

# Droit Public

## **The Legal Status of Civil Servants in the Turkish Republic of Northern Cyprus (TRNC)**

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### **1. In General**

The Civil Servants Act number 7/1979 of TRNC defines Civil Servants as follows; "A Civil Servant is the permanent staff who performs the actual and permanent duties required by public service which the government and the other public institutions and foundations are bound to administer on the basis of general administrative fundamentals and who receives salary from general and additive budgets and their related revolving funds."<sup>1</sup>

A rule related to Civil Servants is also foreseen in TRNC Constitution. Article 120 of the Constitution holds Civil Servants in two groups.<sup>2</sup> The expression "The actual and permanent duties required by public service that the government is obliged to administer on the basis of general administrative fundamentals are applied by the hand of civil servants and the actual and permanent duties that State Economic Enterprises and the other Public corporate bodies are obliged to administer on the basis of general administrative fundamentals are applied by other civil servants" is included in the Article.

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<sup>1</sup> Civil Servants Act Art. 3

<sup>2</sup> Necatigil Zaim, *Kuzey Kıbrıs Türk Cumhuriyetinde Yönetim Hukuku ve Anayasa Yargısı*, 1986 Pg: 64.

As it is obvious from this Article, public services are applied by the hand of civil servants and other staff.

That the public service will be applied by the hand of the permanent staff<sup>3</sup>, personnel bound to a contract<sup>4</sup>, temporary personnel<sup>5</sup> and employees<sup>6</sup> is also stated in the Civil Servants Act Article 6.

Amongst these, only officers who serve in actual and permanent administration services and who receive salary from the general and additive budgets or revolving funds related to these are included in the basic administration of the Law.<sup>7</sup> The Superior Court of Administration has also arbitrated that a personnel who does not receive salary from budget cannot be counted as a Civil Servant.<sup>8</sup>

As it is obvious from the statements above, the Civil Servants Act also deems the principle that the personnel bound to a contract, temporary personnel and laborers whose stipulations are systematized by special Law can be employed besides the servants that Public Law is applied. In other words, all the staff in the public sector is considered "Civil Servants".<sup>9</sup>

The discrimination between the staff considered as civil servants and the ones that are not creates some contrasting consequences in Law on account of the Constitution Article 121;

"The qualifications of the Civil Servants, their appointment and warrants, rights and liabilities, salary and subsidies and other matters pertaining to personnel are regulated by Law.

<sup>3</sup> **Permanent Staff:** The personnel assigned to the actual and permanent duties in public services of the government.

<sup>4</sup> **Personnel Bound to a Contract:** Native and foreign personnel employed in the institution and foundations for the positions requiring expertise and a professional education and knowledge of the field on the basis of the warrants that is received from the regulations and the profession laws.

<sup>5</sup> **Temporary Personnel:** Symbolizes persons who are not laborers and assigned for the temporary positions that are not over one budget year on the basis of the suitability statements that are given by the Ministry which is related with the personnel department and financial affairs.

<sup>6</sup> **Laborers:** the rest of the staff stated above. They work on the professions that require physical a capability. Some special regulations of law are applied for the laborers.

<sup>7</sup> Necatigil Zaim, *ibid.*, pg: 66.

<sup>8</sup> The Superior Court of Administration 12/79, Date of Decision: 9 May 1980

<sup>9</sup> Necatigil Zaim, *ibid.*, pg: 66

Impartial and independent branches are established in order to organize the appointment, acceptance, placements among permanent staff that justify the right of permanent and retirement, promotion to a higher rank, transferring, dispatching to retirement, including dismissal and removal from office temporarily except the discipline processes requiring warning and contamination. The establishment and the functions of these organs are arranged by a Law which makes separate arrangements possible by considering service features for specific public sector officials. The rules about judges, public prosecutors, members of land forces and the police with the other regulations of the Constitution are concealed.

The qualifications, appointment, duty and warrants, rights and liabilities and subsidies and other matters pertaining personnel of the other civil servants are arranged by codes of Law in accordance with the features of service that are administered by the institutions which the personnel is bounded."

However, the matters of employing the personnel that are not civil servants, their rights and liabilities is restricted and may not be administered by Law. On the other hand, the process of appointing and discharging and removal from the office of the personnel that are not civil servants like laborers, temporary staff is made by the related institution or by Cabinet depending on the circumstances, but not by the Public Service Commission.<sup>10</sup>

At a trial at Constitutional Court (Anayasa Mahkemesi), it is decided by majority that stabilizing laborer position does not necessarily have to be done by Law and the Cabinet has the authority to comprise the laborer position.<sup>11</sup>

## **2. Classification of Civil Servants:**

The services of the institutions that are bounded to Civil Servants Act is held in three classes. According to the Public Officials Law Article 50 the classes that performs public service are separated as follows:

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<sup>10</sup> Necatigil Zaim, *ibid.*, pg: 66.

<sup>11</sup> Constitutional Court, 20 /80. Date of Deceision: 28 January 1981

- Administration Service Class
- Professional and Technical Service Class
- General Service Class

In the Act, Article 50 Sentence 2, the administration services are held in two classes as Superior Administrators and Administrators that are not considered as Superior Administrators.

Depending on the educational qualifications to be accepted for the professional and technical services classes and general service classes, these classes are held in three groups in their own course;

- Service classes that require Bachelor's Degree and college education
- Service classes that require a minimum of three years high school or private school education
- Service classes that require a minimum of three years secondary school education

### **3. The Appointing Conditions of the Civil Servants Candidate Period and Their Assignations:**

#### **A. Employing Conditions**

##### **1. Constitutional Conditions**

Three main principles are applied when commencing public duty. These principles are the unconstrainedness principle, the equality principle and the principle of merit.<sup>12</sup>

According to unconstrainedness principle it is bounded to inclination to start a public duty the person who is reluctant to be a civil servant cannot be made civil servant by force.<sup>13</sup>

The equality principle is a principle, which is under the guarantee of constitution. The Article 72 of the constitution states that each citizen has the right to start public duty. According to this, each person who is a

<sup>12</sup> Necatigil Zaim, *ibid.*, pg: 74

<sup>13</sup> Necatigil Zaim, *ibid.*, pg: 74

citizen of Turkish Republic of Northern Cyprus and who is willing to be a civil servant can start public duty by fulfilling the required conditions, free from religious, lingual, sexual or racial segregation.

The principle of merit is also under the guarantee of the constitution. Constitution Article 72 includes the principle: "When employing a staff, no discrimination can be considered except the qualifications for the duty".

For the best application of the equality and merit principles, an examination method is utilized. Three types of examinations as adequacy, competence and foreign language proficiency are utilized for the candidates who apply for public duty. By means of adequacy test the efficiency, by means of competence the ability and by means of foreign language proficiency test the level of foreign language knowledge required for the position are assessed.<sup>14</sup> By taking advantage of this examination method, inequality and discrimination (segregation) is avoided.

## **2. General Conditions:**

These are conditions to be fulfilled for anybody who is willing to be a civil servant. These conditions are stated in Article 62. According to this article:

- a) Being a citizen of the Turkish Republic of Northern Cyprus.
- b) Being over the age of 17,
- c) Having the educational degrees required for the position by this Act,
- d) Having no prohibitions of Public Rights,
- e) Having no imprisonment over one year or having not been sentenced for the crimes like bribing, theft, embezzlement, rape, bankruptcy, fraud,
- f) Having fulfilled the military service,
- g) Having a health report from a state Hospital Health commission about not having any mental illnesses, physical illnesses or

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<sup>14</sup> Civil Servants Act, Art. 63

handicaps which may permanently impair performing the future duty,

- h) Not having withdrawn pensioners' payment or not having been dismissed from public service because of a discipline offense.

In moderation 7/88 of Superior Court of Administration, it is stated that the discipline punishments not only include the discipline punishments decided by Public Service Commission but also the ones judged by all Administrative Commissions.<sup>15</sup>

### **3. Exceptional Conditions:**

These are the conditions required for some specific services in addition to the general conditions.

a) Having graduated from one of the educational institutions that are designated by the Foundations and profession Law and regulations appropriate to the basics foreseen by Law for the class the candidate will be employed,

b) Having the qualifications required for the position to be appointed which are demanded in the position service scheme foreseen by the Foundations and Profession Act or regulations.

### **B. Candidate Period:**

The candidates which are employed for the first time that succeed the adequacy, competence and foreign language proficiency tests required for Public Service Employment and the ones who accept the appointment are appointed as Candidate Servants.<sup>16</sup>

The candidates stabilized unsuccessful by the institution they work for or the ones who do not attend the adequacy test without any excuse - if they are obliged to take the adequacy test- are severed ties with the profession.<sup>17</sup>

The candidates who fulfill the period successfully are appointed as actual and permanent Civil Servants.<sup>18</sup>

<sup>15</sup> Superior Court of Administration 7/88, Date of Decision: 7 October 1991

<sup>16</sup> Civil Servants Act, Art.68 / (1).

<sup>17</sup> Civil Servants Act, Art.69 / (3).

<sup>18</sup> Civil Servants Act, Art.70.

### **C. Appointment**

The Act of Public Officials states the appointment of the candidates in Article 70. According to this Article the candidate;

- Should fulfill the candidate period,
- Should have a positive register and should be stabilized successful by the institution
- Should succeed in the test to start the actual and permanent position

The ones who have fulfilled these circumstances are appointed to the position by the authorizing branch. However, the administration has a right to appreciate on the appointment of the candidate. In order to actualize the appointment of the candidate there should be vacant position and also an announcement on suitability about not having a financial obstruction to assign the candidate for the position by the Ministry related to Financial Process.<sup>19</sup>

The appointment of the civil servants to actual and permanent duties required by public services is handled in the frame of the Public Service Commission and Civil Servants Act.<sup>20</sup>

Despite the authority to appoint to a public service position belongs to the Public Service Commission, this authority will be used in the frame of the Law about foundation and process of Public Service Commission and Civil Servants Act.

In the decision number 46/90 of the Superior Court of Administration it is referred to Civil Servants Act Article 61 (1) and it is stated that the civil servants who perform the actual and permanent duties required by the Public Service will be appointed by the Public Service Commission.<sup>21</sup>

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<sup>19</sup> Civil Servants Act, Art. 59

<sup>20</sup> Civil Servants Act, Art. 61: A Public Service Commission is established on the basis of the related Act Article 7 to administer the process of appointment, acceptance, placement to the positions which gives them the rights of permanent and retirement to the civil servants

<sup>21</sup> Superior Court of Administration 46/90, Date of Decision:8 August 1990. Superior Court points out the transferring processes of the civil servants connected to appointment as a constitutional and legal obligation to be fulfilled by Public Service



The Civil Servant can improve in the rank and level in the salary scale stabilized for the staff duty they are appointed. The following conditions are necessary for the increase in level:<sup>22</sup>

1. Having worked for at least one year at the present level,
2. Not having received any negatory register for the year,
3. Having a level to improve for the present level.

The circumstances of increasing a rank are as follows:<sup>23</sup>

1. There should be a vacant rank for the present level of the civil servant
2. Having worked at the present rank and present staff position for at least three years to increase in rank to a higher rank.
3. Having acquired a positive register
4. Having succeeded at the adequacy or competence test that is stabilized for the future rank of the civil servant

However, in case there are no civil servants having worked for three years vested with suitable conditions, the condition of having worked for a year is required.

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Commission. Ref: Superior Court of Administration 107/88, Date of Decision: 5 August 1988.

<sup>22</sup> Civil Servants Act, Art.71.

<sup>23</sup> Civil Servants Act, Art.73.