

Tort Law In Turkey

The distinction between torts and infringement of a contract is one of the most debated question in law. In Continental Law the distinction between law concepts concerned is properly defined by the means of precise legislations as compared to Common Law.

In Turkish law, Article 96 of Turkish Code of Obligations define the infringement of a contract (contractual liability) for the cases where the performance is lacking. On the other hand, basic definition of the tort in Turkish law (Art. 41 of the law concerned) is the infringement of personal liabilities formed by Turkish legislation where a legal relationship (contractual relationship) between parties do not exist.

According to Article 41 of the Turkish Code of Obligations, the tort must contain following four vital elements:

- 1)Unlawful Act
- 2)Damage
- 3)Omission
- 4)Casual link

1)Unlawfulness

The first condition of the tort is the presence of an unlawful act. In the article the word 'unfair' is not been explained in details. Therefore we need to focus on the court decisions given by the Federal Court of Switzerland (Bear in mind that Turkish legislation concerned almost adopted from Swiss Obligation Code). According to the decision concerned, the unlawful act is an act against individual's assets and rights of individuals which are under guardianship of legal system.

Accordingly, an act against individual's inherent rights, such as unity of human body, honour and dignity of a person can be simply regarded as an unlawful act. According to Turkish Law, sometimes passive positions unlike an act can be considered as a Tort. Forinstance, in case of unperformance or undoing of a responsibility may lead a damage. If a constructor did not build an apartment in accordance with rules of construction, in otherwords if he/she avoided to take necessary measures during the construction then unlawful act can come to an issue as a significant element of concept of the Tort. As mentioned, in these type of cases, not taking actions are considered as an unlawful act.

Exceptional Situations

Unlawful acts can be seen as justified acts under definite reasons.

Enforcement of a public order

Implementation of a right arises from private law

The consent of the sufferer

The Scientific criticism

Self-Defence

State of necessity

Usage of Force for self-protection

2)Damage

According to Article 41, presence of a damage is mandatory element for the Tort. In case that the damage is lacking, the tort can not be an issue.

Turkish law categorized the damage with two concepts.

a) Actual Damage

This type of damage is the damage which cause an actual deficiency in the asset of person .

b) Deprivation from the profit

3) Fault

The omission may consist of two elements depending on the feature of the case. The omission might have occurred with an intent or with negligence.

The concept of intention in Turkish law, is to cause a damage with awareness and willingness of the damage

Negligence is also divided into two different categories as 'severe negligence' (culpa lata) and 'slight negligence' (culpa levis).

4) The Cause Link

The defendant is only bound to compensate the damage if there is a causal link between the fact or act on which the liability is based and the damage. In tort law cases the most important issue to prove this link and also to describe in which levels the link had been established between the damage and the act.

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