



MACROJOURNALS

The Journal of **MacroTrends** in **Social Science**

OFFICERS OF LIABILITY AND PROHIBITIONS IN TURKISH LAW

Mehmet Fatih GÜRKAN

Selçuk University Law Faculty, Turkey

Abstract

This study refers to the liabilities of the government officers and the prohibitions they are subject to in general. A general idea was attempted to be given to the readers in general without going into details. The liabilities of the government officers and the prohibitions they are subject to were studied taking into consideration the relevant laws and regulations. The government officers are obliged to abide by the regulations and consequently some legal prohibitions as their result since they are strictly under the supervision of the constitution and the government. In this context, the government officers are subject to the following obligations; commitment to the state and the constitution, impartiality, obedience to the orders and directives, declaration of property, obligation of residence at the post of duty, returning the public documents, equipments and vehicles, abiding by the ethical behaviors, sustaining services uninterruptedly, executing the duties of the position and/or a supervisor, remedying the losses caused, performing the correct actions and working with others in cooperation. Also in this context, the government officer is obliged to abide by the following such as not undertaking any other offices/jobs, prohibition of strike, not performing any commercial activities to create income, prohibition to make/gain benefits, prohibition to participate in the political parties, prohibition to disclose the confidential information and prohibition to give information or to make statement to the mass communication means, prohibition to incorporate associations or to become members of the same, prohibition to take part in subversive and separatist activities and to take part in actions against the institution he/she works at.

Keywords: *liabilities of the government officers, Turkey*

§ 1. OBLIGATIONS OF THE GOVERNMENT OFFICERS

I- Commitment to constitution and State

As a natural consequence of being a Constitutional State, when the government officers are carrying out their duties, they have to abide by the constitution and laws. The state and

other public legal personalities being committed and loyal to laws will only be possible when and if the government officers and public servants who act in their names being committed to laws¹.

In accordance with article nr. 6 of Public Servants Law nr. 657, the Government Officers are obliged to abide by the Constitution and Laws of Republic of Turkey and implement them diligently and in loyalty. Furthermore it is stipulated under the same law that the government officers will have a ceremony of swearing and will sign the relevant sworn document. The government officer who fails to fulfill this obligation may be sentenced to dismissal.

II- Impartiality

The government officers are obliged to fulfill their duties without making any discrimination in terms of language, race, gender, political opinion, philosophical beliefs, religion and denominations. The government officers cannot act in such a way to cause the benefits or losses of any political party or person. The government officers are obliged to fulfill their duties impartially².

The government officers are obliged to protect the benefits of the state. They will not attempt or commit to any actions or acts which violate the constitution and laws, that disturbs the independence and integrity of the country, that put the safety of the state under peril. They may not join any actions, groups or foundations which act or perform activities in the same way and to the same ends and they may not help them³.

III- Compliance with orders and Lawless Orders

In accordance with article nr. 10 of Public Servants Law nr. 657, the government officers are obliged to abide by the duties which are stipulated under the applicable regulations. The government officers are obliged to carry out the duties which were assigned to them by their superiors, thus they are responsible to their superiors in proper and diligent performance of their duties.

The government officer is obliged to carry out and execute all orders given by his/her superior except for the orders which are outlaw. If the government officer deems the order which he took from his/her superior as outlaw in a way that violates the constitution, rules, legislations and communiqués, he/she shall not fulfill this order and notify such violation to his/her superiors. However if the superior insists on this order and notifies this order in written form, the officer is obliged to carry out this duty. All liabilities due to the fulfillment of this order lies with the person having given such order.

Any order which is a crime in its subject will not be fulfilled. The person having fulfilled the duty will not be released from the relevant duty. In this case, both the party having given the order and executed the order will be deemed liable.

¹ YILDIRIM Ramazan, **İdare Hukuku Dersleri I**, 4. Edition, Konya, 2012, p. 206.

² YILDIRIM, age, p. 206.

³ GİRİTLİ İsmet, BİLGİN Pertev, AKGÜNER Tayfun, **İdare Hukuku**, İstanbul, 2006, p. 506.

The exclusions stipulated by the laws for protecting the public order and security are reserved⁴.

IV- Declaration of property

As per article nr. 71 of the Constitution and article nr. 14 of the Public Servants Law nr. 657, the Government Officers are obliged to declare the the assets and properties owned by themselves or their spouses or children under their custody as well as receivables and debts in this regard. The obligation of declaring properties was stipulated in order to prevent the government officers from acquiring unjustified properties and benefits and fighting against bribes and corruption.

The ones having failed to declare their properties in due time will be given written notification to this end under the provisions of Law of Notifications. The required criminal complaint will be filed before the Public Prosecutor's Office if the government officer in question still fails to declare the properties.

V- Dress code

The dress codes of the government officers were set forth under the relevant laws, regulations and communiqués. The government officers are obliged to dress as per these arrangements (Add. art.19)

VI- Returning Public Documents, Vehicles and Equipment

The government officers will not use the public documents, vehicles and equipment relating to their duties for their personal affairs nor they will use take them outside the areas of authority and jurisdiction.

Furthermore the government officers are obliged to return the public documents, vehicles and equipment assigned to them due to their duties when their duties expire. This obligation also includes their heirs.

If the government officers who have quitted their duties fail to return the public documents, vehicles and equipment assigned to them due to their duties when their duties expire, since their public servant duties have expired, they will not be subject to public servant law, yet general provisions of law like the ordinary people⁵.

VII- Abiding by the Principles of Code of Ethical Conduct

The Law on Ethical Commission regarding the Public Officers (nr. 5176) and making changes on several laws was enacted so as to determine the ethical code of conduct which the public officers are to abide by including transparency, impartiality, honesty, accountability, preserving the public benefit and so as to monitor implementation. The Board consists of a commission of eleven members assigned, delegated and elected by the Cabinet of Ministers under the Presidency named as the Ethical Board of the Public Officers, one member of which is the chairman. The board determines by a regulation "the principles of ethical code of conduct which the public officers are to abide by when carrying out their public duties" and upon any

⁴ AKYILMAZ Bahtiyar, SEZGİNER Murat, KAYA Cemil, **Türk İdare Hukuku**, 2. Edition, Ankara, 2011, p. 585.

⁵ GİRİTLİ, BİLGEN, AKGÜNER, age, p. 515.

allegations filed that these principles were violated/breached or ex officio, such allegations will be investigated by the board of the their results will be notified to the relevant ministry⁶.

As the result of the investigation and research carried out by the board, if any violations or breaches committed by the public officer of the public officer are determined, this will be duly notified to the persons concerned or the Office of Presidency. The Presidency will have it published on the official gazette upon the decision of the board.

VIII- The Obligation to Carry out and Maintain services Personally and Continuously

The officers are obliged to be on duty during their daily working hours and personally carry them out. This is because execution of public services and abiding by the working hours and days is a requirement of continuity of the public services⁷.

Weekly working hours are forty hours in general (PSL. art.99). The daily working hours is not determined under the Public Servants Law however it was stipulated that the administration will determine the working hours. Forty hours of work will be arranged as Saturday and Sunday being the days of holiday. However under special laws or provided that it is specified under the provisions of the relevant legislations, considering the properties of the institutions and the public services, different methods of working may be set determined for the public officers⁸.

IX- Meeting the requirements of being a Superior

The public officers who have the capacity of a superior public officer have the obligation and responsibility of properly and diligently performing and having others perform the duties assigned to them under laws, regulations and communiqués and training the public officers and inspections their actions and activities under their supervision at the institutions and departments they are delegated (PSL art. 10/1).

The superior public officer is obliged to treat the officers under his/her supervision in justice and equality. Furthermore, the superior public officer is obliged to not give the public officers under his/her supervision any orders violating laws and make any demands from them for gaining personal benefits⁹.

X- Compensating the Losses he/she caused

The public officers have to show care and due diligence expected from them when they are carrying out their duties. The public officers are obliged to take the precautions required to keep the government goods/supplies they were assigned ready for continuing service at all times.

⁶ GÖZÜBÜYÜK Şeref, TAN Turgut, **İdare Hukuku Genel Esaslar Cilt I**, 7. Edition, Ankara 2010, p. 992.

⁷ AKYILMAZ, SEZGİNER, KAYA, age, 2011, p. 587.

⁸ GİRİTLİ, BİLGİN, AKGÜNER, age, p. 508.

⁹ ODYAKMAZ Zehra, KAYMAK Ümit, ERCAN İsmail, **Anayasa Hukuku İdare Hukuku**, 10. Edition, 2009, p. 597.

If the state has incurred by any losses due to the deliberate action, fault, negligence or imprudence of the public officer, then the public officer is obliged to pay the losses over the current value (PSL art.12/2).

XI- Acting Properly and Working in collaboration

Since being a public officer is a separate form of life and environment, generally they are more restricted compared to the other citizens in terms of the social behaviors. Nevertheless, it is stipulated under the Public Servants Law that, "the public officers are obliged to show that they are worthy of the reputation and trust which their official nature requires with their acts and deeds during and outside their working hours".

The Public Servants Law stipulates that one of the obligations of the public officers is to work in collaboration. Since it is based on a collaboration of management, in order for the activities of the public officers to be successfully concluded, they must cooperate with their supervisors and colleagues¹⁰.

§ 2. THE PROHIBITIONS WHICH THE PUBLIC OFFICERS ARE SUBJECT TO

I- The prohibition to undertake other duties

The public officers may not undertake a second duty at the public offices and institutions as a rule. Because each public officer may only be assigned to one position and occupy that position. The officers will not be entitled to payment of compensations and make benefits due to the second duty¹¹. However in a very limited way, in individual and mandatory situations, the public officers may be assigned to second duties. Such individual and mandatory situations were provided for in details under Public Servants Law, articles nr. 87, 88 and 89. For instance the teachers may act as school principals as a secondary duty. However under special cases, there may have been exclusions brought to the prohibition of undertaking other duties¹².

II- The Prohibition to Strike and Class Actions

Based on our constitution, only workers are entitled to strikes. The Public Servants Law prohibits the public officers from quitting being a public officer in a way that hinders the public services, slowing down works, making strike decisions, organizing and announcing strikes and making propaganda to this end¹³. Furthermore, the public officers may not attend to any strikes or strike attempts, support or encourage strikes¹⁴.

¹⁰ CANMAN Doğan, ERTEKİN Yücel, AR Fikret, KAYA BENSGHİR Türksel, ÖZER Cevat, **Kamu Görevlileri El Kitabı**, 2002, Ankara, p. 100.

¹¹ GİRİTLİ, BİLGİN, AKGÜNER, age, 2006, p. 515.

¹² YILDIRIM, age, p. 210.

¹³ GÖZÜBÜYÜK, TAN, age, p. 994.

¹⁴ AKYILMAZ, SEZGİNER, KAYA, age, p. 588.

There are no provisions of law which prohibits class actions or filing lawsuits jointly as peers under a common legal cause. Thus there is no prohibition for the public officers to file lawsuits jointly.

Strike makes sense in a two sided relation. The worker who is a party to a service contract may quit his/her job. The salary for the worker having quitted from work will not continue accruing. However the employer who is the other party to the service contract may conduct lockout. However between the government officer and the administration, there is a legal and regular/orderly relation instead of a contractual relation. If the government officer quits his/her office, his/her monthly salary will not be cut off; no lockouts can be declared by the administration regarding the government officer¹⁵.

III- Prohibition to engage in any commercial or revenue making activities

The officers are obliged allocate all their capacity to carry out their Professional duties. They may not engage in any revenue gaining activities under any Professional titles whatever its nature. The government officers will allocate their working hours to performance of their duties which the relevant Office requires¹⁶.

The officers cannot carry out any activities which may require them to be deemed as businessmen or tradesmen, they may not take any duties or jobs in commercial and industrial institutions, they cannot become commercial representatives or become partners or unlimited partners of limited partnerships or ordinary companies. Provided that they do not act in management or auditing duties of limited companies, the government officers may become founding partner sor partners to a company which has already been founded. In joint stock corporations, the government officers may become founding partners or ordinary members of a company by purchasing the shares of said company. However government officers cannot become members of the board of directors or auditors.

IV- Prohibition of acquiring Gifts and Benefits

In accordance with PSL nr. 29, it is prohibited for the government officers to request gifts and to receive gifts to make benefits and to take loans from clients. As per article 15 of the Regulation on Principles of Code of Ethical Conduct of the Public Servants and Methods and Principles of Application; any gifts or benefits which affects or may affect the public servant from affecting his/her impartiality, performance, decision or carrying out his/her duty with or without economic values that are directly or indirectly accepted will be deemed as gifts and benefits. Again as per article 15 of the same regulation, exceptions were made to the prohibition to accept gifts and these conditions are out of scope of prohibition of accepting gifts.

V- The Prohibition to become members of Political Parties

In accordance with article nr. 7 of PSL, the government officers are prohibited from becoming members of any political parties, have actions which causes the benefits or losses of any political party or person.

¹⁵ GÖZLER Kemal, **İdare Hukuku Dersleri**, Bursa, 2010, p. 651.

¹⁶ ATAY Ender Ethem, **İdare Hukuku**, Ankara 2009, 2.Edition, p. 867.

Furthermore when the government officers are carrying out their duties, they cannot discriminate among races, genders, political opinions, philosophical beliefs, religions and denominations; they may under no circumstances perform any political and ideological activities or make statements in this context¹⁷.

VI- The Prohibition to Disclose the Confidential Information and Make public announcements and declarations to Mass Media

It is prohibited for the government officers to disclose the confidential information relating to their public services without obtaining the relevant minister's consent even if they have quitted their offices. The disciplinary penalty which the government officer failing to abide by this prohibition may be subject to is "Dismissal from Public Servant Status". Furthermore it is prohibited for the government officers to give statements or make declarations to the press, news agencies or radio and broadcasting organizations. The information required in this respect may only be given by the officers to be assigned by the minister to carry out this task¹⁸.

VII- Prohibition to establish associations and become members of associations

In accordance with article nr. 33 of our Constitution, everyone is entitled to establish foundations and become members of associations without obtaining prior consent/permission. However as specified under the same article, the members of armed forces and law enforcement offices and the government officers within the frame of their duties may be restricted by laws from establishing associations and becoming members of the associations. Other than that, there is no provision under the laws of Associations and the Public Servants Law that prohibits the government officers from establishing associations¹⁹.

VIII- Prohibition to take any assignments against the institution/Office he/she Works at

The prohibition of the government officers to take any assignments against the institution/Office he/she Works at was set forth under the Law on the Works which the Persons having quitted public offices may be employed under nr. 2531. Based on this Law, if the persons included under this law quit from their offices due to any reason whatsoever, *they may not, for a term of three years work in any businesses, make commitments, have direct or indirect assignments and act as brokers or representatives in any areas which is related to his/her previous duties and areas of activity at the institution/Office where he/she was employed for two years prior to his/her quitting.*

IX- The Prohibitions to commit to Separatist and Destructive Activities

The government officers are obliged to protect the benefits of the state in all circumstances. They cannot commit to any actions which violate the Constitution of Republic of Turkey or laws and that disturb the independence and integrity of the state and risk the safety of Republic of Turkey. They may not attend to or participate in any organizations, actions/movements or foundations which have activities of same nature. (PSL. m. 7/2)

¹⁷ GÜNDAY Metin, **İdare Hukuku**, Ankara 2011, 10. Edition, p. 604.

¹⁸ GİRİTLİ, BİLGİN, AKGÜNER, age, 2006, p. 535.

¹⁹ GÖZLER, age, p. 653.

Furthermore, the government officers who are abroad due to permanent or temporary duties or for training, investigation or research cannot commit to any actions which may disturb the reputation of the state and prestige of the title.

RESOURCES

AKYILMAZ Bahtiyar - SEZGİNER Murat - KAYA Cemil, Türk İdare Hukuku, 2. Edition, Ankara, 2011.

ATAY Ender Ethem, İdare Hukuku, Ankara 2009, 2. Edition.

CANMAN Doğan - ERTEKİN Yücel - AR Fikret - KAYA BENSGHİR Türksel - ÖZER Cevat, **Kamu Görevlileri El Kitabı**, 2002, Ankara.

GİRİTLİ İsmet - BİLGİN Pertev - AKGÜNER Tayfun, İdare hukuku, İstanbul, 2006.

GÖZLER Kemal, İdare Hukuku Dersleri, Bursa, 2010.

GÖZÜBÜYÜK Şeref - TAN Turgut, İdare Hukuku Genel Esaslar Cilt I, 7. Edition, Ankara 2010.

GÖZÜBÜYÜK Şeref, Yönetim Hukuku, Ankara 2008, 27. Edition.

GÜNDAY Metin, İdare Hukuku, Ankara 2011, 10. Edition.

NOHUTÇU Ahmet, İdare Hukuku, Ankara 2012, 6. Edition.

ODYAKMAZ Zehra - KAYMAK Ümit - ERCAN İsmail, Anayasa Hukuku İdare Hukuku, 10. Edition, 2009.

YILDIRIM, Ramazan, İdare Hukuku Dersleri I, 4. Edition, Konya, 2012.