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Application Area and Scope of the Principle of Social Risk

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Abstract

The administration can only be subjected to financial liability due to its nature and structure as a legal entity. As a requirement of the rule of law principle, the compensation of damages arising from the execution of public services by the administration is evaluated within the theory of "service fault". However, the financial liability of the administration is not limited to service fault. As a requirement of the social state principle, in addition to the principle of balancing the sacrifice, there is also the strict liability of the administration based on the principle of danger or risk. If the administration causes damage while engaging in dangerous activities or using hazardous vehicles, it is held liable even in the absence of fault. Nonetheless, the characteristic that distinguishes social risk liability from the principle of strict liability is that the causal link between the damage and the administrative activity is not sought. The social risk principle ensures that the administration is held strictly liable for damages caused by actions of anarchy and terrorism that disrupt public order.

Keywords: Financial responsibility of the administration, Conditions of responsibility, Defective responsibility, Service defect, Conditions of service defect.

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1. INTRODUCTION

The inseparable relationship between society and administration is gaining more and more importance every day. With the increasing role of individuals in this relationship, new areas of liability of the administration emerge, often not adequately met by traditional definitions. The financial liability of the administration, one of these types of liability, can be defined as the situation in which the state is held liable for the actions that result in damages to individuals while carrying out public duties. The financial liability defined for the administration includes the compensation from the financial resources of the administration for the damages caused to an individual or an institution as a result of the activities of the administration. This liability intends to ensure that the administration is cautious in its activities and protects the rights of those damaged (Gözler, 2006). The financial liability of the administration is not a sanction or punishment mechanism, but a process that seeks to compensate for the damage suffered and holds the public authority liable for its acts and procedures (Akpınar & Yeşilbaş, 2011). The financial liability of the administration has reached its current point by developing day by day. Previously, the idea of the irresponsibility of the state was dominant, yet this concept has been left behind over time and the idea that the administration should be held liable for the damages caused by its faulty procedures and actions has gained acceptance. Subsequently, with the increase and complexity of the activities carried out by the administration, along with the increase in the damages suffered by individuals correspondingly, the liability of the administration based on the service fault became inadequate as well, and the principle of strict liability emerged. As of the early 19th century, the idea suggesting that the state should intervene in the economic and social domain was confronted with a lack of responsibility with the rise of democracy and freedom. Expanding state duties increased the losses incurred by individuals and led to tensions between the state and individuals. With the developments in democracy and rights, the idea that the state should compensate for damages gained importance. In this period, it was recognized that the state should be considered as two separate entities in the context of both private and public law (Esin, 1973).

Fault liability is one of the main types of liability of the administration. However, alongside this, strict liability can also be mentioned. The types of strict liability are divided into two: risk liability and the principle of equality against public burdens (Gözler & Kaplan, 2015). Furthermore, in recent years, social risk liability based on the principle of risk has emerged in order to compensate people who have been damaged by social events such as acts of terrorism and illegal meetings/demonstrations and has been developed by doctrine and judicial decisions. The Council of State holds the administration liable for damages arising from events such as natural disasters and terrorism within the framework of the social risk principle. This principle stipulates that the administration should intervene effectively for public security and the welfare of citizens and be fully prepared for future risks. The decisions of the Council of State guide the administration in determining its strategies for social risks. In this framework,

the Council of State's holding the administration liable in such cases underscores the importance of social risk management and social welfare in public administration (Bahtiyar, 2004).

The purpose of this study is to examine the principle of social risk, which is one of the states of strict liability, after analysing the state of strict liability within the scope of the financial responsibility of the administration, and to clarify how this principle finds an application area for terrorist incidents, which is one of the biggest social problems of today. Therefore, in the context of this study, the lawsuits filed due to terrorist incidents and the decisions of the Council of State on these lawsuits will be explained by giving examples. The scope of the study will consist of the decisions of the Council of State on how the damages suffered by individuals as a member of the society are compensated within the framework of the social risk principle developed in accordance with the principle of social state.

As a method in the study, a library study was conducted. In addition, case examples and decisions within the scope of the subject for the legal field were also utilised. The sources obtained by the scanning and evaluation method were analysed and transferred to the article with a descriptive narrative method. The study consists of three parts. In the first part of the study, necessary explanations have been made on the perfect liability of the administration, the cases of perfect liability and the principles of perfect liability. In the second part of the study, comprehensive information is given on the emergence, basis, characteristics, and application area of social risk liability, which is one of the principles of strict liability. In the third part of the study, the concept of terrorism is clarified and the regulations on this problem in French and Turkish law are discussed, and finally, the decisions of the Council of State in various years regarding the compensation of damages arising from terrorist incidents are critically analysed. In the relevant sections of the article we will also clarify the answers to the following questions; What difficulties can the administration face in legal processes when implementing the principle of social risk? How should the administration deal with actions that carry social risk in connection with the principle of social risk? What role did the terrorist incidents in Türkiye, which increased especially after the 1980s, play in the development of the principle of social risk?

According to the Turkish Language Society, liability means to assume one's own actions or the consequences of any incident that falls within one's jurisdiction, accountability (Türkçe Sözlük, 2023). In Civil Law, when a person or institution commits an act that causes damage and because of this act, a victim is damaged, the damaged person or victim may claim compensation from the perpetrator to compensate for the damage. That is, the perpetrator is held liable only for the cause of the damage, without fault or negligence. This principle aims to protect the rights of victims and ensures compensation for the damage. The principle of strict liability in civil law is recognized as a fundamental principle in the legal systems of many countries and aims to protect the rights of victims (Atay & Odabaşı, 2010). Damage is an inevitable element of the concept of liability. It is present in two distinct areas where the administration bears liability in private law and public law, and liability in private law is based on fault.

Persons may suffer damages to their property or personal rights because of the activities carried out by the administration. The administration is obliged to compensate for these damages (Tan, 2020).

2. TYPES OF LIABILITY IN GENERAL

Liability is classified into three categories: political liability, criminal liability, and financial liability. Since the administration is not a real person, it has only financial (legal or asset) liability (Gözübüyük, 2006).

Political Liability: Political liability refers to the ability of administrators to be accountable for their political actions and the need to bear the consequences of those actions. In democratic systems of government, since sovereignty rests with the people, political liability must be directed to the public or their representatives, the elected parliaments (Kaboğlu, 2019). The political liability of ministers can arise from almost any conceivable issue administrative, economic, social, financial, etc. The works on inflation, the appointment of a governor to a province or an ambassador to a country, the referral of a minister to the Supreme Court, or the dismissal of a minister by a vote of no confidence before referral to the Supreme Court (Gözler, 2023).

Article 98 of the 1982 Constitution explains the political responsibilities to be imposed on Ministers under the heading "The means of information and control of the Grand National Assembly of Turkey" According to Article 98 of the 1982 Constitution,

> *The Grand National Assembly of Turkey shall exercise the power to obtain information and supervise through parliamentary enquiry, general debate, parliamentary investigation and written questions. A parliamentary enquiry consists of an enquiry to obtain information on a specific subject. General debate is the discussion of a specific issue concerning the society and the activities of the State in the General Assembly of the Grand National Assembly of Turkey. Parliamentary enquiry consists of an enquiry against the Vice Presidents and ministers pursuant to the fifth, sixth and seventh paragraphs of Article 106. Written question consists of deputies asking questions in writing to the Vice Presidents and ministers to be answered in writing within 15 days at the latest. The form, content and scope of parliamentary enquiry, general debate and written question motions as well as the procedures of enquiry shall be regulated by the Rules of Procedure of the Parliament.*

Criminal Liability: Criminal Liability is a type of civil liability imposed on natural persons who are deemed to have committed an offence. This responsibility is realised through the imposition of sanctions by the authorities of the state. Criminal liability includes the responsibility to understand the legal meaning and consequences of an action. If an action constitutes an offence, criminal liability arises (İnce, 2023). Article 38 of the 1982 Constitution essentially bases criminal responsibility on three basic principles: "legality, innocence and individuality". The principle of legality means that no one shall be punished for an act which the law in force at the time it was committed does not criminalise; no one shall be punished with a heavier penalty than the penalty prescribed for that offence in the law at the time when the offence was committed (Article 38 of the Constitution). The principle of innocence (presumption of innocence) states that no one can be considered guilty until his/her guilt is established

by a judgement; in other words, no one can be considered guilty until a final judgement is rendered by the judicial organs that he/she has committed a crime. According to Article 38 of the 1982 Constitution, "criminal responsibility is personal". According to Article 20 of the Turkish Penal Code, "criminal responsibility is personal". No one can be held responsible for the act of another. Criminal sanctions cannot be imposed on legal persons. However, the sanctions in the nature of security measures prescribed by law due to the offence are reserved.

Fiscal Responsibility: In fiscal responsibility, the damage caused by a person to another person is compensated by the state from the assets of the damaging person. In other words, in case of breach of financial responsibility, according to the relevant legal regulations or contracts, compensation, sanctions or other legal consequences may be in question. It is therefore important to fulfil financial responsibility, otherwise legal liability may arise. Therefore, the compensation of the damage by the state, not by the consent of the damaging party, is called liability. There are two types of fiscal responsibility: civil and administrative responsibility. Civil liability arises within the framework of private law relations between individuals or organisations. It is particularly based on contracts, debts or other financial commitments. Administrative liability relates to problems that arise when the state or public institutions fulfil their legal obligations or perform their duty to provide public services. Administrative liability is based on legal regulations and constitutional provisions, and such liability is usually resolved in administrative courts. Administrative responsibility is the responsibility of the administration in the field of private law, and administrative liability is the responsibility of the administration in the field of public law (Gözler ve Kaplan, 2020). According to the provisions of Article 125 of the Constitution which states that "…The judicial remedy is open against all actions and proceedings of the administration... The administration is obliged to pay the damages arising from its own actions and proceedings" and Article 129 which states that "…Compensation lawsuits arising from the faults committed by civil servants and other public officials while exercising their powers can only be filed against the administration, provided that they are recourse to them and in accordance with the form and conditions specified by law...", persons who have suffered damage may file a lawsuit against the administration (Yıldırım, 2020). It is a well-known principle of administrative law that special and extraordinary damages incurred by individuals during the execution of public services must be compensated by the administration providing the relevant service. This legal responsibility of the administration is a consequence of the rule of law (Ergen, 2008). "In accordance with the generally accepted basic principles of Administrative Law, in order for the financial responsibility of the administration to be ruled, there must be a cause-and-effect relationship between the administrative behaviour and the damage." (Danıştay 8. Daire Başkanlığı, 2022a). The principle of social state has played an active role in the formation, development, and effectiveness of perfect liability. With the understanding of the Social State, the fields of activity of the state have gradually expanded, so the possibility of the administration harming individuals has become inevitable. Therefore, such cases have become more frequent in the courts. This has led to the

development of the concept of administrative responsibility. The financial responsibility of the administration is divided into two categories; defective and faultless liability (Gözler ve Kaplan, 2015).

3. FAULT LIABILITY –

Fault, a concept related to punishment, refers to deficiencies in the fulfillment of an existing duty. When one does not act in accordance with the requirements of the duty, they are at fault, and whoever is at fault is obliged to compensate for the damage caused (Gözler ve Kaplan, 2015). What is essential in fault is that the person does not act carefully, unselfishly, and in compliance with the rules. Thus, even if the legal entity is behind the procedure or action in private law, the fault pertains to a real person or persons (Atay ve Odabaşı, 2010).

3.1. Conditions of the Fault Liability of the Administration

Fault: Three basic elements are mentioned in order for the fault liability of the administration to arise: administrative action, fault, and damage. Fault, which is defined as the failure to perform a task as required, either intentionally or unintentionally, is a value judgement in law regarding whether or not the perpetrator shall be held liable for the act committed (Turabi, 2012). With regard to the statement in a decision the Council of State,

> *The fact that the crimes related to tax evasion in the Tax Procedure Law cannot be properly graded according to the degree of gravity of the moral element in the crime and that all cases other than the intentional commission of the offense are considered as fault and the possibility that the great difference between evasion and fault penalties may from time to time lead to results that damage the relationship between crime and punishment is expressed as the justification for this amendment (Danıştay 4. Daire Başkanlığı, 2021),*

All cases other than the intentional commission of the offense are accepted as fault. While fault includes all faults in private law and brings liability without any distinction between gross fault and slight fault, in administrative law, the fault must be gross for the administration to be liable for damages in difficult-to-execute activities, and this assessment is made by the judge.

Administrative Actions and Administrative Acts: The second condition for the responsibility of the administration is the existence of a (defective) action or act of the administration that results in damage.

Damage: Damage is the loss or deprivation of the increase or decrease in the assets of the person or the mental or physical pain, distress or tension experienced by the person (Sahin, 2020). Damage is a necessary element in all lawsuits in which the administration is held liable and is taken as a criterion in the compensation procedure. However, the injured party should neither be impoverished nor enriched as a result of the compensation (Atay ve Odabaşı, 2010). In order for the responsibility of the administration to arise, the damage must have the following characteristics (Gözler ve Kaplan, 2020):

Link of Causation: Article 125 of the 1982 Constitution, after stating that the judicial remedy is open against all kinds of actions and proceedings of the administration, the last paragraph stipulates that the administration is obliged to pay the damages arising from its own actions and proceedings. As a rule, the administration is obliged to compensate the damages that can be causally linked to the public service it carries out, and the damages arising from administrative actions and/or transactions are compensated within the framework of administrative law rules, in accordance with the principles of service defect or perfect liability (Danıştay 10. Daire Başkanlığı, 2022). Apart from the principle of social risk, the administration cannot be held liable if there is no direct cause and effect relationship between the administrative acts and/or actions alleged to have caused the damage and the damage (Atay and Odabaşı, 2010).

3.2. Service Fault (Service Defect)

> *Any damage caused to persons by public officers while exercising their powers or performing their duties constitutes a fault of service of the relevant public institution ... It can be stated that the legislator aims to prevent officials and public officers from being brought before the judiciary for their justified or unjustified acts committed while exercising their powers, to ensure that the public service is provided continuously and completely, and to determine a more reliable compensation liable for the victim. (General Assembly of Civil Chambers, 16/12/2015).*

> *The administration is obliged to compensate the damage caused by the public service. In order to compensate the damage, a causal link must be established with the administrative action. If the damage is caused solely by the action of the injured party, the administration is not liable for compensation. The fault of the injured party or third party may reduce or eliminate the responsibility of the administration. (Danıştay 10. Daire Başkanlığı, 2017/408 E.,* 2021/5396)

Defect of duty is a type of defect that does not have a direct counterpart in the French and German legal systems but is positioned between personal defect and defect of service. This type of fault arises during the performance of the administration or public services, and the person responsible, i.e. the person who committed the fault, can be identified and personalized. A defect of duty arises from errors or omissions made by a public official in the performance of his/her duties. However, there are no clear and universal criteria that distinguish misconduct from personal fault. That is, it is not always easy to determine whether a public official's fault is a dereliction of duty or a personal fault. Factors to be taken into account when making this distinction may include whether the public official's fault is directly related to the execution of the service, and the context in which the act or omission occurred. Nevertheless, there are no standards that are generally applicable and applicable to all cases. Therefore, each case must be evaluated in its own particular circumstances (Akyılmaz, 2021).

3.3. Personal Fault

It is a personal fault for officials and other public officers, while exercising their powers or fulfilling their duties in the execution of the service of the administration; to refrain from fulfilling their obligations related to the duty, to engage in an activity outside the service by using their official title,

service tools, and equipment; to harm the beneficiaries of the service by acting with feelings such as grudge, hatred, and hostility (Akyılmaz, 2011).

4. STRICT LIABILITY

The damages suffered by individuals due to the activities of the administration are not always attributable to a faulty activity or behavior of the administration. In the compensation of damages caused by certain actions of the administration, regardless of whether the administration is at fault or not, the compensation of damages is called strict liability. Article 125 of the Constitution is an indication of the liability of the administration. In strict liability, in order for the administration to be held liable, it is sufficient that there is a causal link between the attitude and behaviour of the administration and the damage incurred, and there is no requirement that the attitude and behaviour of the administration be unlawful (Kalabalık, 2004).

> *The administration is generally liable to compensate damages caused by its services, following administrative law principles. Faultless liability entails compensating special damages incurred during public service, secondary to fault liability. Public officials' damages during duty must be compensated under strict liability, as seen in a police officer's armed clash. (Danıştay 10. Daire Başkanlığı), (27.06.2022).*

4.1. Liability due to the Formation of Inequality Against Public Burdens

As the benefit arising as a consequence of the activities carried out by the administration for the public good, the damage that occurs without any fault of the administration is shared with the society in line with the equitable principle as a requirement of the principle of social state. In this type of liability, fault or hazardous activities are not in question, and since it would be unequal to attribute the negative consequences that occur during the activities of serving the public to certain individuals or groups, the administration is held liable even if it is without fault. This is mostly encountered in terrorist incidents, which are within the scope of social risk, and in public works services, which are administrative activities (Yıldırım, 2020).

4.2. Strict Liability

The damages suffered by individuals due to the activities of the administration are not always attributable to a faulty activity or behavior of the administration. In the compensation of damages caused by certain actions of the administration, regardless of whether the administration is at fault or not, the compensation of damages is called strict liability. Article 125 of the Constitution is an indication of the liability of the administration (Kalabalık, 2004).

We can explain the situations where the principle of danger is applicable as follows:

Dangerous Activities and Use of Dangerous Vehicles by the Administration; If damage occurs due to the use of dangerous things such as explosive substances, firearms, etc. used by the

administration, the administration is liable for this damage, even if there is no fault attributed to the administration (Gözler ve Kaplan, 2015).

Use of Dangerous Methods (Occupational Risk); The administration is liable for the damages incurred by the public official during/due to his/her duty or the damages incurred by third parties due to the activities of the administration, provided that it is accepted as a requirement of the service (Gözler ve Kaplan, 2015)

Social Risk (Social Hazard); The administration is also responsible for social incidents that may be caused by itself, that it is obliged to prevent but fails to prevent, or that occur when it fails to take the necessary measures to prevent the occurrence of greater harm (Kalabalık, 2004).

5. THE SOCIAL RISK PRINCIPLE

In the doctrine, the social risk principle is referred to as "societal damage", "social damage", and "societal hazard", and it aims for a fair distribution within the society by having the state compensate the private damages of individuals, reflecting the principle of general liability in the context of administrative law (Kaneti, 1980). The social life of our age harbors a number of dangerous situations, especially for individuals who live their lives within the public order, for it is the main duty of the state of law to protect the existing public order without abolishing the freedoms in question. However, due to some of its duties, the state sometimes delays in preventing the social events that arise; as a result, third parties may suffer damages (Akgül, 2008). Such situations have led to the expansion of the scope of the understanding of strict liability and have created the principle of "social risk", which has an important place in terms of ensuring fairness and justice (Akgül, 2008).

5.1. Historical Development of the Social Risk Principle

Humans are social beings in need of living in society. This need has brought about the necessity to live in tribes in the past and under state rule today. Living in society comes with certain disadvantages as well as advantages. Internal and external political struggles have affected the members of society and the state. This process of being negatively affected can sometimes even reach quite critical damages similar to death. The principle of social risk has emerged on the grounds that it is contrary to the understanding of the social state of law, which attaches importance to equity, that the damages incurred as a result of this social turmoil are blamed on the aggrieved persons who do not bear any fault. As a requirement of this principle, the state is responsible for the damages incurred as a result of the aforementioned turmoil situations when the human being is a part of the society and this damage has the feature of being repaired by the state (Çoban, 2003).

5.2. The Fundamental Basis of the Social Risk Principle

The fundamental basis of this principle is the decisions on the liability of the administration, which must be regulated in the constitutions of all legal states, and the special laws, if any, on this matter

(Bayer, 2018). Article 5 of the 1982 Constitution comprehensively defines the fundamental aims and duties of the state. The primary duty of the state is to protect the independence and integrity of the Turkish nation, the indivisibility of the country, the Republic and democracy. Furthermore, the state is obliged to protect the fundamental rights and freedoms of individuals and to eliminate political, economic, and social obstacles that restrict them. The state, which must act in accordance with the social rule of law and the principle of justice, must guarantee the social and economic rights of individuals and observe social justice. The State is also responsible for preparing the necessary conditions for the development of the material and spiritual existence of individuals. This requires developing policies in areas such as education, health, social security and culture. Article 5 of the 1982 Constitution emphasizes that the state has a range of responsibilities that safeguard both security and the well-being and freedom of individuals (Coşkun, 2008).

5.3. The Characteristics of Social Risk Principle

Although the principle of social risk emphasizes the strict liability of the administration, this view is questioned by some. The criticism emphasizes the service fault of the administration in not preventing damages. Damages affecting social solidarity are compensated by the administration; yet, the acceptance of this situation as strict liability is objected. The payment of damages that the administration fails to prevent reveals a fault of service; therefore, it is advocated that the principle of social risk is not strict liability (Akyılmaz and Sezginer, 2001).

5.3.1. Absence of a Causal Link between the Damage and the Administration

The causal link refers to the relationship between an incident and its resulting damage. The absence of a causal link between the damage and the administration refers to a situation where the administration is incapable of determining the cause of the damage or where the actions of the administration are ineffective in the cause of the damage. The absence of a causal link is an important factor in determining the responsibility of the administration. Failure to attribute the damage to the actions of the administration may lead to difficulties in proving the fault of the administration and, therefore, to the questioning of its liability. This is an important concept in terms of legal assessment and attribution of responsibility. The principle of social risk does not require a causal link between the damage caused and the administrative action. Within the scope of the principle, the necessary condition for an individual to be considered responsible for a damaging act is the existence of a causal relationship between the damage and the behaviour of the person considered responsible. However, the principle of social risk constitutes an exceptional aspect of this principle (Köksal, 2010).

Social risk liability is the only and perfect form of liability where no causal relationship is sought for the damage caused by administrative activities. This liability does not include the behaviour of administrative personnel or a potential danger that may arise on the administration's premises but includes actions that are completely beyond the control of the administration or actions of individuals

distant from the administration that cannot be prevented or that would cause greater damage if prevented. In social risk, there is no clear causal link between the damage and the actions of the administration, reflecting the broad responsibility of the administration and the absence of fault in such cases. Therefore, social risk liability ensures that the administration bears a broad social responsibility for the protection of social order (Çoban, 2003a).

Some jurists argue that the causal link must be sought in all types of strict liability of the administration. According to this view, the concept of strict liability includes the idea that the causal link continues even if the fault requirement of liability is removed. Faultless liability generally means that the fault of the administration is not sought in damages arising from the execution of a certain activity by the administration. However, some jurists argue that the causal link between the actions of the administration and the damage cannot be ignored. In other words, the existence of a causal relationship between the acts of the administration and the damage is important even in cases of strict liability. This view argues that strict liability allows the causal link between the acts of the administration and the damage to be questioned and that this link should be examined. Thus, within the scope of strict liability, it can be assessed whether the acts of the administration were effective in the occurrence of the damage. This represents, from a legal perspective, an understanding of strict liability in which not only fault plays a role, but also the principle of causation (Çağlayan, 2009; Gözler, 2023).

5.3.2. The Situation Where the Damage is Caused by Hazards that cannot be prevented by the Administration or Would Lead to More Significant Damages if Prevented

Under the social risk principle, the main factor giving rise to liability is the activities of individuals or communities that are unfamiliar to the administration, which cannot be prevented by the administration or which, if prevented, would lead to greater damages. Pursuant to this principle, the source of the damage is usually individuals or communities other than the administration. The activities of these persons are beyond the control of the administration and cannot be interfered with by the administration.

5.3.3. The Inevitability of Damage to Sustaining Coexistence

Individuals living in society can be affected by mass movements, war, and attacks. The concept of social risk argues that these risks should be shared as a natural consequence of living together. Nevertheless, it is noted that the principle of the social state may create difficulties in ensuring equality among those damaged by threats to society. For instance, the differences in the value of vehicles damaged in a terrorist attack reveal that much as society shares the risk equally, compensation is unequal. This situation renders the compatibility with social justice controversial (Akyılmaz, 2004).

5.3.4. The Fault of a Party Suffering Damage

If the damage resulting from the activity of the administration is caused by the fault of the party suffering the damage, both the fault and the strict liability of the administration shall be excluded.

However, if the damage increases as a consequence of the fault of the party suffering the damage, the Administration shall be partially liable. Damaged persons cannot claim compensation for their damages if they were in an unlawful position at the time of the damage. For example, persons who have occupied public property do not have the right to claim compensation from the administration for the damages arising from the measures taken by the administration to end their occupation (Odyakmaz ve Kaymak, 2011).

6. THE IMPLEMENTATION OF THE SOCIAL RISK PRINCIPLE

The principle of social risk incorporates the fundamental idea that the risks faced by individuals and groups in society should be distributed equitably. This principle advocates that the various risks that are an inevitable part of social life should be borne equally by all and that the responsibility for dealing with these risks ought to be distributed equally. Although it is not possible to draw a basic framework for the applicability of the social risk principle within the framework of doctrine or jurisprudence, it is generally applied to social events arising from mass and social movements, such as meetings and demonstrations, and acts of terrorism. In this section, the cases where the social risk principle is applied will be discussed in detail. However, when the case law of the Council of State on damages arising from earthquakes and the principle of social risk are evaluated together with the constitutional principles, certain conclusions can be reached (Öztoprak, 2020).

6.1. Social Risk Principle Implementation in Social Incidents

The notion that it is not consistent with justice to leave the mass movements caused by the social and economic conditions in which the society exists, and the damages caused by these incidents on individuals who are without fault has given rise to the principle of social risk. This principle embraces the concept that the damages incurred by certain individuals under the influence of turmoil in society shall be compensated within the framework of the principle of social risk, on the basis that the state is an organization that bears liability on behalf of society (Çoban, 2003b). Mass movements, in the context of social events, are collective movements including meetings and demonstrations, and as a result of such mass movements, individuals may face the risk of harm. Third parties may also be harmed in the struggle between law enforcement officers and demonstrators in the process of dispersing illegal assemblies and demonstrations (Çağlayan, 2009).

For damages caused by the actions of third parties, the social risk principle compensation is applied without gross negligence. In our country, there is no current law on compensation for damages arising from mass movements, and there are serious deficiencies and limited regulations in the legislation. For example, the Law No. 6684, adopted on 28 February 1956, was enacted on the payment of damages incurred by individuals due to the events that occurred in Istanbul and Izmir on the 6th and 7th days of September (Bayer, 2018). However, although this law envisaged that the damages arising from the social event in question would be compensated by the administration, it set a certain upper

limit for the damages and left the part of the damages exceeding this amount on the victims (Azrak, 1980).

6.2. Social Risk Principle Implementation in Terrorist Incidents

In Türkiye, the financial liability of the administration and strict liability are determined by the constitution and legal regulations. The social risk principle advocates fair compensation for damages caused by social incidents, especially mass impacts such as terrorism. This principle provides a framework suitable for justice, taking into account the difficulties in determining fault (Sever, 2017).

In our country, the principle of social risk is frequently applied to the damages incurred as a result of terrorist acts and the fight against terrorism. This principle has gained more importance with the increase in terrorist incidents. Terrorist attacks threaten the security of the society and may cause economic, social and psychological destruction. The government uses the social risk principle and cooperates with the security forces to ensure the security of the society and minimise the damages. Success can be achieved in the fight against terrorism through effective solutions and preventive measures. However, adopting a balanced and fair approach in practice is important for social peace and justice (Çoban, 2003b). In the doctrine, there are various views on the sources of administrative responsibility and the social risk principle for terrorism-related damages. Some experts base the responsibility on the principle of equality and social state, and the social risk principle on the idea of solidarity, equality and justice. The military administrative judiciary and the Council of State have different approaches to the causal link and the social risk principle in the assessment of terrorism-related damages. While the Council of State considers the principle of social risk as a third type of liability different from strict liability, the military administrative judiciary assesses terrorism-related damages based on the principle of equality. The differences on the nature of the social risk principle reveal a clear distinction between the doctrine and the Council of State (Sever, 2017).

6.3. Social Risk Principle Implementation in the Scope of Isolated Incidents

While the social risk principle focuses on general risks in a broad community, the isolated incident addresses the specific risk or damage faced by a particular individual or small group of people. In this context, the social risk principle generally deals with collective liability and far-reaching damages, whereas the isolated incident refers to more specific, limited, and isolated situations. Even though the social risk principle typically covers the general risks of social life, it may be implemented by administrative jurisdictions regarding occupational risks at times, and in the context of isolated incidents at other times. The Council of State considered the isolated case of the death of a journalist writer as a result of a political attack and approved the claim for material and moral compensation on the basis of the principle of strict and collective liability (Danıştay 10. Daire Başkanlığı, 18.03.1998).

The administrative judiciary has applied the principle of social risk, particularly in individual cases. A Council of State decision on the death of a journalist writer as a result of a political attack

included compensation based on the principle of faultless and collective responsibility. However, Law No. 5233 only regulates terrorist acts and excludes damages caused by mass movements and isolated incidents. Although this restricts the compensation for damages other than terrorist acts, it emphasises the importance of the social risk principle. In these areas, the responsibility of the administration should be assessed according to the social risk principle and damages should be compensated. However, Law No. 5233 limits the compensation of non-terrorist damages by the administration through legal regulations (Bayer, 2018).

7. LAWSUITS FILED IN ADMINISTRATIVE JURISDICTION DUE TO TERRORIST INCIDENTS

According to Article 1 of the Anti-Terror Law; "Terrorism is defined as the use of force and violence; “Terrorism is defined as any criminal act committed by a person or persons belonging to an organisation with the aim of changing the characteristics of the Republic, political, legal, social, secular, economic order specified in the Constitution, disrupting the indivisible integrity of the State with its territory and nation, endangering the existence of the Turkish State and the Republic, weakening or destroying or seizing the State authority, destroying fundamental rights and freedoms, disrupting the internal and external security of the State, public order or public health by using force and violence, pressure, intimidation, intimidation or threat” (Erol, 2013).

Terrorism is a concept that involves the continuous use of violence to achieve political goals. Terrorism has become an ideology used systematically. The elements of terrorism include violence, political goals, fear, threat and psychological effects on society. Therefore, terrorism often arouses anxiety and fear. "Authorisation" refers to the planned and implemented form of terrorism. Various damages may occur as a result of terrorist acts. In addition to damages to the administration, the economic interests of the state and public personnel may also be damaged. The damages of public personnel may be compensated by the administration in accordance with the principle of occupational risk. Third parties may also be harmed without having anything to do with the incident (Bozkurt and Kanat, 2007).

7.1. Judicial Decisions In French And Turkish Law

The social risk principle is a principle of liability initially developed in France with the purpose of compensating the state for the damages caused by the war. This principle emerging as one of the principles of administrative liability in France, came into force with the enactment of laws regarding primarily war damages and later on damages arising from mass movements (Öztoprak, 2020). Until 1905, law enforcement activities in France were considered outside the state's liability. The principle of social risk is a principle of liability initially developed in France in order to compensate the state for the damages caused by the war. This principle, which emerged as one of the principles of administrative liability in France, was put into practice firstly with the enactment of laws covering war damages, and later with the enactment of laws covering damages arising from mass movements (Öztoprak, 2020).

However, in 1905, the Tomaso Greco judgement ruled that the state could be held liable for law enforcement activities if it was at fault. Tomaso Greco's claim for compensation for injuries sustained when his house was shot at was rejected. Although the French Council of State rejected the claim for compensation in the Tomaso Greco case, it paved the way that the fault of the administration in damages arising from law enforcement activities could be discussed and its responsibility could be accepted. However, in its subsequent judgements, it limited the state's liability for law enforcement activities to cases of gross negligence. In one case, the Turkish Ambassador to Paris was killed in an armed attack. The French Council of State ruled that the failure to prevent the attack could not be considered "grave fault" and therefore the state could not be held responsible for the resulting damage (Gözler ve Kaplan, 2015). For a quarter of a century, Turkey has witnessed various lawsuits regarding compensation for damages caused by terrorism in the fight against terrorism. Terrorist incidents aimed at disrupting the constitutional integrity of our country and creating ideological differences in society have imposed certain burdens on us as individuals as well as the burdens we have endured as a society.

7.2. Liability of the Administration for Damages Caused by Terrorist Incidents in Judicial Decisions

While the liability of the administration was mainly based on the principle of service fault for the compensation of damages arising from terrorist activities until the 1990s, after the 1990s, it is noted that the principle of strict liability of the state started to be taken as the basis for the compensation of damages arising from terrorist activities (Erol, 2013). The Council of State initially compensated damages arising from acts of terrorism based on the principle of service defect. Considering that the state has the duty to ensure the security of life and property and that individuals should be protected against external dangers, liability was accepted in case of service defect. However, in terrorist incidents, absolute fault was not sought, and the culpable responsibility of the administration was subject to certain conditions. Especially in cases where there was no public control and no advance notice, there could be no administrative fault. This situation was evaluated by taking into consideration the unpredictable nature of terrorist acts and the fact that they cannot be prevented even today. The Council of State started to compensate the damages arising from terrorist activities based on the principle of the state's strict liability. This change is based on the principle of "social risk" that emerged with the increase in terrorist activities. Especially after 1990, the Council of State, taking into account the fact that people living in certain regions of Turkey suffered damages due to personal grudges or belonging to their community, decided that the damages should be compensated in accordance with the principle of social risk, regardless of the special and extraordinary characteristics of the damage (Akpınar and Yeşilbaş, 2011).

It is not possible to compensate the victims of terrorist acts under the principle of strict liability because there is no causal link. The administration can only be held liable for damages arising from terrorist acts within the framework of fault liability. In Turkey, the liability of the administration for compensation is subject to special legal regulations and there is no general legal regulation. The social

risk jurisprudence of the Council of State has been criticised with the increase in terrorist incidents. While Gözler (2006) and Çağlayan (2009) argue that the theory of strict liability will preserve the causal link and the damages cannot be compensated according to the social risk principle, Çoban (2003), Günday (2004), Gözübüyük (2006) and Tan state that the social risk principle should be accepted as a service defect and the damages should be compensated by the society. In the Turkish administrative law doctrine, while the majority of the Turkish administrative law doctrine accepts that the damages arising from terrorist incidents should be compensated based on the strict liability of the administration, some critics criticise that the social risk principle focuses only on the prevention of terrorism. While some academics state that it is important to determine the relationship between the damage and the social event or terrorist act and that there is no need for the strict liability of the administration, they emphasise that the compensation of the damages by the administration is not in accordance with the principle of equity and fairness in legal terms (Çağlayan, 2009; Gözler, 2023).

8. CONCLUSION

The State is a public power with special powers and compensation for damages arising from its activities is an essential requirement of the rule of law and social state concept. Turkish administrative law has adopted the principle of liability instead of nonliability of the administration. However, the basis and conditions of the liability of the administration are not specified in the law, and a wide discretionary power is given to the administrative judiciary.

In order for the administration to be held liable, there must first be an administrative procedure or action and damage must occur as a result of this procedure or action. It is crucial that the damage is associated with the action or procedure of the administration, namely that a causal link is present. However, the mere existence of this link is not sufficient; it shall also be assessed whether the administration complies with the principles of service fault or strict liability. If the administration causes the damage without fault, it may be held liable. If it is required to assess whether it is at fault, it is examined within the framework of the principle of service fault. These conditions are important for determining the liability of the administration for the damage and are taken into account to ensure that it acts fairly.

The social risk principle enables the administration to be held liable for damages arising from its risky services, based on its strict liability. This principle intends to compensate for damages and to ensure justice. Even if the administration is without fault, it bears liability for damages arising from risky services. This concept highlights the need for administrations that provide risky services necessary to ensure the security and welfare of society to protect the rights of individuals who are damaged. Particularly in extraordinary situations such as terrorism, it ensures compensation for damages arising from risky services carried out by the administration and takes a fair approach to relieve the

victimization. The principle of social risk is a significant legal principle that expands the liability of the administration in a way that contributes to the welfare of society.

Türkiye lacks established case law and legislation in respect of the strict liability of the administration and the principle of social risk. Those damaged often apply to administrations with compensation claims yet are generally rejected and resort to the administrative judiciary. For mass incidents, legislative amendments are required to compensate damages through settlements.

The study does not necessitate Ethics Committee permission.

The study has been crafted in adherence to the principles of research and publication ethics.

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