
 Public International Law

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Administrative Law

regulates the organizations and conduct of the State mechanism relations and conflicts of individuals and the State and the regulation of public services. (and public contracts)

There is no uniform code defining all the administrative activities of the State.

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Administrative law consists of the legal rules, which:

a) govern relations between the administrative authorities and private individuals,

b) determine the legal status of government officials (civil servants),

c) indicate the rights and liabilities of individuals in their dealings with these officials as representatives of the State.

The procedure by which these rights and liabilities are enforced is also regulated by administrative law.

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Administrative law deals, primarily, with the status, powers and activities of the administrative authorities.
Administrative law comprises:

- All the rules which are concerned with the establishment, duties and authorities of administrative organs and public officers,

- The legal protection of private persons against abuses of power by the administration through independent courts.

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Administrative Organisation of Turkey

1) Central Administration

2) Provincial and Municipal Administration
Central Administration of Turkey consists of:

- The President of the Republic
- The Council of Ministers
  * Prime Minister
  * Ministers
- The consultative and auxiliary organs (National Security Council, the Supreme Council of Higher Education and Council of State, etc.)
In terms of central administrative organisations, the country divided into provinces based on economic and geographical factors, administrated by governor.

Provinces are divided into sub-provinces (counties), administrated by district governor.

Municipalities are legal entities responsible for organising and providing services to meet local needs within their areas.

The organs of municipal administration are:
- Municipal Council
- Municipal Standing Committee
- Mayor

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Control of the Public Administration

• Parliamentary Control
  -expediency (yerindelik)
  -legality (hukuka uygunluk)
  *This political control is based on the principle of ministerial responsibility and operates through such means as question, interpellation, parliamentary inquiries, etc.*

• Judicial Review
  1) "Action for annulment (iptal davası)"
  2) "Full remedy action (tam yargı davası)"

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Other ways to control public administration;

- **Hierarchical control;**
  Every public organisation has a mechanism through which it is controlled internally. It follows from the hierarchical nature of administrative organisation that every subordinate is under the supervision of his superior.

- **Judicial Control of Accounting;**
  The court of accounts (Sayıștay) is in charge of examining on behalf of Parliament, all accounts of the revenues and expenditures of Government departments.
Judicial review of acts and actions of Administration

“Judicial review may be sought for all acts and actions of the administration” (Constitution Article 125).

- The Council of State is, in its judicial capacity, the highest administrative court. It functions primarily as the court of appeals for the lower administrative courts. However, for the cases about the acts to apply all over the country, it serves both as the first instance court and the court of appeals.

- The Military Administrative Court hears the cases relating to administrative acts and actions concerning military personnel.

- Two remedies are available for the individuals who believe they have suffered injustice through maladministration:
  "Action for annulment” and "Full remedy action"
In a well functioning State based on the rule of law, no person is permitted to take the law into his own hands and punish wrongdoers himself.

Criminal Law belongs to that part of public law concerned with criminal offences. Criminal acts are regarded as crimes committed against the society and are dealt with in a criminal court.
Criminal Law refers to statutes defining criminal offences and specific corresponding fines and punishment to be applied to those who violate the legal order.

The main source of criminal law in Turkey is the “Turkish Criminal Code”. “The Law of Misdemeanours” and “the Code of Military Criminal Law” are the other sources.

In addition, there are statutes regulating specific fields of criminal law, and many statutes in other fields of law contain criminal provisions.
Major aspects of the criminal law:

1. Definition of criminal behaviour
2. Specification of the corresponding punishment
Definition of crimes
(Elements of a crime)

- The Act or Omission to Act
  *(Actus Reus - Bad Act - Wrongful Deed)*

- The Requisite Intention
  *(Criminal Intent - Recklessness - Guilty Mind)*

- Illegality
  *(The action of the defendant could be permitted or excused by law for certain special reasons such as "legitimate self-defense")*
A fundamental principle of modern criminal law is that, in order to establish legal guilt, there must be a specific provision in the law which defines the act as a crime: “There can be no crime without law”

Turkish Constitution Article 38 states that “No one shall be punished for an act which was not considered a criminal offense under the law in force at the time the act was committed” (Non-retroactivity principle of laws)

Penal(Criminal) Provisions may have retroactive effect when they are in favour of the person to whom they are to be applied. (Exception to non-retroactivity principle)
Specification of the corresponding punishment

Punishments must be specifically defined by law. This is the principle of “Nulla poena sine lege”

“there can be no punishment without law”

No person can be subjected to a punishment not prescribed by law.

Therefore; “neither crime, nor punishment without law” is the basic principle of the Criminal Law.

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Aims of punishment

*To deter the particular offender from future criminal offences; “Special Prevention” (prevent recidivism (tekerrür))

*To deter others who might be tempted to commit crime.; “General deterrence or general prevention”.

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Criminal cases are distinguished from civil cases;

- Criminal law belongs to the public branch of law. In criminal law, the State, as an essential party, initiates criminal proceedings on behalf of both the victim of the crime and the general community.

- It is a personal and voluntary choice for the individual whether or not to take in a civil law action against an alleged wrongdoer. In contrast, the State is obliged to prosecute a person accused of committing a crime.

- The results of the two legal procedures are different. *A criminal prosecution carries the possibility of a prison sentence and/or a fine.*
Judicial Law
(Law of Procedure)

- Law contains both substantive (maddi) and procedural (usuli) aspects.
- Substantive law determines the content and meaning of the laws (norms) to be applied to a specific case.
- Procedural law describes how, in what manner, the laws are to be applied and by whom.

(Simply stated, the term procedure relates to the machinery of justice, to the form, manner and order of conducting civil, criminal and administrative cases)

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Law of Procedure makes legal judgement secured by the rules regulate the administration of it.

There must be rules for courts how they build and work, to achieve the aim of justice for everybody in the same way.
The law of Procedure has two functions:

- To establish whether the rules of substantive law have been broken. *(Procedural law is, practically, the basis of substantive law)*

- To set up the judicial machinery and lay down a series of procedural rules to resolve disputes.

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The Law of Procedure is divided into two sub-branches mainly:

- The Law of Civil Procedure
- The Law of Criminal Procedure

Alongside civil and criminal procedures, there are other procedures such as administrative procedure, which applies to administrative courts, and military procedure, which applies to military courts. There are also special procedural rules for cases brought before the Constitutional Court.

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Civil procedure

- Civil procedure concerns the enforcement of a civil claim through private action before a court of law.

- In civil matters the public interest is not as prominent as in the criminal cases.

- The fundamental source of Turkish civil procedure is the Code of Civil Procedure (Hukuk Usulü Muhakemeleri Kanunu).

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Criminal procedure

Criminal procedure is concerned with the investigation, trial and punishment of crimes.

It may be called the methods and procedures to determine how people accused of committing a crime will be prosecuted.

An important Procedural principle recognized by most legal systems is that;

“no one can be convicted unless proven guilty in a court of law (Articles 38 of the Constitution).”
The fundamental source of Turkish criminal procedure is the Code of Criminal Procedure, (Law no.5271, 4 December 2004).

In criminal cases there are two parties:
  *public*, represented by the prosecutor
  *defendant*, who is accused of having committed a crime.

An important difference between criminal procedural law and civil procedural law is;

the role played by the judge.

In civil law the judge is bound by the requests and claims put forward by the parties.

In criminal law the judge are the ultimate arbiter of the law to be applied and the punishment to be imposed, not being bound by the requests of the parties.

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The Courts in Turkey are established in two levels:

- First Level (Decision) Courts
- Second Level (Control) Courts

- Court of Cassation (consist of Civil and Criminal Chambers and their Assemblies respectively, besides General Assembly of all Chambers of the Court of Cassation)
- The Council of State (Administrative Law)
- The Court of Accounts (Fiscal Law)
- The Military Court of Cassation (Military Law)

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Court Structure of Turkey

The First Level (Decision) Courts in Turkey

- Civil Courts
- Criminal Courts
- Administrative Courts
- Military Courts

- Civil Courts of Peace
- Civil Courts of First Instance
- Civil Courts for Special Fields
Civil Courts of Peace is established to hear;

The cases about the subjects listed below;
1) The cases related to Contract of Tenancy (Hiring) Contracts just like termination of it, determination of the amount of rent (increase or decrease), eviction cases, etc.
2) Partition of movable and immovable property, protection of possession,
3) Division of inheritance (winding up of an estate), reading out a will and other cases about it, besides the tasks assigned to it by the provisions of the Code of Civil Procedure and other Codes.

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The Civil Court of Instance is the basic court with general jurisdiction covering everything not specially assigned to other tribunals (courts).
Specialized Civil Courts

- Commercial Courts
- Labor Courts
- Consumer Courts
- Family Courts
- Investigation Authorities

- Execution (Debt Enforcement) Officers
- Bankruptcy Officers

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Criminal Courts (First level - decision)

Criminal Courts
(First Level)

- Criminal Court of Peace
- Courts of General Criminal Jurisdiction
  (Criminal Court of First Instance)
- Aggravated Felony Court
  (High Criminal Court)
Jurisdiction of the Criminal Courts;

- The subject matter of the jurisdiction of the Criminal Court of Peace generally covers misdemeanors and other cases of lesser importance.
- The aggravated felony courts try crimes punishable by heavy imprisonment or ten years or higher of imprisonment.
- All offenses outside of these two groups are subject to the Jurisdiction of the Court of General Criminal Jurisdiction, as a general legal rule.
Administrative Courts

- Council of State (control court of administrative and tax courts’ decisions given by more than one judge, annulment cases about regulations, by -laws and degrees applied all over the country and also consultative supervision authority of some administrative transactions and regulations)

- District Administrative Courts
  (Control courts for objection to decisions about stay of execution and first level court decisions given by one judge)

- First Level (Decision) Courts
  1) Administrative Courts
  2) Tax Courts

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Persons Participating in the Administration of Justice:

- Judges
  (They are independent about their decisions and appointed, promoted and dismissed only under the conditions strictly regulated under the law by the Supreme Council of Judges and Public Prosecutors)

- Court Reporters or Clerks

- Public Prosecutors

- Practising Lawyers (Advocates)

- Notary

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The independence of Judges is safeguarded by Articles 138 of Constitution;

“Judges shall be independent in the discharge of their duties. They shall pass judgments in accordance with the Constitution, law, justice and their personal convictions.

No organ, office, agency or individual may give orders or instructions to court of judges in connection with the discharge of their judicial duty, send them circulars, or make recommendations or suggestions.

No questions may be raised, debates held, or statements issued in legislative bodies in connection with the discharge of judicial power concerning a case on trial”

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Public International Law

- Public international law may be defined as the body of rules of conduct which are binding upon the members of the international community in their relations with each other.

- International law is concerned traditionally with the general principles and specific rules regulating relations between states.

- International organizations are the subjects of public international law in addition to the states (UN, Council of Europe, NATO, WTO, WHO, etc)

- Agreements between just two countries are called bilateral, while agreements between more than two parties are called multilateral.
References;

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