University of Chadli Ben-Jdedid - ElTarf
Faculty of Law and Political Sciences
Master Public Law in Depth

جامعة الشاذلي بن جديد - الطارف
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Summary of Online Lectures for First Year Master Public Law in depth

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Lecture No. (01): Administrative liability

What is administrative liability?

In a general sense, administrative liability refers to the mechanism by which the administration is held responsible for the effects of its activities on the public. In legal terms, administrative liability means that the public administration or one of its agents must compensate for any damage caused in the course of its activities. Since the administration or the state is obliged to compensate for the damage caused by its actions, it is said to be liable.

If it is no longer a legal myth to require private entities to repair the damage they cause to others (Article 124 of the Civil Code), it is only natural that a public entity should also be able to bear the damage caused to third parties by its activities. This was not the case in the past: because of its public service mission, the administration was considered untouchable and its actions unassailable. Today, it is obliged to face up to the harmful consequences of its activities.

However, there are some key questions to be asked. For example: What means are available to the public to obtain compensation for damage caused by the activities of the administration? What is the legal content of administrative liability? And what about the procedure, the competent court, time limits, etc.?

In this article, therefore, we will present administrative liability in detail. We will begin with the legal regime of administrative liability and then move on to the rules governing actions for administrative liability .

Definition

Administrative liability, also known as the liability of public bodies, refers to the obligation of the administration to assume responsibility for damage caused by its activity, omission or negligence. In other words, if an administrative activity causes damage of any kind, or if its inaction results in harm, it is still liable and obliged to repair the damage it has caused to third parties.

It should be noted that when we speak of a harmful act on the part of the administration, we mean both the public person (anonymous and collective) and the individual and known administrative authority. Thus, the administrative liability regime will also apply to private persons who participate in a public service mission or who, in the course of their activity, use a prerogative of public power.

Overall, the scope of the different systems of administrative liability can be summarised as follows:

Origins of administrative liability

Initially, the principle was that the public authority was not liable. At the beginning of the twentieth century, the administration was supremely powerful and enjoyed discretionary powers in carrying out its activities and in taking its decisions. Its general liability was not recognised, it could not cause harm to others, and there was no specific legislation allowing compensation for damage caused by administrative activity.

It was not until 1 February 1873, with the landmark Blanco judgment, that things changed. The Tribunal des Conflicts established the principle of a special liability regime for the administration, distinct from that of ordinary law, making it possible to challenge the consequences of administrative action

before an administrative court. From then on, any citizen could call into question the liability of the administration when it caused damage as a result of its activities.

In addition, the Tribunal des Conflits has gone one step further by creating a judicial body specific to the administration, with jurisdiction to hear disputes between the administration and litigants. In effect, the Tribunal des Conflits has become a body for the division of jurisdiction between the courts and the administrative courts.

Finally, the legislator has joined the Tribunal des Conflits in establishing certain special regimes of administrative liability by creating a right of review by the judge in matters relating to the protection of a fundamental freedom or a right of property.

The different types of administrative liability

There are two main types of administrative liability: those where there is a contract and those where there is no contract.

The contractual liability of the administration

When a public authority enters into a contractual relationship as part of its activities, the parties are liable. Firstly, each party is obliged to fulfil the obligations incumbent upon it and set out in the contract.

If one or other of the parties is at fault and fails to fulfil its obligations, the administrative court can be called upon to compensate the injured party for the damage suffered as a result of the other party's failure to fulfil its obligations. This system of liability is known as the contractual liability of the administration.

There is also extra-contractual liability, which deserves special attention.

Extra-contractual liability

The liability of the administration at this level is not based on the existence of an administrative contract. There are two sub-categories: fault-based liability and strict liability.

Liability for fault

In this case, it is essential for the victim to prove the existence of fault on the part of the authorities. In general, there are two types of fault: simple fault and gross fault. As a general rule, simple negligence is sufficient to give rise to administrative liability, but in special cases gross negligence on the part of the authorities is required.

In order to determine whether the administration is at fault, it is necessary to start from the principle that it is entrusted with a public service mission. Consequently, the authorities must ensure that all citizens are equal before the law. A breach of this equality is tantamount to misconduct on the part of the authorities.

Moreover, in certain cases, the courts have created a presumption of fault on the part of the authorities, based on the assumption that certain activities are de facto the responsibility of the authorities (normal maintenance of traffic lights, maintenance of a public structure, etc.). However, this presumption is simple: all the administration has to do to rebut it is to provide evidence to the contrary.

Donnons some examples of administrative responsibility case for fault: default of emergency services and firefighting, action illegal administrative services, lack of hospital services, errors by public institutions, etc..

No-fault liability

As its name indicates here, it does not exist true fault commise by the administration, it suffices victim of show that the damage it underwent from the activity administration. There are two possible types of liability: liability for risk and liability for breach of equality before the authorities.

We speak of liability for risk when we are dealing with damage that may be caused by a risky activity carried out by the administration. This is the case, for example, with damage caused by public works carried out by the authorities or during the construction of public works. Another example is the use of certain dangerous materials by the authorities (artillery, explosives and gunpowder, etc.).

On the other hand, administrative liability for breach of the principle of equality before the law relates to damage caused by the existence of a law or an administrative decision that adversely affects an individual. This is the liability for laws established in the S.A. La Fleurette judgment of 1938.

For example, a company went bankrupt because the authorities issued a decision prohibiting the marketing of a product that had made the company's fortune.

Here are some other cases of administrative liability without fault: refusal to use public force to enforce a court decision, liability for administrative acts lawfully performed, etc.

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