

*Summary of Online Lectures for First Year
Master Public Law in depth*

Professor Karima Ameziane

English terms Scale

Coefficient: 01

Balance: 01

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Lecture No. (02): Administrative liability**Conditions for administrative liability**

Whether in administrative law or private law, the conditions for liability are the same. First, there must be an event giving rise to liability; second, the event must cause damage; and third, there must be a causal link between the event giving rise to liability and the damage.

The event giving rise to liability

This concerns the origin of the damage. The question is whether the damage was caused by the personal fault of a public official or whether it was caused by a fault of the public official. If the official has committed a personal fault, the victim can sue the official in court. However, in the case of misconduct on the part of the official, the dispute will be brought before the administrative courts.

It is not easy to make this distinction between the personal liability of the official and his liability for the service (or in relation to the service). The solution recommended by the judges is that it is in the interest of the victims to sue the administration first. The administration can then take recourse against the official if he or she can be held personally liable. Through the recourse action, the administration will take action against the official in order to obtain compensation.

The special case of cumulative fault and liability

In certain cases, there may be an accumulation of faults and responsibilities that have led to the damage. Two judgments of administrative jurisprudence confirm the accumulation of personal fault and administrative fault.

The Anguet judgment of 1911 established the concept of cumulative fault, while the Époux Lemonier judgment of 1918 established the concept of cumulative liability. In these cases, there may be two different types of fault: one that entails the liability of the administration and another that involves the personal liability of the civil servant in the performance of their duties.

In these rulings, the fault that led to the accumulation is not unrelated to the service in the sense that it was caused during the operation of the service. In order to obtain compensation, the victim can choose between the administration and the employee at fault. The best option, as mentioned above, would be to sue the administration, which would then have to take action against its employee through the recourse procedure.

The damage suffered

The damage suffered must be compensated. However, a number of cumulative conditions must be met before the damage is recognised.

First, the loss must be special. This means that the victim must have suffered the loss directly.

Secondly, the damage must result from the abnormal nature of the administration's activity. In other words, it must go beyond the inconveniences that normal life in society can produce.

Finally, the harm must be certain. Even if we accept the fact that it has not yet occurred (in the case of future damage), we cannot accept possible or probable damage.

The causal relationship

Before obtaining compensation, the victim must prove that the fault committed is directly attributable to the administration. This is the causal link between the fault and the damage. That relationship must be direct. In other words, there must be no doubt that the harmful act caused the damage.

Regulation of administrative liability

The cases of exemption from administrative liability

There are circumstances in which no one can incriminate the administration or its liability would be or only partially. These are Exceptional cases of immunity from administrative liability.

Exoneration partial

In the case of from liability, it is assumed that the administration has only caused the damage to a lesser extent. This means that that an external factor beyond its control contributed to the damaging event. harmful event. There are two cases of partial exemption from public liability liability: the fault of a third party and the fault of the victim.

The cannot be considered to be the fault of the administration if the victim has acted in a inadvertence, negligence or breach of a legal (or regulatory) obligation, or legal (or regulatory) obligation, placed himself in a risky situation which would have led to the led to the damage suffered.

In the same way, if it is a third party who has committed a fault that has caused to the detriment of the victim, it would be difficult for the administration to be held fully liable. Fully responsible: it could therefore be partially exonerated. Mention here that the responsibility of the third party may be partial than total.

Total exemption

In this case, on the other hand, the authorities are considered to be completely blameless in the occurrence of the damage. It is assumed that the circumstances are such that the administration cannot be blamed. There are also two cases to consider: force majeure and fortuitous event.

Force majeure is either an unforeseeable event that could not have been foreseen, or an irresistible event that could not easily have been avoided. In either case, the event must be unavoidable and irresistible. This is the only circumstance in which there can be no fault on the part of the authorities.

As for "fortuitous event", the distinction between this and force majeure is essentially made in administrative law, since the two concepts are confused in civil law. This is a situation where no one knows the cause of the damage (it is only in the system of fault-based liability that fortuitous events have any meaning).

Compensation for damage caused by administrative acts

The administrative courts hear disputes relating to the activities of the administration. When a liability claim is brought before the administrative court, the court determines the amount of damages to be paid by the administration.

To do this, the judge must assess whether there is a legitimate interest before awarding compensation. In other words, the judge ensures that the loss is compensable before ruling against the administration.

As for the compensation for the loss itself, in most cases compensation in kind is not possible, which leads the administrative court to choose an amount within a range after assessing the monetary value of the loss suffered by the victim.

Furthermore, the administration is obliged to compensate the victim in full for the loss suffered. In other words, it must compensate the loss, but it must compensate all the losses: material, moral, pain and suffering, loss of opportunities, etc.

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Pr. Karima Ameziane

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