

The Rights of Leave of Absence of Civil Servants*

Adil Bucaktepe¹

Dicle University, Diyarbakır, Turkey



[10.15408/jch.v12i1.37929](https://doi.org/10.15408/jch.v12i1.37929)

Abstract

Civil officials have several rights conferred by the Constitution as well as by laws and regulations to facilitate the successful execution of their responsibilities. These rights encompass the entitlement to the appointment, provision of service and security, retirement, resignation, the ability to initiate a complaint or legal action, the formation of a trade union, collective bargaining, leave from employment, special considerations in prosecution and trial, protection against accusations and defamation, as well as the right to remuneration and travel expenses. This paper will succinctly examine the overarching rights of federal servants and will thoroughly analyze the "right to leave." Article 50 of the Constitution of the Republic of Turkey ensures employees' entitlement to a day off, while statutory regulations govern paid weekly and annual leave as well as official holidays. Furthermore, Article 23 of the Government Servants Law No. 657 mandates that government servants are entitled to leave under conditions and durations prescribed by law, enabling them to take leave for rest or other purposes. Within this framework, the legislation governs five types of leave: yearly leave, special leave, sick leave, compassionate leave, and unpaid leave. This study employs a qualitative methodology encompassing two primary approaches: a literature review and a legal analysis. The literature review is conducted by examining several academic sources, books, and journals pertinent to the rights of civil servants, particularly the right to quit. This analysis examines the evolution of leave-related rules and regulations across various international contexts and their implementation in Turkey. The legal framework is employed to examine the statutes and regulations pertaining to the rights of government servants in Turkey, encompassing Article 50 of the Constitution and Law No. 657. This article assesses the alignment between legal theory and practice on the right to leave. The study's findings indicate that, despite the legal promise of leave for federal personnel, its execution frequently encounters challenges, particularly concerning the duration and requisite administrative conditions. This paper presents an extensive analysis of government servants' leave rights in Turkey and proposes enhancements for the execution of this right to promote equity and well-being among civil servants.

Keywords: Civil Servant; Rights of Civil Servants; Annual Leave; Special Leave; Unpaid Leave

* Received: January 12, 2024; revised: January 23, 2023; accepted: March 24, 2024; published April 30, 2024.

¹ Associate Professor at Dicle University, Faculty of Law, Department of Administrative Law, Diyarbakır, Turkey.

ORCID ID: <https://orcid.org/0000-0002-4154-7032> Email: adilbucaktepe@hotmail.com

**Corresponding author: adilbucaktepe@hotmail.com

A. INTRODUCTION

It is difficult, if possible, to define some concepts in legal science. The concept of "civil servant" is not easy to explain, as it is described in each country according to the conditions, such as the society, legal system, and administration specific to that country. Therefore, the definition of civil servant may differ from country to country, and reaching a generally valid definition of "civil servant" can be challenging. There is no consensus on this point among the existing legal disciplines within the same country. ([Giritli et al., 2006](#)) This situation is no different in Türkiye. For example, the definitions of a civil servant in administrative law and a civil servant in criminal law (public officer, as expressed in criminal law terminology) are different. The concept described in criminal law is broader. ([Özyörük, 1972](#))

In the appendix to Article 4 of the Civil Servants Law, a civil servant is defined in law as "An individual assigned to perform essential and permanent public services carried out by the State and other public legal entities by general administrative principles, regardless of the current form of establishment". In Turkish Penal Law, a public officer is defined as "a person who participates permanently, temporarily, or continuously for any period in the conduct of public activities, whether by appointment or election or in any other way". In the Constitution of the Turkish Republic, there is no clear definition of a civil servant. ([Gözler and Kaplan, 2022](#)) However, in the first clause of Article 128, similar to the 4th provision of the Civil Servants Law, it is stated that "civil servants and other public officers are seen to deal with the principal and permanent duties required by the public services that the state, public economic enterprises and other public legal entities are obliged to carry out following the general administrative principles."

Civil servants have rights; some prohibitions exist in the Civil Servants Law. ([Onar, 1966](#)) These rights have been recognised as necessary for civil servants to fulfil their duties. ([Gözbüyük and Tan, 2007](#)) These rights are primarily the right to request an appointment to a position, the right to service, rights to security, retirement, resignation, to make a complaint or file a lawsuit, to establish a union, to make collective agreements, to take leave of absence from work, to be subjected to some special provisions in prosecution and trial, the right to protection against accusations and slander, and the right to salary and travel expenses. Before examining the right to leave of absence, it is helpful to mention these other rights briefly.

According to Article 17 of the Civil Servants Law, a civil servant has the right to the provisions of appointment and determination to be applied as set out

by law. Article 49 of the Constitution of the Turkish Republic states that “everyone has the right and duty to work”, and Article 70 states that “every Turk has the right to enter public service”. Therefore, the duties undertaken by civil servants are both a right and a duty. Article 45 of the Civil Servants Law states that no civil servant can be employed outside their own grade or at a lower grade. Thus a civil servant cannot be used at a grade below their current grade or below the monthly salary grade they have already reached. ([Akyilmaz et al., 2023](#)) Any person or authority should not prevent civil servants from using their abilities to fulfil their responsibilities. ([Cağlayan, 2018](#))

Civil service is a profession that must be conducted with specific security measures. ([Günday, 2002](#)) The right to protection of civil servants ([Ulusoy, 2023](#)) is stated in Article 18 of the Civil Servants Law. In this article, it is said that other than in the conditions written in the laws, the employment of a civil servant cannot be terminated, or monthly salary and other rights removed. Article 94 and subsequent articles of the Civil Servants Law state that employment can be terminated in conditions of resignation, acknowledged resignation, non-fulfilment of conditions, age limits, and disability.

The right to a retirement pension for civil servants is “an insurance of long years of service.” ([Eroğlu, 1972](#)) A civil servant obtains the right to a retirement pension on reaching a certain age or when a certain period of working is completed. ([Gözübüyük and Tan, 2007](#)) An individual meeting the conditions terminates the civil servant status and transitions to retirement status. ([Gözler and Kaplan, 2022](#)) Article 19 of the Civil Servants Law states that civil servants have the right to retire within the specific conditions written in the law. The retirement procedures of civil servants are primarily implemented within the framework of the Social Insurance and General Health Insurance Law no. 5510.

The right to resign is defined as a civil servant terminating work on their request and is thus dependent on the wishes of the person working as a civil servant. It is impossible to force any citizen to work as a civil servant. According to Article 18 of the Constitution, nobody can be forced to work, and according to Article 48, everyone has the freedom to work in an area of their choosing. In this context, just as a person can apply to work as a civil servant of their own free will, they can terminate the employment similarly. It is stated in Article 20 of the Civil Servants Law that a civil servant can resign from work according to the principles specified in this law. The reasons for resignation are stated in Articles 94-97 of the law. ([Council of State, 2019](#))

The right to apply, complain and file a lawsuit: According to Article 21 of the Civil Servants Law, civil servants have the right to complain and file a lawsuit

because of personal or official procedures related to the institutions or administrative actions and procedures applied to them by their superiors or institutions. Applications and complaints are made verbally or in writing through the chain of management, starting from the nearest superior and omitting the superior's complaints. Applications and complaints are examined, and the relevant person is notified immediately. The Regulation on Complaints and Applications of Civil Servants regulates the principles and procedures regarding applications and complaints.

Article 51 of the Turkish Republic's Constitution provides civil servants the right to establish a trade union. According to this article, employees can establish unions and upper committees to protect and develop economic and social rights and benefits without obtaining permission, and they can freely become members and terminate membership. There is a similar provision in Article 22 of the Civil Servants Law. The Public Servants' Unions and Collective Agreement Law No. 4688 was enacted to determine the establishment, organs, authorities, and activities of unions and confederations formed to protect and develop the common economic, social, and professional rights and benefits of public service workers and the rights and responsibilities of public officials who will have duties in these.

Article 53 of the Constitution provides civil servants with the right to make collective agreements. Articles 28-34 of the Public Servants' Unions and Collective Agreement Law regulate the manner and principles of collective agreements.

The right to be subject to special provisions in prosecution and trial is stated in Article 24 of the Civil Servants Law, which stipulates that the investigation and prosecution of civil servants and the filing of lawsuits against them for crimes related to their duties or committed during the course of their duties are subject to special provisions. This regulation was made on the principle of continuity of public services and with the idea of providing security because of crimes related to the duties of civil servants when conducting public services. ([Eroğlu, 1972](#))

The right to protection against accusations and slander is provided in Article 10 of the Constitution with the principle of equality before the law. It is stated that, in general, everybody, regardless of gender, race, language, skin colour, political views, philosophical beliefs, religion, sect, and other similar reasons, is equal before the law. No privilege can be granted to any person, family, group or class, and state organs and administrative authorities must act following the principle of equality before the law in all their procedures.

Therefore, according to the laws of public services, everybody must be presented equally in a neutral way without any personal or group differentiation. ([Sancakdar et al., 2018](#)) Public services are provided by civil servants, who are the means of enacting the administration. For civil servants to fulfil their public service duties, they must be protected against unfair accusations and slander. In this sense, Article 25 of the Civil Servants Law protects against allegations and slander. The article states that if denunciations and complaints about civil servants are made under the pretext of a fabricated criminal charge, for spite or insult, or as the result of a legal procedure to which the investigation or trial is subject, the accusation is understood to be not true. The most senior superior in the centre of the official denounced or complained about, and the governors in the province will request the Public Prosecutor's Office to file a public lawsuit against those making the allegations.

The right to a monthly salary is one of the most essential rights of civil servants and is stated in the Civil Servants Law. Salary is a right that corresponds to the service of the civil servant and is the natural outcome of having civil service status. ([Osten, 1968](#)) Article 55 of the Constitution states that the State will take the necessary measures to ensure that employees receive a fair salary appropriate to the work performed. Salary is defined in Article 147 of the Civil Servants Law as money paid monthly on a staff basis, corresponding to the services of those employed in institutions covered by the Civil Servants Law. Civil servants, as candidates or principals, have the right to receive a salary from the day they start duty. Salaries are paid in advance, on the 15th day of each month according to Article 1 of Law No. 3472 on the Adoption of the Decree Law No. 289 dated 9.9.1987 on Changing the Payment Time of Salaries of Civil Servants and Other Public Servants.

The right to travel expenses, or travel allowance, is defined in the Travel Allowance Law no.6245. According to clause (a) of Article 3 of the law, travel allowance refers to one, several or all of the travel expenses, daily expenses, family expenses and relocation expenses that must be paid according to this law. Article 177 of the Civil Servants Law states that travel expenses and daily allowances will be paid if the civil servant leaves the usual place of work temporarily or permanently to perform a duty. ([Council of State, 2010](#)) The laws referred to in this article are the Travel Allowance Law and the Budget Law.

B. METHODS

The provision of public services is a function of administration. The basic tools of "personnel," "money," and "fixed/portable assets" are required to fulfil this function of administration. Without these tools, the administration cannot fulfill its functions and responsibilities.

Although "Law" refers to the whole collection of legal rules, it is traditionally separated into various sub-branches. In this sense, the first separation is between "national" and "international law". According to the classic separation based on Roman Law, "national" or "domestic" law is separated into two: "private law" (*ius privatum*) and "public law" (*ius publicum*), both of which are divided into sub-branches. The sub-branches of "private law" include "common law", "debt law", "foreclosure and bankruptcy law", "civil procedure law", "employment law", "commercial law", and "private international law". The sub-branches of "public law" include "constitutional law", "criminal law", "criminal procedure law", "tax law", and "administrative law".

"Personnel"(public officials) is one of the tools mentioned above required to implement the administration's public services. Administrative law examines it as one of the sub-branches of public law. Administrative law is the branch of law that regulates the establishment and actions of the administration. There are three primary sources of administrative law: legislation, court decisions, and doctrine. The "general principles of law" and "usage and custom" can be added to these sources. "Legislation" means all the legal rules in force. The legislation in Türkiye, from the top downwards, consists of the Constitution, the law, presidential decisions, and regulation. There are also regulatory procedures such as notices, communiqués, instructions, procedures, directives, and circulars, which are known as "anonymous regulatory procedures." In addition, the "decree laws" and "regulations" issued during the parliamentary government system but have not been repealed are still valid.

Jurisprudence, in other words, court decisions, is a second source of administrative law. The last paragraph of Article 138 of the Constitution states that the legislative and executive bodies and the administration are obliged to comply with court decisions, and these bodies cannot change court decisions in any way. They cannot delay the implementation of these. Therefore, court decisions are the references that must be applied in studies in administrative law. Naturally, in the field of administrative law, decisions of the Council of State are most frequently referred to. However, as in other branches of the law, the decisions of the Constitutional Court and the Court of Arbitration are also very

important in terms of administrative law. In some areas of administrative law, the decisions of the Supreme Court, which is another high court, can also be implemented.

Doctrine is another source of information on administrative law. It refers to the opinions and thoughts revealed in scientific works written by scientists in their own field of expertise. Scientists critically examine legislation, court decisions, and administrative procedures and make recommendations for improvements, thereby contributing to the development of the law.

In this study, the legislative provisions were first scanned, and the provisions of the Constitution related to the subject of this study were reviewed. As the Civil Servants Law is the general law pertaining to civil servants, this law was examined first. Then the following rules related to the study subject were examined: Social Insurance and General Health Insurance Law, Law on the Adoption of the Decree Law No. 289 dated 9.9.1987 on Changing the Payment Time of Salaries of Civil Servants and Other Public Servants, Turkish Penal Code, Public Servants' Unions and Collective Agreement Law, Travel Allowance Law, Radiology, Law on Radiology, Electrical Therapy and Other Physiotherapy Institutions, Law on Radiology, Radiation and Electrical Therapy and Other Physiotherapy Institutions. The Regulation on Health Services Provided Using Ionizing Radiation and Radionuclide and the General Communiqué for Civil Servants with serial number 154 relevant to the subject were also examined. Finally, scientific works were reviewed and attempted to show "what is" and "what should be" related to the topic.

C. RESULTS AND DISCUSSION

1. The Right to Leave of Absence

The characteristics of the Republic of Türkiye are stated in the Constitution. One of these characteristics is the principle of a "social state". The main aims and duties of the State are defined in the Constitution. Some of these are to provide welfare, peace, and happiness for individuals and society, to remove political, economic, and social barriers that would limit this in a way that would be incompatible with the fundamental rights and freedoms of the individual, and the principles of justice and a social law state, and to prepare the conditions necessary for the development of the people's material and spiritual wealth. The right to leave of absence, one of the most essential rights defined for civil servants, is a requirement of the social state principle. It can also be said that the right to leave of absence is necessary for a civil servant to work productively.

A civil servant who is fatigued burned out, or who has lost any pleasure in the work will not be able to provide a service of the desired capacity, quality, and sufficiency. A Council of State decision stated that “rest is one of the conditions protecting health, and a rested civil servant will be more productive in their working life as the fatigue caused by the work will be eliminated”. ([Danıştay. 1982](#)) The third paragraph of Article 50 of the Constitution states the right of employees to rest. In various articles of the Civil Servants Law, the rights for multiple absences are given to civil servants for rest and other reasons. The Civil Servants Law defines the rights for five different types of leave of absence. These are annual leave, special leave, sick leave, compassionate leave, and unpaid leave.

a. Annual Leave

As previously stated, civil servants working throughout the year may become tired and worn out and need to rest for specific periods to avoid disruption or deficiency in the provision of public services. In Turkish legislation, civil servants who work for particular periods have the right to annual leave.

The period of annual leave that civil servants can use depends on the length of service. Those who have worked for 1 to 10 years are entitled to 20 days of annual leave, and those with more than ten years of service are entitled to 30 days. However, the length of service used in calculating annual leave does not necessarily have to have been in a public institution. Some exceptions are stated in paragraph C of Article 36 of the Civil Servants Law. For example, for those accepted as working for the Ministry of Education after having worked as a teacher or administrator in private schools, the time of working in private schools is evaluated based on one scale of advancement for each year of two-thirds of the period and one degree of promotion for every three years. According to the same paragraph of the Article in the law, three-quarters of the time spent in the legal services category as a lawyer before entering or after leaving the civil service will be considered paid in the civil service. Each year of these periods will be evaluated as a basis for one-level advancement, and every three years will be assessed as a basis for one-degree promotion. Similar provisions exist for those in the technical services category, healthcare and auxiliary healthcare services, journalism, contractors, and Agricultural Credit and Agricultural Sales Cooperatives.

The General Communiqué for Civil Servants, serial number 154, states that “in the calculation of annual leave periods, the service periods spent in public institutions and organisations, regardless of status, and the service periods evaluated in the vested rights pensions of civil servants, even if they are not spent

in public institutions and organisations, should be taken into account." The 12th Chamber of the Council of State also approved the local court decision that the period of service spent as a freelance lawyer and evaluated according to degree and level should also be considered in the calculation of annual leave. ([Council of State, 2005](#))

The annual leave of civil servants can be taken at one time or divided at times suitable for the superiors. However, no regulation in the Civil Servants Law related to how much the annual leave period can be divided. Article 56 of Employment Law no. 4857 states that annual leave can be taken in parts, one part of which is not to be less than ten days, with the agreement of both parties. This is consistent with a similar regulation in the Civil Servants Law. However, some hesitation can be experienced in the application of this article. It can be understood from the text of the article that the administration has discretionary power regarding the time to use annual leave. Still, there is no regulation regarding public institutions and organisations limiting the period of use of annual leave. In short, no regulation in the Civil Servants Law prevents annual leave as a total of one time or several days at different times. Nevertheless, Article 103 of the law defines the discretionary authority of superiors regarding the time of use of annual leave by civil servants. It should be stated that the discretionary power granted to superiors should be used within the limits stipulated by the legislation in a way that does not hinder the exercise of the constitutionally and legally recognised right to rest by the principles of justice and equality, for public services and requirements and the public interest.

However, taking into consideration the nature of the service provided by the administration and to avoid abuse of the right and hesitations in implementation, it would be appropriate to clarify, by legal regulation or regulatory action, the amounts in which annual leave can be divided or used if not used as a whole. For example, a civil servant may request to use 30 days of annual leave as 30 separate days. If the superior agrees, this can be done, but the same superior may not approve another civil servant to use annual leave as 30 separate days. Such a situation would be contrary to the principle of equality. Therefore, to avoid this type of adverse situation, the basis of using annual leave should be re-regulated, defining the minimum number into which it can be divided. Such a regulation would allow the right to rest, guaranteed by the constitution, and could contribute to providing public services effectively and efficiently as required.

It would be helpful to state whether or not probationary civil servants have the right to annual leave. Although Article 102 of the Civil Servants Law states

the right for 20 days annual leave for civil servants with up to 10 years of service and 30 days for those with more than ten years, there is no provision in the Civil Servants Law related to whether annual leave will be given to probationary civil servants. However, in communique serial number 154, in the calculation of the period of service on which annual leave is based, it is stated that the service periods spent in public institutions and organisations, regardless of status, and the service periods evaluated in the salary rights gained, even if they are not paid in public institutions and organisations, should be taken into account. A probationary civil servant who has not completed one year of civil service in the institution where working must complete the 1-year service period following the provisions of the said communiqué. Annual leave can be used if the one year of service has been completed.

A civil servant is not obliged to use their annual leave within that year but can use the leave allowance for two consecutive years together. For example, a civil servant with 15 years of service can defer using their annual leave for 2024 until 2025. However, this is only valid for one subsequent year, so the leave allowance for 2024 cannot be used in 2026.

There is a special provision in the Civil Servants Law about the use of annual leave for teachers working as civil servants. According to the earlier provision, teachers are not given specific yearly leave but are considered on leave during summer holidays and rest days. However, annual leave is given to teachers who are given secondary duties of school or institution management and those working in educational institutions which do not provide face-to-face education. Finally, civil servants can use annual leave to add additional leave for travelling, but this additional period must be at most two days.

b. Health leave

In practice, health leave also refers to radiation leave. This is stated in the last paragraph of Article 103 of the Civil Servants Law. According to this provision, personnel who are exposed to radioactive rays in their work are entitled to one month of additional annual leave.

The regulation regarding health leave is also included in the Regulation on Health Services Provided Using Ionizing Radiation and Radionuclides. The regulation states that "health leave, in addition to their annual leave, will be given to employees in controlled areas where only ionising radiation sources and radionuclides are used." Related to the subject of this paper, the additional Article 1 of Law No. 3153 on Radiology, Radiotherapy and Electrical Therapy and Other

Physiotherapy Institutions states that the weekly working hours of the places where diagnosis, treatment or research is carried out with ionising radiation and the personnel working in these jobs or procedures are 35 hours. No regulation related to annual leave could be identified.

It would be beneficial if the details of the health leave of civil servants and even those working in the private sector who work in places where radioactive rays are present or may be present were to be determined by the legislature by law or by the administration by regulatory action. Otherwise, some hesitations or abuses may occur in practice.

c. Special Leave

Other rights to leave of absence have been defined in addition to the right to annual leave of civil servants. Special leave can be examined in two groups as “mandatory special leave” and “approved special leave” (Atay, 2012). The administration must grant the special leave in the first group when the reason for it occurs, and in the second group, the administration is not obliged to grant the leave of absence. ([Günday, 2002](#))

Mandatory special leave includes “maternity leave”, “breastfeeding leave”, “paternity leave”, marriage leave”, and “compassionate leave”. Other leaves of absence can be granted at the discretion of the administration. These forms of leave are examined in brief as follows:

1). Mandatory Special Leave

Special leave in this group is leave of absence which must be granted by the administration when requested by the civil servant for reasons defined in Article 104 of the Civil Servants Law. The reasons listed in the Article are as follows:

Maternity leave: female civil servants are entitled to 16 weeks 8 weeks before the birth and 8 weeks after. In multiple pregnancies, two weeks are added to the prenatal 8 weeks of maternity leave. However, if supported by a doctor’s report of fitness to work, a female civil servant can continue to work up to 3 weeks before the birth and the period worked is added to the postnatal maternity leave. If the birth occurs before the due date, the proportion of unused maternity leave before the birth is added to the postnatal period. In cases where both parents are civil servants, if the mother dies in childbirth or while on maternity leave, the father is given the leave period that was due to the mother.

At the end of maternity leave, a female civil servant can request to work half hours for two months when it is the first birth, four months for the second birth, and 6 months for subsequent births. A month is added to each of these periods for multiple births. If the child is born with a disability or a disability is diagnosed within the first 12 months, these periods are applied as 12 months.

Civil servants have a right to leave of absence when adopting a child below a certain age. A civil servant adopting a child younger than 3 years, either individually or together with their spouse who may or may not be a civil servant, is given leave of absence for a period of 8 weeks from the time the child starts to live with them, even if before the adoption decision has been made.

- Paternity leave: on written request, male civil servants are given ten days of paternity leave following the birth of a child.
- Marriage leave: On request, 7 days of marriage leave are granted for the marriage of a civil servant or their child.
- Compassionate leave: Seven days of compassionate leave are granted upon request following the death of a spouse, child, mother, father, sibling, or spouse's mother or father (Council of State, 2015).
- Breastfeeding leave: at the end of maternity leave, breastfeeding leave is given 3 hours a day for the first six months and 1.5 hours a day for the following six months. How many times a day and at what times the leave is used are the preferences of the female civil servant.
- Caregiver leave: A civil servant is entitled to a total of 10 days in a year, taken together or at separate times, to care for a child who is at least 70% disabled or who has a chronic disease (if the child is married, provided the spouse is at least 70% disabled).

During special leave, financial rights and social benefits other than payments due to actual work are not touched. The civil servant continues to benefit from these rights and benefits.

2). Approved Special Leave

The conditions and periods of leave of absence in this group are at the administration's discretion. Other than the mandatory special leave mentioned above, a period of 10 days to be used at one time or in parts can be given to a civil servant within one year. This type of leave can be provided by the superior authorised to make appointments in the centre, the governor of the province, the district governor, and the chief of a diplomatic mission abroad with the consent

of the head of the unit. Except for teachers, in cases of necessity, a further ten days' leave of absence can be given with the same procedure. This second approved 10-day period is deducted from the annual leave of the civil servant.

There is a separate regulation for approved special leave for teachers. According to this regulation, a second period of 10 days of special leave can be given on condition that it is necessary, and the days will be deducted from the annual leave of the following year. However, according to Article 104 of the Civil Servants Law and Article 10 of the Ministry of Education Leave of Absence Directive, this second 10-day period of special leave will not be given to teachers. This is thought to be because teachers need to have annual leave or to avoid interruptions to educational activities. However, there may be situations when teachers need special leave for reasons other than for themselves. In these situations, teachers, who are also civil servants, should be given special leave like other civil servants. Otherwise, this would be contrary to the principle of equality guaranteed in the Constitution. Therefore, it would be appropriate for legislators to remove the rule that teachers cannot be given a second period of 10 days of special leave.

d. Sick Leave and Patient Care Leave

Article 105 of the Civil Servants Law defines various periods of sick leave for civil servants, starting from 12 months.

On the production of a report showing that it is necessary, sick leave of up to 18 months is given to a civil servant in conditions of sickness that require long-term treatment, such as cancer, tuberculosis, and mental health disease, and leave of up to 12 months for other diseases. The salary and personal rights of the civil servant are protected throughout this period. The time that a civil servant spends hospitalised for treatment is considered when calculating the period of sick leave. At the end of the leave period, whether 12 or 18 months, the civil servant must present a report of recovery to be able to start work. Receiving a report from the official healthcare institution that the disease is ongoing at the end of the leave period allows the leave to be extended up to double. Retirement procedures are applied to the civil servant if there is no recovery at the end of this period. Civil servants determined by the official health committees to have regained the necessary health conditions at the end of the period and who have not obtained the right to retirement may return to civil service if they wish and are first appointed to a position appropriate to their qualifications.

Civil servants have the right to sick leave if they experience an accident or assault at work because of their work or if they contract an occupational disease. ([Güloğlu and Yargıcı, 2022](#)) Unlike other forms of leave, there is no time restriction. In the case of the stated conditions, the civil servant is considered on leave until fully recovered.

Finally, caregiver leave is stated in Article 105 of the Civil Servants Law. In this sense, “caregiver” means caring for a sick person. According to this provision, up to 3 months' leave of absence can be given when the mother, father, spouse, child, or sibling for whom a civil servant is responsible has had a severe accident or has a disease requiring long-term treatment, provided a health committee report documents this. The salary and personal rights of the civil servant are protected throughout this period, which can be doubled when necessary. According to the Council of State, caregiving can be provided in hospitals or at home (Council of State, 1988). In other words, hospitalisation is not mandatory for caregiving, according to the High Court.

e. Unpaid Leave

The rights of civil servants to unpaid leave are stated in law. The conditions for unpaid leave in the Civil Servants Law are as follows:

At the end of caregiver leave (a maximum of 3 months), unpaid leave can be given for up to 18 months on request and with a health committee report. After maternity leave, up to 24 months of unpaid leave can be given on request. Or, starting from the end of working half the working hours per day, which begins at the end of maternity leave, up to 24 months of unpaid leave can be given on request. Likewise, a civil servant whose wife has given birth can be granted unpaid leave for up to 24 months on request starting from the date of the birth.

Unpaid leave is also defined for adoptions. According to the Civil Servants Law, a civil servant adopting a child younger than 3 years, individually or with a spouse who may or may not be a civil servant, can take unpaid leave of absence. A period of up to 24 months can be given on request starting from the end of the eight weeks or from the back of working half the working hours per day, which begins at the end of those eight weeks. If both the adopting parents are civil servants, this period can be used on request as two consecutive periods by the two parents, but not exceeding 24 months.

Civil servants who are sent abroad to be trained on a scholarship or with budgetary means, who are appointed to a permanent position within Turkey or

abroad, who are temporarily assigned abroad for at least six months, and civil servant spouses of students who are sent abroad by public institutions may be granted unpaid leave during the period of duty or education. If the civil servant has completed five years of service in terms of the periods taken as the basis for annual leave, unpaid leave for up to one year can be given on request to be used during service and, at most, twice.

The rights of civil servants to unpaid leave of absence related to military service have been defined. According to Article 4 of the Military Recruitment Law no.7179, every male citizen of the Republic of Türkiye has to undertake compulsory military service. In this context, civil servants assigned to active military service are considered to be on unpaid leave, while their place of duty remains reserved during their military service. Those who want to return to civil service on completion of military service must apply to their institutions within 30 days from the date of discharge, and the institutions must start their duties within a maximum of 30 days from the date of application. If the reason for special leave disappears before the end of the unpaid leave period, the civil servant must return to duty within ten days, and failure to do so is considered resignation from the civil service.

Other than the Civil Servants Law, different laws in Turkish legislation give the right to unpaid leave of absence. The fourth paragraph of Article 18 of the Public Servants' Unions and Collective Bargaining Law no. 4688 defines the right of union and confederation managers to unpaid leave. According to this Article, union or confederation board members and union branch board members should notify their institutions in writing of their status within thirty days of their election. On the written request of these managers, they will be on unpaid leave during their duties. If those who are considered to be on unpaid leave then leave their position in union or confederation bodies for any reason, a written application must be made to the institution or organisation they left within thirty days from the date of termination of their duties. The public sector employer must assign these people to their former positions or another suitable position within thirty days. Those not applying to start duty within 30 days are considered to have resigned.

A similar regulation related to this subject is stated in Municipality Law No. 5393. According to the sixth paragraph of Article 49 of this law, civil servants working in public institutions and organisations may be temporarily assigned as unit managers and above in municipalities upon the request of the mayor and with the consent of themselves and their institutions. The civil servant assigned to the city is considered on leave from their institution, and the municipality

meets all expenses incurred during this period. Those appointed in this way must apply in writing for reinstatement to their institution within 15 days from the end of the temporary appointment period. They will be appointed to another suitable position within one month.

D. CONCLUSION

Just as some responsibilities are placed on civil servants in the Constitution and laws, some rights are also defined. These rights are the right to request an appointment to a position, the right to service, security, retirement, resignation, to make a complaint or file a lawsuit, to establish a union, to make collective agreements, to take leave of absence from work, to be subjected to some special provisions in prosecution and trial, to be protected against accusations and slander, and the right to salary and travel expenses. The right to leave of absence of civil servants was examined in this paper.

There is a need for some improvements on the subject of leave of absence for civil servants. There is no provision for how annual leave should be used. The timing of annual leave is at the discretion of superiors. To avoid hesitation and provide clarity, it would be appropriate to define how many parts of annual leave can be divided into legal regulations or general regulatory procedures. The right to health leave is one of the rights stated in the Civil Servants Law, but the law's provision can be considered insufficient. It would be beneficial if the rights to health leave of civil servants working in places related to radioactive rays were defined in detail by law by the legislator or by regulatory action by the administration. Otherwise, there may be some hesitations or abuses in practice.

Teachers are also civil servants, but a different regulation related to approved special leave prohibits them from taking a second 10-day period of special leave. This can be said to be contrary to the constitutional principle of equality. Teachers may need special leave in the same way as other civil servants. Therefore, it would be appropriate to remove this prohibition for teachers.

The application of "hourly leave" is only stated in one article of the Civil Servants Law as 3 hours and 1.5 hours of breastfeeding leave. Hourly leave is included in the Public Servants' Unions and Collective Bargaining Law, but in practice, hourly leave usually has to be applied for. As there is no legal regulation on this subject, there is a probability of experiencing various problems. Therefore, it would be appropriate for the issue of hourly leave to be regulated by law regarding whether it can be obtained and if so, the procedures and principles by which it will be received.

REFERENCES

- Akyılmaz, B., Sezginer, M. & Kaya, C. (2023). Turkish Law of Administration (Expanded and Updated 17th Edition), Ankara: Seçkin Publishing
- Atay, E.E. (2012). Administrative Law (3rd Edition). Ankara: Turhan Bookstore Publishes
- Çağlayan, R. (2018), Administrative Law Courses (Updated According to The New Sistem 6th Edition). Ankara: Adalet Publications
- Eroğlu, H. (1972). Administrative Law Courses. Ankara: Sevinç Press
- Giritli, İ. ve Bilgen, P. & Akgüner, T. (2006). Administrative Law (Revised 2nd Edition). İstanbul Der Publications
- Gözler, K. & Kaplan, G. (2022). Administrative Law Courses (Updated 24th Edition). Bursa: Ekin Bookstore Publications
- Gözübüyük, A.Ş. & Tan, T. (2007). Administrative Law Volume 1 General Principles (Updated 5th Edition). Ankara: Turhan Bookstore
- Güloğlu, Y. & Yargıcı R. (2022). Government Liability to Damages Due To Defective Provision of Health Services in Turkey. *Jurnal Cita Hukum*. Volume 10.Number (3), 447-472.
- Günday, M. (2002). Administrative Law (Renovated 5th Edition). Ankara: İmaj Publishing
- Onar, S.S. (1966). General Principles of Administrative Law II Volume (3rd Edition). İstanbul: İsmail Akgün Press
- Osten, N. (1968). Administrative Law Courses. Ankara: Başnur Press
- Özyörük, M. (1982). Administrative Law Lecture Notes (2nd Grade Program Duplicating) Ankara: 72 Duplicator Typewriter Photocopy
- Sancakdar, O.,Us, E., Kasapoğlu Turhan, M., Önüt, L. B. & Seyhan, S. (2018). Administrative Law (Expanded and Updated 7th Edition), Ankara: Seçkin Publishing
- Ulusoy, A. D. (2023). Turkish Law of Administration (Revised 6th Edition), Ankara: Yetkin Publications
- Yılmaz, E. (1992). Law Dictionary (Expanded 4th Edition). Ankara: Yetkin Publications

Adil Bucaktepe

1st Chamber of The Council of State Its decision dated 06.07.1982, *Journal of Turkish Council of State*. Volume 12. Number(46-47), 54.

The 5th Chamber of the Council of State's decision, dated 04.13.1988, was numbered E: 1987/2265, K: 1988/1282.

The 5th Chamber of the Council of State's decision, dated 05.31.2010, is numbered E: 2008/1919, K: 2010/3768.

The 12th Chamber of the Council of State's decision, dated 12.14.2005, is numbered E: 2002/4212, K: 2005/4535.

12th Chamber of The Council of State's decision dated 11.18.2015 numbered E: 2012/4436, K: 2015/6001.

12th Chamber of The Council of State's decision dated 03.19.2019 numbered E: 2018/9930, K: 2019/2014.