General Liability of the Administration

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Abstract

The regulation included in Article 125 of the Constitution holds the administration responsible in general. According to this regulation; "The administration is obliged to pay for damages resulting from its actions and acts." In addition, apart from Article 40 of the Constitution, it was decided in Article 129 that "claims for damages arising from the faults committed by civil servants and other public officers while exercising their powers can be brought against the administration provided that they are recoursed to them and comply with the manners and conditions specified by the related law". The basis of the responsibility stated in this provision is the continuation of the general basis of responsibility regulated in Article 125. Through these regulations, it is desired to allow that the civil servants who have faults in their services carry out their services carefully and to avoid their being held irresponsible; and at the same time, the legal remedies to bring a lawsuit by those who are harmed due to the performance of the services against the administration which has the ability to pay.
Keywords: Service Defects, Liability of the Administration, Strict Liability.

1. Introduction and Service Flaw

The flaw arising from the establishment and operation of the service is accepted as the financial liability requirement of the administration. As the administrative liability reason, a flaw means a quality deficiency, flaw or failure arising from the establishment or delivery of public services (Armağan, 1997, p.17 ;Gözübüyük-Tan, 2006, p.820 ;Özgüldür, 2002, p.731 ;Atay-Odabaşı-Gökcan, 2003, p.5 ;Atay, 2006, p.559 ;Çağlayan, 2007, p.133 ;Günday, 2011, p.369 ;Yıldırım, 2010, p.320). In other words, the administration is deemed defective as it does not think and regulate well as an organization or function or cannot perform the service duly or at all or cannot carry out the audit activities it should properly (Özgüldür, 2002, p.709).

As the administration is comprised of legal persons as a whole, the flaw of the administration is the consequence of the bodies and personnel consisting of real persons; however, it is not possible to mention the public officers who make these mistakes in each case. In the cases where it is possible to identify them, it is not always right and possible to be able to personalize the defects of the public officers (Düren, 1979, p.287). The objective and anonymous flaw of the administration in not fulfilling its supervision and audit task on the establishment, delivery of the public services and on the related public official is called a *service flaw* (Atay, 2006, p.571). A service flaw is the one that cannot be depend on the attitudes and behaviors of one or a few certain public officers and that cannot be directed to them. Therefore defining the service flaw as *anonymous*, which means a flaw that cannot be attributed to a certain person (Özyörük, 1972-1973, p.241 ;Atay, 2006, p.577) is possible and it is also possible to explain it as a deficiency that is the responsibility of one or more than one officers of the administration during the normal delivery of the service, yet that cannot be directed to them personally; (Özyörük, 1972-1973, p.241) however, as mentioned above, it is not possible to personalize this flaw.

A service flaw is also regarded as the legal structure of the public services and the liability of the administration arising from this. The administration has to provide the public services to those who use them in a consistent manner that complies with the requirements of these services or to cause these services to be provided and to ensure that those who use these service benefit from them duly. Provision of public services or ensuring their provision as stated above is the most fundamental duty and reason for being of the administration. The failure to perform this task constitutes a *service flaw* (Onar, 1966, p.1695).

The general characteristics of the service flaw can be listed as follows based on its legal character: (Onar, 1966, p.1695) Service flaw includes an independent feature. The liability based on this flaw is a primary and first degree liability. Service flaw is anonymous. Service flaw has a different structure for each event. Service flaw has general characteristics (Duez, 1950, p.15).

The flaw that results in the personal liability of a public official due to an activity which is not related to the duty is called *an absolute personal flaw* and it requires the liability of the public official in judicial courts in accordance with the rules of private law (Günday, 2011, p.374 ;Gözübüyük-Tan, 2006, p.809).

2. Cases Considered as Service Defects

In the administrative law doctrine and court case-laws, the cases considered to be a service flaw include poor delivery, unsatisfactory, late or non-delivery of a service in general (Gözübüyük-Tan, 2006, p.821 ;Atay, 2006, p.579 ;Çağlayan, 2007, p.133).

Poor or Unsatisfactory Delivery of a Service

The places of administrative jurisdiction, mainly the Council of State, assumes the poor or unsatisfactory delivery of a service as a service flaw and decides on the liability of the administration and the compensation of the damage (Yayla, 2009, p.362 ;Gözübüyük-Tan, 2006, p.821 ;Atay, 2006, p.580 ;Özgüldür, 2002, p.735-736). Poor or unsatisfactory delivery of a service can be in the form of an administrative action or may arise in the form of an administrative procedure. To mention briefly, what is meant by poor or unsatisfactory delivery of a service is the activities and actions of the administration that can constitute a flaw.

There are countless decisions taken by the 10th Law Chamber of the Council of State that can be shown as an example to the service flaw that has resulted from the poor or unsatisfactory delivery of a service: "…The damage that has arisen from the delivery of a health care service carried out by the defendant administration should be compensated by the administration that performs the service defectively in the case of losing the healthy left eye of the patient due to the anesthesia infection that was acquired during the eye surgery done in the .....hospital…"(10th law chamber of the council of state, decision date:22.11.1999 docket:1998/190 decision:1999/6198), "The damage incurred by the plaintiffs due to the poor delivery of the service during the transport of the blood sample received from the relatives of the plaintiff after the birth to the related health care unit and during the testing stages should be compensated by the administration…"(10th law chamber of the council of state, decision date:20.10.2006 docket: 2003/3146 decision:2006/5850), "The administration has a service flaw and the liability to damage in the case of amputating the patient's arm who was hospitalized in a state hospital for receiving a fractured foot treatment and whose arm became gangrenous due to a defective injection…"(10th law chamber of the council of state, decision date:16.01.1985 docket: 1982/2908 decision:1985/26), "The damage incurred by the concerned person due to his/her amputated leg as a result of the poor treatment and care after the surgery should be compensated by the administration that performed a defective service…"(10th law chamber of the council of state, decision date:09.12.1992 docket: 1992/184 decision:1992/4321), "The administration has a gross negligence and the liability for damage in the death case that happened as a result of not taking the effective measures against the infection-associated shock…"(10th law chamber of the council of state, decision date:01.06.1994 docket: 1993/363 decision:1994/2502), "The administration has a gross negligence and the liability for damage in the death case that happened as a result of giving carbon dioxide instead of oxygen during the surgery in a university hospital…"(10th law chamber of the council of state, decision date:03.05.1995 docket: 1994/3258 decision:1995/2379), "The damage arisen from the death case resulting from giving the wrong serum during the tonsillectomy performed in the university hospital of the administration should be compensated by the administration…"(10th law chamber of the council of state, decision date:13.11.1996 docket: 1996/1091 decision:1996/7530), "The damage arisen from the death that occurred due to the insufficient medical intervention during the time when the plaintiffs' relative stayed in the hospital to which he/she was brought injured patient should be compensated by the administration…"(10th law chamber of the council of state, decision date:09.11.1999 docket: 1997/4839 decision:1999/5475), "The moral damage incurred by the plaintiff who was attempted to be raped by somebody who was wearing a doctor costume while she was under treatment should be compensated by the administration that has a service flaw…"(10th law chamber of the council of state, decision date:09.02.2000 docket:1998/4977 decision:2000/380), "The defendant administration has a service flaw in the plaintiff's becoming permanently disabled after falling down into the well by stepping on a banana peel, who is also doing his/her specialty in the

cardiology department of the faculty of medicine…"(10th law chamber of the council of state, decision date:20.10.2006 docket:2003/4153 decision:2006/5848).

Late or Slow Delivery of a Service

Late or slow service delivery is a service flaw that requires a liability as it is not enough to perform a service regularly and lawfully, the administration must perform its activities and services on a timely basis and in the necessary speed so that the administration can be considered to have fulfilled its duty (Armağan, 1997, p.30). Either in taking decisions and precautions or in their implementation, actions must be taken within the period of time required by the legislation and terms and conditions. Otherwise, the administration is obliged to compensate the damages arisen from the delay is due to the service flaw (Duran, 1974, p.12).

It is not possible to set a certain rule on the late or slow service delivery. Whether such a situation exists or not can be considered based on the aspects of the case. Indeed, the Council of State determines in the decisions it takes whether the administration has any defects considering the nature of the case. It should be also noted that although the time within which the service should be performed is regulated by the legislation, it can be concluded that the *service is delayed* in case the time foreseen by the legislation is exceeded by the administration without excuse. It is stated that in case the time within which the services are performed is not determined by a rule, a *reasonable and normal* time should pass to allow the administration to take action based on the nature and requirements of the service (12th law chamber of the council of state, decision date:18.11.1970 docket:1969/957 decision:1970/2040). For example, in the cases such as performing the surgical intervention in a patient with appendicitis later than the reasonable period of time (12th law chamber of the council of state, decision date:25.12.1968 docket:1967/788 decision:1968/2448 in Esin, 1973, p.46), the administration is held responsible for the material and moral damages arising from the late delivery of the service.

In a decision taken by the 1st Law Chamber of the Council of State on the *late delivery of the service* and including important determinations, it is stated that: "In the last paragraph of Article 125 of the Constitution; it is concluded that the administration is obliged to compensate the damage arising from its actions and transactions. One of the theories that require holding the administration liable for the damages arising from the execution of the public services is the service flaw. Overall, a service flaw is the failure and disorder in the establishment and operation of a public service. In case the administration performs an inappropriate, a poor activity, a defective behavior, or the administration does not deliver a service properly, have adequate facilities, causes damages by not exercising the authority it has to exercise and not taking any actions, causes a delay not deemed ordinary in the delivery of public services and does not act rapidly as required by the task, it should be accepted that the administration has delivered a defective service. It is clear that the administration has to provide the tools and facilities required to provide *services and to take the sufficient measures on a timely basis.* …It is understood that the damages in dispute have arisen due to the *late or poor delivery of the service*…"(1st law chamber of the council of state, decision date:12.7.1995 docket:1994/7359 decision:1995/3559).

Non-delivery of a Service

Non-delivery of a service appears to be a situation that leads to a service flaw made by the administration. This notion can be used in a sense that the administration is obliged to compensate the damages arising from the non-performance of any actions and/or acts the administration should perform in relation to the provision of the service (Armağan, 1997, p.39 ;Atay, 2006, p.583).

In order to mention non-delivery of a service or in other words non-performance of an administrative activity, the administration should be assigned with the execution of this service at first. It is not possible to hold the administration liable due to non-performance of a public service that does not fall under the liability of the administration in accordance with the legislation or administrative function.

In accordance with the Civil Procedure Law (Art. 2/2), the administrative jurisdiction authority is limited to the audit of compliance of the administrative actions and transactions with law. The administrative jurisdictions cannot perform a legality audit or cannot take judicial decisions in the nature of an administrative action and transaction or in a manner that would eliminate the discretionary power of the administration. However, the

discretionary power of the administration is not unlimited. The discretionary power vested in the administration cannot be interpreted as that the administration can act arbitrarily. The discretionary power vested in the administration is not a privilege either. On the other hand, the discretionary power is a power vested in the administration to allow for the operation of services. Indeed, the Council of State states that the discretionary power of the administration should be exercised in accordance with public interest and service requirements and audits the discretionary power as to whether this is exercised in line with the conditions or not (Atay, 2006, p.583 ;Yayla, 1964, p.201-202 ;Alan, 1982, p.33 ;Sağlam, 1999, p.32).

The administrative jurisdictions cannot place an order and instruction to the administration directly to enable the administration to take action; however, they can hold the administration liable for the consequences of not taking any action in case that the administration has to take action due to public interest and service requirements even within the scope of the non-discretionary or discretionary power. In case a condition is stipulated for the administration to take action in the delivery of the service and the court assumes that this condition has been fulfilled, the administration may be held liable to compensate the damages that occur.

It should be noted that the administration cannot refrain from performing the activities and services assigned by law due to the lack of financial and technical capabilities or lack or insufficiency of organization and it cannot get rid of liability for these reasons (Duran, 1974, p.33).

The 8th and 10th Law Chambers of the Council of State have taken decisions that can be set as an example for the *non-delivery of a service*. Public administrations are liable for performing the public services properly and constantly check the functioning of these services and take the necessary measures during the execution. The fact that the administration has provided late or unsatisfactory or poor services by not fulfilling this liability and therefore caused damages encumbers the administration with the obligation to compensate the damages that have occurred. It is one of the established principles of law that the damages arising from service defects need to be compensated by the administration…"(8st law chamber of the council of state, decision date:26.01.1983 docket:1982/2490 decision:1983/120), "In the case where a person who was taken to a state hospital due to an injury he got in a knife attack and died of internal bleeding in a day after he was sent home by the doctor examining him instead of hospitalizing him claiming that he did not have any death risk, the administration which was understood not to perform the necessary examination and treatment in the state hospital has a service flaw…"(10th law chamber of the council of state, decision date:11.05.1983 docket:1982/2483 decision:1983/1106).

3. Cases Considered to be Personal Defects

In general, *a personal flaw* means that a public official must be held liable directly instead of the administration legal personality, for any defective action which happens while the administration performs its functions and due to the fact that it delivers public services or which has no relations with the administration function or the service it is assigned to perform and the defective action should be attributed to the public official himself/herself (Gözler, 2003, p.1045 ;Çağlayan, 2007, p.130 ;Atay, 2006, p.584-585 ;Akyılmaz, 2004, p.90-91).

If the defective action arises anonymously and non-personally rather than being attributed to one or a few public officers, the flaw is considered to be in the service, in other words the defective action has arisen from the suspension of the service and the failure in its functioning and the administration is assumed to be liable (Başgil, 1940, p.29).

With regard to the cases considered to arise from personal defects, the following very important determinations can be made: *Non-service flaw:* If a damage has arisen from a behavior of a public official which is out of the scope of service and does not have any ties with the service, this defective approach and behavior of the public official constitute the *absolute personal flaw* (Gözübüyük-Tan, 2006, p.809). The claims to be filed accordingly are settled in the judicial jurisdiction and provisions of private law apply. There is no hesitation in this regard (Güran, 1979, p.55-62). *In-service or service-related flaw:* The fact that the approach and behavior of the public

official within or regarding the service constitute a crime, the public official does not apply the clear legislative provision deliberately or applies it wrong or commits a serious flaw while delivering the service or hurts people with malicious intentions such as enmity, political grudge, etc. are considered to be *in-service personal defects*. An in-service personal flaw of the public official does not constitute a personal flaw that eliminates the responsibility of the administration. This is because the public official is employed by the administration and the fact that the administration does not perform the supervision and audit task on the public official it has employed constitutes a service flaw (Günday, 2011, p.376). In addition, the liability of the administration does not disappear to prevent the person who has incurred damages due to the in-service personal flaw of the public official from losing his/her right in case the public official does not have financial capacity (Giritli-Bilgen-Akgüner, 2006, p.656 ;Özgüldür, 2002, p.753). Indeed, the Constitution regulated that the administration is liable in case of in-service personal defects.

The distinction between a service flaw and an in-service personal flaw of public officers has lost its importance in terms of the damage given to individuals. The regulations brought by the Constitution and the Civil Servants Law and the approaches of the Council of State and the Court of Jurisdictional Disputes became effective in losing the importance of the distinction between a service flaw and an in-service personal flaw of public officers (Armağan, 1997, p.84). In accordance with 10th Law Chamber of the Council of State, the availability of in-service personal defects of public officers does not eliminate the liability of the administration (10th law chamber of the council of state. decision date:20.10.1999. docket:1997/721 decision:1999/5266). The Court of Jurisdictional Disputes also stated in its decisions that the administrative jurisdictions are assigned in the claims that include a service flaw or an in-service personal flaws of public officers (Court of jurisdictional disputes decision date:04.04.1997 docket:1997/16 decision:1997/15 official gazette, date and number:18.05.1997/22993 ;Court of jurisdictional disputes decision date:15.11.1993 docket:1993/42 decision:1993/41 official gazette, date and number:15.12.1993/21789).

Intertwinement of Service Flaw and Personal Flaw

As mentioned before, the availability of the situations accepted as in-service personal flaws cannot eliminate the service flaw and the liability of the administration (Günday, 2011, p.376 ;Özgüldür, 2002, p.758). This is because the administration has selected the public official causing a personal flaw. In addition, the administration has a supervision and audit task on the public official. After all, the administration has to train its own officer. Therefore, the personal defective behaviors of the public service while delivering service show that the administration cannot fulfill its duties sufficiently. Hence, the administration is also liable despite the personal flaw of the public official in delivering a service.

A service flaw actually arises from the actions of the public officials carrying out the service as in the personal flaw committed by public officials in the service. This distinction can be important in terms of whether the cost of the damage that the administration has to pay due to the defective activity is recoursed to the public official who has caused the flaw. In addition, Article 129 of the 1982 Constitution states that "claims for damages arising from the flaws committed by civil servants and other public officers while exercising their powers can be brought against the administration provided that they are recoursed to them and comply with the manners and conditions specified by the related law". In this provision of the Constitution, as the flaws committed by civil servants and other public officers *while exercising their powers* are mentioned, it is concluded that claims can be filed only against the administration for the damages caused by the flaws committed by public officers while they exercise their powers and no claims can be filed against public officers. To mention briefly, claims for damages can be filed only against the administration as in the case of service flaws in terms of the *personal flaws that do not fall under the absolute personal flaws* of public officers (Yayla, 2009, p.357). In this case, if the administration is sentenced to pay compensation as a result of such a case, it is entitled to recourse it to the concerned public official (Günday, 2011, p.377 ;Giritli-Bilgen-Akgüner, 2006, p.656). It should be noted that the administration should recourse the compensation of the damage it has paid to the public official who has caused the damage with his/her action *in case of the cases that can be regarded as personal flaws in the service such as intention or severe negligence*.

4. Strict Liability

While the basis of holding the administration financially liable is the principle of service flaw, this basis has become inadequate with the increase in the services undertaken by the administration and with their becoming complex. In particular, when the administration started to undertake new services upon the development of the social state principle, the probability of damaging people by the administration has increased as well. Accordingly, in case of only a causal link between an administrative action and damage, it is accepted that the administration is liable without seeking a requirement for flaw (Akyılmaz, 2004, p.91 ;Atay, 2006, p.586 ;Çağlayan, 2007, p.175). The 10th Law Chamber of the Council of State has taken the following decision on the strict liability of the administration: "In determining the liability for damage of the administration, the principle of service flaw should be investigated and in case no flaw is identified, it should be determined whether the principle of strict liability can be applied in the case or not.." (10th law chamber of the council of state, decision date:15.10.1996 docket:1995/482 decision:1996/5981). As can be seen in this decision, the first basis of the financial liability of the administration is service flaw again. Holding the administration liable without seeking a requirement for flaw only depends on the nature of the concrete case and the realization of the principle of strict liability.

The strict liability cases of the administration seem to be based on two main principles although they are exposed to various classifications by the doctrine: The principle of hazard (risk), the principle of balancing of sacrifices (principle of equality before public burdens) (Akyılmaz, 2004, p.91 ;Yıldırım, 2010, p.330 ;Gözler, 2003, p.1071 ;Özgüldür, 2002, p.720).

5. Principle of Hazard (Risk)

If an administrative activity or equipment of the administration that has a high risk of creating hazard and is technically complex, and therefore, always may lead to damages the reason of which cannot be always identified causes any damage, the damage should be compensated by the administration without stipulating a requirement for flaw. Even if the administration has taken all kinds of due diligence to prevent the hazard, it cannot be excluded liability. The principle of hazard in administrative law is applied in the following cases: (Günday, 2011, p.379-380 ;Çağlayan, 2007, p.255) *Hazardous activities or equipment of the administration:* Some of the activities performed or equipment used by the administration include a certain level of hazard due to their nature or structure. If such activities or equipment cause damage, the administration has to pay for this damage even if it does not have any flaws in it. *Occupational risk:* It is the form of application of the principle of hazard in the field of occupational accidents. According to this principle, if a person working in a public service incurs damage due to his/her occupation, this damage is accepted as the inevitable hazard of the service or in other terms, of the occupation and the damage arising for this reason is compensated by the administration even if it does not have any flaws in this case (Gözler, 2003, p.1102 ;Çağlayan, 2007, p.286).

Principle of Balancing of Sacrifices (Principle of Equality before Public Burdens)

In accordance with the principle of balancing of sacrifices, some people are damaged as a result of any activity that the administration is involved in with the idea of *public interest;* this damage needs to be compensated by the administration even if it does not have any flaws in this case. This principle aims to balance the decreases in the private interests of private interest holders due to an activity performed for public interests, in other words, in the sacrifices they have to make due to the stated activity by compensation. The most obvious area of application of the principle of balancing of sacrifices is expropriation. However, a very extensive area of application has arisen with the judicial case-laws (Gözler, 2003, p.1141 ;Çağlayan, 2007, p.340 ;Atay, 2006, p.594-595 ;Özgüldür, 2002, p.745).

Conditions of Liability and Elimination or Limitation of Liability

Conditions of Liability

As a rule, in order for the administration to have either defect liability or strict liability, there must be a causal relation between the administrative action and the damage (Günday, 2011, p.381 ;Çağlayan, 2007, p.304).

First of all, an administrative action must be available in order to hold the administration liable. This can be in the form of an administrative procedure or an administrative action initiated to implement an administrative procedure or not based on any administrative procedure. In addition, the administrative behavior that causes damage can be executory or negligent. The second condition of being able to hold the administration liable is that the administrative action has caused any damage. This damage can be material and moral. The damage that will lead to the liability of the administration must be definitive and real. After all, there must be a causal link between the damage and the administrative conduct, namely a cause-and-effect relationship in order to hold the administration liable. If the damage is not a consequence of an administrative action and is an unexpected result within the normal course of events, the causal link may not be mentioned (Gözübüyük-Tan, 2006, p.849 ;Gözler, 2003, p.1172 ;Yıldırım, 2010, p.341).

Elimination or Reduction of Liability

In some cases, the causal relationship between the administrative behavior and the damage may weaken or vanish due to an intervening cause. In such cases may lead to the elimination or reduction of the liability of the administration. The situations that may lead to the elimination or reduction of the liability of the administration are in general; compelling reasons (force majeure), unexpected circumstances, the flaw of the injured person and the third person (Gözler, 2003, p.1221 ;Yayla, 1979, p.47). The availability of these situations may not necessarily lead to the elimination or reduction of the liability of the administration. Based on the nature of each concrete case in which compelling reasons (force majeure), unexpected circumstances, the flaw of the injured person and the third person exist, it should be decided as to whether the liability of the administration carries on, eliminates or reduces. The emergence of the cases that eliminate or reduce the administration's liability may not affect the strict liability of the administration if the conditions have occurred.

Compelling reasons are the events that occur outside the control of the administration, cannot be possible foreseen and avoided even with great attention and care and that make the execution of a public service impossible. Such as an earthquake, flood, heavy rainfall or lightning and landslides (Yıldırım, 2010, p.341). Unexpected circumstances are the events that occur in beyond the control of the administration and that cannot be foreseen and avoided just like compelling reasons. However, compelling reasons occur out of an administrative action, while unexpected circumstances occur within the administrative action. If the damage has occurred due to the flaw of the injured, the liability of the administration may be eliminated (Günday, 2011, p.384-385 ;Yıldırım, 2010, p.345). This is because the flaw of the injured might cut off the causal link between the administrative behavior and the damage. On the other hand, if the damage has increased due to the defective behavior of the injured, the administration may not be responsible for the increasing part. The decrease in the liability of the administration will be in proportion to the flaw of the injured. If the damage has occurred due to the flaw of a third person, the liability of the administration may be eliminated. If the flaw of a third person has led to the increase in the damage, the liability of the administration may be reduced in proportion to the reducing part (Bayındır, 2007, p.564). In a case on this issue, the 10th Law of Chamber decided that: "The flaw of the injured and the third person cuts off the *causality link* between the defective action of the administration and the damage; therefore, the administration does not have any liability for damage (10th law chamber of the council of state, decision date:18.09.2007 docket:2005/4493 decision:2007/4199).

6. Results and Recommendations

The regulation included in Article 125 of the Constitution holds the administration responsible in general. According to this regulation; "The administration is obliged to pay for damages resulting from its actions and acts." In addition, apart from Article 40 of the Constitution, it was decided in Article 129 that "claims for damages arising from the faults committed by civil servants and other public officers while exercising their powers can be brought against the administration provided that they are recoursed to them and comply with the manners and conditions specified by the related law". The basis of the responsibility stated in this provision is the continuation of the general basis of responsibility regulated in Article 125. Through these regulations, it is desired to allow that the civil servants who have faults in their services carry out their services carefully and to

avoid their being held irresponsible; and at the same time, the legal remedies to bring a lawsuit by those who are harmed due to the performance of the services against the administration which has the ability to pay.

According to the Supreme Court; "... It is not possible to say that the law-maker has an absolute discretion regarding the appointment of the administrative jurisdiction in the solution of a dispute falling within the jurisdiction of administrative courts. The resolution of a dispute that should be depending on the control of the administrative jurisdiction may be left to the judicial jurisdiction by the law-maker in case of a reasonable justification and the public interest. However, there is no public interest in leaving one part of an administrative procedure to the control of the administrative jurisdiction, while leaving the other part to the control of the judicial jurisdiction. This is because these procedures are the continuation and the application of .....an administrative procedure related to the exercise of public power, there is no doubt that administrative jurisdiction shall be authorized in the resolution of possible disputes... Hearing one part of the decision taken by the Administration in the administrative jurisdiction and hearing the other part in the judicial jurisdiction impair the integrity of the proceeding. As the procedure cannot be paused if it is an administrative one and there is no justifiable reason and public interest required by the service in this regard, it would not be right to divide the administrative procedure and leave one part of it to the control of the administrative jurisdiction and the other part to the control of the judicial jurisdiction" (The Supreme Court, decision date:15.05.1997 docket:1996/72 decision:1997/51 official gazette, date and number: 01.02.2001/24305). According to this decision of the Supreme Court, the disputes arising from administrative acts and actions must be settled in the administrative jurisdiction. However, provided that there is a reasonable justification and public interest, administrative procedures and administrative actions might be audited in the judicial jurisdiction.

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