

EXTENDED SUMMARY

Law No. 657 regarding the absence of civil servants from duty includes various disciplinary penalties as well as different sanctions. One of these sanctions is that if the civil servant leaves her duty for 10 consecutive days without permission or excuse, he is considered to have requested to withdraw from civil service. Being absent from duty for a total of 20 days in a year without any excuse, which is among the actions that require disciplinary punishment, requires the penalty of dismissal from civil service. In the penalty of dismissal from civil service, the civil servant is dismissed from the civil service and will not be appointed to the civil service again. Therefore, in both cases although where the civil servant is dismissed from the civil service and the request to withdraw from the civil service is deemed to have been made, the civil servant's relationship with the civil service is terminated, the penalty of dismissal from the civil service includes a heavy sanction in the form of not being able to be appointed to the civil service again. As a result, both sanctions are the heaviest sanctions applied to the civil servant who does not come to duty, in terms of termination of employment.

In order to apply these sanctions to the civil servant who does not come to duty, the days when the civil servant does not come to duty must first be determined by his superior and the necessary administrative procedures must be initiated. Because Law No. 657 and the relevant Regulations gave this duty superior. If the superior does not fulfill his duty, financial and criminal liability may arise.

The financial liability of the superior in this regard may arise in terms of public damage within the scope of Law No. 5018. For example, since the superior does not make a determination against the civil servant under his command who does not come to duty for a total of 20 days in a year without permission or excuse and does not initiate administrative action for the penalty of dismissal from civil service, the civil servant will continue to remain in office and receive a salary. From now on, if the same civil servant does not continue his duty, each day he does not come to duty will be considered as public loss, taking into account the salary paid to the civil servant for these days. Because if the superior had fulfilled his duty and the civil servant had been dismissed from

the civil service as a result of his 20-day absence, no payment would have been made for the other days of absence from duty and no unfair payment would have been made to the civil servant by the State.

When the failure of the superior to fulfill his duties and the resulting public loss are taken into consideration, criminal liability will also arise within the scope of the crime of misconduct as stipulated in article 257 of Turkish Penal Code. This responsibility can be evaluated within the scope of the second paragraph of article 257. Because according to the first paragraph of article 257, in order to be punished, a public official must “act contrary to requirements of his duty” and in order to be punished according to the second paragraph, he must “show negligence or delay in performing the requirements of his duty”. In order for there to be an act contrary to the duty specified in the first paragraph, there must be an executive act. From the perspective of the superior not to monitor the attendance status of the civil servant under his command, not to make a determination regarding the absence and not to initiate the necessary administrative procedures against the civil servant constitutes an example of negligent behavior, not executive action. In this respect, it is considered that the superior did not fulfill his duty in question by negligence and thus he can be punished in accordance with the second paragraph of article 257 of the Turkish Penal Code.