



**TÜRKİYE CUMHURİYET
MERKEZ BANKASI**

**THE STATUS, LEGAL AND CRIMINAL
LIABILITIES OF THE CENTRAL BANK OF THE
REPUBLIC OF TURKEY EMPLOYEES**

Özge AKAN

Legal Counsel

Antalya, November 14, 2014

OUTLINE

- Legal Status of the Central Bank of the Republic of Turkey (CBRT)
- Legal Status of the CBRT Employees
- Liabilities of the CBRT Employees
 - ➡ CBRT Employees' Liability for the Damages
 - ➡ Disciplinary Liability of the CBRT Employees
 - ➡ Criminal Liability of the CBRT Employees

Where does the Turkish legal system stand categorically within the legal systems in the world?

I- LEGAL STATUS OF THE CBRT

Legal status of the CBRT is stipulated in Law No 1211 on the Central Bank of the Republic of Turkey.

- Established as a joint stock company.
- Is subject to the provisions of private law in cases where the Law is not explicit.
- Has "capital", "shares", "balance sheet", "General Assembly", "Board".

Is the CBRT a Typical, Ordinary Joint Stock Company ?

Even though CBRT is established as a joint stock company;

- Duties and powers of the Bank listed in the CBRT Law reflect public law characteristics.
- Its regulatory and individual acts, are of a nature which create unilateral legal consequences, are mandatory and do not require third party consent.
- Its purpose is public interest and field of activity is public service.
- It is vested with privileges originated from public authorities.

Where does the CBRT stand in the Turkish Administrative Organization ?

- Central administration
- Functionally Decentralized Organization
- Autonomous Administrative Authority

As it is established through court decisions, the CBRT;

- Is not a central or functionally decentralized administrative organization.
- Is not an autonomous administrative authority.
- Is not subject to administrative hierarchy and tutelage.

Consequently, it has a completely unique and individual legal status which can be defined as sui generis.

II- LEGAL STATUS OF THE CBRT EMPLOYEES

As a continuation and consequence of the CBRT's unique legal status, CBRT employees are also given a unique legal status.

A- In Terms of Administrative Law

CBRT employees;

- Are not subject to the Law on Civil Servants.
- Accordingly, they are not considered as civil servants.

A- In Terms of Administrative Law

- The legal basis of the status of the CBRT employees is Article 32 of the CBRT Law.
- According to Article 32, CBRT employees are subject to the regulations to be drawn up by the Board.
- The Board determines the legal status of the CBRT employees through regulations.

A- In Terms of Administrative Law

According to the CBRT Law, there are three types of employees in the Bank;

- The officers appointed to serve continuously for the main and permanent duties that the CBRT services entail
- Workers
- Personnel employed on a contractual basis

B- In Terms of Administrative Procedural Law

Disputes between the CBRT and the employees are heard by administrative courts.

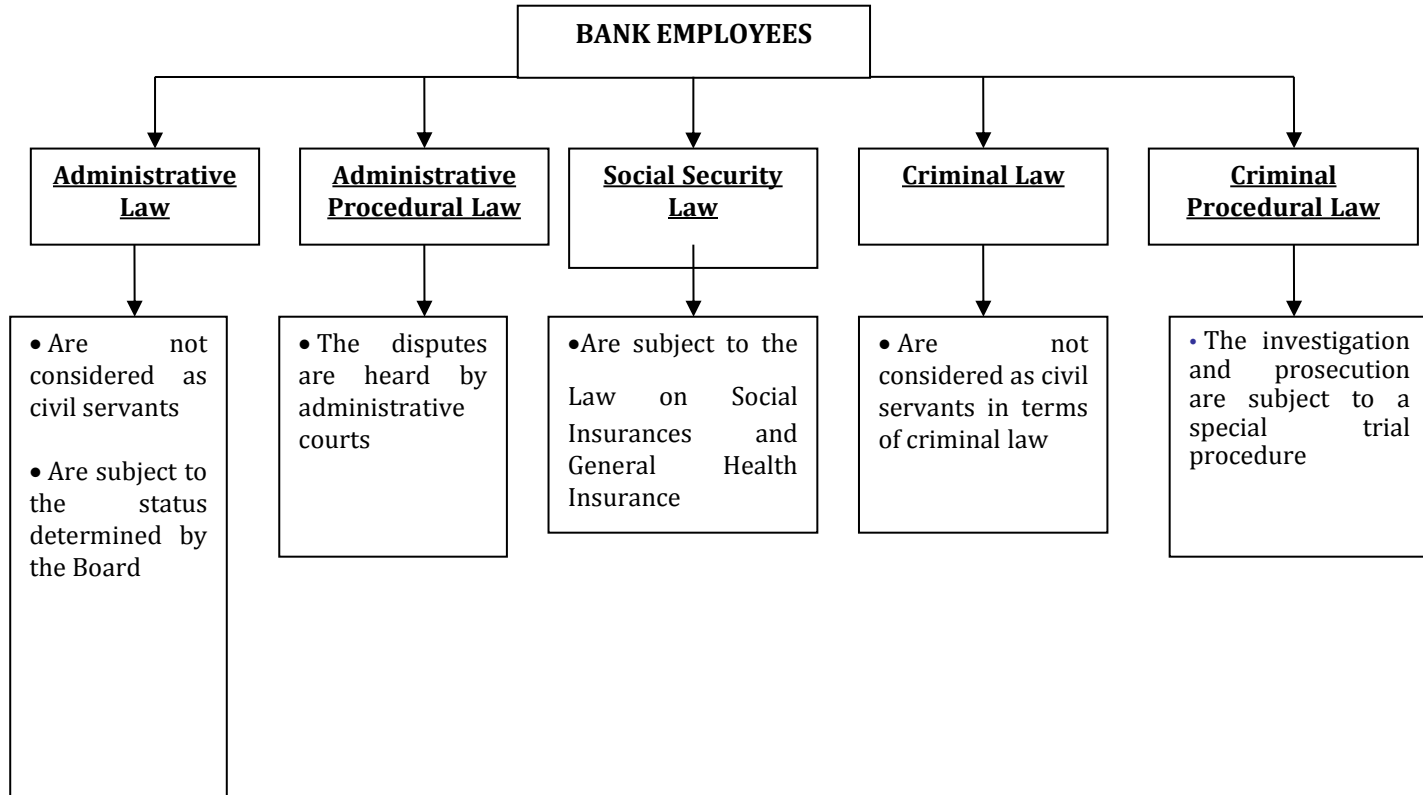
C- In Terms of Social Security Law

The CBRT employees are subject to the Law on Social Insurances and General Health Insurance.

D- In Terms of Criminal and Criminal Procedural Law

- The CBRT employees are not considered as civil servants in terms of criminal law.
- The investigation and prosecution of the CBRT employees are subject to a special trial procedure laid down in the CBRT Law.

THE STATUS, LEGAL AND CRIMINAL LIABILITIES OF THE CENTRAL BANK OF THE REPUBLIC OF TURKEY EMPLOYEES



III-LIABILITIES OF THE CBRT EMPLOYEES

A- CBRT EMPLOYEES' LIABILITY FOR THE DAMAGES

- CBRT employees are subject to the provisions on tort in the Code of Obligations for the damages they cause to the Bank in connection with their duties .
- They have to compensate the damages resulting from their deliberation, fault, negligence or improvidence.
- Actions for damages resulting from the performance by the CBRT employees of their duties shall only be filed against the Bank. The right to recourse of the CBRT is reserved.

B- DISCIPLINARY LIABILITIES OF THE CBRT EMPLOYEES

- The liability of the CBRT employees resulting from their failure to properly fulfil the duties given by the CBRT Law or from their actions violating the legal order within the Bank can be defined as disciplinary liability.
- The actions which are considered as discipline offences and their sanctions are stipulated in the CBRT Discipline and Award Regulation.
- The power to determine the sanctions of the discipline offences rests with the Disciplinary Board, which is composed of six employees under the chairmanship of the Vice Governor.

C- CRIMINAL LIABILITIES OF THE CBRT EMPLOYEES

- CBRT employees are not considered as civil servants in terms of criminal law.
- As a consequence of not being considered as civil servants, the CBRT employees can not be charged with offences which are peculiar to civil servants.

The status of the CBRT Employees in Terms of Criminal Procedural Law

- As a consequence of not being considered as civil servants, the CBRT employees are not subject to the provisions of the Law on Trials of Officials and Other Civil Servants .
- The investigation and prosecution of the CBRT employees are subject to a special trial procedure stipulated in the Article 68 of the CBRT Law.
- According to the special trial procedure, the commencement of an investigation and prosecution against CBRT employees in connection with the offences described in the CBRT Law is subject to the filing of a petition by the Board.

The status of the CBRT Employees in Terms of Criminal Procedural Law

What will happen in case the Board decides not to file a petition?

➤ In the investigation stage;

➡ The public prosecutor will render a *decision not to prosecute*.

➤ In the prosecution stage;

➡ *Decision for stay of proceedings*: The Court will take an immediate decision for stay of proceedings pending a response from the Board.

➡ *Decision to dismiss*: If it is communicated that a petition is not to be filed, the case shall be dismissed as it becomes apparent that the condition for the filing of a lawsuit will not be met.

The status of the CBRT Employees in Terms of Criminal Procedural Law

What will happen if the Board decides to file a
petition?

***THANK YOU FOR YOUR INTEREST
AND PATIENCE***

ozge.akan@tcmb.gov.tr