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Administrative Responsibility in *Force Majeure* Situations: The Case of Earthquakes

Ali Suat Pişkin

Abstract

Globally and throughout history, earthquakes have represented significant natural hazards that result in loss of life and property. After such disasters, administrative entities bear key responsibilities for protecting and preserving public welfare. Despite the absence of culpability on the part of the administration, their basic obligation remains to act in the best interest of the population, especially in unpredictable circumstances. This paper clarifies the concept of administrative responsibility and delineates measures to deal with events classified as *force majeure*. Furthermore, it delves into the administrative liability arising from contingencies, shedding light on the complex legal and practical dimensions of these phenomena. Through a comprehensive analysis, this study contributes to a deeper understanding of administrative duties in the wake of natural disasters, offering insights into effective governance and disaster management strategies.

Keywords: responsibility, *force majeure*, administration, earthquake, public

Introduction

Earthquakes are natural disasters that have caused much loss of life and property in the world and in North Macedonia in the past. Earthquakes and unpredictable natural disasters are situations that countries all over the world may encounter and against which need to take precautions. Because such natural disasters are out of human control, one of the responsibilities of an administration is to take precautions by thinking and acting as if the public is always at risk.

Occupying an area of 25,713 km², North Macedonia lies centrally within the Balkan Peninsula. Key road arteries including Corridors 8 and 10 traverse the nation's territory, forming vital links to the global community. Over the millions of years since the Paleogene era, North Macedonia has resided within the South Balkan extensional region and undergone continuous Neogene extension. Its geological narrative intertwines closely with significant fault lines such as the North Anatolian fault and the southern Hellenic trench (Dumurdzanov, Serafimovski, & Clark Burchfiel, 2005). The severity of earthquakes in Macedonia diminishes with distance from the epicenter and is influenced by local geological characteristics. Soft geological conditions can lead to a maximum attenuation of 0.5 meters, while hard geological conditions result in a minimum attenuation of 0.5 meters (Timovska, 1992).

Minor earthquakes are frequent in North Macedonia, while moderate ones are relatively rare and strong ones uncommon. These seismic activities generally originate within the Earth's crust at predominantly hypocentral depths (Černih & Čejkovska, 2015). Assessments of seismic risk conducted for the nation's aviation infrastructure, including airports, airfields, and flying fields, indicate a 64% probability of exceeding peak ground acceleration thresholds, posing significant hazards to aviation safety (Pekevski, 2006). The primary seismic activity in North Macedonia stems from tectonic forces, leading to sporadic occurrences of moderate to substantial earthquakes. This geological activity is primarily attributed to North Macedonia's geographical location within the Mediterranean region of the Alpine-Himalayan orogenic belt (Droghreshka, Najdovska, & Chernih-Anastasovska, 2019).

To define an earthquake, earthquakes must first be said to be natural events that have the potential to cause serious loss of life and property. An earthquake is defined in the dictionary as "a tremor, ground tremor, movement, or shaking of land caused by the breaking and shifting of the deep layers of the earth's crust or the eruption of volcanoes" (Turkish Language Association, 2024). Earthquakes have also been defined as events where vibrations that occur suddenly due to fractures

in the Earth's crust spread as waves and shake the environments and land they pass through (Turkish Ministry of the Interior Disaster and Emergency Management Presidency, 2024). Similarly, an earthquake is stated to be a phenomenon in which vibrations resulting from the displacement movement that occurs as a result of the sudden release of deformation energy accumulated on the fracture planes in the Earth shake the environments and the land through which they pass in the form of waves (Kandilli Observatory and Earthquake Research Institute, 2024).

The damage resulting from an earthquake is defined as *force majeure* in law and forms certain cases in many branches of law. Although *force majeure* is generally the subject of the law of obligations, it is also included in the area of administrative responsibility under administrative law. As is known, an administration works for the welfare and happiness of the people, and this imposes a responsibility on it over the public to prevent further damage that occurs after an unexpected situation, even if the administration is not directly responsible for the situation. Earthquakes can be given as an example of a situation that gives rise to administrative responsibility despite the administration not being responsible for the *force majeure*, with many studies having been conducted on this doctrine. Although *force majeure* does not have much place in administrative law in North Macedonia law, actions and example situations can be seen in its regulations (Kocevski & Georgievska, 2019)

Responsibility in Administrative Law

Responsibility typically denotes when the misconduct of an individual, whether physical or legal, deviates from established legal and moral norms and thereby incurs consequences for which they must be held accountable by law. In administrative law, this entails that each administrative body bears responsibility for its actions before other administrative, legislative, and judicial authorities. Through this accountability, the core values of a system are upheld, including efficiency, effectiveness, reliability, and predictability within public administration.

A distinctive aspect of administrative responsibility lies in its execution through a complex framework of formal procedures. Unlike abstract notions, administrative responsibility is concretely defined within a set of specific procedural guidelines. In the Republic of North Macedonia, administrative responsibility is codified within the Law of Administrative Servants, which delineates varying degrees of violations of official duties and outlines the procedures for establishing responsibility and imposing disciplinary measures.

When the administration acts according to the rules of public law, the for of the competent court it acts under varies according to different countries; sometimes the civil court is competent, and sometimes it is the administrative court. A large number of authors see responsibility as public authority and a necessary consequence of the principle of citizens being equal before public authority. Administrative action is carried out in everyone's interest, but during the execution of administrative action, adverse effects may occur from this; in other words damage may occur. In this case, harmful effects may arise that can be assessed without any test of administrative behavior; however, these may also involve harmful effects. Liability in public law as well as in private law includes three conditions: the occurrence of damage, the possibility of connecting this damage with a certain person, and the specific legal characteristics from which the obligation for compensation arises.

Earthquake and Situations That Reduce or Eliminate Administrative Responsibility

Force majeure

In some cases, an administration may be completely or partially relieved of its obligation to compensate for damage. In other words, the causal link between damage and administrative behavior may be eliminated or weakened for a reason outside of the administration's actions and behaviors. Here, administrative responsibility either disappears completely or decreases in direct proportion to the severing or weakening of the causal link (Düren, 1979; Günday, 2013). Situations that eliminate or reduce administrative responsibility are as follows: *Force majeure*, unexpected circumstances, the behavior of the one who suffered the damage, and the behavior of a third party.

The concept of *force majeure* is quite old and originates from Roman Law, where the concepts of *vis major*, *damnum fatale*, and *casus majores* were used as the equivalent of this concept. In exchange with these concepts, the term of *force majeure* began being used in Roman law to express events that were impossible to resist (Gözübüyük, 1957). *Force majeure* eliminates both faulty liability and strict liability in both public law and private law. *Force majeure* involves events that cannot be predicted or resisted. Onar (1966, p. 243) explained *force majeure* as something that “prevents the timely fulfilment or payment of an obligation or debt; It is any event that cannot be foreseen or overcome” and “an event that cannot be forecast or predicted in advance, such as an earthquake or a catastrophic revolution, and that lies

outside the perpetrator due to its natural, social or legal origin. In other words, it is completely outside of the will and action of a real or legal person and cannot be prevented by this person.” An event described as *force majeure* may be natural, social, legal or human-caused. While these are generally natural events, such as earthquakes, landslides, lightning, floods, hurricanes, gusts, tornadoes, excessive rain or snow, frost, and drought, human events also can be considered *force majeure*, such as coups, war, revolutions, uprisings, and looting in extraordinary situations. Legal *force majeure* events can also be cited, such as general strikes for political purposes, import or export bans, and border closures. Judicial decisions and doctrines state that, in order for an event to be considered *force majeure*, it must have the elements of externality, unpredictability, and irresistibility (Gözübüyük p. 66). Therefore, an earthquake event must meet all these conditions to be considered a *force majeure* event.

In order for an event to be described as *force majeure*, the first condition is that there should be no administrative behavior underlying the occurrence of the event. In other words, the incident must have occurred outside the activities and actions of the administration. When a causal link exists between the damage and the administrative services being carried out, the administration must compensate for the damage.

The second condition of *force majeure* is unpredictability. In order for an event to be considered *force majeure*, it must also be impossible to predict in advance. Unpredictable events are extraordinary events. Frequently occurring events cannot be described as unpredictable events. An earthquake should not be considered a *force majeure* in a region located in an earthquake zone where earthquakes occur constantly. If an extraordinary event that has occurred in one place occurs again in the same way and in the same place, it can no longer be described as an unpredictable event. Atay (2012) stated the recurrence of a flood disaster in France that had also occurred a hundred years ago with the same severity is not considered a *force majeure*. In one of its decisions, the Supreme Court of Appeals considered an event where a contractor who'd made a commitment to import goods from a foreign country and had not fulfilled his commitment because the government of this foreign country had banned exports after the outbreak of war to be an unforeseen event (Gözübüyük, 1957). The assessment of unpredictability is a material matter made by judicial bodies. For a judicial body to considers an event unforeseeable, it is mandated to take into account the special nature of such an event and the circumstances of its occurrence.

Thirdly, for an event to be considered *force majeure*, it must also be irresistible and unpreventable. Whether an event is irresistible or not is decided by looking at the consequences and severity of that event. Low-intensity events that can be encountered frequently in the ordinary course of life and that do not cause serious consequences are not irresistible events. Disasters such as a very large earthquake or a severe winter that deeply affect social life, excessive rainfall that brings life to a halt, or extraordinary events such as war can be cited as examples of irresistible events.

Administrative Responsibility in Cases of *Force Majeure*

Public administration functions through objectively manifested forms of behavior within specific management systems. These systems are designed to achieve public goals, ultimately in order to meet the life needs and expectations of citizens.

The occurrence of earthquakes in North Macedonia represents a factual reality similar to other natural disasters that require legal considerations regarding the responsibilities of public administration. While an administration may be held liable for earthquakes resulting from defective and deficient acts, its duty to act in the public interest imposes certain obligations. Despite the absence of explicit legal provisions relating to earthquakes, the concept of *force majeure* is invoked in relation to an administration's responsibilities, which include measures such as extending the deadlines for applications and tax deferrals. Furthermore, definitions of *force majeure* are used to delineate situations that are eligible for free assistance, reflecting events beyond individual control that cause destruction or damage. In these cases, the administration's provision of financial assistance to citizens emphasizes its role in mitigating the impact of unpredictable and uncontrollable events such as earthquakes.

Conclusion

While public services are being carried out, people may suffer material and immaterial harm due to certain administrative actions and transactions. The responsibility of an administration is to cover the damages people suffer due to administrative activities. In order for an administration to be held accountable, certain conditions must be present. These conditions are damage having occurred to a person's material or spiritual existence beyond their will, an administrative behavior that caused this damage, and the presence of a causal link between the damage and the admin-

istrative behavior. In cases where an administration has fault liability, the terms of defective (meaning poor performance of service), delayed operation, or non-functioning must be added to these conditions. In cases where the principle of strict liability is accepted, the administration does not need to be found at fault in order to be held responsible for the damage caused.

In some cases, an administration may be completely or partially exempt from liability. The causal link (cause-effect relationship) between damage and administrative behavior may be eliminated or weakened for a reason other than administrative behavior. If the causal link is cut or weakened, administrative responsibility will either disappear completely or decrease. The fault of the injured person, the behavior of a third party, *force majeure*, and unexpected circumstances are situations that can either eliminate or reduce administrative liability.

If the damage is caused entirely by the fault of the injured person, administrative responsibility is completely eliminated due the severance of any causal link between the damage and administrative behavior. For example, an administration cannot be held responsible for the collapse of a building that had been built contrary to what had been licensed as a result of an earthquake. If an increase in the amount of damage occurs due to administrative activities, then the administration may be held responsible for this increase. In this sense, the relevant administrations will undoubtedly be held responsible for damage in this region as a result of an earthquake in direct proportion to its fault, such as in cases where the administration grants a construction permit that is in violation of the construction guidelines with respect to earthquake legislation in an area designated as an earthquake zone, or where the government permits construction along a fault line.

If damage has occurred due to the behavior of a third party, an administration will not be held responsible because no causal link exists between the administrative activity and the damage. If the damage had occurred as a result of the actions of both the administration and the third party, the administration would be partially responsible for the damage. A third party's behavior may affect administrative responsibility only in cases where the fault liability of the administration is accepted. In cases of strict liability, the behavior of the third party has no effect on administrative responsibility. In other words, the behavior of a third party who impacted the occurrence of damage (i.e., a person with no legal relationship to the administration) does not eliminate or reduce the strict liability of the administration. In cases where the administration can be held responsible for strict liability, the administration may be asked to compensate for the entire damage, even if the be-

havior of a third party had an impact on the damage. An administration that covers the entire damage may file a recourse lawsuit against that third party.

Unexpected events are events that are impossible to predict and resist. The concepts of *force majeure* and unexpected events can sometimes be confused with each other because the principles of unpredictability and unpreventability also apply to unexpected situations. However, unlike *force majeure*, unexpected and damaging behavior must have occurred within an administrative activity. Events described as *force majeure* occur outside the will of the administration. Because an earthquake is an event that occurs outside of administrative activities, it is not an unexpected event but rather a *force majeure*. However, in regions where earthquakes are likely to occur, the administration should always be prepared for possible earthquakes. Therefore, such an administration will be responsible for any disruptions or deficiencies in public services to be provided after the earthquake.

Meanwhile, possible damages can be minimized by taking the necessary precautions. In this sense, an administration has very important duties and responsibilities. The following precautions can be taken against the danger of earthquakes: Buildings should not be built in at-risk areas. Lands with loose soil should not be opened to development. Assurances must be made that the structures that are to be rebuilt or replaced in earthquake zones will be constructed in accordance with the provisions of the Regulation on Buildings to be Built in Earthquake Zones. Existing buildings should be made resistant to possible earthquakes. In this sense, urban transformations in at-risk areas must be completed immediately. Buildings should be built in places that have been determined in a development plan. Construction outside of zoning plans should be forbidden. Buildings should not be built on steep valleys or the edge of steep cliffs, as these are at higher risk in possible earthquakes. Houses should be insured against earthquakes. The administration must meticulously carry out the necessary inspections and controls on these and similar issues. In addition, citizens should be made aware of how to behave before, during, and after an earthquake. In this sense, such things as having items that are in danger of falling, tipping, or slipping inside a building be affixed; having automatic natural gas valve shutoffs and electrical shutoff fuses installed; having items at risk of burning or explosion carefully be stored; having the necessary precautions for evacuating buildings immediately in case of danger be taken and emergency exits kept open; and having fire extinguishers be present where everyone can easily reach them in buildings should happen before an earthquake strikes. All citizens should be made aware of and be sensitive toward these issues. In the event of an

earthquake, people need to know to stay away from items that are in danger of falling, slipping, or tipping over; to not use elevators, to not jump from windows or balconies, to not ascend stairs or go on balconies, to not use flame-starting devices in the face of possible fire danger, and to turn off electrical fuses, natural gas, and water valves after an earthquake has passed. Citizens need to be informed about these issues, and the necessary efforts should be made to make citizens aware of how to act after an earthquake.

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