

The presumption of error in administrative responsibility in Saudi law: a comparative study

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Abstract

The current research aims to show the presumption of fault underlying administrative responsibility in Saudi law as compared to French legislation. Research to achieve the desired objectives depends on the analytical and comparative approaches.

The results of the research showed that the attachment error for Saudi and French legislators was objective; In other words, it is attributable to the General Facility and entails the responsibility of the Department in carrying out its activities in an irregular manner or causing damage to others. The attachment error is distinguished from the personal error by the actions of the Administration, while the personal error is due to the fault of the Administrative Officer.

The results also showed that the responsibility of management for the error it had committed arose with a degree of gravity of error, and therefore the recognition by management of its responsibility for the attachment errors provided an opportunity for the injured to claim and make reparation; The claim for compensation is one of the successful means of preserving the rights of individuals.

The research recommends that the Saudi administrative judge distinguish between personal and elbow error by relying on the criteria for distinguishing them, and that more attention be paid to the regulation of public facilities; Because the majority of elbow faults are produced because these facilities are poorly regulated.

Keywords: Responsibility, management, personal error, elbow error.

الملخص

يهدف البحث الحالي إلى بيان قرينة الخطأ التي تقوم عليها المسؤولية الإدارية في القانون السعودي بالمقارنة مع التشريع الفرنسي. ويعتمد البحث في تحقيق الأهداف المرجوة على المنهج التحليلي والمنهج المقارن.

وبيّنت نتائج البحث أنّ الخطأ المرفقي بالنسبة للمشرع السعودي والفرنسي هو خطأ موضوعي؛ أي أنه ينسب للمرفق العام ويترتب عليه مسؤولية الإدارة خلال مباشرتها لنشاطاتها بطريقة مخالفة للنظام أو أنها تسبب أضرار للغير، وأنّ الخطأ المرفقي يتميز عن الخطأ الشخصي بأنه يرجع إلى أفعال الإدارة، بينما يرجع الخطأ الشخصي إلى خطأ الموظف الإداري.

كما أظهرت النتائج أنّ مسؤولية الإدارة عن الخطأ الذي ارتكبته تنشأ بوجود درجة من جسامه الخطأ، ومن ثمّ فإنّ إقرار الإدارة بمسؤوليتها عن الأخطاء المرفقية يتيح الفرصة للمتضرر بأن يطالب بحقه وجبر الضرر؛ لأنّ دعوى التعويض تمثل إحدى الوسائل الناجحة في الحفاظ على حقوق الافراد.

ويوصي البحث أن يميز القاضي الإداري السعودي بين الخطأ الشخصي والخطأ المرفقي من خلال الاعتماد على معايير التمييز بينهما، كما يوصي بمزيد من الاهتمام بتنظيم المرافق العامة؛ لأنّ أغلبية الأخطاء المرفقية تنتج بسبب تنظيم هذه المرافق بطريقة سيئة.

الكلمات المفتاحية: المسؤولية، الإدارة، الخطأ الشخصي، الخطأ المرفقي.

Introduction

Administrative responsibility arose as a result of the development of social awareness of the need to protect the rights and freedoms of individuals; As one of the priorities of the public functions of the State, the French Council of State initially decided on the responsibility of the State for acts of ordinary administration (except acts of power and sovereignty), After the Council launched a number of resolutions, it recognized the responsibility of the Department for its work in all damage caused by its work¹.

The error refers to the wrongful act, breach of the provisions of the law in a material act or legal act in the form of a positive or passive act when performing the act as required by the provisions of the law².

The basis for the administrative responsibility based on the presumption of fault is to justify and define its existence, which is based on the distinction between the fault of the administrative entity (the error of the annex) and the fault of the administrative officer (a personal error), and therefore the nature of the error which inevitably entails the existence of administrative responsibility must be determined, The degree to which this error relates to the administrative annex also leads to the determination of the responsibility of the Department for the actions of its employees. It is possible for the Administration to incur the compensation due to the injured party and once and for all if the employee's error is closely related to this general annex on the one hand, On the other hand, the Administration may ensure that compensation is paid to the injured person and then it is up to the administrative officer who made the mistake to take the amount of compensation paid from him³.

¹ Abdul Hakim Mbruki. (2014). Administrative responsibility. Master's Degree, University of Mohamed Khayder- Biskra, Faculty of Law and Political Science, Department of Law, People's Democratic Republic of Algeria.

² Muhammad Hasun ibn Mushish, and Ramzi Qurnain. (2014). Error in administrative responsibility: A comparative study. Master's Degree, 8May 1945 Qallama University, Faculty of Law and Political Science - Department of Legal and Administrative Sciences.p. 20.

³ Jaber Judd Nassar. (1995). Responsibility of a State for its non-contractual acts, "Performance of compensation." Egypt: Arab Renaissance House. P. 135.

To that end, the research will deal with the presumption of fault in administrative responsibility in Saudi law as compared with French legislation.

Search problem

The State is obliged to pay compensation to the injured party for administrative acts and activities in the State, in accordance with the applicable liability provisions of the State⁴. The Administration justifies the idea of equality of all citizens of the State in the face of public burdens. If individuals suffer damage as a result of the illegal actions of the Administration, it is unfair for such individuals to bear compensation⁵.

Accordingly, the administrative responsibility based on the presumption of fault is divided into: Error on the part of public administration, damage on the part of individuals by individuals working in public administration or by the nature of the work of public utilities, plus the causal link between error and damage⁶.

Search questions

The research aims to answer the following questions:

1. What's administrative responsibility?
2. What are the pillars of administrative responsibility based on presumption of error?
3. What is the presumption of error underlying administrative responsibility?
4. How did Saudi lawmakers and legislation distinguish between personal and elbow error?

⁴ Magdi Medhat Al, Nahri (1997). Responsibility of a State for its non-contractual acts, performance of compensation. Cairo: Arab Renaissance House. p156.

⁵ Georgie Shafiq Sari. (2002). Responsibility of the State for the acts of its authorities, the administration of compensation. Cairo: Arab Renaissance House. p. 158.

⁶ Nayef Bin Faisal Bin Abd Al, Aziz Bin Lebda. (2017). Compensation for administrative decisions that are flawed in the system of the Saudi Ombudsman's Office: A comparative study. Journal of Legal and Economic Research (64), 687 – 760. P. 721.

Search goals

The research aims to achieve the following objectives:

1. Statement of the meaning of administrative responsibility
2. Research into the pillars of administrative responsibility based on presumption of error.
3. Statement of what is meant by the presumption of fault on which administrative responsibility is based.
4. To reveal how Saudi Arabia's legislator and legislation distinguished the comparison between personal and elbow error.

The importance of research

The importance of research stems from the importance of administrative responsibility, which is one of the types of systemic responsibility that arise from the management or public administrative bodies, as well as from the importance of disclosing the presumption of fault in administrative responsibility; Explicit and direct observance of the rights and freedoms of individuals; and the many mistakes made by the Department.

The importance of research is also to try to uncover the presumption of fault underlying administrative responsibility in Saudi, French legislation, and to indicate the elements on which it is based, making a distinction between the error caused by the employee's superior interests and personal wishes over public interests (personal error), and the error caused by the negligence and default of the administration (attachment error).

Research approach

Research will depend on the analytical descriptive and comparative approaches.

Previous studies

- Study by (Al Nasiri, 2018) entitled "**Management's responsibility to compensate for administrative decisions**". The aim of this study was to clarify the course of the UAE legislator if the responsibility of the administration is established, whether it compensates the UAE judiciary for flawed decisions in form and subject matter to its release, or whether it follows the steps of jurisprudence and the judiciary in the administration's idyrhym of the decision that is formally flawed. In achieving its objectives, the study relied on a comparative approach. The study produced a number of results, the most important of which is that the first State to hold the Administration accountable for its actions towards its employees is France; The study recommended a number of recommendations, the most important of which were: the establishment of a State Council competent to deal with administrative disputes, as in France and Egypt, and recommended the establishment of a dual system specializing in administrative disputes controlled by a different system from the ordinary judiciary
- Study by (bin Ammar, 2015) entitled "**The Evolution of the Foundations of Administrative Responsibility**". The aim of this study was to learn about administrative responsibility, particularly in Algerian legislation. In achieving its objectives, the study relied on the analytical approach. The study produced a number of results, the most important of which are: General administrative responsibility is based on two main grounds: error and without error. The first is based on the elbow error resulting from the administration's physical work, while the second is the faultless liability that takes place as soon as the damage to others arises as a result of its actions, and the results of the study have shown that there is no general rule by which to distinguish between personal risks and other concepts, but the type of error is determined by the judge's conclusion of the circumstances of the case. displayed in front of him.

- Study by (Mbruki, 2014) entitled "**Administrative Responsibility**". This study aimed to track the historical stages of administrative responsibility and to determine the legal basis for administrative responsibility. In achieving its objectives, the study relied on the historical and comparative approaches. The study produced a number of results, most notably: that the legal basis for administrative responsibility is based on the theory of error that protects the rights of individuals affected by management activities, and the results of the study showed that the error of administrative responsibility is caused by a defect of competence, a defect of form, a defect in the use of power, and a defect in the violation of the law.
- Study by (ibn Mushish, and Qurnain, 2014) entitled "**Error in Administrative Responsibility: A Comparative Study**". The aim of this study was to research the subject of administrative responsibility and to develop administrative scientific knowledge in how to deal with a specific part of the pillars or conditions of administrative responsibility. In achieving its objectives, the study relied on descriptive, analytical, comparative and historical approaches. The study produced a number of results, the most important of which is that the error represents the common denominator among all types of responsibilities, including administrative responsibility, but the jurisprudence and the elimination of the development of a specific criterion for the thinking of personal error, and there are no specific controls separating personal and other errors, and the results of the study showed that the error in the administrative decision clearly affects its legitimacy, and that most of the errors of management in its responsibility for the administrative contract are related to the financial aspect. The study recommended a number of recommendations, the most important of which are: to work out a specific and clear definition of error in accordance with its nature and associated facility, and to standardize the provisions on responsibility for personal error in all laws providing for such liability, due to the legislative lack of administrative law to determine the rules of administrative responsibility and the relationship of management to its employees and responsibility for their actions.

Comment on previous studies

Having examined previous studies, the researcher found that the current study is distinct from previous studies by discussing the issue of presumption of fault in administrative responsibility in Saudi law as compared to French law, Previous studies have examined administrative liability in general, compensation for damage caused by management responsibility, and error in administrative liability in Algerian, Egyptian, United Arab Emirates and French law.

Administrative responsibility

Administrative responsibility and its legal nature

The word liability in the language refers to: The responsibility of the individual for the consequences of his or her actions, but in the same way, it is evidenced by the legal basis that results from administrative overlap, which conveys the burden of damage directly caused to the individual by the natural or social laws of another individual bearing this burden⁷.

The legal nature of administrative liability is based on the distinction between civil and criminal liability, where civil liability indicates that the injury caused to third parties, which is an obligation linked to the financial harm of the person liable, must be compensated either by removing the damage caused, or by paying compensation as a financial amenable, While criminal liability indicates that a penalty of imprisonment or a fine established by law must be imposed or that an individual shall refrain from an order classified as a criminal offence in legal terms, Administrative liability shall be in the form of civil liability, which shall include not punishment but reparation for damage caused to others; That is, it's an intelligent obligation.⁸.

⁷ Abdul Hakim Mbruki. (2014). Administrative responsibility. Master's Degree, University of Mohamed Khayder- op. cit. P.2.

⁸ Adel bin Abdullah. (2011). Administrative liability of hospital facilities (tort-generating clause). Dictorah Thesis, University of Mohamed Khayder Biskra, Faculty of Law and Political Science - Department of Law. P.10-11.

Characteristics of administrative responsibility⁹

1. Administrative responsibility is a judicial system

That is, administrative responsibility originates from a judicial source. This characteristic is relative and divided into judicial and legislative responsibility, so that legislative responsibility can be found in legislation through the intervention of the legal legislator in determining the rules of administrative responsibility. The administrative judiciary was the only competent body to deal with disputes arising out of administrative responsibility.

2. The legal regime of administrative responsibility is an autonomous and inherent one

administrative responsibility is not fully independent of civil law; In many cases, the administrative judge may decide to apply the Civil Code in a manner consistent with the facts before him. The fact that administrative and civil liability are involved in the legal feature explains why they are similar in certain provisions of liability (such as conditions and elements).

3. The legal regime for administrative responsibility is based on the reconciliation of public and private interest

This indicates that the rules on administrative liability include provisions that balance the public interest with the requirements for the operation of public utilities, and the mandatory preservation of the rights and freedoms of individuals against harmful acts of the administration.

Administrative liability based on error (presumption of error)

The error is referred to as being against the right thing, or it's all contrary to what it has to be, it's the opposite or the opposite, and the human being does or says what it's not right for him to say or do¹⁰.

Administrative responsibility based on error is based on three pillars:

- Public administration error.
- Damage to individuals by employees of public administration or by the functioning of public utilities.

⁹ Abdul Hakim Mbruki. (2014). Administrative responsibility. Op.cit. p.11-12.

¹⁰ Terhip ben mahfouz al-anazi (1437 AH). Compensation for damage caused by attachment and personal errors in the Saudi Arabian Administrative System. Islamic University, Sharia College, Medina - Saudi Arabia. P. 3916.

- Causation between error and damage. They can be explained as follows:

1. Public administration error

While the Department is responsible for errors made by or on behalf of its staff, this does not necessarily mean that the Department is always guilty of wrongdoing or compensation for damage; Because there are mistakes made by staff on the basis of their personal actions that are unrelated to management, or because of negligence or negligence of management, and This leads us to distinguish between personal error (committed by an employee of the Department on the basis of a personal act) and elbow error (caused by the negligence and failure of the Department and for which it must endure and compensate)¹¹.

A. Personal error

Personal error is separate from elbow error; That is, the personal error is irrelevant to the General Annex, as the idea of separation has been assessed by looking at its status vis-à-vis the General Annex; to consider the framework of the underlying relationship between the aid error and the General Annex. The personal error that justifies attribution of the injury to the perpetrator (s) is determined by its separate character from the general annex, which provides an opportunity for the ordinary judge bound by the principle of separation of administrative judicial bodies to adjudicate the dispute in view of the administration and without exposure to administrative work (non-interference in administrative work)¹².

A personal error is defined as an error committed by a staff member who is liable for compensation for the damage caused in person¹³, or an error made by a person of the Department without the Department having a role in making such an error¹⁴.

¹¹ Ghazi Faisal, Adnan Abed. (2013). Administrative jurisdiction. Baghdad Guidance Press. P.224.

¹² Adel bin Abdullah. (2011). Administrative liability of hospital facilities (tort-generating clause). Op.cit. p52.

¹³ Mohsen Khalil. (1992). Cancel and make amends. Dr. Alexandria.p. 262.

¹⁴ Magdi Medhat Al, Nahri (1997). Responsibility of a State for its non-contractual acts, performance of compensation.op. cit. P. 225.

The Saudi Ombudsman defined personal error as "that error, which is attributed to the employee and in which the human character is often not the public interest, and the employee asks only for it"¹⁵.

Saudi Arabia's administrative system has divided patterns of personal errors into the following¹⁶:

1. criminal offence

The fact that a criminal offence is considered to be a material error entails the liability of a staff member for compensation from his or her personal property for this crime, owing to the fact that the criminal offence is considered to be a serious error within the scope of personal errors.

2. physical attacks

This refers to the Department's unlawful or unlawful physical executive conduct of a serious nature, in which a right or freedoms of individuals are clearly violated.

B. Elbow error

The elbow error is referred to as that error, which the Department has a role to play in and which is actually damaged to the public facility, as a result of the department's negligence or failure to pursue its work, even if it is physically carried out by one of its staff members, making it obliged to pay compensation for the damage¹⁷.

The elbow error also indicates that error due to the facility if a management staff member had a hand in causing it, so that the error here was that the public facility was the cause of the damage¹⁸.

Saudi Arabia defined the elbow line as the fault attributed to the public service as a result of acts of public officials¹⁹

¹⁵ The Saudi Ombudsman's Office. (1401 AH). Set of Administrative Provisions and Principles. Saudi Arabia.

¹⁶ Terhip ben mahfouz al-anazi (1437 AH). Compensation for damage caused by attachment and personal errors in the Saudi Arabian Administrative System. Op. cit. p. 3920.

¹⁷ Ammar Awabadi. (2004). Theory of administrative responsibility. Biographers, Ben Eknon, University Publications Office.p.122.

¹⁸ Mahmoud Helmi (1983). Theory of administrative responsibility. Cairo, Arab House of Thought. P.68.

¹⁹ Abdullah Rashid Al - Senedi. (1418 AH). Government Administration of Saudi Arabia, edition 5. P. 98 – 99.

The error made by employees of the public facility is divided into: an error attributed to a particular staff member/staff member, and a line that cannot be attributed to a particular staff member/staff member, which can be explained as follows:

- A line that can be attributed to a particular employee

Error can be attributed to a specific employee or staff member if the real perpetrator of the injury is identified in the facility as neglect of mental health supervisors, resulting in one patient escaping and committing harmful acts to others²⁰.

- An error that cannot be attributed to a particular employee (error attributed to the facility)

This is a situation in which third parties are harmed despite the failure or negligence of the staff member in the performance of his administrative duties, the damage to others may have been caused by an error that led to such damage and is often related to the organization of the facility²¹.

For example: If a prisoner is assaulted in prison, and the judiciary cannot prove who actually caused the damage, the result is that the error is due to the public facility²², The forms/patterns of attachment error are divided into three forms, depending on the gravity of the error in accordance with the Saudi administrative system and the French Council of State²³:

- Either the facility has performed the service in a bad way²⁴, such as arresting a person and putting him in prison without following regular procedures.
- Or be slower in providing service, such as delays in the payment of salaries and pensions.
- The general service facility has never performed, as the administration has refrained from carrying out a judicial decision.

²⁰ Georgie Shafiq Sari. (2002). Responsibility of the State for the acts of its authorities, the administration of compensation.op. cit. P.228.

²¹ Georgie Shafiq Sari. (2002). Ibid.

²² Fouad Attar. (2006). Administrative jurisdiction. Cairo: Arab Renaissance House. P. 709.

²³ Terhip ben mahfouz al-anazi (1437 AH). Compensation for damage caused by attachment and personal errors in the Saudi Arabian Administrative System. Op. cit. p. 3919.

²⁴ Nayef Bin Faisal Bin Abd Al, Aziz Bin Lebda. (2017). Compensation for administrative decisions that are flawed in the system of the Saudi Ombudsman's Office: A comparative study. Op. cit. P. 730 – 731.

The foundations/criteria for distinguishing between personal and elbow error:

Personal and elbow error can be distinguished by the following grounds:

-Intentional error :

If the error is made by the administration officer in the course of his work as a result of desire, inclination or recklessness, it is a personal mistake, so that here his intention and purpose is bad that he may deliberately make the mistake and harm others for the purpose of revenge or for the sake of a special interest, but if the error is free of any personal character, i.e. it was committed in good faith, it is an accompanying error²⁵.

Intentional error is taken as a criterion as difficult to apply, as it depends on the psychological and internal factors of the employee (intent and intent) in the performance of his administrative function²⁶.

-Serious error

The error is of a personal nature if the administrative officer has acted in bad faith, but it is serious and exceeds the normal limits of the risks to which the administrative officer is exposed in the performance of his duties and administrative functions, and therefore we cannot say that a serious error is a common mistake to which the employee is subjected during his working life, but if the error is not serious, it falls under the attaché errors for which the administration is responsible²⁷.

This criterion of personal error goes beyond cases of intentional error to reach a case of error in which the error attributed to the employee is serious, although the employee has acted in good faith²⁸, for example: the employee makes a serious mistake as a result of his response to the interpretation and assessment of facts that justify his conduct, his understanding of the legal provisions that allowed him to act arbitrarily,

²⁵Sammy Hamid Suleiman. (1988). Personal error theory in the area of administrative responsibility. Cairo: Arab Renaissance House. P. 407.

²⁶ Ibrahim Muhammad Ali, Abdel Munim Sharif. (1999). Responsibility of a State for its non-contractual acts - payment of compensation. Cairo: Arab Renaissance House. P. 268.

²⁷ Mohsen Khalil. (1992). Cancel and make amends. Op. cit. p. 267.

²⁸Ramzi Taha al, Shaer. (1990). Compensation: Responsibility of a State for its non-contractual acts. Cairo. P290.

or if the act becomes a punishable offence, such as a staff member issuing a decision to remove electoral advertising advertisements²⁹.

The criterion of serious error is taken as no more than relying on the psychological criterion in distinguishing between personal and elbow error, most of the time the French Council of State considered serious error to be an elbow error and that in some cases the criminal act may be unintentional³⁰.

-Separate error

A personal error is based on a separate error with a personal character that can be separated from the post, while the elbow error cannot be separated from the employee's work in the administrative post; that is, if the nature of the employee's work accepts dismissal, the error is personal and if not, the error is attached. The error is materially separate from the post if it is not linked to the duties of the administrative function in the event that the employee commits the purpose of defaming the other, and the error is morally separate from the duties of the administrative function in the event that it is committed for purposes that have nothing to do with the job, such as abuse³¹.

The separate error criterion is taken to exclude the personal responsibility of the employee in the event of serious errors in the course of his or her work, if it does not separate physically or morally from his duties in the administrative post³², and the judge will be obliged to examine the administrative work that caused the damage and assess whether the error is separate or not separate by job³³.

²⁹ Hatem Labib Jabr. (1984). Elbow error theory. Cairo Arab House of Renaissance. P.69.

³⁰ Mohamed Abdul Hamid Abu Zeid. (1986). Judicial oversight of administrative work. Cairo: House of Arab Culture. P.373.

³¹ Magdi Medhat Al, Nahri (1997). Responsibility of a State for its non-contractual acts, performance of compensation. Op. cit. p. 230.

³² Decision of the Office of the Ombudsman No. 8/26/1399 AH in case No. 8/1/S of 1399 AH;

³³ Georgje Shafiq Sari. (2002). Responsibility of the State for the acts of its authorities, the administration of compensation. Op. cit. p. 168.

- The end

If the purpose of the staff member's action is to achieve the objectives of the Department, his or her fault is attached, but if the purpose of the staff member's wrongdoing is to achieve special interests, his or her fault is personal³⁴, In case of personal error, the staff member shall be responsible for the abuse of his or her authority and function.³⁵ This standard is taken to be of a psychological character and to produce irrational consequences. If the staff member makes a mistake in good faith and believes that he or she is honestly performing his or her managerial function, it is considered an error attached to this criterion.

Saudi legislator's position and comparative legislation on the basis of distinguishing between personal and elbow error

A. Saudi legislator

The Saudi administrative system indicated that the origin of administrative responsibility was a pillar (fault) and that management was not responsible for the personal fault of the staff member, but that it was responsible for the fault caused by negligence or negligence from the administration or the public facility³⁶, If the staff member's work can be separated from the job, the error is personal, and if not, the error is attached³⁷.

The Saudi Arabian legislature has also indicated that the administrative judge is responsible for determining the basis or appropriate criteria for its application in the case before him; Given the instability on a given standard and the conflation of many criteria³⁸.

³⁴ Ibrahim Muhammad Ali, Abdel Munim Sharif. (1999). Responsibility of a State for its non-contractual acts - payment of compensation. Cairo: Arab Renaissance House. P.275.

³⁵ Mohsen Khalil. (1992). Cancel and make amends. Op. cit. p.226.

³⁶ Terhip ben mahfouz al-anazi (1437 AH). Compensation for damage caused by attachment and personal errors in the Saudi Arabian Administrative System. Op. cit. p. 3918.

³⁷ The Saudi Ombudsman's Office. (1401 AH). Set of Administrative Provisions and Principles. Op. cit.

³⁸ Jaber Saeed Hassan Mohammed. (1984). Elbow error theory. Cairo: Arab Renaissance House. p.370. And see: Decision of the Office of the Ombudsman No. 8/26/1399 AH in case No. 8/1/S of 1399 AH;

Saudi Arabia has shown that it is possible to collect responsibility for personal and elbow fault in two cases³⁹:

First case: Collecting responsibility as a result of multiple errors or common error

The combination here is due to the injury caused by personal and elbow error simultaneously.

Second case: Combining the two mechanisms in the case of a single error

The question of the combination of personal responsibility and the attachment to a single error is a complex one, so the French legislator here makes a distinction between the only error made by performing functions, and the only error made outside the administrative function and not without any connection to the general facility, such as accidents caused by the use of government motorists for personal purposes⁴⁰.

B. Egyptian legislator

In its ruling of June 29, 1950, the Administrative Court of Egypt ruled that "it is a principle established in the jurisprudence of administrative law that an employee is not asked about his or her own mistakes, but rather about his personal mistakes"⁴¹.

The Egyptian Council of State also considered that the employee is not responsible for his elbow mistakes but is solely responsible for his personal mistakes, and that the type of error is determined based on the type of error in each case and the results and the circumstances surrounding it, relying on the intention of the employee, and the amount of error of gravity and motive to commit it, so that the error is considered to be in person if it is impersonal, If the cause of the error is due to the desires, desires and interests of the employee or his desire to harm the other, it is considered a personal error. The Egyptian Council of State also considered the seriousness of the error to vary according to the varying circumstances and conditions, and is used to identify the ability of the middle-qualified employee who is present in circumstances similar to that of the errant employee⁴².

³⁹ Ali Hassan Shantawy. (n.d). Encyclopedia of Saudi Administrative Justice. Riyadh. P 28, 116.

⁴⁰ Jaber Judd Nassar. (1995). Responsibility of a State for its non-contractual acts, "Performance of compensation. Op. cit. p. 409.

⁴¹Administrative Court of Justice of 29 June 1950, Set of Legal Principles Decided by the Administrative Court of Justice of 15 Years, Part I, p. 665.

⁴² Mohamed Abdul Hamid Abu Zeid. (1986). Judicial oversight of administrative work. P. 45.

2. Damage to individuals caused by employees of the public administration, or by the functioning of public facilities

Damage is an essential pillar of the emergence of administrative responsibility, so that the administration is obliged to compensate the injured party for damages suffered as a result of the department's error, and the liability and award of compensation are denied⁴³.

Compensation for damage is due if the damage is material (physical and financial) and moral (moral) in case the following conditions are met:

- The damage is the result of an act of the Administration

The harmful act suffered by the injured person must have been committed by the administration, regardless of whether the act occurred because of the individuals serving in the department or because of the animals or objects under their ownership and under their supervision, and hence the responsibility of the administration to compensate for the harmful act⁴⁴.

- The damage is of a direct nature

That is, damage is a direct result of management error; Consequence of the link between the wrongful act and its harmful effects⁴⁵, Compensation for damage is therefore a duty⁴⁶, Damage caused by the fault of the injured person himself or as a result of the force majeure of the administration may be attributed either in whole or in part to the proportion of their contribution to the damage⁴⁷, If the fault is shared between the injured and the Department, the Department will be relieved of its responsibility if the fault of the injured takes place,⁴⁸ Management is relieved of responsibility to the extent that the injured person has contributed to the fault if the injured person's fault is not taken for the management error; That is, if there are many reasons⁴⁹.

⁴³ Nayef Bin Faisal Bin Abd Al, Aziz Bin Lebda. (2017). Compensation for administrative decisions that are flawed in the system of the Saudi Ombudsman's Office: A comparative study. Op. cit. p. 731.

⁴⁴ Mohsen Khalil. (1992). Cancel and make amends. Op. cit. p.298.

⁴⁵ Ibid, p.298.

⁴⁶ Mohamed Abdul Latif. (2004). Administrative Justice Act. Cairo: Arab Renaissance House. p. 410.

⁴⁷ Saad Al Sharqawi. (1972). Administrative responsibility. Cairo, Knowledge House. p.239.

⁴⁸ Abdul Aziz Abdul Monim Khalifa. (2007). Responsibility of the Department for its legal conduct. Alexandria University Think Tank. P. 212.

⁴⁹ Decision No. 38 (V) of 1400 AH in case No. 360/1/S of 1399 AH.

- **Damage to be sustained**

That is, the damage has already occurred or will already occur in the future, but it cannot be considered as such if it is possible⁵⁰.

- **The damage is of a special nature**

That is, damage has been caused to a particular person or persons, which requires compensation for such damage, but not compensation for damage if all citizens have suffered the same damage; Because they have become equal in the face of this damage, and thus they have equal overall burdens and sacrifices⁵¹.

- **The damage can be estimated by money**

that the compensable damage is compensable by money; In order to give effect to the sentence handed down for material or moral compensation (moral)⁵².

3. Causal link between error and damage⁵³

The Saudi administrative system required administrative liability to establish a link between the person's fault and the injury to the injured person, so-called (fault-damage causation).

This causation does not exist in three cases:

A. force majeure

Force majeure refers to every unexpected emergency, as in the case of wars and natural disasters. The incident must be sudden to the injured and unexpected by the administrative authority, and the incident must be impossible to pay; It is this impossibility that justifies the sibility of the cause of the injury.

⁵⁰ Mohamed Abdul Latif. (2004). Administrative Justice Act. Op.cit. p. 414.

⁵¹ Magdi Medhat Al, Nahri (1997). Responsibility of a State for its non-contractual acts, performance of compensation. Op. cit. p. 290.

⁵² Saad Al Sharqawi. (1972). Administrative responsibility. P241.

⁵³ Terhip ben mahfouz al-anazi (1437 AH). Compensation for damage caused by attachment and personal errors in the Saudi Arabian Administrative System. Op. cit. p. 3924.

B. contributory fault

The Administration is not obliged to compensate the injured person for the damage suffered in the event that the error was caused by him rather than by management.

C. another's error)

That is, the fault that occurred was the result of the fault of management and the fault of third parties. If the greater cause of damage is not proven on one party, liability becomes shared as a result of multiple liability; That is, management is liable for the damage it has caused as a result of its fault, and the same applies to others.

Conclusion

The results of the research show that Saudi and French legislators have agreed not to specify a specific criterion or basis for distinguishing between personal and attachment error. Saudi legislators have merely assigned this criterion to the administrative judge.

The results also showed that the attachment error for Saudi and French legislators was objective; In other words, it is attributable to the General Facility and entails the responsibility of the Department in carrying out its activities in an irregular manner or causing damage to others. The attachment error is distinguished from the personal error by the actions of the Administration, while the personal error is due to the fault of the Administrative Officer.

There can be no single definition of both personal and elbow error; Because each has a special nature, the view of each is different from the view of administrative law, and fault in civil liability is the source from which the fault in administrative responsibility is derived.

In order for management to be responsible for the error it has committed, there must be a degree of gravity of error, so that the Department's recognition of its responsibility for attachment errors provides an opportunity for the injured to claim his or her right and reparation; The claim for compensation is one of the successful means of preserving the rights of individuals.

Through research, the researcher came up with the following recommendations:

- The Saudi administrative judge should distinguish between personal and attachment error by relying on the criteria for distinguishing them.
- Greater attention to the regulation of public utilities; Because the majority of elbow faults are produced because these facilities are poorly regulated.
- The Saudi administrative judiciary should not elaborate on the notion of elbow error at the expense of personal error; To avoid overburdening the state treasury.

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