

Contractual Liability of Administration in Turkey

Government's contract concluded under private law subject to liability of private law. On other hand, contracts governing public services and activities are subjected to administrative law principles and case-law and administrative liability comes to an issue.

In administrative contracts, in case government causes damage via misconduct or negligence against other party, it is obliged to compensate damages.

Administrative party of the contract may be obliged to perform obligations which are not predicted in course of contractual conclusion. In case that these additional obligations stemming from contract are performed for purpose of contribution to the government, administration may be subjected to compensation for recovery of contribution. These compensations are stemming from unjustified enrichment.

Administrative liability of contract might be seen in two possible case:

1. In case that other party's obligations shall become complicated due to the administrative conducts and acts and new conditions force other party to compensate more unforeseen expenses. If administrative conducts and transactions shall effect the contract directly, the damage arises from these facts must be compensated by administration.
2. This is well accepted principle that if administration is not party of the contract, it can't be held liable for conducts and transactions.

Predictability is an important factor for determination of other party's compensation. In case that other party still provides the services stemming from the contract due to the facts of war, economic crisis, other party must certainly have right to demand compensation for this conduct.

In some cases, administration is fully liable of its conducts whether it has no any negligence or mistake.

Hazardous activities are considered in this concept such as nuclear tests, military exercises, management of mental hospitals or medical and chemical usage. As can be seen risky activities of government have wider liability regarding compensation of damages.

In these situations, negligence cannot be an issue for purpose of administrative defense in judicial procedure. Public Risks are also considered in same category. Terrorist activities are major risk factor in Turkey and person who is damaged by terrorist act must be compensated without discussion of administration's negligence or mistake.

Because administration's first priority must be to secure people's right of life including Turkish citizens or foreigners. Therefore, intelligence of administration must be properly working for prevention of this case. Accordingly, damages stem from terror incidents are subject to compensation.

In addition, in this type of judicial cases must be seen in Administrative Courts of Turkey. This judicial procedure is not the same as the civil court procedure. Hearings are not compulsory for administrative cases, if the court finds it necessary it can decide to set a hearing. In ordinary circumstances, administrative judicial process does not require any hearing. The procedure is governing with petitions and counter petitions.