

THE LIABILITY OF PUBLIC EMPLOYEE BASED ON PERSONAL MISTAKE: A COMPARATIVE STUDY BETWEEN FRANCE, EGYPT AND JORDAN

Mohammed Abdul Mohsen Mohammed Bin Treef, Amman Arab University

ABSTRACT

This study aims to clarify the legal implications of the personal Fault of the public employee in the Jordanian law, after identifying the concept of the public employee and the personal Fault committed by him, and a distinction has been made in this study between the concept of personal Fault and the accompanying Fault by examining the criteria for differentiation between them Which was derived from the administrative jurisprudence of the French State Council, and knowing the position of the comparative administrative judiciary from it, and in the end the researchers examined the legal consequences of the personal Fault of the public servant by identifying the personal responsibility of the public employee and the extent of the administration's responsibility for the personal Fault of the public employee. The personal responsibility rests with the public employee whenever he commits personal mistakes that are related to the public job. Therefore, he bears the compensation from his own money, but the administration sometimes may commit an attachment mistake that shares with the personal mistake.

Keywords: Public Employee, Personal Mistake, Legal Liability.

INTRODUCTION

A public employee, in accordance with the rules of civil law, is responsible for all his mistakes, whether the mistake was minor or serious. This is based on the provisions of Article 256 of the Jordanian Civil Code, which stipulates that “*any harm to others is obligatory for the doer, even if he is not distinguished, to guarantee the harm*”. However, the administrative judiciary took the theory of personal mistake and attachment mistake, in order to protect the public employee, especially since adopting this theory exempts the employee from Liability for elbow mistake s for the public interest, in addition to the management and its participation, bearing a part of the compensation when it participates in an accompanying mistake with the employee's personal mistake, which is called the common mistake.

Assigning management compensation for damage as a result of the elbow mistake creates an atmosphere of reassurance and stability for the employee so that he performs his duties according to legal principles. The employee is responsible for every mistake he commits, even if he is an elbow, which will lead him to be lax and slow in carrying out his duties for fear of making a mistake and thus bear compensation.

However, the difficulty faced by jurisprudence and comparative jurisprudence is to arrive at accurate criteria for differentiating between personal mistake and attachment mistake. There were attempts to differentiate between the two mistakes, although these attempts were criticized.

This research was divided into three demands and the structure was as follows: The first requirement: The concepts of public employee and personal mistake; the second requirement: Distinguish between personal mistake and elbow mistake; the third requirement: The legal consequences of personal mistake.

The Research Importance

The importance of the research topic is highlighted by standing on the concept of the public employee and the personal mistake committed by him and the images of that mistake, and the need to distinguish between personal mistake and the accompanying mistake within the framework of the public job, and the legal consequences resulting from that mistake.

The Research Problem

The research problem emerges by answering the following questions: What is the concept of the public employee? What is the personal mistake and what is the picture? What are the criteria that have emerged to distinguish between personal mistake and elbow mistake? Which of these criteria was taken by the judiciary, whether comparative or Jordanian? And when is the public employee responsible for the personal mistake? Is it possible for the administration to compensate and bear the responsibility instead of the public employee in the event of a personal mistake? Here is the problem of the study.

RESEARCH METHODOLOGY

In preparing this research, the researcher relied on the descriptive analytical method, by describing and analyzing the texts contained in the civil service system in force on this subject. As well as the comparative approach by comparing the trend of the administrative judiciary in the countries under study by reviewing the rulings issued by the judiciary and the opinions of jurisprudence in this regard.

The Concepts of Public Employee and Personal Mistake

Public employee is considered the basis of administrative responsibility, as he may make mistakes by virtue of his job and his association with management, and it is considered an attachment mistake. On the other hand, the employee may commit a personal mistake away from his work in the public facility. Therefore, he bears the responsibility without the slightest relationship to the administration with this mistake, so what is the definition of a public employee? Was it defined by the legislator? Or leave the task of defining jurisprudence and the judiciary, and what is meant by personal mistake? And what is his picture?

In order to answer these questions, the researcher considers dividing this requirement into two branches as follows:

The First Section: The concept of public employee: The Jordanian legislator has endeavored to put different definitions of the public employee, as it has referred to the public position in general in the constitution. As well as some penal legislation referred to the definition of public employee for criminal purposes. Especially that the civil service system has defined the public employee as the general law and the reference for the affairs of public officials.

Whereas Article 76 of the Jordanian Constitution stipulates that *“With due regard to the provisions of Article (52) of this Constitution, membership of the Senate or the House of Representatives may not be combined with public positions. Likewise, it is not permissible to combine membership of the Senate and the House of Representatives”*.

It is noted in this text that it did not put a comprehensive definition of the public employee, but rather indicated that the membership of the Senate and the House of Representatives should not be combined with public positions, and in that the Jordanian Supreme Court of Justice ruled that *“Article 76 of the Constitution was not set to define a public employee, but it meant describing public employees those who are not allowed to combine membership of the National Assembly with a job, therefore, this text is not considered comprehensive for all public officials”*.

The legislator defined a public employee in the Jordanian civil service system (4) in Article 2 of it that the employee is “a person appointed by a decision of the competent authority, in a job listed in the job formations table issued under the law of the general budget or the budget of one of the departments and the employee appointed under a contract and does not include A person who earns a daily wage.

This text stipulated that the decision issued for the appointment had been issued by the competent authority. In addition to the job being listed in the formation schedule issued under the general budget law or the budget of independent units.

This leads to two results (Massadeh, 1999): This job should be among the jobs affiliated to a public utility run by the state or one of its affiliated institutions. Therefore, workers in public utilities that are managed in a manner of concession or indirect exploitation, or in public joint stock companies, are not considered public employees.

The legislator did not require that the job be permanent in order for a person to be considered a public employee, as it gave the status of Public employee to all workers in public facilities, whether the job is permanent or non-permanent and occupied by the employee, with the exception of people who receive daily wages.

The jurisprudence also defines the public employee, as Dr. Ahmed Odeh Al-Ghuwairi defined him as the person who works in a permanent or temporary job in the service of a public utility managed by a public legal person who is managed in the direct way (Ahmed, 1989).

As for Dr. Nawaf Kanaan, he stipulated the fulfillment of several conditions for a person to be considered a public employee, namely: appointment by the competent authority, holding a permanent job, and that the service is in a public facility run by the state or the administrative authority directly administering (Nawaf, 1996).

And Dr. Fouad Al-Attar defined him as a public employee who is entrusted with a permanent job in the service of a public utility managed by public law persons (Khan, 2010).

The administrative judiciary was not satisfied with defining the public employee in the legislation and jurisprudence, but the Supreme Court of Justice referred to the definition of the public employee in some of its provisions.

And she indicated in another ruling that *"a public employee, according to the prevailing definition in administrative jurisprudence, is the one who is entrusted with a permanent job in the service of a public facility managed by the state or a public law person. This definition applies to employees of public institutions"* and I also defined it *"Public employee is every person who is entrusted with a permanent job in the service of a public utility run by the State"*.

The second section: The concept of personal mistake: A personal mistake is the mistake committed by a public employee when he breaches the obligations and duties imposed on him by law, and the mistake is attributed to the employee in his personal capacity, that is, it has nothing to do with the job he occupies. Here, the employee is responsible for compensating for this mistake, and the jurisdiction is for the civil judiciary (Awabdi, 2004).

When referring to the books of jurisprudence and the judicial rulings of the comparative judiciary, it was found that it identified some forms of personal mistake that can be summarized as follows:

The Case of a Public Employee Committing a Criminal Offense

A criminal offense means the act and behavior of a person, whether this behavior is negative or positive, but he fears the provisions of the law.

A public employee is asked on the basis of a personal mistake in the event that he commits a criminal offense, whether it is a crime of murder, injury, or other crimes, and he is obliged to compensate for the harm caused to others from his own money. The French Council of State has set controls to consider the criminal offense as a personal mistake about which the employee is personally questioned. These controls are represented in that the criminal offense is committed outside working hours and service, meaning that the act is related to the job or the crime was committed intentionally, or it has reached a special degree of gravity (Anwar, 1983).

It was the French administrative judiciary who always began to set standards and controls to determine the provisions related to administrative responsibility in order that their provisions did not overlap with other legal issues. This may be justified from a practical point of view, since administrative responsibility appeared in its infancy in France and some European countries, so it needed to control the provisions of this responsibility by setting standards and controls that regulate it.

A public employee may commit a criminal offense while performing his job and his commission of this crime would have been by virtue of his job. And if it were not for the job, he would not have committed it. Therefore, it is fair that he should not be asked about this crime, and that this mistake is considered an accompanying and not personal mistake, for which the management and not the employee are responsible.

The Egyptian administrative judiciary linked the commission of a criminal offense by a public employee to the severity of the mistake. If this behavior reaches the point of a criminal offense that falls under the penal code, the mistake is personal and bears the unity of its consequences.

As for the Jordanian judiciary, it considered the criminal offense committed, and the link between it and the job was cut off, such as personal mistake, and he bears the responsibility for it personally, without the management having any relation to this act.

Article 181 of the Jordanian Penal Code stipulates that *“Every employee who, as an employee, enters a person’s home or its annexes in cases other than those permitted by law shall be punished by imprisonment from three months to three years and a fine of twenty dinars to one hundred dinars”*.

It is understood from this text that an employee who commits an illegal and illegal act, whether this act is by entering a person’s home or even the annexes of this home, is considered to have committed a crime punishable by law. As a result, he is sentenced to a criminal penalty, and here is what indicates that the mistake he committed is a personal one, because this act is separate from his job. In this regard, the Court of Cassation ruled in one of its rulings that *“The acts committed by the accused by entering the complainant’s house at night and seizing the amount of 350 dinars constitute a misdemeanor of theft, in contrast to Article 406/1/b of penalties, contrary to what the court said that the disgusting act constitutes a misdemeanor of theft. Contrary to Article 407 of Penalties, however, since this appeal was submitted by the accused, there is no harm in his appeal 2. If the accused is a public security officer, then entering the complainant’s residence and revealing his identity that he is a public security officer and committing the crime of theft constitutes an infringement on the freedom of people and their homes, contrary to Article 181/2 Penalties. 3. If the ruling issued for imprisonment for one year and the fees after the merger, the ruling to expel him from service shall comply with the provision of Article 72/6 of the Public Security Law”*.

The Case of the Employee Committing a Disciplinary Violation

Disciplinary mistake means the mistake committed by the employee in violation of the duties and tasks of the profession and job (Qadir, 1983), and these violations are committed by a public employee during or on the occasion of the job, including what he commits outside the job.

The question arises, is every disciplinary mistake committed by a public employee considered a personal mistake upon which the employee’s personal responsibility rests, or can it be considered an accompanying mistake?

Dr. Awabdi Ammar believes that a disciplinary mistake is not a personal mistake, as it is often a simple mistake, as the rule is that every disciplinary mistake is not a personal mistake and vice versa as every personal mistake is considered a disciplinary mistake if it is committed during or on the occasion of the job service, because it is either intentional or unintentional, but it is of a great degree of gravity (Awabdi, 2004).

Dr. Georgi Shafiq Sari believes that the distinction between a personal mistake and an elbow mistake in the event the employee commits a disciplinary violation is based on the extent to which the violation relates to the work of the job or the extent of the seriousness of the violation.

The researcher believes that the relationship between the personal mistake and the disciplinary offense is based on the extent to which the disciplinary mistake relates to the job. Then the administration imposes the appropriate penalty on him according to the gravity of the disciplinary offense. As for saying that the disciplinary offense is serious, and when it is serious, we are facing a personal mistake, an inaccurate criterion from my personal point of view, because this disciplinary mistake, whether it was simple or serious, the employee made by virtue

of his connection to the job, and without this job, he would not have been able to commit this disciplinary mistake.

The Physical Assault

Physical abuse means that the administration committed a serious mistake while carrying out a material act that includes an assault on an individual freedom or on private property, and since the material assault approaches the concept of personal mistake in terms of the gravity of the mistake, this concept led to the association of material abuse and personal mistake, meaning that material abuse constitutes a limit. The same in all cases is a personal mistake (Karim, 1997).

The physical assault may be due either to the administrative decision on which the physical process was based, when an illegal administrative decision is issued and implementation is carried out based on the same decision. It may also return to the physical process itself despite the integrity of the administrative decision on which the administration relied in the implementation, when the administration resorts to direct execution in cases other than those authorized by law (Khattar, 1994).

Where physical abuse was a personal mistake until the ruling of the French Court of Dispute in 1935 in the case of *lactation francaise*, where it decided that physical abuse and personal mistake are two separate and independent ideas from each other.

The Jordanian judiciary considered the physical assault to be an accompanying mistake, as the administration bears compensation for it (Safaa, 2013).

Executing the Orders of the Superiors

Problems have arisen about the nature and quality of the mistake that is made based on the order of the superior to the subordinate, so is it a personal mistake? To answer this question, we must distinguish between two cases:

The first case: the case of the subordinate employee exceeding the limits of the order issued to him by his superior, and he implements the order in a different manner and in the manner intended for it. In this case, the employee bears full personal responsibility and the chief's order does not exist, such as one of the subordinates transgressing the law and the limits of the presidential order to expel a farmer from a specific area, so he destroyed his agricultural crops and demolished his house (Khattar, 1994).

The second case: The employee is restricted to implementing the order as it was issued to him. If the employee implements the order issued to him by his administrative head as it is, is this considered a personal or an accompanying mistake? The jurisprudence differed in answering this question, and the judiciary differed from the opinion of jurisprudence as well, as follows:

So the jurist Barthelmy went to say that the mistake committed by the employee in implementation of the order of his administrative head is always considered an accompanying mistake. As for the jurist Doji, he held that the mistake committed by the subordinate in implementation of the order of his superior is a personal mistake that entails the personal responsibility of the employee, because the public employee is obligated to respect the laws, and if an unlawful order is executed, it is his personal fault, while the jurist Lipid believes that the duty of the employee is limited to verifying the legality and formality of the orders, so he must

ensure that the order has been issued to him by the authority to issue it. Does it fall within the competence of the commanding officer to implement such an order, and does the order fulfill the formal conditions in which it must be issued? Otherwise, the employee does not have the right to discuss the legality of the matter. Therefore, the mistake he commits and is illegal from an objective point of view is an accompanying mistake, but this approach is flawed to implement an order that is contrary to the law from an objective point of view, and this differs with what the judiciary has reached and the decision of the legislator (Awabdi, 2004).

While the French administrative judiciary goes to differentiating between two cases: if the violation is of a high degree of gravity and the illegality is apparent in the matter, then the mistake of the subordinate in implementing this order is considered a personal mistake. But if the violation is minor and the employee has no choice but to implement it, then we will be facing an accompanying fault, and the administration will bear the compensation (Awabdi, 2004).

Civil Service No. 9 of 2020 did not include any provisions and explicit texts about presidential orders, and to what extent they may be subject to personal mistake if the employee exceeds the limits of the order. When referring to the provisions of the Jordanian Civil Code, it becomes clear that it stipulates in Article 263 of it: "1- The act is added to the subject, not the command, unless it is compelled. The compulsion that changes the actual behavior is coercion alone. 2- However, the public employee is not responsible for His work that harms others if he performs it in implementation of an order issued to him by his superior, when obeying this order is his duty, or he believes that it is his duty on him, and establishes evidence of his belief in the legitimacy of the act that took place from him, and his belief was based on reasonable reasons and that he took into account in his work the aspect of caution and caution.

According to this text, the personal mistake turns into an accompanying mistake made by the administration's responsibility whenever the conditions set forth in the aforementioned article are met. The harmful act must be the result of the implementation of a presidential order issued by the supreme administrative chief. And that the employee is obligated by law to implement this order or to believe so at the very least. And if the matter is legitimate, or the employee executing it believes its legitimacy and establishes evidence for this belief, provided that his belief is based on reasonable reasons, in addition to the employee's observance in his work of caution and caution (Khattar, 1994).

When reviewing images of personal mistake, which was presented by jurisprudence, the researcher believes that it is possible to imagine personal responsibility on a public employee by committing a criminal offense or a disciplinary mistake, provided that they are related to the job. Likewise, it is possible to imagine that the personal mistake will also follow the orders of the boss, when the public employee executes an illegal and illegal presidential order, and the employee did not alert the boss that this matter is illegal, but the picture mentioned by jurisprudence, which cannot be imagined as a personal mistake, is the material assault, as the material assault may be in the form of an illegal administrative decision that led to the implementation of an illegal material act that led to harm to others, or it may be a legitimate administrative decision, but the method of material implementation of the administrative decision was illegal and harmed others. Therefore, from my point of view, only the elbow mistake can be found in this picture.

Distinguish between Personal Mistake and Elbow Mistake

Administrative jurisprudence and jurisprudence distinguish between two types of mistake, namely, personal mistake and correlative mistake, one of which is realized liability of management, while this liability is not based on the second type. In other words, what is a personal mistake and what is not?

In this regard, the jurists differed in the criteria for differentiating between personal mistake and attachment mistake, which they derived from the judiciary of the French Council of State. In its application of administrative responsibility, the comparative administrative judiciary has taken some of these criteria, so this requirement has been divided into two branches as follows:

The Position of Jurisprudence

There are many criteria that were taken by jurisprudence to distinguish between personal mistake and elbow mistake, and they are as follows: The criterion of the jurist Liverier, which is based on the idea of personal whims.

The effect of this criterion is that it is based on the personal whims of the employee to whom the mistake is attributed. If the mistake is imprinted with a personal character that reveals a person's weakness, desires, and lack of insight, the mistake is considered personal. But if it foretells of an employee being exposed to mistake and right, then the mistake here is self-serving. In other words, this criterion is a personal standard based mainly on the bad intent of the employee, and he performs the duties of his job. Whenever he intends to harm or achieve personal goals, the mistake is personal.

This criterion was criticized, as they considered this criterion to be lame and needs a criterion to define and control it, which entails that it is a relative criterion subject to the discretion of the judiciary. In addition, it contradicts the jurisprudence of the French State Council, which considers cases of grave mistake personal mistake s about which the employee is asked from his own money (Khattar, 1994).

The criterion of the jurist Horio, which is based on the idea of mistake separate from function: A mistake is considered personal according to this criterion if it is possible to separate it from the job, whether materially or morally, where the mistake is materially separate from the job if the work does not fall within its duties. An example of this is when a mayor announces in the streets the bankruptcy of a person, knowing that this work is not one of the duties of the job.

The work is morally separate from the job if it falls within the duties of the job materially, but for specific purposes. The employee performs this work with the intention of achieving a purpose other than the purposes specified for him. For example, an order issued by a mayor to ring bells to celebrate a civil funeral, the bells do not ring for him, because if he enters It is within his jurisdiction to authorize the ringing of bells, until the mayor's use of this permission in this case does not fall within the cases in which it is intended to be used.

This criterion has been criticized as it will logically entail excluding the personal liability of the employee in the event of serious mistake s committed by him while he is carrying out his job. And that in the event that it is not separated morally or materially from the duties of his job and thus will lead to results that often contradict what the French Council of State takes.

The criterion of the jurist Guys, which is based on the idea of the gravity of the mistake: According to this criterion, the employee is considered to have committed a personal mistake whenever his mistake is so serious that it reaches the point of being considered a crime under the penal code, or if the mistake is so serious that it cannot be considered as one of the normal risks to which the employee is exposed in the performance of his daily work. But this criterion is flawed - because sometimes a serious mistake is considered a professional mistake - then there are simple mistakes, but at the same time personal mistakes.

Digi standard, which is based on the idea of purpose (employee intent): This criterion is based on the purpose of the wrong administrative behavior - if the employee has acted to achieve one of the goals entrusted to the administration and which is included in its administrative function, then his mistake here is an accompanying mistake. But if the employee acts with the intent of achieving purposes unrelated to the job or administrative goals, but rather to satisfy a special desire, then his mistake in this case is considered a personal mistake.

This standard is defective in two respects: The first aspect: This criterion depends on the internal factors of the employee who performed the work, which often makes it difficult for him to know what is going on in the employee's soul to identify these motives and motives.

The second aspect: adopting this criterion entails that the employee is not liable for serious mistakes resulting from his actions in the event that the activity is not aimed at achieving personal purposes or interests.

By appreciating the previous criteria, we conclude by saying that none of these criteria can rise to the level of a definitive criterion. They are just directives that are true in some cases and disappoint in others.

The Position of the Judiciary

It is noteworthy that the comparative administrative judiciary did not take one of these criteria without the others, but it always took into account the circumstances and circumstances of each case and was guided by the criterion that achieves the greatest benefit for the injured, and decides on a broader protection of the right that is infringed upon because the French administrative judiciary has always aimed to preserve the rights and freedoms of the person (Khattar, 1994). On many occasions, the French judiciary took the criterion of purpose as a basis for differentiating between personal mistake and attachment mistake, and on other occasions the French judiciary also took the criterion of intentional mistake and considered it as a personal mistake. The French State Council also took the criterion of grave mistake on some occasions, but the French State Council did not apply the rule of grave mistake to its launch, as the mistake committed by the employee in some cases was considered an accompanying mistake despite its gravity (Safaa, 2013).

As for the position of the Egyptian judiciary regarding the criterion of distinction between personal mistake and attachment mistake, the position of the ordinary judiciary differed from the position of the administrative judiciary in this context. The ordinary judiciary refused to take into account the distinction between personal mistake and elbow mistake and insisted on applying the legal rules that govern liability in general.

As for the Egyptian administrative judiciary, the French administrative judiciary went along with the introduction of the theory of personal mistake and the elbow mistake, and was guided by all the criteria that were said to differentiate between the two mistakes. With the aim of protecting the public interest in ensuring the regular and steady functioning of public utilities,

and protecting the interests of the injured from losing his right to compensation also protection for the employee so that he is not afraid of liability and does not work. Similar to the French judiciary, the Egyptian State Council did not adhere to one of the criteria but not the other. On some occasions, it combined more than one criterion at the same time (Safaa, 2013).

At the end of this topic, there is a question that imposes itself, what is the position of the Jordanian judiciary regarding the criteria for distinguishing between personal mistake and escort mistake?

The Supreme Court of Justice has issued many judicial rulings in the field of compensation since it was granted the authority to consider compensation disputes for administrative decisions. The management man, and therefore his quarrel is permissible, even if the plaintiff proves her claim, it is permissible to compel the plaintiff against him to harm if the plaintiff suffers harm as a result of his personal mistake , i.e. what is called a non-functional mistake.

The Supreme Court of Justice also confirmed this distinction in another ruling (that the Water Authority is responsible for compensation for damages caused by its employees to others, with the exception of the non-functional mistake for which the employee is personally asked.

The Supreme Court of Justice adopted the criterion of the extent of the seriousness of the mistake as a basis for determining compensation for the nullified decisions for one of the objective defects, and not as a basis or criterion for distinguishing between personal mistake and attachment, as it ruled in its judgment (for its reliance on the Crime Prevention Law is not based on a sound basis and its decision to arrest the applicants was issued contrary to And since the arrest of the plaintiffs has disrupted their work, especially that one of them is a driver, the second is a student orientation, and the third is a farmer, they have been harmed as a result of their arrest without legal basis, and they have the right to obtain compensation for the material and moral damage they suffered.

And it ruled in another ruling: The governor's use of his powers stipulated in the same law constitutes a grave mistake because it was issued in violation of the law. The summoned person is entitled to compensation for damages).

It also ruled (that the defect of the form does not rise as a reason for the liability of management with compensation, it is a simple mistake that did not reach the amount of the serious mistake affecting the decision and does not affect the validity of a subject, which leads to the fading of compensation).

It also ruled (that merely canceling the defective decision does not necessarily serve as a basis for compensation unless the defect is serious and affects the subject and essence of the decision).

Finally, it ruled (the responsibility of the administration does not realize compensation by simply canceling its decisions tainted with defects of form or jurisdiction, unlike other aspects of illegality, such as a serious violation of the law).

The best thing to say is that the Supreme Court of Justice clearly adopted the criterion of gross mistake as a basis for determining compensation for decisions that were canceled for an objective defect, and not for the distinction between personal mistake and an accompanying mistake.

Before leaving the issue of the criteria for distinguishing between personal mistake and attachment mistake, we would like to ask about the position of the Jordanian Court of Cassation on this issue?

The Jordanian Court of Cassation's position on the criteria for distinguishing between personal mistake and elbow mistake varied. In some of its rulings, the court has adopted the criterion of mistake that is separable from the job, where the mistake is considered personal if it can be separated from the job and vice versa. The mistake is considered attached if it is not possible to separate it from the job. Where the aforementioned court ruled in one of its rulings (it is not acceptable to recourse to the government because of the damage caused by one of its employees, except in two cases, one of them if the elements that make up the harmful act are not separate from the work of his job or are included in the work of his job).

In other words, it is acceptable to recourse against the employee personally because of the damage he caused if the elements that make up the harmful act are separate from the work of his job or are not included in the work of his job.

In some of its rulings, the Court of Cassation adopted the criterion for the purpose of committing the act, as it ruled (The work done by the military ruler and the police chief by virtue of their job and for the purposes of the government, not in their personal capacity or for their own purposes. Therefore, the government is a liability for the damage inflicted by the military ruler and the police chief).

Finally, the Court of Cassation adopted, in other rulings, the criterion of a close causal relationship between the committed mistake and the job, as it ruled) (If there is a close causal relationship between the mistake committed by the employee and his job, the government is the ability to compensate the person who sustained damage as a result of this mistake. The harmful act that the soldier who was driving the military vehicle caused was not due to his mistake, negligence, or breach of job duties, and accordingly the government does not have the right to recourse against him for what it paid to the injured person as a result of the collision that occurred between the military vehicle and the victim's vehicle.

We conclude from the foregoing ruling that the Court of Cassation has applied the text of the first paragraph (b) of Article (288) of the Jordanian Civil Code, which requires the establishment of a subordinate liability that the harmful act occurs from the subordinate if the job is performed or because of it. Where the act occurred in the aforementioned case during and the reason for performing the job and there was a direct causal relationship between the act and the job so that without it the harmful act would not have occurred.

The Legal Consequences of Personal Mistake

The public employee bears personal responsibility whenever it is proven that the mistake he committed is a personal mistake, as he bears compensation from his own money. Especially since the administration sometimes bears the compensation for the employee and then returns to it. It may also participate in part of the compensation for its participation in causing the damage, so we will divide this requirement into two branches:

The Personal Responsibility of the Public Employee

The personal responsibility of the public employee is based on the personal mistake issued by him when it has been proven that this personal mistake is on the employee himself. The injured party, whether an individual or the administration, must prove the issuance of this

personal mistake by a public employee who caused a specific harm, and in order for the individual to file a compensation claim against the employee who committed the harm, the French State Council obligated the administration to inform the injured party, at his request, of the identity and personality of the employee who committed the mistake. As well as knowing the address of the employee so that the injured can file a case against the employee at fault. In such a case, if he wants to quarrel with the employee alone according to the French system, he must file his case before the ordinary court. He can also quarrel with the administration and the employee together, and here he files the case before the administrative court (Karim, 1997).

It should be noted that the rule that the employee bears responsibility for his personal mistake is not absolute, as the French State Council recognized the possibility of an elbow mistake by the administration that shares with the personal mistake of the public employee, so the administration's responsibility is in addition to the personal responsibility of the employee, which we will explain in some detail in the second section.

In Egypt, the rules of jurisdiction went through two phases: Prior to 1972, the jurisdiction to consider compensation claims was divided between the ordinary judiciary and the administrative judiciary according to the nature of the work and not the type of mistake. The jurisdiction was to compensate for the material works of the ordinary judiciary, whatever the description of the mistake, and the jurisdiction to compensate for defective administrative decisions was within the jurisdiction of the judiciary Administrative, whether the mistake is personal or annexed. However, after the issuance of State Council Law No. 47 of 1972, the Egyptian State Council became the holder of general jurisdiction in disputes, which entails its competence to consider all compensation cases, whether they are related to a material act or an administrative decision (Al-Rahman, 1990).

A public employee may commit a personal mistake that harms the administration itself, and here a distinction must be made between a personal mistake and an elbow mistake. If this mistake is considered an accompanying mistake, he is not responsible for it, because the burden of compensation for the accompanying mistake falls on the management, but if the mistake is a personal mistake, the employee is responsible for this mistake and is obligated to compensate the damages incurred by the administration as a result of his personal mistake. The administration can implement the decision to pay the amount of compensation that covers the damage through direct execution and deduction from his salary, and this principle was adopted by the French State Council (Karim, 1997).

The Egyptian State Council also adopted the principle of the employee's responsibility for the damage he causes to the administration directly, provided that this mistake is a personal one (Al-Rahman, 1990). And this rule was applied by the Egyptian Administrative Court in its ruling issued on March 10, 1973, where this ruling is summarized as follows: "*The damage inflicted on the administrative body was the result of the gross negligence committed by the employee, who constitutes a personal mistake. The damage was represented by the administration paying an amount of The money not owed to one of the individuals, and the court concluded that the administration is not obligated to file a lawsuit against the individual to recover what was paid to him unjustly, and it has the right to return directly to the employee who committed the mistake as a result of the employee's personal mistake, it may be satisfied with recourse to the employee from his dues through direct execution*" (Karim, 1997).

The Jordanian Court of Cassation ruled in one of its rulings that “the capital secretariat workers are obligated to carry out its orders.

It is understood from this ruling that the Greater Amman Municipality is obligated to compensate for the damage caused to others as a result of carrying out its duties. And if it is proven to it that the harmful act belongs to the employee and the mistake he committed was such as a personal mistake, then the trust has the right to refer to the employee to collect the compensation allowance that it paid, because the responsibility here is a personal responsibility based on the personal mistake and not the elbow.

The Supreme Court of Justice ruled in one of its rulings that “*it is permissible to quarrel any person in his personal capacity and in addition to his job in the event of harm by compensation for material or moral damage resulting from a non-functional mistake committed by the management man, and since the applicant claims in her appeal that the fourth defendant in his personal capacity and in addition to his job*”. A high institution, he has refrained from implementing the decision of the High Court of Justice and that his refusal to implement the decision of the High Court of Justice has caused material and moral damage to it. Therefore, his litigation is permissible even if the applicant proves her claim his personal mistake or the so-called non-functional mistake.

A public employee may commit a personal mistake against others, and this mistake is not related to the job. Therefore, the injured person can claim the wrongdoer on the basis of the personal mistake of the public employee, away from the accountability of the administration with this compensation. Therefore, the injured person can file his claim before the ordinary judiciary on the basis of the tort responsibility “*harmful act*”, as Article 256 of the Jordanian Civil Code stipulates “*All damages to others obligate the doer, even if it is not distinguished by a damage guarantee*”.

Article 17 of the Postal Services Law No. 34 of 2007 stipulates that “A. The general postal operator or any of its employees shall not be held responsible for any damage or loss incurred by any person as a result of any of the matters set forth below, provided that international agreements that are The Kingdom is a party to it.

Notwithstanding what is stated in Paragraph (A) of this Article, the following must be observed:

Liability of the general postal operator and any of its users for any mistake in payment or delay in it related to any transfer of money by it or any other violation in any document used regarding the transfer under the Banks Law and any regulations issued thereunder

Notwithstanding what is stated in Paragraph (A) of this Article, the following must be observed:

The general postal operator or its employees shall be liable for any damages or losses incurred by any person as a result of any negligence or malicious act relating to the matters mentioned in that paragraph.

It is noted in this text that he has established personal responsibility on the general postal operator or its employees for the damage caused to others as a result of a mistake or delay in payment. Therefore, personal responsibility rests on them, and they must bear compensation for the damage they have caused to others from their own money.

Likewise, Article 9 of the Telecommunications Law No. 13 of 1995 stipulates that: A.1. It is not permissible for any of the council members or their spouses or relatives of the first and

second degree to have a direct or indirect interest in any investment in the telecommunications and information technology sectors during the term of his membership in the council. Every member of the board, before starting his work, must submit a written declaration that there is no interest between him and the investors in the telecommunications and information technology sectors, and he must inform the board of any such benefit that has arisen or may arise during his term of membership in the board, under penalty of legal liability.

“If any member of the Board violates the provisions of Paragraph (A) of this Article, he shall be prosecuted, as the case may be, for the crime of job investment or abuse of credit harm than that”.

It is understood from this text that it has also established personal responsibility on any of the members of the Telecommunications Regulatory Commission’s Board of Commissioners if they commit any of the violations mentioned in Paragraph (A) of this Article, whereby he is obligated to compensate if harm occurs to others as a result of committing these violations.

Article 15 of the Temporary General Electricity Law No. 64 of 2002 also stipulates that *“(A). It is not permissible for any of the commissioners, their spouses, or their relatives of the first and second degree to have a direct or indirect material benefit, or for any of them to act or provide advice for compensation or without compensation, in the field of generation, transmission, or operation of the transmission, supply or distribution system throughout the term of his membership in the Council and for one year after its expiry”.*

Each authorized person, upon his appointment, must submit a written declaration that there is no benefit or relationship with him, his wife, or relatives of the first and second degree, and he must inform the Council in the event of this benefit or relationship. In the event that it occurred as a result of inheritance or for any reason whatsoever, he must dispose of it within a period not exceeding three months from the date of its occurrence.

1. If a council member violates any of the provisions contained in this article, he will be dismissed from the council and prosecuted for the crime of job investment or abuse of credit, as the case may be, and he is obligated to return all the amounts or benefits he obtained as a result of committing that violation in addition to the compensation he is entitled to for any One of the parties that suffered harm from that, as decided by the competent court.

It is noted that this text is very close to the text contained in the Telecommunications Law, where it establishes personal responsibility on the members of the Board of Commissioners of the Electricity Sector Regulatory Authority in the event that they commit the violations mentioned in this article, and it entails compensating the damage incurred to others, which indicates that this responsibility has been carried out on personal mistake.

The Extent of the Management’s Responsibility for the Personal Mistake of the General Employee

The circumstances led the French administrative judiciary to create the idea of combining the management's responsibility for the elbow mistake and the employee's responsibility for the personal mistake, when the elbow and personal mistake s were involved in causing damage. It can be said that taking into account the possibility of combining the personal mistake and the elbow mistake is due to the ambiguity of the criteria for distinguishing between the personal

mistake and the accompanying mistake, especially since the essential difference between them is due to gravity and not in nature. A mistake up to a certain degree is considered an accompanying one. Exceeding this degree is considered a personal mistake. Undoubtedly, the difference in degree is not sufficient for a complete change in the legal rules, in addition to the possibility of the insolvency of the employee who committed the personal mistake, who makes compensation for his personal mistake that leads to the injured not obtaining compensation (Taha, 1989).

But the question that arises here is, does the administration ask about all the personal mistakes committed by the public employee? To answer this question, we stand before the following provisions:

The Management is Responsible for the Personal Mistake Associated with an Elbow Mistake (Common Mistake)

The administrative judiciary has recognized the rule of combining the personal mistake and the accompanying mistake, when they occur with the same harm that creates liability. Especially that the facts of the personal mistake were associated with the facts of the elbow mistake, and the damage resulted from them, and as a result, it is necessary that the administration's responsibility for the facts constituting the elbow mistake and the employee's responsibility for the personal mistake, and this results in the principle of combining administrative and personal responsibility.

The French Council of State recognized this rule for the first time in its ruling in the Anguet case, which is that Mr. On his way to the back door, Anguet passed the parcel hall, and some employees thought he was a thief, so they beat him until he broke his leg. It was also proven that there was a piece of iron that was placed in the wrong way at the threshold of the door, which caused his leg to be broken. On the occasion of this case, the question arose about the possibility of combining the responsibility of the accompanying administration and the personal responsibility of the employee, and the French State Council ruled in it that it is permissible to combine the two responsibilities due to the presence of multiple, overlapping and joint mistakes in causing damage. The rulings of the State Council in this regard followed after that, establishing the principle of combining the two responsibilities (Awabdi, 2004).

And the administration here does not ask about the personal mistake, but its responsibility is based on the independent attachment mistake associated with the personal mistake in the occurrence of damage, so the injured party in this case is responsible, the administration and the employee and he has the right to choose from among them who quarrels with him and he has the right to demand the administration and the employee to compensate the entire damage, the judge of the matter divides the compensation between the management and the employee together, according to the degree of seriousness of the mistake attributed to each of them (Karim, 1997).

The Administrative Judiciary Court also says in one of its rulings that "*there is nothing in the law that prevents the government from being responsible for its mistake of interest in addition to the responsibility of the employee for his personal mistake, nor what prevents the applicant for compensation from combining these two responsibilities together in one case*".

In this case, the injured person has the option to sue the employee personally before the ordinary judiciary, or to sue the administration before the administrative judiciary, or to sue both in its jurisdiction (59).

The Jordanian judiciary acknowledged the possibility of combining the employee's personal mistake and the management's elbow mistake, recognizing the existence of a common mistake that makes both of them obligated to compensate each in proportion to its contribution to the occurrence of the damage (Safaa, 2013).

The Management is Responsible for the Personal Mistake that is Not Associated with an Attachment Mistake

Proceeding from the principle of guaranteeing the rights of the injured, the French Council of State acknowledged the management's responsibility for the personal mistakes that occur from the employees without the need to prove the occurrence of a companion mistake on the part of the administration. Thus, the rule of not combining the personal mistake and the attachment with regard to the management's responsibility is no longer applied now except with respect to the mistake that it is issued by the employee and has absolutely nothing to do with the job, however, the distinction between personal mistake that is related to the job and non-personal mistake that is related to the job (Karim, 1997).

The French Council of State, in its ruling issued on July 26, 1918, decided the responsibility of the administration for the personal mistake committed during the work. Its facts are summed up in that the mayor of one of the villages neglected to take the necessary measures to protect the citizens during the celebration of the annual festival of the village. And he had to contemplate these mistakes by choosing another place to practice this dangerous hobby, and he did not take the initiative to prevent the practice of this hobby until it moved to another place where the people warned him more than once about the dangers to which passersby are exposed. A person was shot by archers (Al-Rahman, 1990).

In this case, the French Council of State concludes that the mistake is a personal one, but the issuance of a ruling by the ordinary courts in this does not prevent the injured from claiming the administration with which the employee is related for compensation directly on his behalf.

The administration is also responsible for the personal mistake committed by means of the facility. The French Council of State ruled in a ruling issued on October 26, 1973. The facts of this ruling are summarized in the fact that one of the policemen, while sitting at his house with one of his colleagues, cleaned his gun, which he has the right to possess by law outside working hours. As a bullet fired from the pistol and fatally wounded his colleague, the council decided that the mistake was not related to the facility on the basis that the facility was the one that was placed under the policeman's hands and the means of committing this mistake (Al-Rahman, 1990).

The Egyptian State Council took the same principles as the French State Council, and decided the responsibility of the administration in addition to the responsibility of the employee for the personal mistakes that occur from the employee during the performance of the duties of his job or because of them.

The Jordanian judiciary also took the view of the comparative judiciary, where it recognized the establishment of joint responsibility despite the presence of one mistake that was committed by virtue of the job either due to absence, supervision and control by the administration or through what the administration provides to its employees with tools that enable him to commit the mistake (Safaa, 2013).

The Jordanian Civil Code stipulates in Article 288/1 that “no one is responsible for the act of another. However, the court, upon the request of the injured party, if it finds justification, may oblige to pay the guarantee awarded to the person who inflicted the harm: Actual authority to supervise and direct him, even if he is not free to choose him, if the harmful act was issued by the subordinate in the event of performing his job or because of it.

Through the previous text, we find that the state’s liability, which may arise before the injured party as a result of the employee’s mistake, is the liability of subordination, i.e. his subordinate responsibility for subordinate actions job or because of it.

The Effect of Double Liability on Compensation

It is clear that in the comparative judiciary, if the injured person chooses to resort to the ordinary judiciary and obtain compensation for the damage he sustained as a result of the personal mistake. He cannot resort to the administrative judiciary to claim compensation for the personal mistake in order to obtain compensation, and in the event that the victim resorts to the two sides of the judiciary, each party will award him compensation in exchange for the part of the common mistake that falls within its jurisdiction. In all cases, if the administration pays the entire compensation, whether in the case of a joint mistake or in the event that the administration pays the compensation in lieu of the employee, then it has the right to recourse against the employee to the extent of his percentage of the amount of compensation paid by the management on his behalf, or the amount of the entire compensation in the case of personal mistake (66).

The Jordanian judiciary also took the idea of combining the personal mistake and the accompanying mistake within the scope of administrative responsibility. Rather, each of them must bear the compensation in proportion to his contribution to causing the damage. In the event of multiple employees causing the damage, each of them bears his share of the compensation, each according to the proportion of his contribution in causing the damage, based on the text of Article 265 of the Jordanian Civil Code, which states If there are multiple officials responsible for a harmful act, each of them shall be liable in proportion to his share of it, and the court may rule equally or Solidarity and interdependence among themselves (Safaa, 2013).

CONCLUSION AND RECOMMENDATION

It has reached that the public employee may make many mistakes, some of these mistakes may be disconnected from the public job, and they are called personal mistakes. The employee bears the responsibility personally to compensate for the harm caused to others as a result of this mistake, but he may commit mistakes related to the public job, which are the accompanying mistakes.

There are many forms of personal mistake. A public employee may commit a criminal offense such as murder, abuse, embezzlement, or other crimes that are related to the public job. The employee bears the personal responsibility for this act, as well as committing a disciplinary offense or illegally violating the order of the chief, while the physical assault is not perceived except as an accompanying mistake only, which is what the comparative judiciary and the Jordanian judiciary said.

Some jurists worked hard to set and create criteria for distinguishing between personal mistake and elbow mistake, but these criteria were quickly criticized by jurisprudence as well, especially since the comparative administrative judiciary took these criteria to differentiate between personal mistake and elbow mistake in most of its rulings. While the Jordanian judiciary and in the judgments of the Supreme Court of Justice, it is clear that it took the criterion of grave mistake to determine the basis for compensation for unlawful administrative decisions for an objective defect and not to distinguish between personal mistake and annexing mistake, especially since the Jordanian Court of Cassation has taken more than one of the jurisprudential criteria to distinguish between personal mistake and annexing mistake.

The personal responsibility rests with the public employee whenever he commits personal mistakes that are related to the public job. Therefore, he bears the compensation from his own money, but the administration sometimes may commit an attachment mistake that shares with the personal mistake. Sometimes the employee may commit a personal mistake, but he was by virtue of his work in the public facility, so the administration bears compensation for this damage.

Based on the foregoing, we hope that the Jordanian legislator will make the administrative responsibility under the scope and jurisdiction of the administrative judiciary, just like the legislation and the comparative judiciary, because the administrative judiciary is the first to protect the rights and freedoms of individuals and protect the right of the injured to claim compensation. In addition to trying to set clear criteria for differentiating between personal mistake and elbow mistake, especially in the functional legislation, on top of which is the Jordanian civil service system.

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