

## ADMINISTRATION RESPONSIBILITY FOR HEALTH FACILITIES

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**Abstract:** *The issue of management responsibility for health facilities is of great importance and deserves a lot of care and attention because of its contact with the human body and its preservation from the dangers that may result from mistakes committed by these health facilities, and administrative responsibility as a type of legal responsibility takes place within the scope of the legal system administrative □ It is related to the responsibility of the state and the public administration for its harmful actions, whether these harmful administrative actions are legitimate or illegal, on the basis of the elbow error or the administrative error and on the basis of the risk theory and within the scope of the legal system of administrative responsibility and the responsibility of the state, and we have tried through this research to determine the nature of administrative responsibility About health facilities and a statement of what is meant by a health facility error, as well as a statement of the basis for establishing the administration's responsibility for this error in Iraqi legislation.*

**Key words:** *preservation, mistakes and management.*

### Introduction

Since the administration may cause errors that cause harm to people through carrying out its traditional functions and activities, then responsibility for it cannot be excluded. The administration's relationship with others under the rule of law necessitates the administration's respect for the interests and rights of people in addition to its care and pursuit of the public interest, unless The determination of the responsibility of the administration is not so easy as it is the case in the civil law, especially with regard to the fault, its independence and privacy, and this research was raised in several interpretations related to who is responsible.

It should be noted that, according to the rules of administrative responsibility that are based on the error, the injured party may, as a general rule, file a claim for compensation against the administration before the administrative judiciary if the error committed is attached, and in return, and in the event that the error committed is personal, the responsible person alone is the one who bears the liability for compensation for this. The error, however, is the development that occurred in the general system of administrative responsibility on the basis of annex errors.

Responsibility may be divided between the employee and the administration.

The systems varied in this, as according to the Anglo-Saxon system, the employee who committed the error is the one who is asked only from his financial responsibility until the middle of the twentieth century, when the matter became responding to the principle of non-responsibility of management in this system with exceptions that reduce its severity, as it is limited to The department of tort liability without contract, and applies only to employees of the central administration by virtue of their direct affiliation with it <sup>(1)</sup>. As for the Latin system, it looks at the responsible party according to the case, and therefore the management is the responsible person in the case of a lateral error, and the employee remains responsible for his personal mistake, and the injured party

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<sup>1</sup> Hussein Muhammad Othman, Administrative Judiciary, University Press, Alexandria, Egypt, 2000, p. 71.



can sometimes choose between referring to the administration or the wrong employee <sup>(1)</sup>, and this is the case now and is reflected in Most legal systems.

Accordingly, the legal system of administrative responsibility for the attached error remains, in turn, following the administrative responsibility for the error in general, which we are currently discussing.

#### **First: the importance of research:**

The importance of this research appears from the importance of administrative responsibility for health facilities, which is reflected in the importance of health facilities themselves, in which the object of harm is the human being, and all declarations, regulations and constitutions stipulate the protection of his rights. In a place, especially with the presence of the administration in a higher position, since the administration is the custodian of the interests of individuals and its domain here, as it is in the process of ruling and deduction at the same time, as well as the fact that one of the perpetrators of the error that causes damage and requires responsibility is one of the administration's employees and those in charge of implementing its policy.

#### **Second: Research Problem:**

Through this research, a major problem is raised: "How responsible is the administration for health facilities?" This problem stems from several sub-questions, as follows:

- a) What is the concept of administrative responsibility?
- b) What are the elements of responsibility?
- c) What is a healthy elbow fault?
- d) What is the basis for the administration's responsibility for this error?

#### **Third: Research Objectives:**

This research aims to answer the questions raised above, namely:

- a) Determine the nature of administrative responsibility for health facilities.
- b) Explain the concept of administrative responsibility.
- c) A statement of the basis for the administration's responsibility for this error.

#### **Fourth: Research Methodology:**

In this research, the researcher relied on an integrative approach consisting of the analytical approach by explaining the nature of responsibility and defining its elements, especially since responsibility here is subject to the general rule of responsibility contained in the civil law and its constituent elements of error, damage and causal relationship, by following the comparative approach through the elucidation of the legal system French and Anglo-Saxon regarding responsibility, and then a statement of the position of law and administrative judiciary on it. With the need to extrapolate what was reported about this comparative analysis and the conclusions and recommendations we concluded in the light of the inductive approach. **Search Plan:**

The first topic: the concept and elements of administrative responsibility

The first requirement: the definition of administrative responsibility

The second requirement: the elements of administrative responsibility

The second topic: the administration's responsibility for the elbow error

The first requirement: the verbs constituting the elbow error

The second requirement: establishing the administration's responsibility for the elbow error

#### **The first topic**

##### **The concept and elements of administrative responsibility**

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<sup>1</sup> Kafif Al-Hassan, Administrative Responsibility on the Basis of Error, Dar Houma, Algeria, 2014, p. 10.



The principle is that the responsibility of the administrative authority is based on error, because it is not possible to compel the administration to compensate or redress the damage except based on its fault, but in some cases we are dealing with liability without fault, either because the damage is caused by the administration's action despite the fact that it did not make a mistake and is then in the process of There is a breach of the principle of equality before the public burdens, or because the administration's activity has special risks, which results in damages that cannot remain without compensation. Since the administration benefits from that activity, it in return bears compensation for the damages arising from it.

It is natural that the responsibility of the public authority is in principle a liability for sin, in the sense that it does not exist unless the harmful act is at fault, and if this responsibility - on the basis of error - is dominant in administrative law. However, since 1895, another type of responsibility has been found, and this last one is established even if it is absent. error, and it is a liability by force of law due to the damage caused. To clarify that responsibility, we will discuss it in the following two requirements:

### **The first requirement**

#### **Definition of liability**

The theory of responsibility is considered one of the basic provisions on which all legal actions and actions are based, as the feeling of responsibility of the individual assigned to a work towards this work serves as a deterrent to him in the event of his non-compliance or breach of his duties, which would achieve a kind of balance between the assigned individual And others from society, responsibility is "bearing the responsibility, which means the legal or moral situation in which a person is responsible for the words and actions he made in violation of moral and legal rules and provisions" <sup>(1)</sup>.

#### **First: Responsibility in Language:**

Responsibility in the language: It is the noun of the past participle of the one who asked in the sense of an accountant, who is responsible for a deed or matter - for his saying, may God's prayers and peace be upon him, "All of you are shepherds and all of you are responsible for his subjects" <sup>(2)</sup>, and God Almighty says: "Stop them, they are responsible" <sup>(3)</sup>, meaning They are wanted for the reckoning <sup>(4)</sup>, and what a person is responsible for is required for things or actions that he has done, or it is the condition or characteristic of someone who is asked about a matter that falls upon him. It is said that I am innocent of the responsibility of this work <sup>(4)</sup>.

#### **Second: Responsibility idiomatically:**

Responsibility is not defined in the legal texts, as it is a modern word in use

The jurists had nothing but diligence in defining it, so there were many definitions according to the vision of each

Jurisprudence, it is generally the case of the person who committed something that requires accountability, so if this act is contrary to a moral rule that is described as moral responsibility and does not go beyond society's disapproval of this violating act, but if this act is contrary to a legal rule, then it is the case of the person who caused harm that requires the law to be held accountable for it that damage <sup>(5)</sup>.

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<sup>1</sup> Ibrahim Al-Munji, The Administrative Compensation Claim, The Legal and Practical Organization of the Compensation Claim before the State Council Court, Manshaat Al-Maarif, 2003, p. 7.

<sup>2</sup> Surat Al-Safat, Verse: (24).

<sup>3</sup> The Dictionary of Contemporary Arabic, (vol. 2 / p. 1020), and the industrial source: It is what ended with a strict ya' and a ta' such as ability and responsibility.

<sup>4</sup> Ibrahim Mustafa, and others, Al-Mu'jam Al-Waseet, Dar Al-Da'wa for Printing and Publishing, Part 1, 1972, Cairo, pg. 411.

<sup>5</sup> Fatima Al-Zahraa Manar, The Civil Responsibility of the Anesthesiologist, "A Comparative Study", Dar Al-Thaqafa for Publishing and Distribution, Cairo, 2012, pg. 42.



Liability generally means "bearing the consequence of the harmful act done by the natural person or Moral, and this act may be a departure from what may be ordered by the rules of ethics or a departure from what is commanded by the law, and therefore the responsibility in the first case is moral and the second is legal<sup>(1)</sup>.

Some have defined it as "representing the commitment of a person who has caused harm to another person

By repairing what he caused by restoring the situation to what it was or by means of material compensation" <sup>(2)</sup>, and some of them defined it as "the judgment that results from the person who commits something that requires accountability" <sup>(3)</sup>, and others defined it as "the obligation to repair a damage that we caused by mistake." , or in some cases defined by the law through the risks that result from a specific activity such as work accidents" <sup>(4)</sup>, and responsibility is "a person's bearing for the results and consequences of default issued by him or by those who supervise and supervise him." The Belgian jurist is the first to employ the term responsibility in The beginning of the eighteenth century, where the term used before that illegal work, and the guarantee <sup>(5)</sup>.

Or it is the "obligation of the official within the limits of the law to compensate the injured party for the damage that occurred

suffered as a result of damage or loss of benefits, or partial or total material or moral damage" <sup>(6)</sup>, or is "a person's capacity to attribute his action to him and be held accountable for it" <sup>(7)</sup>.

Referring to the provisions of the Iraqi Civil Law No. (40) of 1951 in Article (204), we find it stipulating that: "Every infringement that harms a third party requires compensation, and therefore it has acknowledged, albeit implicitly, the general provisions of contractual liability that arise from a breach of obligations by one of the parties to the contract." mentioned therein." Likewise, the tort liability that arises from the breach of a non-contractual obligation resulting from an illegal act, and the Iraqi legislator equated between the assault on funds and the assault on persons.

As for the contractual liability, it was stipulated in Article (169), Paragraph (2), in which it states: "Compensation shall be for every obligation arising from the contract, whether it is an obligation to transfer ownership or benefit or any other real right, or an obligation to work or abstain from work, and it includes what is owed to the creditor." Loss and lost gain due to the loss of the right due to him or due to the delay in fulfilling it, provided that this is a natural result of the debtor's nonfulfilment of the obligation or his delay in fulfilling it.

The exact meaning of responsibility in the jurisprudence of law is a judgment on the one who breaches the obligation of what he was committed to before others to compensate for the damage resulting from the breach of this obligation. And between being negligent, the perpetrator is obligated to compensate because of his breach of a legal obligation imposed on him not to harm others <sup>(8)</sup>. Responsibility can be defined from the researcher's point of view as the "obligation" of the person who caused harm to others to bear the consequences of what he caused by compensation.

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<sup>1</sup> Hassan Ali Al-Dhanoun, Al-Mabsout in Civil Responsibility, Part 1, Dar Wael for Printing and Publishing, Jordan, 2006, p. 13.

<sup>2</sup> Abdullah Tolba, Administrative Law, Judicial Oversight of Administration Work, Aleppo University Publications, 1997, pg. 313.

<sup>3</sup> Suleiman Marks, Al-Wafi fi Explanation of Civil Law, Harmful Action and Civil Responsibility, Al-Halabi Human Rights Publications, Volume 1, 2019, p. 300.

<sup>4</sup> Ammar Awabedi, Theory of Administrative Responsibility, University Press, 1998, p. 12.

<sup>5</sup> Abdul Qadir Al-Arari, Sources of Obligations and Civil Responsibility, Dar Al-Arman, Morocco, 2005, p. 8.

<sup>6</sup> Muhammad Abdul Hakim Karsheed, Civil Medical Responsibility, Central Library, Gaza, 2011, pg. 28.

<sup>7</sup> Muhammad Kamal al-Din Imam, Criminal Responsibility, Its Basis and Development, University Foundation for Studies and Publishing, Alexandria, Egypt 1991, p. 397.

<sup>8</sup> Abd al-Hamid al-Shawarbi, The Responsibility of Doctors, Pharmacists, and Civil, Criminal, and Disciplinary Hospitals, Manshaat al-Maarif, Alexandria, 2000, p. 17.



### **The second requirement elements of administrative responsibility**

The judiciary was satisfied with the responsibility for the availability of a simple error element, like other normal facilities, as it relates to the normal functioning of public health institutions <sup>(1)</sup>. In addition to the element of simple error, the existence of damage and a causal relationship between management error and damage to the environment is required for the liability of health facilities to be established. On this basis, the error and its images will be shown, and then to the damage and the causal relationship.

#### **First: The error resulting in the administrative responsibility of health facilities:**

A mistake is a violation of the provisions of the law, which is represented in a material act or in a legal act, which takes the form of a positive act, or a negative act that results from abstaining from an action required by law. And since those in charge of the work or act are natural persons, the error will be generated by these people, but the people are at the same time employees who did not commit the wrong act or act except on the occasion of their exercise of their jobs, so the resulting error is either a personal mistake for which the perpetrator is responsible, or it is Attachment error asked by management.

Great jurisprudential efforts have been made in order to distinguish between the two types of error, due to the importance of this distinction regarding the determination of the rules governing the responsibility of the administration towards it. The elbow error applies the rules of administrative law, that is, the provisions of administrative responsibility. There have been many criteria that were used in jurisprudence and jurisprudence to distinguish between personal error and elbow error.

- 1- The criterion of the seriousness of the error: Zeze said that the personal error is the gross error that the employee makes, whether in estimating the facts or in interpreting the law. Including the doctor's mistake, which leads to the death of the patient, and negligence in protecting a person threatened with assassination <sup>(2)</sup>.
- 2- The criterion of personal whims: It is one of the most important standards advocated by jurisprudence, in the forefront of which is "laferriere", which means that the error is personal when it is imprinted with a personal character about a person with his whims and their lack of insight, and it is attached if it is not printed with a personal character and emanates from an employee who is subject to error and right <sup>(3)</sup>.
- 3- Purpose Criterion: Dickie-Duguit went to the distinction between a personal error and a corpuscular error that is related to the purpose of the work or action. management, the error is attached <sup>(4)</sup>.

It should be noted that the text of the Iraqi Civil Code in Article (220) of it stipulates that the administration will then be asked about the mistakes of its employees in countries that apply the provisions of civil law, and the administration may then return to the employee what it paid for him and in all cases <sup>(5)</sup>, but where The provisions of the administrative law are applied, and the ruling differs, as the elbow fault is questioned by the administration alone, and it does not return to the employee what it pays in terms of compensation to the injured person as a result of the employee's elbow fault, but the employee bears the consequences of his personal mistake <sup>(6)</sup>.

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<sup>1</sup> Kafif Al-Hassan, Administrative Responsibility between Independence and Subordination, Maalem Journal for Legal and Political Studies, Volume (4), p., Algeria, 2020, pp. 141-143.

<sup>2</sup> Dr.. Majid Ragheb Al-Helou, Administrative Judiciary, University Press, Alexandria, 1985, p. 478.

<sup>3</sup> Dr.. Suleiman Al-Tamawy, Administrative Judiciary, "The Second Book - Compensation Judgment," Dar Al-Fikr AlArabi, Cairo, 1968, p. 119.

<sup>4</sup> Dr.. Suad Al-Sharqawi, Administrative Responsibility, Dar Al-Nahda Al-Arabiya, Cairo, 1973, p. 79.

<sup>5</sup> Dr.. Muhammad Fouad Muhanna, The Responsibility of Administration in the Legislations of Arab Countries, AlJilawi Press, Institute for Arab Research and Studies, 1972, p. 132.

<sup>6</sup> The previous reference, p. 132.



The French judiciary did not take any of the previous criteria alone, but it used them all <sup>(1)</sup>. The French Council of State considered the error personal if it was not related to the facility, or if the error was intentional and targeted by the employee other than the public interest, and if the error reached a special degree of seriousness even if the employee targeted the public interest.

In Egypt, the ordinary judiciary, unlike the administrative judiciary, did not adopt the theory of personal error and corporal error, and the orientation of this judiciary was logical because both the regulations for the arrangement of mixed and national courts explicitly stipulated their competence to consider cases of responsibility of the administration for its harmful actions, and these courts were of course applying the rules of civil law in responsibility <sup>(2)</sup>. While the Egyptian State Council went along with its French counterpart in adopting the cubital error theory <sup>(5)</sup>.

The forms of simple error differ according to the work attributed to the administration represented in one of the health facilities. The error may be negative due to the administration's failure to take the necessary legal and material measures to protect the environment from pollution by medical waste. The error may also be positive due to the illegality of the decisions taken by it, or the poor performance of the facility for its work <sup>(3)</sup>.

**a) Pictures of the negative error resulting in administrative responsibility:**

The negative error, or what is known as the lack of functioning of the public facility, results when the administration takes a negative stance by refraining from performing a certain behavior that falls within the duties dictated by the law <sup>(45)</sup>. Examples of health facilities' refusal to perform a specific behavior that falls within the legal duties related to the management of waste hazardous to the environment is the failure to collect, transport and treat waste in order to preserve the environment. Thus, health institutions did not comply with what was stated in the Health Law.

Examples of health facilities not taking legal measures for waste management, which constitute a negative error, include not collecting toxic medical waste in advance in hard, resistant red plastic bags, or using these bags for multiple uses. Placing the wastes of therapeutic activities outside the collection sites <sup>(6)</sup> is also considered a negative error that leads to responsibility.

It is also considered as a negative error that the health facilities do not take the necessary administrative decisions to protect the environment and implement the rules of environmental law, as well as the failure of these facilities to monitor and direct <sup>(7)</sup> the process of waste collection and treatment by the agents in charge of that matter. This is what makes the health facilities responsible

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<sup>1</sup> In addition to the previous criteria, the jurist "Rivero" argued that the elbow error can be defined as a deficit in the normal workflow of the facility carried out by the administration's agents, but it is not attributed to them personally. Dr.. Mahmoud Khalaf Al-Jubouri, Lectures on Administrative Judiciary, p. 150.

<sup>2</sup> Judgment of the Court of Cassation on April 10, 1933. Dr. Majid Ragheb Al-Helou, previous source \_ p. 493. <sup>5</sup> The ruling of the Administrative Court in Case No. (88) of the judicial year, and the ruling of the Supreme Administrative Court issued on June 26, 1959. Dr. Majid Ragheb Al-Helou, previous source\_p. 495, 496.

<sup>3</sup> Tariq Kahlan Al-Abyad, The Administration's Responsibility to Compensate for Environmental Damage, Al-Baath University Journal for Humanities, Vol. (39), p. (45), pp. 239-240-241.

<sup>4</sup> Kafif Al-Hassan, Administrative Responsibility between Independence and Subordination, previous reference, p.

<sup>5</sup> .

<sup>6</sup> Muhammad Fouad Muhanna, The Responsibility of Administration in the Legislations of Arab Countries, previous reference, p. 136.

<sup>7</sup> Tariq Kahlan Al-Abyad, The Administration's Responsibility for Compensation for Environmental Damage, previous reference, pp. 239-240.





on the basis of The error. Examples of failure to take the necessary decisions to protect the environment.

**b) Pictures of the positive error resulting in administrative responsibility:**

Health facilities are responsible administratively for pollution due to health waste due to a positive error, in the event that they issue certain administrative decisions, so that their implementation leads to harming the environment instead of its safety <sup>(1)</sup>, that is, the decision is tainted by the defect of illegality.

An example of this is when a health facility that possesses or produces hazardous therapeutic waste issues a decision that includes handing over this waste to another person who is not using a facility licensed to treat this type of waste.

The error also takes its positive form, which leads to administrative responsibility, in the case of the bad functioning of the public facility, and this situation occurs when the public facility performs its services in a bad way or when there is a defect in the organization of the facility <sup>(23)</sup>. The health facility is obligated to continue its administrative activities, including the management of waste resulting from the therapeutic activity, in accordance with the principle of continuity of public facility services regularly and steadily.

An example of this is that health institutions remove the waste resulting from their therapeutic activity for treatment, but after a period of storage in collection stores, so the storage of hazardous medical waste for a week leads to pollution and damage to the environment.

**Second: Damage and causation**

The environmental laws of countries have recognized the possibility of administrative responsibility and compensation for damages to the environment or one of its elements, without stipulating that such damages must befall natural or moral persons in addition to the damages to the environment, meaning that the administration has harmed the environment without harming a right or an interest. one person, and this is called ecological damage <sup>(45)</sup>.

However, with regard to the Iraqi environmental legislator, he did not set provisions for administrative liability for environmental damage, and thus reference is made to the general provisions contained in the Civil Code <sup>(6)</sup>; This is either on the basis of responsibility for personal actions or on the basis of responsibility arising from things.

The damage necessitating the administrative responsibility of the health facility for environmental damage caused by medical waste is stipulated in the same conditions known in administrative liability in general, which is that the damage is attributed to the administrative activity or is related to the things that it owns or uses or that it is under its supervision and in its possession <sup>(7)</sup>. For the damage caused by medical waste, these are things that are owned and possessed by the health facilities, which supervise their management.

The harm must also be private, ie, affecting an individual or a group of specified individuals <sup>(2)</sup>, as a result of environmental pollution by medical waste. And that the damage is certain, whether it

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<sup>1</sup> Ibid., pg. 240.

<sup>2</sup> Kafif Al-Hassan, Administrative Responsibility between Independence and Subordination, previous reference, p.

<sup>3</sup> .

<sup>4</sup> Ismail Najm al-Din Zangana, Environmental Administrative Law, Al-Halabi Human Rights Publications, 2012, pp.

<sup>5</sup> -480.

<sup>6</sup> Ismail Najm al-Din Zangana, Environmental Administrative Law, previous reference, p. 481.

<sup>7</sup> Tariq Kahlán Al-Abyad, The Administration's Responsibility to Compensate for Environmental Damage, previous reference, p. 242. <sup>2</sup> Ibid., p. 242



occurred or will inevitably occur in the future, with the exclusion of possible or probable harm <sup>(1)</sup>. In addition, the damage must affect a legitimate right, interest, or situation protected by law <sup>(2)</sup>, so that this legitimate right or interest that is legally protected in this matter is represented in the human right to live in a healthy and clean environment.

In order for the health facilities to be responsible for the faulty administrative responsibility for contamination due to medical waste, it is not sufficient to have the element of error and damage, but there must be a causal link between them<sup>(3)</sup>.

If the damage is due to foreign causes unrelated to the activity of the facility, the latter is exempted from liability partially or completely <sup>(4)</sup>. If the damage is due to the act of a third party alone, such as the failure of the operator of a waste treatment facility to take practical measures that allow valorization, storage and removal of waste, including mixing medical waste with other waste during treatment, which leads to damage to the environment. But if the mixing of medical waste with other waste is a joint act between the health facility and the operator of the waste treatment facility, then the responsibility is shared.

Force majeure is also a reason for exempting the health facility from administrative liability due to the medical waste, if the force majeure is the only reason for causing environmental damage with the inability to pay it, such as if the damage is caused by floods despite the collection of medical waste in the plastic bags designated for it and it has been sorted. He put them in solid containers, but the force of the floods pushed them out of those containers into the urban surroundings, causing pollution. But if the pollution of the urban environment results from the failure of the health facility to place medical waste in solid containers with the occurrence of floods, which are considered force majeure, then the responsibility in this case is joint.

## **The second topic**

### **Management responsibility for the elbow fault**

The elbow fault is the fault in which negligence, negligence, or abandonment that generates damage is attributed to the facility itself, even if it was physically done by one of the employees. However, the only problem that stands in front of this definition is the difficulty of differentiating and distinguishing between the elbow fault and the personal fault, as the personal and elbow fault share They are issued on one side, which is the employee. And they differ in other points, which led the jurisprudence to rely on some criteria such as the criterion of personal whims, the criterion of the extent of the error's separation from the public office, the criterion of the goal, the criterion of gravity, and other criteria. In the following two requirements, we will examine the responsibility of the administration for the elbow error through the following:

### **The first requirement**

#### **Verbs constituting the auxiliary error**

The administration carries out its activities through its employees and workers, as they are its human means to carry out its work, and they also control the material means necessary for the conduct of its activities. Therefore, if one of these workers commits a mistake that causes moral damage to an individual, the administration compensates him. However, this rule cannot be applied absolutely, as the employee's mistake for which the management pays compensation is the mistake that the employee commits when performing his job duties and with the aim of achieving the public interest. It is not known, the negligence or negligence in it is attributed to the facility itself, and then bears

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<sup>1</sup> Kafeef Al-Hassan, Administrative Responsibility between Independence and Subordination, previous reference, p. 191.

<sup>2</sup> Ibid., p. 192.

<sup>3</sup> Tariq Kahlan Al-Abyad, The Administration's Responsibility for Compensation for Environmental Damage, reference previously mentioned, p. 243.

<sup>4</sup> Kafif Al-Hassan, reference previously mentioned, p. 205-206-207.





responsibility for it, and this is what the administrative jurisprudence has termed as the elbow error <sup>(1)</sup>, or the interest <sup>(2)</sup> or the functional <sup>(3)</sup>.

What is meant here is the actions in which the error is embodied and which lead to injury to individuals, whether these errors are attributed to a specific employee or to the facility as a whole. These actions can be attributed to three forms:

1. The facility performed poorly.
2. The facility did not perform the service.
3. The facility is too slow to perform the service.

Attachment errors are errors committed in actions or material actions that may be taken in the form of negligence, omission, delay, or lack of foresight. All of these forms include images of errors attributed to the elbow. However, the issue of estimating these images is subject to some restrictions, such as taking into account the circumstances of the time and place in which the public health facility performs its services. A elbow fault in a public place is not considered a elbow fault in a remote area. The burdens and resources of the facility are also taken into account in facing its obligations. medical liability <sup>(4)</sup>.

However, the current view has changed due to the development of medical methods and the introduction of modern capabilities in this field, which led to a radical change in the idea of distinction and the introduction of the idea of gross error rather than simple error. By the nature of the facility and its social importance, health facilities are considered a fertile field for providing basic services to the community and practicing delicate technical work. Therefore, the judiciary previously required the availability of a grave error to say that there is responsibility. Hence, the personal error is that error that is attributed to an employee, in which the responsibility of the employee is personal and the judgment is implemented on his money, and this personal error may sometimes lead to penal liability <sup>(5)</sup>.

It should be noted that the Iraqi judiciary, according to the conditions stipulated by the Court of Cassation in its ruling, that the gross error is a condition for holding the doctor accountable, as it decided: "...And with a sympathetic view of the error contained in Article 219 of the Baghdadi Penal Code and other punitive articles related to the error He believes that the search for error came with a general text that does not differentiate between the doctor and others, but a group of sailors and jurists divide the error into two types for art masters, whether they were doctors or others, as their error may be material or professional, as the material error is not subject to technical discussions and disputes The jurists divide the technical error into two, one of them is the minor error and the second is the serious error. Some of them decide the criminal responsibility for minor and major technical errors, while others limit the criminal responsibility to the serious error only because

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<sup>1</sup> Abdullah Hanafi, Compensation Judgment "Non-Contractual Responsibility of the State", Dar Al-Nahda AlArabiya, Cairo, 2000, pp. 242-273. Likewise, Hussein Hamouda Al-Mahdawi, Explanation of the Provisions of Public Employment, the General Establishment for Distribution, Publishing and Advertising, Libya, without a year of publication, pg. 253. As well as Omar Muhammad Murshid Al-Shweiki, Principles of Control over the Work of Management and its Applications in Jordan, Amman, 1981, p. 84.

<sup>2</sup> Some jurists of administrative law go to this designation: Consider: d. Suad Al-Sharqawi, New Horizons in Front of Administrative and Civil Responsibility, Journal of Administrative Sciences, p. (11), 1969, p. 218. And also: d.

Mahmoud Helmy, personal error and genitive error, Journal of Administrative Sciences, third issue, eighth year, 1966, p. 203

<sup>3</sup> Go to this label. Dr.. Ibrahim Taha Al-Fayyad, The Administration's Responsibility for the Work of its Employees in Iraq, a Comparative Study, Abda and Anwar Ahmed Press, Dar Al-Nahda Al-Arabiya, Cairo, 1973, pg. 303.

<sup>4</sup> Ibid., pp. 166-167.

<sup>5</sup> Suleiman Al-Tamawy, previous reference, p. 121 et seq.



medicine is a rapidly developing science in which the old and the new are constantly fighting.... What some of them see It is correct that others see as wrong, just as the wisdom in committing to a serious mistake is that the fear of responsibility should not prevent the doctor from practicing his profession with absolute freedom and from relying on his knowledge and art and from embarking on expanding his experience, and by this it is easy for the doctor to keep pace with modern scientific theories and benefit from them ...

And based on the foregoing, it is not correct for the judiciary to interfere in scientific fields or in the determination of medical theories, but this does not prevent the ruler from exploiting his wide authority in assessing medical responsibility in accordance with the recognized rules of jurisprudence and jurisprudence, because the judiciary rules by what he believes in and not by what others believe in<sup>1</sup>). From this decision it becomes clear to us that the Court of Cassation has distinguished between the ordinary error and the technical error, as it decided to hold the doctor accountable for the ordinary error rather than the technical error, based on what it requires to hold the doctor accountable for committing a serious technical error, or in other words, that the doctor - as we see it - is only asked about The serious mistake, and from here she saw that the doctor's mistake was not a serious mistake, so she decided to ratify the appealed verdict of innocence <sup>(2)</sup>.

### **The second requirement**

#### **Management responsibility for the elbow error**

The development of the administrative judiciary contributed to the emergence of the rule of combining responsibilities in the event of multiple or joint and personal faults in causing damage, although this rule was initially rejected on the basis of the complete and absolute separation between what is a personal fault and what is a facility fault.

And that it is impossible, and out of a sense of contradiction, for the act to be attached and personal at the same time, and this is what was embodied by the French administrative judiciary in the Boursin case in 1915, through which it rejected the idea of combining responsibilities, but after severe criticism, it recognized the idea of combining the two mistakes in causing the same damage that is responsible. Where the incidents constituting the elbow fault share with the incidents constituting the personal error, which results in damage from both together, which necessitates the responsibility of the administration for the incidents constituting the personal error contributing to the cause of the damage.

However, some jurisprudence has mentioned a case in which the error was considered personal and consequential, i.e. combining the responsibility of the administration and the employee, and this was approved by the French Council of State issued on February 3, 1911 <sup>(2)</sup>In the Anguet case, the facts of which are summarized in the fact that Mr. Anguet went to a post office to receive the value of a transfer, but the aforementioned office closed the doors designated for the public minutes before the specified time, so one of the employees advised him to exit the door designated for workers, so when he left he suspected him and thought that he was a thief, so he pushed him to outside by two workers who were unloading packages, causing him to break his leg On the occasion of this case, the issue of combining the personal and utility responsibilities was raised, so the decision of the State Council on the employees' liability arising from personal errors did not absolve the administration of responsibility for the service or utility error that generated the accident, which is the closure of the office before the specified time due to the corruption of the wrong clock suspended

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<sup>1</sup> Iraqi criminal cassation File No. 535 discriminatory / 1968 on 30/11/1968. Referred to: Dr. Dhadi Khalil Mahmoud, Al-Adala Magazine, issue 3, issue 3, 1977, p. 472. The facts of this case are summed up in the fact that one of the female doctors had decided to inject one of her patients with a substance called botosin, which occurs in the uterus of the pregnant woman, expanding and narrowing to help her give birth, and which is not taken except under the supervision of a doctor, but what happened is that the doctor left the patient under the care of one of the nurses who did not improve the monitoring of the patient and therefore She did not notice the drop in blood pressure that led to her death. <sup>2</sup> Ibid., pg. 472.

<sup>2</sup> Ammar Awabidi, Theory of Administrative Responsibility, previous reference, p. 134 et seq..



in the aforementioned post office and the presence of a piece of iron badly installed at the entrance to the door, and therefore the ruling of Anguet was the first ruling that deviates from the principle of not combining the two responsibilities prevailing in jurisprudence and legal jurisprudence <sup>(1)</sup>.

Hence, the rule of combining the two responsibilities is born, and the development of the administrative judiciary was not limited to these points only or in this manner, but rather proceeded more than that, and I adopted the idea of combining responsibilities by establishing the administration's responsibility along with the personal responsibility of the employee in the event of personal error, as he also approved in 1949 the idea of The management responsibility arrangement in addition to the employee's personal responsibility in the event of a personal error that is committed outside the service so that he was not clothed in certain circumstances or had a physical or moral relationship with the facility <sup>(2)</sup>.

In this way, the administrative judiciary bypassed the idea of distinguishing between the elbow fault and the personal fault, and adopted the idea of combining responsibilities, but the first thing that follows from this principle is the possibility of filing two lawsuits, as the injured person has the possibility to choose and file a lawsuit before the ordinary court or before the administrative court, but this does not mean the possibility of obtaining compensation for damage. Twice because justice refuses that and because the basic principle of liability is that compensation should be in such a way as to cover the damage and not add to it, or in a more precise sense that double responsibility and double lawsuit do not mean at all the possibility of double compensation.

But who bears the burden of compensation is the administration or the employee? <sup>(2)</sup>. To answer this question, several methods have been proposed:

- The guarantee method, according to which the administration does not pay compensation unless the employee is proven insolvent.
- The method of solutions, whereby the administration pays compensation to the injured party, provided that the execution judgment is made dependent on a pledge given by the injured party to the administration that it must pay compensation in its place.

Despite the simplicity of this method, it has been subjected to some criticism, which led to abandoning it and finding another way, which is the way of recourse. It was devised by the State Council to distribute the burden of compensation in the event of combining the two responsibilities, as the administration was authorized to refer to the employees for their responsibility for personal errors separate from the facility. If paid The administration, fully compensating the injured party, has the right to refer back to the employee by issuing a payment order, i.e. through direct execution. In the event of a dispute between the administration and the employee over the estimation of the share of each of them, the jurisdiction in this matter belongs to the administrative judiciary exclusively, and assuming the multiplicity of employees responsible for the personal error, they are not jointly liable for the error, but each of them is responsible for the proportion of what he committed separately from the error<sup>(3)</sup>.

In Iraq, the rules of civil law regulated the provisions of administrative responsibility on the basis of error under the title "responsibility for the work of others." Article (1/219) of Civil Law No. (40) of 1951 stipulated that: "The government, municipalities and other institutions that perform a public service Every person who uses an industrial or commercial establishment is responsible for the damage caused by their employees, if the damage results from an infringement committed by them while performing their services.

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<sup>1</sup> Saidi al-Sheikh, personal error and affiliative error between the positions of jurisprudence and judiciary, Encyclopedia of Legal Thought, File: Medical Responsibility, Algerian Public Law Journal, 2002, pp. 102-103.

<sup>2</sup> Ammar Awabidi, Theory of Administrative Responsibility, pp. 168-169. <sup>2</sup> Suleiman Al-Tamawy, previous reference, p. 186 et seq.

<sup>3</sup> Ibid., p. 116 et seq.



The implication of this is that the provisions of the Iraqi civil law have defined the personal error and subjected the responsibility for it to the rules of the superior's responsibility for the actions of his subordinate, which is based on what he possesses towards his subordinates of the right of control, supervision, guidance, and the right to issue orders to them <sup>(1)</sup>. From the foregoing, we can say that there are two types of error that the injured party can raise together or both separately, and they are the personal error of the employee, which is represented in not taking precaution, caution, and attention, or not taking care of the usual man, and the auxiliary or interest error on the part of the administration, which is represented in the negligence and supervision of subordinates and negligence in following them.

And the matter is confirmed, with regard to the administrative judiciary, the Second Amendment Law No. (106) of 1989 to the State Shura Council Law No. (65) of 1979, as well as the Fifth Amendment Law No. (17) of 2013 of the Administrative Judicial Court that was established by virtue of which it was established, did not allow consideration of requests for compensation for damages Resulting from the work and actions of the administration on an independent basis, as it stipulated that the court decide on the appeal submitted to it, and it may decide to reject the appeal, cancel or amend the contested matter or decision with a judgment for compensation if it is necessary at the request of the plaintiff, as the law stipulates the jurisdiction of a court The administrative judiciary decides on requests for compensation for illegal administrative decisions without distinguishing between those addressed to the administration and those addressed to employees.

### **Conclusion**

The administrative responsibility on the basis of the genital error, especially the health one, on the basis of the error was taken over by a special and independent legal system. It led to positive and tangible results by compensating victims with the solutions it created in order to address liability issues.

On the other hand, the legislator had only an exceptional and complementary role through his positive and modest interventions at times. Despite this, the compensation judiciary contributed to deepening the effectiveness of the legal system of administrative responsibility on the basis of error, especially the annexational error. The judicial and legislative rules applied by the judge regarding reparation for the damage resulting from The administration's mistake somehow made it easier for the victim to obtain her rights.

From the foregoing, we concluded several conclusions and recommendations, as follows:

### **First: Results:**

- 1- It became clear to us that liability is the ruling on a person who breaches an obligation to which he was bound before a third party to compensate the damage resulting from the breach of this obligation, and there is no difference here between the type of obligation.
- 2- The culprit is obligated to compensate, whatever the type of obligation, is contractual, as the contractor is required to implement it at the specified time, otherwise he is considered responsible and sentenced to compensation, and between being negligent, the perpetrator is obligated to compensate because of his breach of a legal obligation imposed on him not to harm others.
- 3- The existence of the damage and the causal relationship between the management's error and the damage to the environment is required for the management's responsibility for the health facilities to be established.
- 4- The forms of simple error differ according to the work attributed to the administration represented in one of the health facilities. The error may be negative due to the administration's

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<sup>1</sup> Judgment of the Court of Cassation issued on 2/19/1968, where it ruled that "the Directorate of the Passenger Transportation Authority is responsible for the damage caused by the drivers of the Authority's cars with its money from an actual authority that gives it the right to monitor and direct and the right to issue orders to them." Journal of Legal Sciences, 1969 (first issue ) p. 192



failure to take the necessary legal and material measures to protect the environment from pollution by medical waste; The error may also be positive due to the illegality of the decisions taken by it, or the facility's poor performance of its work.

- 5- The administration shall be questioned about the mistakes of its employees in countries that apply the provisions of the civil law, and the administration may then return to the employee what it paid for him in all cases.
- 6- As for where the provisions of the administrative law are applied, the administration is responsible for the elbow fault alone.
- 7- Do not return to the employee what you pay in terms of compensation to the injured person as a result of the employee's elbow error, but the employee bears the consequences of his personal error.
- 8- The damage must be special, i.e. affecting an individual or a group of specific individuals, and the damage must be certain, whether it occurred or will inevitably occur in the future, with the exclusion of possible or probable harm.
- 9- The Iraqi legislator was keen later on to combine personal and attachment responsibility without distinguishing between them.

### **Second: Recommendations:**

- 1- All the work of the administrative authorities should be informed of the adequate laws that define the rights and obligations of the administration towards its employees on the one hand, and the direction of the work carried out under its command on the other hand, especially in health facilities that require special attention.
- 2- Administrative laws should be more specific, especially with regard to responsibility, similar to what was specified in the civil law, so that the elements of responsibility become more clear with regard to the administrative field.
- 3- The Iraqi legislator should not differentiate between a simple mistake and a serious mistake in the realization of responsibility, especially in health facility work, due to its importance and the seriousness of negligence in it.
- 4- The Iraqi judiciary should be more strict in its rulings, especially those rulings pertaining to administrative responsibility for health facility work.

### **List of references**

#### **First: the Qur'an:**


Surat Al-Safat, Verse: (24).

#### **Second: Linguistic references:**

- 1- Ibrahim Mustafa, and others, Al-Mu'jam Al-Waseet, Dar Al-Da'wa for printing and publishing, Part 1, Cairo, 1972.
- 2- Sahih Al-Bukhari, Book of Friday, Chapter on Friday in Villages and Cities, 2/5: Hadith No. 893.
- 3- The Dictionary of Contemporary Arabic, (vol. 2 / p. 1020), and the industrial source: It is what ended with a strict B and T, such as ability and responsibility.

#### **Third: books**

- 1- Ismail Najm Al-Din Zangana, Environmental Administrative Law, Al-Halabi Human Rights Publications, 2012.
- 2- Hussein Hamouda Al-Mahdawi, Explanation of the provisions of the public office, the General Establishment for Distribution, Publishing and Advertising, Libya.
- 3- Hussein Muhammad Othman, Administrative Judiciary, University Press, Alexandria, Egypt, 2000.

- 
- 4- Suleiman Al-Tamawy, Administrative Judiciary, "The Second Book - Compensation Judgment", Dar Al-Fikr Al-Arabi, Cairo, 1968.
  - 5- Suleiman Marks, Al-Wafi fi Explanation of Civil Law, Harmful Action and Civil Responsibility, Al-Halabi Human Rights Publications, Volume 1, 2019.
  - 6- Abdul Qadir Al-Arari, Sources of Obligations and Civil Responsibility, Dar Al-Arman, Morocco, 2005.
  - 7- Abdullah Tolba, Administrative Law, Judicial Control over the Work of Administration, Aleppo University Publications, 1997, p. 313.
  - 8- Omar Muhammad Murshid Al-Shweiki, Principles of Control over the Business of Management and its Applications in Jordan, Amman, 1981.
  - 9- Fatima Al-Zahraa Manar, The Civil Responsibility of the Anesthesiologist, "A Comparative Study", Dar Al-Thaqafa for Publishing and Distribution, Cairo, 2012.
  - 10- Majed Ragheb Al-Helou, Administrative Judiciary, University Press, Alexandria, 1985.
  - 11- Muhammad Abdul Hakim Karsheed, Civil Medical Responsibility, Central Library, Gaza, 2011.
  - 12- Ibrahim Al-Munji, The Administrative Compensation Claim, The Legal and Practical Organization of the Compensation Claim before the State Council Court, Manshaat AlMaarif, 2003.
  - 13- Ibrahim Taha Al-Fayyad, The Administration's Responsibility for the Work of its Employees in Iraq, a Comparative Study, Abda and Anwar Ahmed Press, Dar Al-Nahda Al-Arabiya, Cairo, 1973.
  - 14- Hassan Ali Al-Dhanoun, Al-Mabsout in Civil Responsibility, Part 1, Dar Wael for Printing and Publishing, Jordan, 2006.
  - 15- Suad Al-Sharqawi, Administrative Responsibility, Dar Al-Nahda Al-Arabiya, Cairo, 1973.
  - 16- Tariq Kahlan Al-Abyad, The Administration's Responsibility to Compensate for Environmental Damage, Al-Baath University Journal for Humanities, Vol. (39), p. (45).
  - 17- Abdel-Hamid Al-Shawarbi, The Responsibility of Doctors, Pharmacists, and Civil, Criminal, and Disciplinary Hospitals, Manshaat Al-Maarif, Alexandria, 2000.
  - 18- Abdullah Hanafi, Judgment of Compensation, "The State's Non-Contractual Responsibility", Dar Al-Nahda Al-Arabiya, Cairo, 2000.
  - 19- Ammar Awabedi, Theory of Administrative Responsibility, University Press Office, 1998.
  - 20- Kafif Al-Hassan, Administrative Responsibility on the Basis of Error, Dar Houma, Algeria, 2014.
  - 21- Muhammad Fouad Muhanna, The Responsibility of Administration in the Legislations of Arab Countries, Al-Jilawi Press, Institute for Arab Research and Studies, 1972.
  - 22- Muhammad Kamal Al-Din Imam, Criminal Responsibility, Its Basis and Development, University Foundation for Studies and Publishing, Alexandria, Egypt 1991-

#### **Fourth: Research and Articles:**

- 1- Suad Al-Sharqawi, New Horizons in Front of Administrative and Civil Responsibility, Journal of Administrative Sciences, p. (11), 1969.
- 2- Saidi Al-Sheikh, personal error and affiliative error between the positions of jurisprudence and jurisprudence, Encyclopedia of Legal Thought, File: Medical Responsibility, Algerian Public Law Journal, 2002.
- 3- Dhadi Khalil Mahmoud, Al-Adala Magazine, issue 3, issue 3, 1977.
- 4- Abdel-Wadoud Yahya, The Liability of the Engineer and Contractors and Insurance Thereof, Modern Egypt Magazine, Issue (276), 2007.
- 5- Kafif Al-Hassan, Administrative Responsibility between Independence and Subordination, Maalem Journal for Legal and Political Studies, Vol. (4), p. (2), Algeria, 2020.
- 6- Mahmoud Helmy, personal error and genitive error, Journal of Administrative Sciences, third issue, eighth year, 1966.

#### **Fifth: Laws:**

- 1- Iraqi Civil Law No. (40) of 1951
- 2- Second Amendment Law No. (106) of 1989 to State Shura Council Law No. (65) of 1979.
- 3- Fifth Amendment Law No. (17) of 2013 to State Shura Council Law No. (65) of 1979

#### **Sixth: Judicial rulings:**





- 1- The judgment of the Court of Cassation issued on 2/19/1968, where it ruled that “the Directorate of the Passenger Transportation Authority is responsible for the damage caused by the drivers of the Authority’s cars with its money from an actual authority that gives it the right to monitor and direct and the right to issue orders to them.” Journal of Legal Sciences, 1969 ( First issue) pg. 192
- 2- The ruling of the Administrative Court in Case No. (88) of the judicial year, and the ruling of the Supreme Administrative Court issued on June 26, 1959.
- 3- The judgment of the Court of Cassation on April 10, 1933.
- 4- - Iraqi criminal cassation file No. 535 discriminatory / 1968 on 30/11/1968.