



Paris, 24 October 2024

[Legal decision]

Compensation is possible under certain conditions for harm arising from decisions that are undetachable* from the conduct of France's international relations

The Conseil d'État today ruled that applications may be made to the administrative courts to claim compensation for damages resulting from decisions that are undetachable from the conduct of France's international relations, under the strict liability of the State. The Conseil d'État specified that the harm must affect victims subject to the collateral effects of such a decision in a particularly serious way.

While administrative courts may be called upon to verify that government decisions comply with the law, they cannot rule on actions that are undetachable from the conduct of international policy. They cannot, therefore, annul such actions nor uphold a request to find the State at fault and award a judgement against it.

However, is it possible to apply to an administrative court for compensation in the event of harm suffered as a result of such a decision, without asking the court to recognise the fault of the State? This question was referred to the Conseil d'État by the *Mutuelle Centrale de Réassurance*. The *Mutuelle Centrale de Réassurance* had previously asked the Minister of Foreign Affairs for French diplomatic protection to help it obtain compensation from the Algerian authorities for harm suffered after Algerian independence. When this was refused, the mutual insurance company claimed compensation for losses suffered as a result of France's refusal to grant diplomatic protection.

The Conseil d'État ruled that the administrative courts can be called upon to recognise the State's strict liability for decisions that are undetachable from the conduct of France's international relations based on the French principle of “equality of citizens before public burdens”.

However, this strict liability regime has some particularities as it cannot interfere, even indirectly, with the objectives or implementation of France's foreign policy.

The Conseil d'État specified that such a claim for compensation can only be granted if the harm affects the individuals concerned in a special and particularly serious way. In addition, the State's liability can, in principle, only be incurred for the benefit of collateral victims of the decision in question, and not for the benefit of those whose situation the decision was specifically intended to resolve.

Moreover, in accordance with established case law, the State cannot be held liable, even without fault, if the harm is directly caused by the action of a foreign State or by acts of war, or if a special compensation scheme exists.

In this specific case, the Conseil d'État rejected the claim because it related to a decision directly addressed to the company, namely the Government's refusal to grant it diplomatic protection to help it obtain compensation from the Algerian authorities.

***In French-influenced continental jurisdictions, a “detachable act” is “an act that is part of a complex administrative act (act of state, contract) and which the administrative judge accepts to consider as juridically different from the main act.”**

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