



Research Article

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## Criminal Prosecution (Punishment), a Cause for Terminating Employment Relationships in the Civil Service, under Albanian Legislation

PhD(c)., Andi Civici

University of Tirana

Asoc. Prof. Dr. Klodjan Skenderaj

University of Tirana

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### Abstract

*The regulation of legal relations in the civil service has undergone a radical reform in recent years. Legislative acts regulating the working relationships of civil servants and strict rules regarding the purity and integrity of the civil servant figure have been adopted, the lack of which results in the interruption of relations in the civil service. In 2015, the law on the integrity of persons elected, appointed or exercising public functions entered into force, the purpose of which is to guarantee public confidence in the functioning of the institutions, by preventing the election or appointment, or leaving the public function of such persons who have been convicted or to whom security measures have been taken or have been convicted by a non-final decision for committing crimes under this law. Based on the provisions of this law and the provisions of the law on the status of a civil servant, when public institutions find that a person is convicted, or to whom a security measure is taken, decides to terminate relations in the civil service. This paper will analyze the cases of termination of employment relations in the civil service due to criminal punishment, the types of criminal punishment which constitute a cause for dismissal, the application of conditions and criteria and the way public institutions interpret the legal acts in force, with the aim of addressing the problems of law enforcement in practice and giving concrete recommendations on issues to be ascertained.*

**Keywords:** criminal punishment, criminal offense, rehabilitation, civil servant, civil service

### 1. Introduction

The normal functioning of the Rule of Law cannot be separated from the existence of a written constitution, from the recognition and respect of human rights and fundamental freedoms and from the exercise of state activity based on constitutional legal principles (Sadushi, 2012) (Zaganjori, 2012).

The civil service in the Republic of Albania went through radical changes with the entry into force of the new Law No.152 / 2014 "On Civil Servant". The purpose of this law was to create a stable, professional, merit-based administration, moral integrity and political impartiality. The high moral integrity of civil servants is one of the key elements of creating an effective administration is.

For this reason, the law itself states some provisions regarding the figure of a civil servant, while the detailing of the criteria and values that a civil servant must have is regulated by the Code of Ethics of Public Administration and the special law on guaranteeing the integrity of persons who are elected, appointed or exercise public functions, which provides for the rules and procedures for dismissal of civil servants who do not meet the moral standards and do not have sufficient integrity to be part of the civil service.

In this paper, we will specifically discuss one of the causes of the dismissal of the civil servant from the duty, which is the criminal punishment, how are these criteria applied in practice, when is the civil servant considered to be rehabilitated by the criminal punishment etc. A particular topic analyzed in this paper is whether alternative punishment, community work, is part of the causes of the dismissal from the civil service?

## 2. Reasons for Dismissal of Civil Servant from the Civil Service

In order for a governance system to successfully bring development of a particular society, there must be a very organized and effective state apparatus. This apparatus must ensure public order and security, protect public and private life and property, and respect fundamental human rights and freedoms (Pollozhani, Stavileci, Dobjani, & Salihu, 2010).

The civil service is an innovation of the way of organization and operation of a part of central or local public administration in the Republic of Albania, introduced for the first time in 1996 by a law prepared with foreign legal aid mainly that of SIGMA Program of the Organization for Economic Co-operation and Development in Europe - OECD.50 (Petrela, 2013).

Persons who exercise public functions and who are employed in the civil service must work with dedication, integrity and professionalism. A number of special laws have been adopted for the implementation of a professional service by the administration employees.

Ethics in public administration is one of the most salient elements. Different authors of different eras have defined ethics as '*... it is desirable and pleasing to gain and defend the good of the individual, but it is noble, divine and sublime to define and defend the good of the community and state ... (Aristotle)*', (Methasani).

Law no. 9131, dated 8 September 2003, "*On the Rules of Ethics in Public Administration*" provides for a set of rules on the behavior of public administration employees and some standards that assist not only public administration employees in carrying out their duties and performance of the institution, but even citizens in strengthening their trust in institutions, thus being an added value of the public law legislation in the country.

In addition to the behavior of public administration employees, an important element is the purity of the civil servant figure, which means that they must meet certain objective criteria for being part of the civil service. Conviction for a criminal offense for which the rehabilitation period has not passed constitutes a reason for these persons not to be admitted to the public administration.

Regarding the rules and criteria for the purity of the figure of public servants, a special law is adopted on guaranteeing the integrity of the persons elected, appointed or exercising public functions.

Among other things, this law includes the category of criminal offenses, types and means of conviction, which constitute negative conditions, which means the commission of these offenses is a disqualification condition and constitutes a reason for dismissal of the civil service.

If we intend to interpret Article 2 of the Law, we conclude that letters (a) and (b) provide for the category of criminal offenses, the commission of which, regardless of the means of conviction provided, constitutes a reason for dismissal from the civil service. Letter (b) of this article provides that in the event of a criminal offense which does not belong to the aforementioned category, but for which a person has been sentenced to not less than 2 years of imprisonment, constitutes a cause for dismissal.

While letter (c) of this Article provides for cases when a person has committed a criminal offense not provided for in the above-mentioned category and for which he has been sentenced to not less than six months of imprisonment, it will be a cause for dismissal. Interestingly, for this condition to take place, the criminal offense should have been committed intentionally, because if committed negligently, this disqualifying condition does not apply.

## 3. Alternative Punishment "Community Work" as a Cause for Removal from Civil Service

For the commission of a criminal offense, the punishments provided for in the Criminal Code are the principal punishments and supplementary punishments. In order to rehabilitate and re-educate

a person who committed a criminal offense, with the adoption of the Criminal Code in 1995, some new types of punishments, called supplementary punishments, which replace the principal ones were provided for.

Providing for punishments and alternative means as substitute, substitution of imprisonment, is a progressive trend in contemporary criminal law and at the same time represents important reform in the concept and system of punitive sanctions. The fundamental characteristic of the contemporary punishment system and its perspectives is the trend of bifurcation - division in two directions: sentenced to imprisonment, for more serious criminal offenses, alternative punishments and alternative means for lighter criminal offenses.

One of the alternative punishments provided for in the Criminal Code is the suspension of enforcement of imprisonment sentence and compulsion to perform community work. Specifically, Article 63 of the Criminal Code provides for: *"The court may, due to low dangerousness of the person and circumstances under which the criminal offence was committed and as long as it has imposed a punishment of up to one year, decide to suspend the enforcement of imprisonment sentence and replace it with the obligation for the convict to perform community work. 47 Community work means the performance of work by the convicted person upon his consent and without reward in the public interest or in the interest of the association set out in the court verdict for a period ranging from forty to two hundred and forty hours. This obligation may not be imposed if the convict refuses the suspension during the court hearing. Community work is performed within a six-month term. The court shall, in its sentence, determine the number of working hours and the obligation for the convict to keep contact with the probation service. The probation service decides on the kind of work which will be performed, the place and the week days when the work will be performed, keeping in mind, to the extent possible, his regular employment or his family obligations. The duration of community work shall not exceed eight hours a day. Following the completion of the work, the punishment shall be remitted"*.

One of the elements that distinguishes this alternative punishment from other punishments is the fact that after the completion of the work, the punishment given is considered to be remitted, which means it is undone, as if it never existed. Even in the evidence of the person's criminal records, this punishment is not filed.

The problem noted is in the case of a person working in the public administration, who is sentenced for a criminal offense and an alternative punishment of community work is imposed on the Court, a punishment that he or she completes, will this constitute a cause for his removal from the civil service?

Article 65 of Law no. 152/2013 "On civil servant" provides for: *"1. The civil service relationship also terminates based on the law due to: a) death of the civil servant or the date when the court decision of declaration of the death of civil servants becomes final; b) the civil servant loses the Albanian citizenship or from the date when the court decision to limit or deprive him of the legal capacity to act becomes definitive; c) the civil servants fulfils the age for retirement; c) when the appointment act to the civil service is found to be null and void; d) when sentenced by a final judgment for committing a criminal offense."*

Above we analyzed categories of criminal offenses, the type and means of punishment, the commission of criminal offenses and the criminal punishment that result in the dismissal of the civil servant. Regarding the duration of these obstacles in Article 5 of the law *"On guaranteeing the integrity of the persons elected and/or appointed to, or exercising public functions"* the deadlines are provided depending on the seriousness of the offense and the quality of the subject that has committed it.

An important element that is provided in Article 5 of the law, is the exclusion of favorable circumstances affecting the reduction of punishment, namely: *"Reduction of the amount of punishment due to a shortened trial or similar proceeding that passes the punishment reduction, amnesty, de-penalization, pardon, suspension of the sentence, premature release on parole or any shorter sentence in accordance with the law, do not affect the implementation of this law and are not calculated in the function of shortening the term of the sentence, in order to shorten the period of the prohibitions provided by this law. This law does not apply to penalties imposed on provisions that have been repealed by the Constitutional Court after the issuance of the appropriate*

*punishment as provisions contrary to the Constitution in force at the time of the punishment”.*

According to the above provision, the enforcement of certain substantive and procedural provisions in favor of the defendant, which affects the reduction of the sentence, does not affect the decision-making for dismissal of the civil servant.

The only provided exclusion with regard to the "removal" of these obstacles is the person's rehabilitation, which means that during the period from the moment of the sentence until the rehabilitation deadline has been completed, the person is forbidden to work in the public administration. The provisions of the aforementioned law have provided for explicit rehabilitation terms, while in cases where the conviction is not less than six months, the law refers to the rehabilitation terms provided for in the Criminal Code.

Regarding to the provisions given in the special laws ruling and providing the criteria for the purity of the figure of a public servant and his dismissal from the civil service in case of a criminal offense, it remains highly controversial whether the alternative punishment of community work would be applied as a detention condition.

We think that the penal lawmaker has differentiated this kind of punishment from other punishments, as it is the only alternative punishment, which is considered as non-existing and does not appear in the criminal records of the person who committed a criminal offense.

Regarding to the purpose of the criminal prosecution that is the rehabilitation and re-education of the person as well as the principle of the most favorable law enforcement, although we have a special law which does not provide for punishment of community work as an excluding cause, bringing the dismissal from the civil service of the person who committed the criminal offense, we express the opinion that if a person is convicted for a criminal offense and the enforcement of the sentence of imprisonment is suspended and the compulsion to perform a community work is given, which he has completed, this cannot constitute a cause for removal from the civil service. This opinion is also based on the detention criteria provided for in Article 5 of the Law on the Integrity of Persons Elected, Appointed or Performing Public Functions, where no alternative punishment of "community work" is provided

#### 4. Conclusions

Providing services to the public administration by servants who possess ethical behavior and have a clean figure that brings not only an effective and quality service but also increases public confidence in the well-functioning of public administration, is a vital condition for building the Rule of Law.

Providing for the criteria and conditions in special laws for being part of the civil service or for being removed from the civil service, is an important element for the organization and functioning of public administration, but the enforcement of laws should be in a fair proportion between the public interest and protection and respect for human rights, in this case those of civil servants.

Under the conditions where there is no consolidation of administrative and judicial practice in relation to the interpretation and application of legal provisions concerning the dismissal of the civil servant from the civil service, in cases where he has completed an alternative punishment "community work", this paper will serve as a promoter for a debate between law scholars, public servants in order to establish a consolidated and unified practice.

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