

# ACTIONS THAT RAISE MANAGEMENT RESPONSIBILITY

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## ABSTRACT

*The basis of administrative responsibility with the presence of error is originally based on the same foundations of tort liability and its elements (error and harm causal relationship), but because there are cases with which that application of responsibility is absent and away from justice and in which there is a waste of the rights of those affected by the administration's act despite the lack of error from Aside from it, which became urgent with him, he laid new foundations for this responsibility, so the so-called risk theory emerged. Which necessitates the availability of a harmful act and its concept of every harm, whether it is based on error or without error? The judge resorts to applying the theory of risk when it is not possible to arrange responsibility on the basis of an error on the part of management, so the two theories complement each other.*

**Keywords:** Responsibility, Management, Raise, Action

## INTRODUCTION

For a time not long ago, the prevailing principle was the lack of responsibility of the state for the actions taken from it, as the belief that the determination of its responsibility was incompatible with its sovereignty, but under the weight of criticisms that were directed to this principle, as it exaggerated the state's sovereignty and prejudiced the rights of individuals, so it was then adopted the principle of state responsibility.

## RESEARCH IMPORTANCE

The importance of the research is demonstrated by the extent to which the administration bears responsibility for its actions, especially the legitimate ones, which have sparked widespread controversy among jurists, because the administration has gone astray for many years not responsible for many of its actions.

## RESEARCH PROBLEM

The research problem lies in explaining the legal basis on which the responsibility of the administration rests, whether it was committed for a mistake or even without a mistake.

## THE AIM OF THE RESEARCH

This research will try to shed light on the responsibility of the administration for the actions it carries out and result in some harm, whether these actions are wrong or not.

## RESEARCH METHODOLOGY

This research, will try to follow the descriptive analytical approach, through an analysis of the position of the legislator and the French and Egyptian judiciary, as well as the position of the legislator and the Iraqi judiciary regarding administrative responsibility on the basis of error as well as administrative responsibility without error.

## RESEARCH PLAN

### The First Requirement

The definition of administrative responsibility, and what are its characteristics.

- First: Definition of administrative responsibility.
- Second: characteristics of administrative responsibility.

### The Second Requirement

Administrative responsibility on the basis of error and administrative responsibility without error.

- First: Administrative responsibility on the basis of error.
- Second: Administrative responsibility without error.

### The Third Requirement

The legal basis for administrative responsibility.

- First: The legal basis for error-based management responsibility.
- Second: The legal basis for administrative liability without error.

## CONCLUSION

### The First Requirement:-Definition of Administrative Responsibility and what are its Characteristics

As a result of the development witnessed by the administrative judiciary throughout history, and the creation of those administrative courts that contributed to establishing the state of right and law, so the rules of administrative responsibility have become clearer and focused than they were previously

Therefore, we will divide this requirement into two branches. We allocate the first section to the definition of administrative responsibility, and the second to its most important characteristics.

#### First: Definition of Administrative Responsibility

Several definitions of administrative responsibility have been established as they have been defined as ((positive to bear the consequences of conduct)). It was also known as ((a technical tool that obliges the public people to take responsibility for their actions that produce harm. And that are designed to achieve the public benefit)).

And Dr. Mohamed Refaat Abdel-Wahab defined her as (“that responsibility with which the right of individuals to seek compensation arises and that results from the mistakes of its employees”). It was also known as ((that final commitment with which it is decided upon the administration to compensate for the harm caused to others as a result of its legitimate actions, whether or not these actions are)).

#### Administrative Responsibility can be Defined as Follows

“That responsibility that arises when damage occurs to others, which is either to be based on some error on the part of the administration and to result in damage and be related to a relationship that this error caused the damage and that responsibility may arise without error (which is an

exception of the first type". It is raised when damage occurs to certain individuals and is of great magnitude (*i.e.*, on the basis of risks).

## **Second: Characteristics of Administrative Responsibility**

Among the most important characteristics of administrative responsibility are:

### **Legal Liability (Responsibility)**

Where it is necessary to achieve the difference in the administrative authorities that issue damage from the affected people, and that the burden of compensation falls on the public treasury and not to enter money in the possession of those affected by the state in advance.

### **Indirect Liability (Responsibility)**

This is because the administration bears the responsibility for the harmful actions of its employees, with a dependency relationship.

### **It has its Own Independent Legal System**

As it is subject to the rules of administrative law and separates administrative disputes, the competent administrative judicial authorities.

### **It is a Modern and Evolving Responsibility**

Where it appeared at the beginning of the twentieth century, as the principle that was prevalent in the past is the lack of responsibility of the administration, either as it has sovereignty, but because of the many criticisms that were directed against this principle, the principle of management responsibility gradually emerged.

## **The Second Requirement: Administrative Responsibility on the Basis of Error and Administrative Responsibility without error**

The administration may take legitimate legal or material actions without error on its part, but it happens that those actions harm individuals, and it is not fair that the individual should bear the responsibility for these damages, therefore, the French State Council succeeded in establishing a new basis for administrative responsibility, which is the responsibility of risks, and who Examples are the damages that result from legitimate administrative decisions. Therefore, we will try in this demand to shed light on the administrative responsibility based on an error committed by the administration in the first branch of it, while we will single out the second branch of administrative responsibility without error.

### **First: Administrative Responsibility on the Basis of Error**

In order to establish management responsibility here, three pillars are required, namely error, harm and causation. And since the original principle is that the wrong actions are issued by the agents of the administration, so I knew the responsibility of the administration for these mistakes as a responsibility for the actions of others.

The error is either: 1-personal error or 2-attached error:

### **Personal Error**

This is the error attributed to the employee and results in personal responsibility to pay compensation from his own money.

### **Attachment Error**

It is that normal error that can be committed by any aid in the framework of the facility without being intentional and the public person in it bears responsibility instead of the employee committed.

Another type of error is the common error that the employee and public person share.

The harm may be:

1- Personal harm or 2- Direct damage

- **Personal Damage:** It is the harm that affects a person in his person, money or emotions until he has his capacity and interest in litigation (2, 3).
- **Direct Damage:** It means that the damage is a direct result of the harmful administrative act, and here the damage can be compensated in case of violating a legitimate interest.

There must also be a causal relationship between error and damage, meaning that there is a correlation between the activity of the administration and the damage achieved until the administration is asked and obligated to pay compensation.

### **Second: Administrative Responsibility without Error**

The basic principle is that the responsibility of the administration for its actions rests in the event that it commits a mistake, so if someone who is mistaken bears the consequences of his error, that is, where there is no error, then there is no responsibility, and this is the fundamental rule. Dealing with the administration without there being any error on the part of the administration and failure to compensate the affected will be against the rules of justice (6, 7).

That is, the responsibility of the administration without error necessitates the issue of management that provides the two pillars of the damage and the causal relationship without the presence of something wrong, and on the aggrieved party, the burden of proving the causal relationship lies between the activity of the administration and the damage it has suffered. And, it is based on two principles. First, the idea of risks, which means that the activity of the administration created a danger for one of the individuals without committing a mistake, and the second: the principle of equality in front of public burdens. Which means that the rights and freedoms of individuals are governed by the principle of equality, that is, they are equal in rights and duties, meaning that public activity is in the interest of all, and therefore individuals all bear burdens, through the public treasury bearing the burden of repairing harm in order to achieve the principle of equality in front of public costs.

Based on this, this responsibility has a set of characteristics that distinguish it. They are:

- 1- An exception applies because, as mentioned above, the basis and rule in the administration's accountability is the presence of an act on its part and that it causes harm and that they are related to a causal relationship, meaning that it is not an absolute responsibility.
- 2- It is a responsibility that is based on the two pillars of the damage and the causal relationship, and it is stipulated that the harm here be personal and severe, that is, the damage must be available and because of the activity of the administration.
- 3- It is a judicial responsibility, because it is the creation of the French State Council.
- 4- It is responsible of an objective nature, meaning that it does not necessitate error on the part of the administration, but rather it is sufficient that its activity has caused some harm.

### **The Third Requirement: The Legal Basis for Administrative Responsibility Based on the Error**

The prevailing principle previously was the lack of responsibility of the administration, and this principle was only approved recently, and if the customary matter is that the administration's fault is borne by it, but the reality of the work proves the opposite. In some cases, the legal person (administration) bears the burden of the error of the natural person (public employee). The clearest example of this in Iraq is the inclusion law No. (31) of 2015, where the first article of it stipulated that "(the employee or the person charged with public service guarantees the value of the damages incurred by the public treasury due to his negligence, negligence, or violation of the laws, decisions, regulations, and instructions)" and may initiate At first glance this is justice, But we think that the burden of the employee's mistakes in this case should be borne by both the administration and the employee at the same time for two reasons:

- **First:** The mistake made by the employee is here on the occasion of the practice of his work, which may be so frequent that he is forced, with the speed of its completion, not to be careful or sufficiently careful and cautious, so it is a mistake.
- **Second:** That the above article indicated the existence of negligence or negligence on the part of the employee or who is charged with a public service, meaning that the element of intent and intent is not available here, however the legislator stresses in making the burden of compensation on the person of the employee himself without management.

Accordingly, we will divide this requirement into two branches:

The first section will discuss the position of the legislator and the French, Egyptian, and Iraqi judiciary regarding the administrative responsibility based on a mistake. In the second section, we will discuss the position of the legislator and the French, Egyptian and Iraqi judiciary regarding the administrative responsibility without error.

#### **First: The Legal Basis for Administrative Responsibility for the Basis of the Error**

In the period before the revolution of 1789 in France, the prevailing principle was the lack of responsibility of the administration for its harmful actions, but after the success of that revolution, a law 16-90 was issued in 1790 deciding the principle of separation of administrative and judicial bodies, and with it the administration became the ruling and the opponent at the same time. But in the eighth year of the establishment of the French Republic, the constitution of that year stipulated the establishment of the French State Council, where he became responsible for deciding disputes, and this led to the establishment of guarantees to protect individuals. This has distinguished the French legislator in the basis on which he built the administrative responsibility between two types of error; it is either to be an elbow error in which the defective work is attributed to the public utility or to be a help error. However, he settled at the outset that the error that necessitates the responsibility of the administration must be among the grave mistakes, and this is what the French State Council approved in the famous (Blanco) case.

The French Dispute Court laid the basis for distinguishing between mistakes in 1873, and if the error was on the part of the public attachment, then the burden of compensation is placed on the public person before the administrative judiciary. However, the French State Council abandoned that condition (a grave mistake) and became satisfied with a simple mistake, as in the case of Mrs. 7, who was exposed to a nervous nature after undergoing a cesarean section in order to generate it. So, it became evident from this that the identification of cases of elbows error, with which the responsibility of the administration is raised, is mainly due to the judiciary, which in turn is in continuous development. Even the French State Council adopted the idea of a common mistake in which the burden of compensation falls on management and aid at the same time.

In Egypt, the Egyptian Supreme Administrative Court ruled that (the basis of the administration's responsibility for its decisions is the existence of a mistake on its part, and the

person concerned suffers harm and a causal relationship is established between the error and the damage). The Egyptian Council of State has taken a similar position to the position of the French judiciary in distinguishing between errors that require the responsibility of management, where the Supreme Administrative Court ruled that (the jurisdiction of this court has settled that the traditional rule in the field of management responsibility based on the corner of the error is based on the distinction between the interest or attachment error Who attributes negligence or negligence to the public facility and between the personal error attributed to the employee). Then the Egyptian Administrative Judiciary returned to decide in a ruling of the Supreme Administrative Court issued on 12/22/2001 to decide that ((there is no abstract general rule that separates elbows and personal errors, but is determined in each case separately.)) until he recognized the possibility of combining attached and personal error.

In Iraq, the basis of the administration's responsibility with the Iraqi legislator is the supposed error in supervision and direction by the administration for its employees, and this is the opinion of the majority of Iraqi jurisprudence. Even the rules of civil law organized the provisions of administrative responsibility on the basis of error under the title (Responsibility for the work of others). M (1/219) of Civil Law No. (40) of 1951 stipulated that (the government, municipalities, industrial or commercial establishments are responsible for the damage that it is updated by their users)). As for the Iraqi judiciary, it has not settled on clarifying the nature of administrative responsibility for the error. In many cases, it has embraced the basis of direct responsibility for personal action, as in the decision of the Iraqi Court of Cassation, which states that (Mutasarrif should be a tort liability in accordance with Article 204 of the Civil Law for the damage suffered The plaintiffs) In other cases, the judiciary went to the idea of the presumed error, as it ruled to prove the responsibility of the municipality that it was based on the presumed error, presumably capable of proving the opposite).

## **Second: The Legal Basis for Administrative Liability without Error**

The most important basis for this theory is help in Islamic law, as it is from the hadiths of the Prophet Muhammad (PBUH) (no harm, no harm), as this statement establishes a general rule based on the negation of harm at all, whether it is the result of legitimate or illegal work, as it implies inclusion (Hussain, Quddus, Pham, Rafiq & Pavelková, 2020)

In France, we find that this theory is of judicial origin, it is the creation of the French State Council and its roots for the year 1895 go back to the case (comes), who sustained an injury in his hand that make him unable to use his hand anymore, and as a result of he is unable to use it in his work in the state's armory and the Council ruled for him to compensate, thereby establishing the theory of administrative responsibility on the basis of risk. The Board evaluates that responsibility on the basis of the presence of unusual damage (*i.e.*, that cannot be attributed to the elbow error) occurred on a specific individual or individuals, the most important of which is the administration's responsibility for the unlawful dismissal of its employees, its responsibility for work injuries, and its responsibility to refrain from implementing judicial rulings. However, the Council initially established that responsibility on the basis of the idea of risk, as it is sufficient to compensate the injured person, to prove the causal relationship between the activity of the administration and the damage, but for that idea to be exposed to several criticisms by some jurists who went to the introduction of the principle of equality in front of public burdens, and therefore if there is a particular harm Exceptional and on the extent of the seriousness injured a number of individuals, it is necessary to compensate them despite the fact that the administration's activity is a project to achieve the principle of equality and the distribution of burden to all. While some in France go on to say the combination of the idea of risk and the principle of equality in establishing administrative responsibility (Hussain & Hassan, 2020).

In Egypt, the Egyptian civil law did not take the principle of responsibility of the administration without error, as it established tort liability on the basis of error with stipulation of assumed responsibility in both cases of responsibility for the actions of others and responsibility resulting from things. As for liability on the basis of risks, there are only certain legislations in it. As for the administrative judiciary, it does not take that idea in general, and that includes a ruling of the Administrative Judicial Court that came from it (that the issue of the government to compensate for its administrative decisions is a mistake on its part) It is clear from this that the Egyptian administrative judiciary does not establish any responsibility for the administration without the presence of an error on her part (Hussain, Nguyen, Nguyen & Nguyen, 2021)

As for Iraq, some believe that the Iraqi civil law did not adopt the theory of risks correctly, but rather stipulated in Article (231) of it that: (Anyone who was at the disposal of mechanical machinery or other things that require special care to prevent their harm will be responsible for the damage he causes unless he proves that he has taken adequate care to prevent this damage from occurring without prejudice to the special provisions contained therein). So, the article above, although it made the mistake assumptive, left an open field for what is decided by the special rules, if any. The Iraq Constitution of 2005 singled out the second chapter of it for rights and freedoms, as Article 19/VI stipulated that (everyone has the right to be treated fairly in judicial and administrative procedures). That is, the constitution adopted the principle of equality. Also, the Iraqi judiciary took the idea of risks as a basis for the responsibility of the administration, in which the Court of Cassation committed a decision to the Minister of Transportation and the Director of Roads and Bridges as well as their job to pay compensation for causing damage to the crops of one of the individuals as a result of opening a public road in his land (Hussain, Ahmad, Quddus, Rafiq, Pham & Popesko, 2021)

This research reached that the administrative responsibility did not appear until recently, as the prevailing principle was its lack of responsibility at all, and even after the principle of responsibility was approved by the administration in a later development, it was limited to the cases in which the administration commits a mistake and that it is of some gravity and the burden of proof falls on The aggrieved party, who is not easy to do and may find himself unable to prove that mistake in many cases, loses the right to compensation, so the reasoning requirements necessitated the availability of other foundations to hold the administration accountable, so the so-called administrative responsibility appeared without error, which some established on the basis of risks while others established it on the basis of The principle of equality In front of public burdens.

## CONCLUSION

Although the French State Council has expanded its assessment of the basis of administrative responsibility, it still considers that the general basis for it is error and that administrative responsibility without error is complementary or backup.

The administration is supposed to bear the mistakes that result from the act of aid or at least bear part of the burden of compensation for those mistakes, given that the aid was committed on the occasion of his job and may be without neglect or negligence on his part, but because of the work pressure and yet many of the cases that we faced In our practical life, we saw in it that the employee is the only one who bears responsibility as a natural person and not (in addition to his job).

## RECOMMENDATIONS

- ❖ As the activity of the administration is in continuous development, which necessitates that there be a corresponding development on the basis of administrative responsibility.
- ❖ The researcher hopes that the Iraqi legislator will surround the issue of administrative responsibility with greater care by developing clear legal texts that can be relied upon.

- ❖ Activating the role of the administrative judge in Iraq more like the important role played by the administrative judge in both Egypt and France.

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