STATE LIABILITY AND ELECTRONIC PUBLIC FACILITIES: FOUNDATIONS, CHALLENGES, AND FUTURE TRENDS

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ABSTRACT

The evolution of digital administration has given rise to a new form of public service delivery: the electronic public facility. This paper examines the legal framework governing the operation and liability of such facilities, with a focus on French administrative law principles. Through an analysis of fault-based and non-fault-based liability, the paper explores how risk theory and the principle of equality before public burdens apply in the digital context. It further considers the role of foreign causes in excluding liability and anticipates future developments in state responsibility as public administration becomes increasingly automated and data-driven. The research ultimately calls for a re-evaluation of traditional doctrines to ensure fairness, accountability, and legal protection for citizens interacting with digital public services.

INTRODUCTION

Digitalisation has become an imperative necessity and an urgent requirement for the field of administration, especially when managing public facilities or services. This has been associated with the concept of e-management and e-government, where public services have been provided to citizens through digital channels and facilities. Accordingly, electronic administration represented an important turning point for what it provides in terms of effective, fast and transparent services to citizens compared to what traditional administration provides. However, the digital transformation of public facilities/ services provided by the government may carry risks that cause damage to citizens that the state is responsible for compensating. In other words, digitalisation of public services does not eliminate the administrative responsibility incurred in cases of serious and non-serious service errors/ faults. Therefore, all parties – providers and users of e-services – need to be aware of how the legal system deals with service errors arising from the use of public E-Services. The administrative judiciary distinguishes between proven error, presumed error, and no error when establishing administrative liability for damages caused to users of public E-services.

It is worth noting here that the French term *responsibility* incorporate different concepts in English: 'liability' (a duty to pay), 'responsibility' (a duty to take charge) and 'accountability' (a duty to explain). An action brought by a citizen against the state may be trying to perform one or more of these functions. However, the notion of *liability* is our primary concern in this research. Thus, the current study will elaborate on the legal basis that the administrative judge relies on in establishing administrative liability for damages resulting from the use of public e-services. It will be focusing on the basis of proven error, presumed error, or without error. In doing so, the researcher will adopt the analytical approach for analysing the various foundations for establishing administrative liability in cases of electronic public services.

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ELECTRONIC PUBLIC FACILITIES & ADMINISTRATIVE JURISPRUDENCE

It was inevitable that adopting electronic or technological methods would be beneficial for the advancement in the administration of public services. On the other hand, the legislative development in information systems and communication networks has enabled the shift away from the traditional style of managing public services, increasing the efficiency and the performance of employees, departments and government institutions, in addition to reducing administrative procedures. Accordingly, the increase in digitalisation of public services has received wide attention from administrative jurisprudence and judiciary due to its impact on the function of the state and its level of intervention in the lives of individuals as well as the role it plays in satisfying public needs.

Jurisprudence traditionally viewed the state as the sole or primary provider of essential services, especially those that directly impact public welfare, such as education, healthcare, and public infrastructure. Under this framework, the public administration is responsible for ensuring that these services are provided equally and without profit motive, thus aligning with the public interest. However, critics of this state-dominated model point to the increasing burden on the state and its inefficiencies in managing large-scale public services. In the 21st century, governments increasingly struggle to provide all public services directly, particularly as global challenges such as economic crises, budget deficits, and administrative inefficiencies become more pronounced OECD in 2019.

As for the definition of 'public service', administrative jurisprudence and judiciary have used two different concepts - the objective (material) concept and the formal (organic) concept. The **objective** meaning entails that the public service is meant to be:
"any activity directed at fulfilling a societal need and delivering public benefit, regardless of whether the provider is a government entity or a private individual or organization"[1] *(Rosenbloom et al., 2014).*

According to this criterion, a **public service** refers to services that are provided by the government or state for the benefit of the general public. These services are typically essential for the functioning of society and include areas such as healthcare, education, transportation, law enforcement, and social welfare. Public services are financed through taxes and are intended to ensure the well-being and security of citizens, without the primary motive of profit[2].

The **formal concept** of public service often emphasizes the party responsible for the activity, rather than the service itself. Under this framework, public service refers to the provision of services by an entity that holds authority and jurisdiction over a specific area, with the aim of meeting public needs on a regular and permanent basis. This concept has been adopted by many jurists, including the notable jurist Horio, who defined public utility (or public service) as:

"a public organization with authority and jurisdiction that aims to satisfy public needs and services on a regular and permanent basis"[3] *(Horio, 1995).*

In this context, public organizations or bodies, endowed with legal authority, are tasked with delivering services essential for the welfare of the public. These services are typically non-profit-oriented and are provided on a continuous basis to ensure that citizens' basic needs, such as education, health services, transportation, and public safety, are met consistently and reliably. This formal definition reinforces the idea that public services are integral to maintaining social order and contributing to the public good.

The formal concept of public service underscores the role of governmental or quasi-governmental organizations as providers of these services, further emphasizing their accountability and responsibility to the public[4] (Bovens et al., 2014). This accountability is

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especially important when it comes to evaluating the effectiveness of public services and ensuring that they are provided in a **fair** and **efficient** manner.

From a legal perspective, the provision of public services is governed by principles of administrative law, ensuring that public bodies are accountable for the delivery of these services. The concept of public service obligations extends to ensuring that these services are accessible, non-discriminatory, and efficient. For instance, the European Union has emphasized that public services should maintain a high level of service quality and accountability while considering citizen rights European Commission in 2016. In the UK, the Public Services (Social Value) Act 2012 legally reinforces the idea that public bodies must consider the social value of the services they provide HM Government in 2012. Therefore, public services are not just a mechanism of governance, but **a legal responsibility of the state**, which ensures that the rights of citizens to access such services are upheld, and that there is legal recourse available in cases of failure or mismanagement[5].

Technological progress in information and communication technologies (ICT) has significantly influenced the modernization of state institutions, prompting them to adopt innovative management strategies that capitalize on the global reach of the internet and the benefits of the digital revolution[6] (Heeks, 2005). Various terms have been used for electronic government (e-government), such as: e-business, digital government, e-public administration, and e-public utilities. Some have gone so far as to say that electronic public administration is: *the use of information technology and modern means of communication to improve government performance in a way that ensures change in the management style by including a new style characterized by flexibility away from routine and complexity, relying on the use of information and communication technology, and then providing it to the recipient of the service in an easy and safe way, which saves effort, time and money[7] (Alshehri & Drew, 2010).*

On the other hand, the term e-government is often used to describe the electronic administration of public services, which has sparked a jurisprudential debate about whether the two concepts are interchangeable or represent distinct phenomena. Some scholars argue that the two terms are synonymous, asserting that the core idea is the capacity of government sectors to deliver traditional services to citizens using modern electronic tools in order to accelerate administrative processes and enhance public service delivery (Hasan et al., 2024). Meanwhile, other scholars maintain a distinction between the two terms, proposing that electronic administration represents an earlier phase in the digital transformation of the public sector, whereas e-government reflects the more advanced stage of full technological integration into governance[8] (Zygiaris & Maamari, 2023). Additionally, some see e-administration as the broader term, encompassing various digital applications such as e-commerce, e-business, and e-government, thereby positioning it as more comprehensive and inclusive[9] (Michel, 2005).

Therefore, introducing technology into electronic public facilities has distinguished them from traditional public institutions through several key characteristics:

- Paperless Operation: Electronic facilities function without the need for paper by integrating core digital infrastructure such as computers, communication networks, and specialized software. This transition supports the use of email, electronic archives, and digital records instead of paper-based documents.
- Remote Access to Services: Services are available remotely, allowing users to engage with public institutions from any location via the internet, which enhances service accessibility and citizen engagement.
- 24/7 Service Availability: These digital public services are accessible at all times—beyond standard office hours—including nights, weekends, and public holidays—supporting flexibility and responsiveness[10].

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- Adaptive Regulations: Unlike traditional systems, electronic public facilities operate under smart, adaptive digital frameworks that can respond dynamically to changing demands or emergencies[11].

These differences highlight the importance of electronic public facilities in performing administrative tasks efficiently and flexibly, thanks to the technological means they employ, which facilitate information retrieval and inter-agency coordination—advantages not present in traditional public facility management.

THE IMPACT OF E-ADMINISTRATION ON THE PRINCIPLES GOVERNING THE PUBLIC FACILITY

The concept of the public facility is founded on principles that ensure its ***continuous and effective operation, equitable service delivery, and adaptability to change***. With the advent of the electronic communications revolution, characterized by rapid and precise information processing, transmission, and dissemination, these principles are increasingly influenced by technological advancements.

Continuity of Operations

Electronic administration enhances the regular and steady functioning of public facilities by streamlining processes and reducing bureaucratic delays, thereby ensuring uninterrupted service delivery[12] (Alawneh, 2024). This principle means providing the basic needs that the facility is created to meet in a continuous and regular manner except on official holidays and in cases of force majeure , i.e. that public facilities operate continuously and regularly, as social life attaches great importance to the continuity of the operation of the public facility regularly and steadily, and individuals arrange their life system based on what these facilities provide, so that their stoppage does not lead to a disruption. This principle has been derived by the French jurist Roland from the rulings of the French State Council. The French Constitutional Council also gave it a constitutional value through its decision issued on 7/25/1979, in which it decided that public utilities should operate regularly and steadily.

The principle of ensuring the continuous and regular operation of public facilities is fundamental to maintaining societal stability. Electronic administration significantly reinforces this principle by mitigating the impact of employee strikes and resignations. The automation of services through digital platforms reduces dependency on human intervention, ensuring uninterrupted service delivery even during workforce disruptions[13] (Kim et al., 2024). Furthermore, the concept of the "actual employee," referring to individuals appointed without proper authorization, becomes less relevant in the context of electronic administration. Digital systems necessitate formalized processes for access and operation, thereby reducing the likelihood of unauthorized personnel affecting service delivery[14] (European Foundation for the Improvement of Living and Working Conditions, 2021). In exceptional circumstances, such as force majeure events, electronic administration systems are designed to maintain essential operations, ensuring that public facilities continue to function without significant disruption. The integration of digital technologies enables rapid adaptation and response to unforeseen challenges, thereby upholding the principle of continuous service provision (Eom & Lee, 2022). Thus, the adoption of electronic administration not only enhances the efficiency and reliability of public facility operations but also strengthens the foundational principles that govern their functioning. On the other hand, the theory of emergency circumstances, which makes the implementation of the contract burdensome due to unexpected circumstances, grants the party who suffered the damage fair compensation, in order for the public facility to operate regularly and steadily. So, the establishment of such a theory in light of the application of electronic administration

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has a lesser impact than in traditional facilities due to the presence of a main information centre in the country, and the presence of backup servers with an international scope.

Equal Access to Services

The digitalization of public services promotes **equality** by providing citizens with equal access to services, irrespective of their geographical location, thus bridging gaps in service delivery[15] (Alaaraj & Ibrahim, 2023). Traditionally, access to government services was often influenced by a citizen's proximity to urban centres, the physical presence of government offices, or the availability of administrative personnel. These geographical and infrastructural constraints disproportionately affected rural, marginalized, and underserved communities, creating systemic inequities in the delivery of public services. With the implementation of e-government platforms and digital tools, these barriers are significantly reduced. Citizens can now access essential services—such as renewing documents, applying for permits, or receiving social support—through web portals and mobile applications, regardless of their physical location. This shift not only minimizes the need for in-person interactions but also ensures that services are available 24/7, thereby accommodating various socio-economic and time-based constraints.

Moreover, governments are increasingly investing in inclusive digital policies and infrastructure to ensure that even remote areas benefit from connectivity and digital literacy. Initiatives such as free Wi-Fi hotspots, the expansion of broadband networks, and user-friendly platforms in multiple languages have all contributed to a more equitable public service environment[16] UN E-Government Survey in 2022. Importantly, digital governance also supports the principle of *procedural equality*, where each citizen interacts with a standardized digital system that treats all users uniformly. This minimizes the risk of favouritism, human error, or bureaucratic discrimination, and enhances transparency and accountability in administrative processes (Alateyah & Crowder, 2023). However, challenges persist, particularly concerning the digital divide. In regions with limited internet access or lower digital literacy, such as rural areas, the effectiveness of e-administration can be compromised, potentially exacerbating inequalities. Studies indicate that individuals in rural areas may have less access to e-government services, highlighting the need for inclusive digital infrastructure to ensure equitable service delivery[17] (Slijepčević, 2023). Thus, digital transformation in the public sector is not merely a technological upgrade—it is a structural enhancement of equity, inclusion, and citizen empowerment. Therefore, the application of electronic administration requires state intervention to eliminate information illiteracy, enable individuals to access the Internet, and provide the necessary devices to access public facility services.

Adaptability of **Services**

E-administration embodies the principle of **adaptability** by facilitating continuous updates and improvements in public services, enabling facilities to respond effectively to emerging needs and challenges[18] (Almulhim, 2023). These advancements underscore the transformative impact of electronic administration on the foundational principles of public facilities, highlighting its role in enhancing efficiency, accessibility, and responsiveness in public service delivery. This principle means that the administration has the right to modify or change the rules governing the public facility at any time in a way that achieves the public interest without anyone having the right to object to that, whether from the beneficiaries of the facility or its employees or to adhere to any acquired rights. It follows that this principle

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gives the administration the discretionary power to modify the work method of the traditional system, regardless of the management method followed, whether it is related to direct management.

The principle that the administration has the right to modify or change the rules governing a public facility at any time in the public interest is rooted in the concept of ***administrative discretion***, a cornerstone of modern public law. Administrative discretion refers to the legal authority granted to administrative bodies to make judgments and decisions based on their expert knowledge and responsibility to act in the public interest. This principle allows the administration to adjust policies and procedures as needed, even in ways that may affect the rights or expectations of employees or service users, provided that such adjustments serve the public good.[19]

This authority stems from the ***public service doctrine***, developed in French administrative law and adopted in various forms in other legal systems. Under this doctrine, public services must operate continuously, changeable to meet new societal needs, and available equally to all.[20] The principle of ***mutability*** (principe de mutabilité) specifically allows the administration to unilaterally amend the rules or operations of a public facility to adapt to changing circumstances. This principle is considered essential for maintaining the relevance and effectiveness of public services in dynamic environments[21].While beneficiaries and employees of public facilities may possess certain rights or expectations, these are not deemed absolute in administrative law. Courts have consistently upheld that the public interest overrides individual claims in cases involving the adjustment of service delivery mechanisms, work structures, or administrative procedures[22]. The administration is entrusted with the responsibility of ensuring that services operate efficiently and meet societal needs, which are constantly changing due to economic, technological, or political developments. As such, the administration must retain the unilateral power to amend operational rules—even if such changes affect users or employees.

Legislation and case law in jurisdictions such as France and Egypt confirm that the discretionary power of public authorities can be exercised without breaching legal standards, so long as the action is neither arbitrary nor abusive[23]. For instance, this position is firmly rooted in **French administrative jurisprudence**, particularly in the work of jurist Léon Duguit, who emphasized that public service is defined by its utility to the community and must be adaptable to serve that purpose[24]. Likewise, the French Conseil d'État established the legal doctrine that **no vested rights** (*droits acquis*) can be claimed in opposition to a general interest decision taken by the administration, especially where the continuous operation of a public service is concerned[25]. Moreover, Egyptian administrative law has embraced this doctrine through its alignment with French principles. The Egyptian Supreme Administrative Court has affirmed that the executive has the authority to alter or reorganize public facilities if doing so promotes public welfare.[26] Such changes may include restructuring institutions, shifting resources, or implementing technological reforms without requiring consent from affected parties.

Nevertheless, there are limits to administrative discretion. Legal scholars and courts stress the importance of proportionality and non-discrimination in the exercise of discretion. The decision to modify the structure or operation of a public service must align with constitutional and statutory principles and affected parties may still seek judicial review in cases of manifest abuse or deviation from legal norms[27]. So, despite its rationale, the discretionary authority of the administration is not absolute and must operate within the boundaries of legal norms, constitutional guarantees, and judicial oversight. Critics contend that allowing unfettered discretion risks undermining legal certainty, employees' labour rights, and due process protections. The rule of law, a central principle in administrative

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governance, requires that even discretionary powers be reasonable, proportionate, and subject to judicial review[28].

The concept of legitimate expectation, recognized in various legal systems, holds that individuals who have consistently benefited from certain administrative practices may, under specific conditions, expect them to continue[29]. In common law systems, such as in the UK, this concept has become an enforceable ground for judicial review, especially when abrupt changes by public authorities affect rights or expectations[30]. Although less entrenched in civil law systems, the trend toward integrating rights-based approaches is growing in administrative adjudication. Further, international administrative standards increasingly call for transparency and participatory governance. The OECD's Good Governance Principles recommend involving stakeholders in decisions that affect their interests, particularly where public service restructuring is concerned[31]. Failure to consider such perspectives may not only violate procedural fairness but also erode public trust in institutions.

In summary, the legal debate surrounding the administration's power to modify public facility rules underscores the tension between **state efficiency** and **individual legal protection**. While the principle of mutability is indispensable for flexible and responsive governance, its application must be tempered by legal safeguards that **ensure accountability, prevent arbitrariness**, and uphold **basic rights**. The challenge for modern administrative law is to strike a fair balance between **dynamic service delivery** and **respect for the rule of law**.

LEGAL FOUNDATIONS OF LIABILITY IN ADMINISTRATIVE LAW

The principle of administrative responsibility is now firmly established in the legal systems of most contemporary states. This responsibility is based on the idea that the administration, though acting in the public interest, may incur liability when its actions cause unlawful harm. The general rule accepted by administrative courts is that such liability arises when three cumulative elements are present: an error or unlawful act, the occurrence of damage, and a direct causal link between the two[32]. In the absence of any one of these pillars, the claim for compensation by the injured party cannot be sustained.

Fault-Based Liability in Electronic Public Facilities

The implementation of electronic public administration in managing public facilities represents a significant advancement aimed at enhancing efficiency and service delivery. However, this transition introduces potential risks that may adversely affect beneficiaries, necessitating a legal framework for state liability. This analysis explores the basis of administrative responsibility in the context of electronic public facilities, focusing on three key aspects: liability based on *proven error*, *presumed error*, and *strict liability (without error)*.

Proven Error

Traditional administrative liability hinges on the presence of fault, typically established through ***proven error***. In the realm of electronic public administration, this concept extends to situations where the administration's actions, such as system malfunctions or data breaches, directly result from identifiable mistakes. For instance, if a public facility's digital system erroneously processes personal data due to a coding error, leading to harm, the administration may be held liable for the damages incurred. This aligns with the principle that

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the state is accountable for unlawful or irregular official actions performed during the execution of its duties.

A landmark example of such fault-based liability can be seen in French administrative law, where the Conseil d'État has consistently upheld that a public entity is liable for "faute de service"—a service error—whenever the malfunction of a public system causes harm to individuals[33]. This jurisprudence has been mirrored in other civil law systems, including Egyptian administrative courts, which have reinforced the state's responsibility for negligent management or defective operation of digital services[34].

This type of liability is not only essential for redress but also functions as a legal incentive for public authorities to maintain and upgrade their information systems responsibly[35]. Moreover, in the context of data protection law, proven error in handling personal information can also lead to administrative sanctions and civil compensation under frameworks such as the EU General Data Protection Regulation (GDPR)[36]. Thus, under the doctrine of proven fault, administrative liability for digital mismanagement represents a modern continuation of long-standing principles of public law, ensuring that technological evolution does not escape traditional standards of accountability.

It is fundamental to understand that while the administration is endowed with legal personality, it does not possess a will independent of its agents. Errors made in the execution of administrative functions are therefore committed through public officials, who serve as the instruments through which the administration operates[37]. This fact led the French Conseil d'État to develop a pivotal legal doctrine: the distinction between ***personal fault*** (faute personnelle) and ***service fault*** (faute de service)[38]. This theory constitutes one of the key features distinguishing administrative liability from its civil counterpart under private law.

Personal Fault Versus Service Fault

In civil liability, the fault is typically personal and attributed directly to the individual. However, under administrative law, personal fault refers to acts committed by the public servant that are entirely detached from the administrative function—for instance, behaviour stemming from personal animosity, deliberate misconduct, or actions beyond the scope of their duties. In such cases, the liability falls on the individual, and jurisdiction lies with the ordinary civil courts[39]. Conversely, a service fault involves misconduct that arises in the course of performing official duties, even if the act was negligent or harmful. The administration bears responsibility for these acts, and it is the administrative courts that have jurisdiction to hear such claims. This distinction reflects the recognition that, while the administration should be held accountable for the conduct of its agents, it should not bear liability for acts that have no connection to public service or that violate the duties of the position in a deeply personal manner.

The jurisprudence of the French administrative courts, particularly decisions from the Conseil d'État, has provided influential guidance on this matter. For instance, in the seminal case Anguet CE in 1911, the court acknowledged the possibility of both types of fault coexisting and affirmed that the administration may still be held liable even where a personal fault has occurred, so long as the act is not entirely divorced from service. This ***dual liability theory*** ensures that victims are not left uncompensated due to the complexity of fault categorization, a principle increasingly accepted in various legal systems globally[40]. In conclusion, the modern doctrine of administrative responsibility balances the protection of public interests with the individual rights of persons harmed by state actions. By distinguishing between personal and service faults, administrative law achieves both

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functional accountability and fairness in the allocation of liability, reinforcing the rule of law in public administration.

However, while the French administrative judiciary has long recognized the distinction between ***faute personnelle*** (personal error) and ***faute de service*** (service error), this division remains conceptually and practically difficult to delineate. Although it is intended to allocate liability appropriately between the public employee and the administration, the doctrine relies heavily on ***an abstract standard*** that proves difficult to apply consistently in real-life situations. At its core, the concept of fault—whether personal or service-related—is inherently human behaviour, the evaluation of which is susceptible to multiple overlapping factors, both subjective and objective. The challenge arises from the fact that administrative errors rarely occur in isolation; they are often the result of complex interactions involving the employee's psychological constitution, the institutional pressures of the administrative environment, and broader social and cultural influences[41].

As scholars have noted, the psychological makeup of a public employee may influence their conduct under stress, authority, or institutional hierarchy, which can blur the line between a purely personal act and one deeply embedded in the working environment[42]. Moreover, the job context — including workload, administrative constraints, or vague procedural guidelines—may push employees toward decisions that, although flawed, are arguably service-related[43]. This interplay raises fundamental questions about the fairness and consistency of assigning personal liability to an official whose actions, while potentially aberrant, were induced or exacerbated by systemic deficiencies. This difficulty is reflected in the jurisprudence of the French Conseil d'État, where the courts have struggled to offer a precise and universally applicable criterion. In some cases, courts emphasize the intentionality or gravity of the employee's behaviour, while in others, they assess whether the act was **intrinsically linked to the performance of public duties. Such inconsistency reveals a tension between the doctrinal desire to maintain a distinction for purposes of allocating liability, and the legal reality that fault often cannot be cleanly categorized.

Modern administrative thought suggests that this distinction—while analytically useful—should not prevent flexible judicial interpretation, especially where rigid categorization may frustrate access to justice or fair compensation[44]. Indeed, comparative jurisprudence, including developments in Germany and certain common law systems, reflects a trend toward focusing more on institutional accountability rather than individualized blame, thereby mitigating the harsh consequences of overly rigid fault distinctions[45].

However, when the error is committed by a public official, courts must distinguish whether the fault is personal, attributable solely to the employee, or a service error, for which the administration must bear responsibility[46]. The Pelletier case of 1873, rendered by the Tribunal des conflits in France, laid the groundwork for this distinction. The court held that a service error—committed in the course of official duties—invokes the liability of the administration, while a personal error, committed outside the scope of public duties, renders the individual employee personally liable[47]. Nonetheless, the application of this distinction is highly complex. Error is inherently human and influenced by numerous internal and external factors, such as psychological disposition, workplace environment, or socio-cultural context[48]. This makes it difficult to devise a unified standard to distinguish between the two types of fault. Consequently, the matter is generally left to the discretion of the judge, who examines the specific facts, context, and motives behind the act. Courts and scholars have offered several guiding criteria that may aid in this judicial assessment:

- A personal error is clearly separate from the job—both physically and mentally—such as misconduct during the official's private time.

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- An error is still considered personal even when connected mentally to the job, if it is physically removed from official duties—for example, using government equipment for personal misconduct[49].
- An error may be materially linked to the job—i.e., committed during working hours—but is considered personal if it is marked by serious misconduct or malice, such as gross negligence or intentional harm[50]. In such cases, courts often scrutinize the official's intent or the severity of the conduct[51].

Despite these conceptual guidelines, judicial practice has not solidified a single, abstract legal rule, and each case continues to rely on the factual matrix and judicial interpretation[52]. This emphasizes the practical reality that the line between personal and service error is blurred and context-specific. Thus, it is conceivable that a personal error within electronic public facilities may occur when one of the facility's employees intentionally or through gross negligence hacks into the site's security system, which leads to a complete paralysis of the site and thus the cessation of its services until repair is done, or through the employee disclosing the confidentiality of personal information or tampering with it by destroying or modifying it, which would at the same time constitute a crime called the crime of illegal access to the automated data processing system. However, such personal errors do not prevent the administration's responsibility alongside the employee's responsibility by finding out the facility error in the mere failure to supervise the employee and not taking the necessary measures to prevent the occurrence of damage, or through the employee committing these personal errors on the occasion of using the facility's means and tools, according to the approach followed by the French State Council in combining personal error and facility error.

On the other hand, the responsibility of an **electronic public facility** may arise from what is legally characterized as a **service error**—an error attributable to the administration itself rather than an individual employee. This triggers the **public law liability** of the administration, which is obligated to compensate the injured party from public funds. The **jurisdiction** over such cases lies with the **administrative judiciary**, which has developed distinct standards for identifying service errors, particularly in the context of digitized public services[53]. The legal doctrine recognizes several forms of service error, often divided into **three main categories**, each of which may involve specific liability implications under the principles of **French-origin administrative law**, and increasingly within comparative public law systems:

Failure to Perform the Required Service: This form occurs when the public administration fails to deliver a service that it is legally obligated to provide. In the electronic administration context, such failure may include, for instance, the inaccessibility of an online government platform, the non-responsiveness of digital communication systems, or the absence of real-time access to public records that citizens are entitled to obtain[54]. If this failure results from negligence, system design flaws, or insufficient technical maintenance, and causes damage to a citizen or institution, the administration may be held accountable under the rules of public service liability. In such cases, the damage is not caused by a specific human agent but by the administration's systemic failure—reflected in its digital infrastructure, software planning, or its inability to ensure service continuity. This form of liability aligns with the broader principles of objective fault in public administration, especially when the service is a mandatory function and the user suffers harm as a direct consequence of inaction. This form of error emphasizes the growing responsibility of public entities to maintain **technological reliability** and ensure **uninterrupted access** to e-government services, particularly where these platforms replace traditional, physical channels.

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This form of administrative error may also arise when the administration refuses to perform a duty that it is legally or contractually required to fulfil. In such cases, liability is not based on a positive act, but rather on the administration's omission or abstention, which leads to harm to individuals[55]. Under classical administrative law, this negative behaviour constitutes a service error where the administration is legally obligated to act, but instead adopts a passive or unjustified position. The courts have consistently held that failure to act, when action is due, amounts to a breach of administrative duty and gives rise to liability, provided that damage and a causal link can be established.

In the context of electronic public administration, this form of liability becomes increasingly relevant. For instance, it may be represented by a public employee's failure to receive an electronically submitted request, or failing to process or transmit the digital transaction after completion. The automation and digitization of public services entail not only the modernization of public interaction but also legal obligations to maintain responsiveness and technical functionality. A refusal or failure to act in the digital realm—particularly when systems are expected to function autonomously or with minimal human intervention—can have the same legal consequences as an express denial of service under traditional administration[56].Thus, electronic inaction, such as ignored submissions, technical dead-ends, or unacknowledged service requests, must be scrutinized under the same principles that govern omissions in conventional administration. The responsibility of the state or administrative authority may therefore be established if such inaction results in prejudice to a citizen and the other elements of liability (damage and causal relationship) are fulfilled.

Poor Performance of Public Service: This category of administrative error pertains to instances where the administrative body performs its duties inadequately, resulting in harm to individuals. Such deficiencies may arise from poor service delivery or inadequate organization within the facility. For example, employees may suffer health issues due to inadequate ventilation in workplaces, especially when heating is achieved through coal-burning methods. In the realm of electronic public administration, poor performance can manifest in several distinct ways, all of which reflect a breach of the duty of care owed by the administration to users of public digital services.

The responsibility of the electronic public facility in this context includes the **failure to maintain or organize digital infrastructure**, such as an underdeveloped service platform that lacks full functionality or sufficient access points. If the state or public institution provides limited digital options that do not cover essential services—or provides them in an inaccessible, ambiguous, or unsafe manner—this failure may constitute misadministration, triggering liability[57].

Moreover, the **absence of technical oversight**—such as failure to employ IT supervisors, cyber security professionals, or platform administrators—can lead to systematic service deficiencies. These failures may expose users to risks including data breaches, account hacking, or loss of personal information, which the administration has a legal obligation to prevent[58].

The jurisprudence and doctrine of administrative law support the idea that the administration is responsible not only for its intentional or negligent acts, but also for organizational or systemic failures that cause harm. In particular, **deficient implementation of electronic security standards**, failure to provide clear platform instructions, or mismanagement that allows unauthorized access or repeated technical errors, can all amount to actionable errors under public service liability[59].

Such failures undermine the **principle of continuity** and regularity of public services, which is fundamental in administrative law and becomes especially significant in the digital

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era, where interruptions and insecurity can affect wide swaths of the population simultaneously. Consequently, poor electronic service delivery may give rise to claims for administrative compensation, grounded in a proven or presumed fault of the facility. A notable legal illustration is when administrative platforms do not clearly inform users about potential data risks or implement weak authentication systems that allow unauthorized access. In such cases, the public administration may be held liable for negligence or mismanagement, especially when these failures directly result in harm to individuals. Additionally, operational shortcomings, such as neglecting to implement security protocols, failing to provide electronic warnings about information security risks, offering unclear instructions that facilitate unauthorized access, or executing erroneous operations that adversely affect service recipients, further exemplify poor performance in electronic public administration. Legal precedents underscore the state's liability for such deficiencies. For instance, in *Lucknow Development Authority v. M.K. Gupta*, the Supreme Court held that when public servants act in a manner that causes injustice and harm to individuals, the state is liable to compensate the aggrieved party from public funds. This principle applies to both traditional and electronic forms of public service delivery.

Slowness or Delay of the Public Facility: If the administration is slow in performing its work for more than the reasonable time dictated by the nature of these works, this is considered a public service error that requires the responsibility of the administrative body if the individual suffers harm as a result of that. It is worth noting that if the law sets a specific date for the administrative body to perform its services, such that the administrative body does not work during this date, this indicates that the administrative body has refrained from performing its services. This means that the law did not restrict the administration to a specific date, but its slowness beyond a reasonable limit in performing its services may cause harm to individuals, which requires compensation.

The slowness of the electronic public facility in providing its services and then its liability in this regard may be due to several reasons, including the increase in the number of visitors to the same site, which leads to a weakness in its electronic capabilities and thus its inability to provide the service on time, and slowness may occur as a result of the infection of the electronic site with viruses, which may cause harm to the recipient of the service as a result of this delay or the submission of the transaction after a long period of time in a way that causes harm to the recipient of the service.

Although establishing administrative liability for electronic public facilities on the idea of error that must be proven is the original, some have directed some criticism at it, the most important of which is the difficulty of the injured party in this regard obtaining compensation in most cases due to the many difficulties facing proving error in the field of electronic administration. Based on this, it is possible to move towards establishing the liability of electronic administration on the presumed error or what is called the presumption of error, as we will see in the next section.

Presumed Error

In certain instances, liability may arise even in the absence of a proven error, based on ***presumed error***. In administrative law, liability does not always require direct proof of fault. Presumed error (faute présumée) serves as an intermediate standard between proven fault and strict liability. It allows courts to presume negligence when an act of the administration results in harm, particularly in technically complex fields like electronic public administration, where causation and fault may be difficult to trace. For example, if a newly deployed government software system results in widespread service disruption—such as

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blocking access to public health services or unemployment benefits—the state may be held liable without explicit proof of a specific act of negligence, on the basis that such a breakdown would not ordinarily occur without some form of mismanagement[60]. The administration is then expected to rebut this presumption by proving that it took all necessary precautions and that the harm was caused by factors beyond its control[61]. This legal construct is particularly relevant in e-governance contexts, where system complexity and algorithmic opacity can make it difficult to assign blame precisely. Therefore, presumed error becomes a protective legal mechanism, ensuring that individuals are not left uncompensated simply because technical evidence is unavailable or obscured by proprietary technologies.

The French Conseil d'État has long recognized presumed fault in public liability cases involving malfunctioning infrastructure or administrative services, applying it in instances where the administration fails to maintain essential public systems[62]. This doctrine has been adapted in various legal systems to address the risks posed by digitization, especially concerning public data processing and automation in service delivery[63]. In this regard, the presumption of fault aligns with both constitutional principles of administrative accountability and emerging international governance standards, such as those set by the OECD, which emphasize the precautionary duty of public administrations operating digital infrastructure[64]. This approach is particularly relevant in electronic public administration, where technological complexities can lead to unforeseen issues. For example, if a public facility adopts a new software system that inadvertently causes widespread service disruptions, the administration may be presumed to have acted negligently, even without direct evidence of fault. This presumption serves to protect beneficiaries and ensures that the administration maintains high standards of care in its digital operations.

In the context of electronic public facilities, this doctrine allows for the attribution of fault to public authorities even in the absence of direct evidence of wrongdoing, provided certain conditions are met. While this approach aims to ensure accountability and compensate victims, it also raises significant legal and practical concerns. For example, the Conseil d'État, France's highest administrative court, has developed the doctrine of presumed error to address cases where the damage is unusual, difficult to explain scientifically, and disproportionate to the expected outcome[65]. Similarly, the United Kingdom's doctrine of *no-fault compensation* in certain public services mirrors aspects of the French approach, aiming to streamline compensation processes and reduce litigation.

This presumption operates on the premise that the circumstances surrounding the damage strongly suggest a fault, even if not explicitly identifiable. However, the application of presumed error necessitates the fulfilment of specific criteria:

- **Definite Damage and Causal Link**: There must be clear evidence of harm and a plausible connection between the public facility's operation and the damage.
- **Highly Likely Error**: The circumstances should strongly suggest that an error occurred, even if it cannot be definitively identified.
- **Serious and Disproportionate Damage**: The damage must be significant and out of proportion to the expected outcome of the service provided.

This doctrine ensures that individuals who suffer harm due to public services are compensated, even when direct evidence of fault is lacking. It also incentivizes public authorities to maintain high standards of service delivery, knowing that failure to do so could result in presumed liability. However, critics argue that presumed error shifts the burden of proof unfairly onto public authorities, potentially leading to unjust liability. Again, determining when presumed error applies can be complex, especially in the context of electronic public facilities where technical issues may be multifaceted. Moreover, the application of presumed error may lead to increased claims against public authorities, raising

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concerns about resource allocation and the potential for defensive practices that could undermine service quality.

In this regard, the French administrative law grants administrative judges significant discretion in its application to enhance flexibility and responsiveness. a rigid application of legal standards may fail to address the diverse nature of administrative actions and the varying circumstances surrounding each case. The discretion granted to administrative judges in applying the presumption of error is a double-edged sword. While it provides the flexibility necessary to address the unique aspects of each case, it also introduces challenges related to consistency and predictability. For instance, excessive judicial discretion can lead to inconsistent rulings (Widdershoven, 2023), undermining the principle of legal certainty[66]. When judges have broad latitude to determine the applicability of the presumption of error, similar cases may yield different outcomes based on individual judicial interpretations. This variability can erode public trust in the legal system and create challenges for public authorities in anticipating legal consequences. However, this can be mitigated by applying the principle of ***proportionality*** which can act as a safeguard against arbitrary use of discretion. Thus, judges are guided by this principle to make decisions that balance the interests of justice with the rights of public authorities. This ensures that discretion is exercised within reasonable bounds (Parchomiuk, 2018), promoting fairness and accountability[67]. In cases involving complex administrative actions, such as those related to electronic public facilities, judicial oversight becomes indispensable. The intricacies of technical decisions often preclude a straightforward assessment of fault. In such contexts, the presumption of error allows courts to attribute liability in a manner that reflects the complexities of the administrative process, ensuring that individuals are not left without remedy due to the technical nature of the issue at hand.

By shifting the **burden of proof** to the public authority, the doctrine of "presumed error" allows for the attribution of liability even in the absence of direct evidence of fault. For example, in cases where direct evidence of fault is lacking, this doctrine compels the administration to demonstrate the absence of fault or the intervention of an external cause, thereby facilitating compensation for the injured party[68]. However, it could be argued that the presumption of error undermines legal certainty by imposing an evidentiary burden on public authorities without sufficient justification. Traditional legal principles dictate that the claimant bears the burden of proof. Departing from this norm may lead to unpredictable outcomes and potential overreach in administrative liability. Moreover, the requirement for the administration to disprove fault or external causation can be practically challenging, especially when dealing with complex administrative actions[69]. Thus, the presumption of error blurs the lines between fault-based liability and strict liability. Therefore, judicial scrutiny and potential legislative refinements will be essential in addressing the challenges associated with this doctrine.

The principle of 'presumed error' has been indirectly or implicitly indicated by the Conseil d'État and lower administrative courts – where the judiciary employed the phrase: "*The damage reveals a defective performance of the public facility that naturally leads to the establishment of administrative responsibility*." This suggests that the occurrence of damage inherently indicates a failure in the public facility's operation, thereby establishing the administration's liability. Over time, the language evolved to: "*The damage reveals an error in the organization or management of the facility that naturally leads to…*" This shift indicates a more explicit reference to organizational or managerial errors as the basis for liability. By attributing liability based on presumed errors in these areas, the courts emphasize the responsibility of public authorities to maintain high standards in the operation and management of public services[70].

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In the case of electronic public facilities, identifying the specific cause of the problem becomes exceedingly complex as users typically interact with the service remotely, without direct oversight of the underlying systems. So, they may experience issues such as system malfunctions, data inaccuracies, or access difficulties. Given the technical complexities involved, users often lack the expertise and resources to investigate and establish the specific nature of the error. Without the presumption of error, users might be unjustly deprived of compensation due to the inability to provide detailed evidence of the fault. In applying the 'presumed error' by the French Conseil d'État in the seminal Savelli case in 1960 (hospital-acquired infections)[71] gave a leeway to extend the principle to the realm of electronic public facilities. So, some legal scholars have argued that the provisions of civil liability for the custodian of the thing (*responsabilité du fait des choses*), which imposes liability on those who have control over objects that require special care, should be applied analogously to electronic public facilities. Here, by shifting the burden of proof to the public authority, the judiciary ensures that users are not penalized for circumstances beyond their control, thereby upholding the principle of access to justice. It should be confirmed here that presumed error is attributed to the electronic public facilities provided that the damage is evident, and the circumstances suggest a failure in the facility's organization or management[72].

While the presumption of error requires the public authority to prove the absence of fault to avoid liability, **no-fault liability** imposes liability on the authority regardless of fault. In cases where the damage results from risks inherent in the public authority's activities, such as the use of dangerous materials in public works, or from laws or legal decisions that burden individuals, the authority may be held liable without proof of fault. This approach reflects the principle of equality before public burdens, ensuring that individuals are compensated for damages resulting from public activities that disproportionately affect them. Hence, the following section is dedicated for the explanation of 'no error' liability (Mohammed & Almarabeh, 2023).

LIABILITY WITHOUT FAULT: RISK THEORY AND EQUALITY BEFORE PUBLIC BURDENS

In modern administrative jurisprudence, ***liability without fault*** has emerged as a central doctrine, particularly in the context of public service activities involving complex technological systems. Traditionally, administrative liability required fault—either through a proven error or a presumption thereof. However, contemporary legal developments reflect a significant shift toward ***objective liability***, where the state may be held responsible for damages resulting from its activities even in the absence of fault. This doctrine of ***no-fault liability*** (also referred to as *responsabilité sans faute* in French administrative law) is especially relevant in the digital age, where electronic public administration entails the deployment of intricate digital infrastructures that may inadvertently cause harm. For instance, if a cyberattack breaches a public facility's data systems, compromising personal information or service continuity, the affected individuals may be entitled to compensation even if the administration had exercised reasonable diligence and committed no specific act of negligence[73]. The European Court of Justice (ECJ) has reinforced this concept in its landmark ruling in Natsionalna agentsia za prihodite (C-340/21), where it held that the mere fear of misuse of personal data following a cyber incident can constitute non-material damage under the General Data Protection Regulation (GDPR), thereby activating the state's obligation to provide compensation[74]. This decision underscores a growing judicial tendency to prioritize individual rights and trust in public institutions, even in the absence of a culpable administrative act.

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Furthermore, legal scholars have argued that in cases involving high-risk digital operations—such as biometric data processing, AI-driven public decision- making, and nationwide databases—the threshold for administrative liability should be adjusted to ensure that victims are not unduly burdened with proving technical fault. These views align with the precautionary principle in public law, which obliges administrative bodies to anticipate risks and absorb resulting damages as part of their public service obligations.

In comparative law, countries such as France and Egypt recognize no-fault liability in circumstances involving abnormal and special risks (*le risque spécial et anormal*), including those posed by state technological initiatives[75]. Such frameworks are not only legally sound but also ethically imperative, ensuring equitable treatment of citizens affected by state-initiated digital transformations. Accordingly, the legislator played a prominent role in supporting this responsibility, whether by codifying the established judicial principles in the field of liability without error, or by inventing new cases in this regard. Moreover, responsibility in this regard is established once two basic elements are present - the damage/ harm and the causal relationship between it and the legitimate activity of the administration, unlike the responsibility based on error, which requires the presence of the three traditional elements, namely the error, the damage, and the causal relationship. As for 'harm', the French State Council's judiciary requires exceptional conditions in the element of harm that establishes liability without fault - the harm in this regard should be ***special*** and ***unusual***. The specificity of the harm means that it is directed at a specific individual or at individuals themselves, while unusual harm means that it is of a certain degree of seriousness that makes it unusual. Thus, for electronic public services, the judiciary applied administrative liability without fault, by establishing this liability on the idea of **risks**, and on the principle of **equality** between individuals before public burdens. Some jurisprudence uses the term *risk liability* as a synonym for *liability without fault*.

No Error Liability Based on Risk

In modern administrative jurisprudence, particularly within the French legal tradition, the concept of *risk liability* (*responsabilité pour risque*) has emerged as a cornerstone of liability without fault. Rooted in a pragmatic and moral rationale, this theory reflects an evolution from a fault-based system toward one that emphasizes the equitable distribution of harm arising from public activities. The central tenet of the risk theory is that the party who creates a risk—and benefits from it—must also bear the consequences of its realization, regardless of any proven misconduct or negligence. This principle has played a pivotal role in shaping state liability, especially in areas where harm arises not from illegality, but from the inherent dangers of lawful state action.

French administrative courts, particularly the Conseil d'État, have long been receptive to this theory, applying it in several critical domains. Notably, jurisprudence has recognized liability without fault in cases related to public works, the operation of medical facilities, dangerous objects, and state-run activities involving high-risk procedures. In such contexts, the administration is held liable not because it has erred, but because it has exposed individuals to abnormal risks in the pursuit of public interest.

This doctrinal shift is evident in the French approach to *travaux publics* (public works), where liability is incurred not due to proven fault but because individuals suffer special or excessive harm resulting from otherwise lawful infrastructure projects. The leading case of *Cormier* exemplifies this approach, in which the Conseil d'État affirmed that damage caused by public works could result in compensation, even in the absence of any administrative wrongdoing[76].

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Similarly, the state's responsibility in the realm of public hospitals has been increasingly framed through the lens of risk. In cases where patients suffer injury from hospital-acquired infections or faulty medical equipment, courts have recognized that the mere exposure to institutional risks suffices to establish liability. The underlying rationale is not corrective justice based on culpability, but distributive justice centred on the equitable allocation of harm resulting from collective services[77].

The risk theory finds further application in situations involving dangerous objects and methods utilized by public authorities—such as weapons, explosive devices, or hazardous chemicals. Even when handled correctly, these items present an intrinsic danger that, if realized, shifts the burden of harm onto the state. This application is less about punishing error and more about acknowledging that those who manage inherently dangerous tools in the name of public service must also shoulder the costs when those tools cause injury[78].

Moreover, the adoption of risk liability reveals a broader philosophical commitment: the state, as a principal actor in society, must act as an insurer of last resort. This commitment reflects a solidaristic vision of public law—one in which the state does not merely regulate risk but also absorbs it on behalf of its citizens. As René Chapus observed, this orientation transforms administrative law from a rigid system of fault-based accountability into a more humane, socially responsive framework[79].

In implementing the principle of no-error liability, the French legal system reaffirms a fundamental principle of public law—namely, that the burdens of public service should not fall disproportionately on the individual. This approach represents a sophisticated balance between the needs of administrative efficiency and the imperatives of justice.

The growing dependence on digital infrastructure has exposed public institutions to novel forms of harm, including hacking, cyber espionage, and data breaches. These activities—although frequently perpetrated by third parties—can have grave consequences for public facilities and services, leading to disruption, leakage of sensitive data, and the erosion of public trust. In light of these evolving threats, the logic of responsabilité sans faute finds renewed relevance, particularly within the framework of risk liability.

a) Hacking, in its various manifestations, represents an intentional intrusion into electronic systems. This may include unauthorized access to confidential data, manipulation of transmission protocols, or exploitation of software vulnerabilities through malicious code. In some cases, the aim is economic espionage, in others, political sabotage or data theft. Regardless of the specific form, such attacks target the very infrastructure of digital governance.
b) Espionage and the subsequent unauthorized publication of sensitive materials also fall under the scope of electronic risk. This includes the exposure of state-held or institution-specific information that was intended to remain confidential. The public release of such data—whether involving national security, personal information of citizens, or operational details of state institutions—can have consequences just as damaging as physical attacks on public works or dangerous activities involving tangible risks.

French administrative jurisprudence, grounded in the theory of risk, offers a viable model for addressing such harms. Just as courts have imposed liability for harms stemming from the management of hazardous materials or defective public facilities, so too can they extend this principle to the domain of digital vulnerability. The same legal logic can be used here: when the state benefits from the digitization of public services and electronic governance, it also assumes the responsibility of managing the associated risks. Cyber infrastructure, like physical infrastructure, carries inherent exposure to harm. The individuals or institutions affected by cyberattacks—particularly when these target public systems—should not bear the disproportionate cost of such exposure. So, when a citizen suffers a privacy violation, financial loss, or reputational harm as a result of a breach in state systems, this qualifies as an abnormal and specific harm warranting redress. In this respect, hacking and data leaks affecting public electronic facilities should be treated similarly to physical

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damages caused by public works or institutional negligence. Whether the attacker is identified or remains anonymous, and even if the breach occurs without any internal misconduct, the mere exposure to abnormal risk originating from public digital infrastructure should suffice to trigger the state's obligation to compensate.

However, it should be noted here that *liability without fault* has not yet been fully codified in the **French law** for cyber incidents, but scholars and some judicial trends support applying risk liability to digital infrastructure, especially when public systems are compromised and citizens suffer specific harms. As for the **German law**, state liability requires that a public authority violates a public duty and the violation causes damage to a third party[80]. This traditionally requires fault (intent or negligence), making it harder to impose liability without error. However, under certain circumstances—such as failure to secure critical infrastructure or breaches of duty to protect personal data under data protection law (DSGVO/GDPR)—compensation may be available. There is still a gap when it comes to strict or risk-based liability for cyber incidents. The **U.S. legal system** is heavily shaped by the doctrine of sovereign immunity, which means the federal or state governments cannot be sued unless they consent through legislation. The Federal Tort Claims Act (FTCA) allows some exceptions but does not clearly cover cyber incidents. Recent litigation has tried to hold the government responsible for data breaches, especially involving federal agencies (e.g., the 2015 OPM hack), but courts have generally been reluctant to impose liability without clear statutory authorization or evidence of gross negligence[81]. The government's duty to protect data may trigger constitutional privacy concerns, but remedies have been limited. Finally, in the **UK**, individuals may bring claims under negligence law or data protection legislation (especially the Data Protection Act 2018, implementing GDPR). Claims for cyber incidents involving government-held data typically require a breach of duty of care, and a demonstrable loss. There have been some class action attempts after major data breaches involving public entities (like the NHS), but courts often apply a high threshold for liability. The Human Rights Act 1998, especially Article 8 (right to private life), could also form a basis for claims, though remedies are again limited unless significant damage is shown[82].

For national security, many countries prioritize cybersecurity as a state function, sometimes limiting liability to avoid hampering defence efforts. As cyber threats evolve, legal systems may need to develop doctrines similar to risk liability or no-fault compensation in physical infrastructure law. In this regard, the **French risk theory** provides a promising model for such evolution, suggesting a path for other civil and common law jurisdictions to adapt their frameworks to the digital age. As such, the logic of *responsabilité sans faute*, when grounded in the theory of risk, provides a legal and moral justification for extending state liability into the digital sphere. It aligns with a broader vision of public law in which the state not only serves as regulator and protector, but also as guarantor of justice in the face of contemporary technological risks.

No Error Liability Based on Equality Before Public Burdens

The French administrative law recognizes two main bases for liability without fault: **risk theory**, which emphasizes the presence of abnormal danger or technical hazard; and **equality before public burdens**, which emphasizes that lawful administrative action should not impose disproportionate harm on individuals or groups. Both frameworks support the idea that state liability is not merely corrective, but also **redistributive**—a recognition that justice in public administration must account for both individual loss and collective gain.

The principle of equality of individuals before burdens is considered a basic guarantee of the rights and freedoms of individuals. When states impose these burdens and public costs,

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everyone must bear them, and no individual may evade them or have them imposed on a specific individual. This principle justifies liability based on distributive fairness—even in cases where there's no unusual risk involved, but where harm is an inevitable and unequal consequence of actions taken for the public good. According to this principle, when the state undertakes actions that serve the public interest, it must ensure that no individual or small group disproportionately bears the adverse effects of those actions. If such harm occurs, compensation becomes not just a matter of administrative discretion but a requirement rooted in **equality and fairness**. This equality-based liability responds to **normal administrative acts** that, although lawful and generally beneficial, cause **certain, direct, and special harm** to particular individuals. Here, the injury or harm is not incidental or abnormal, but rather a foreseeable and necessary consequence of the state's pursuit of the general welfare[83]. In this context, the harm does not arise from a breakdown in public service or a breach of duty, but from the uneven distribution of the burdens that public policies inevitably produce. Thus, even in the absence of risk or administrative fault, the law imposes a duty on the state to restore equality through compensation. This was clearly established in the seminal case Couitéas, where the refusal to evict squatters from private land, though legally justified in the interest of public order, led to harm so significant and individualized that compensation was owed under the principle of equality before burdens[84].

The logic is straightforward: if public policies are meant to serve society as a whole, it is unjust for only a few to suffer the negative externalities of those policies. For example, when infrastructure projects lead to expropriation, disruption, or economic loss to specific individuals, the state must recognize that the collective benefit must be matched by an equitable distribution of costs. Moreover, this form of liability is particularly relevant in contemporary areas such as environmental regulation, urban development, or cybersecurity, where the harm is often not due to risky procedures, but rather to necessary and widespread administrative action. The logic applies equally in the digital age: if the state digitizes its services for efficiency and national benefit, but a particular citizen suffers harm from a systemic failure or data compromise, then compensation should follow—not because of risk or fault, but because inequality in burden has emerged[85].

One of the foundational promises of e-administration is to reinforce the principle of equality before public services (*égalité des usagers devant le service public*)—that is, the idea that all individuals in the same legal situation should have equal access to public services, regardless of personal characteristics such as wealth, location, or background. In theory, e-administration supports this principle by removing barriers of time and geography and by offering services continuously and remotely. However, in practice, digital inequality introduces a new dimension of discrimination that threatens the very principle e-administration is meant to uphold. While the formal conditions for accessing public digital services may be uniformly applied, structural and technological disparities—including unequal access to devices, internet connectivity, and digital literacy—can result in de facto exclusion of certain populations. Individuals who are elderly, economically disadvantaged, or digitally illiterate may find it difficult or impossible to access e-services, even if they are legally entitled to them[86].

Moreover, public digital services may be available only in certain geographical areas, or may be optimized for specific devices or operating systems, creating an uneven landscape in which equal rights are not matched by equal capabilities. Thus, while the law recognizes all citizens as equal before the public service, the design and implementation of e-administration may lead to unequal treatment, inadvertently restricting access to privileged demographics—those who possess the necessary technical means and skills. Such disparities contravene the core administrative law principle that public services must be accessible to all

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users in a non-discriminatory manner. As noted by French administrative law scholars, material equality in accessing services is just as important as formal legal equality. Where the state opts to digitize essential services, it assumes a corresponding obligation to ensure accessibility for all, including through complementary analog channels, targeted support for vulnerable users, and universal service design[87].

The French Conseil d'État has traditionally affirmed that access to public services must be adapted to the needs and capacities of users, especially where new modalities are introduced. While comprehensive jurisprudence in the area of e-administration remains limited, the logic of equality before public burdens and public services would suggest that any public service transformation—digital or otherwise—must account for and mitigate systemic disadvantages that prevent equal enjoyment of public rights. Thus, when e-administration replaces traditional service channels without ensuring inclusive access, it risks violating the very principle of equal treatment of users it purports to serve. In such cases, administrative liability may be engaged not on the basis of technical malfunction or fault, but on the grounds of structural exclusion—a failure to design systems that respect the universal accessibility inherent in public service obligations.

REFUTING NO ERROR LIABILITY

The public authority can refute this presumption of error by demonstrating that the damage was not caused by any fault or error on its part. This can be achieved by establishing that the damage resulted from an external cause beyond the authority's control, such as the actions of the injured party, a third party, or force majeure[88]. For instance, if a user inadvertently caused the damage through their own actions, or if an unforeseeable event occurred that led to the damage, the public authority may be exonerated from liability. So, liability without fault is not absolute. It remains subject to general principles of causation. Notably, the administration may be fully or partially exonerated from responsibility by invoking the presence of a foreign cause (*cause étrangère*)—a factor external to the administration's conduct that breaks the chain of causation between the administrative action and the harm suffered. In this regard, foreign causes are categorized according to their legal effect on the attribution of liability[89]. Certain causes **completely exonerate** the administration, whether liability is fault-based or non-fault-based. These include f**orce majeure** (*la force majeure*): an unforeseeable, irresistible, and external event, and t**he act of the victim** (*le fait de la victime*): when the injured party is responsible for their own harm through negligent or intentional conduct.

In contrast, other causes—such as the error of a third party or a fortuitous event (*le fait d'un tiers* or *cas fortuit*)—typically lead to exoneration only in fault-based liability, but do not interrupt liability without fault, particularly under the doctrines of risk or equality before public burdens[90]. This distinction has significant implications for electronic public facilities. Given that many such services operate digitally and continuously, the possibility of interference by third parties, technological failures, or external threats is high. However, these do not necessarily relieve the administration of liability unless they meet the stringent criteria of a foreign cause capable of breaking the causal link[91]. For instance, in the context of liability without fault, the administration may successfully deny responsibility **only** in cases of:

- **Force majeure**, such as a **deep-sea earthquake** disrupting undersea internet cables, resulting in the paralysis of administrative websites or services. Such an event is characterized by its unpredictability, irresistibility, and exteriority relative to the administration's sphere of control.
- **The act of the victim**, where, for example, a citizen misuses the digital platform, negligently inputs false data, or intentionally causes a system error that leads to their own harm[92].

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On the other hand, causes such as: the error of a third party (e.g., a hacker who breaches the security infrastructure of the public platform, or a sudden technological malfunction (e.g., a virus disrupting public servers), do not generally suffice to break the chain of causation in cases of liability without fault[93]. These causes, although external to the administration's will, are not unforeseeable in the context of modern digital administration. Given the known prevalence of cyber threats, courts are likely to consider the duty of the administration to anticipate and guard against such risks, especially when managing sensitive public services. The occurrence of a cyberattack, in this sense, does not constitute force majeure, but rather falls within the normal scope of digital risk, which the administration must internalize and insure against[94].

CONCLUSION

One foreseeable trend is the expansion of liability without fault to encompass digital-specific harms—such as unauthorized data disclosure, algorithmic discrimination, or service inaccessibility caused by automated systems. Building on the doctrines of risk theory and equality before public burdens, courts may increasingly recognize that digital systems, while not inherently dangerous in the traditional physical sense, carry their own risks that justify compensation without the need to prove fault. For instance, when a public AI system wrongfully denies a citizen access to welfare due to biased training data or programming flaws, it may not be reasonable to demand proof of administrative error in the classical sense. The predictability and inevitability of systemic digital failures may support a jurisprudential shift toward strict administrative responsibility for such harms, especially when public trust and rights are at stake.

Another anticipated trend is a redefinition of force majeure in the realm of cyber liability. Given the increasing frequency and sophistication of cyberattacks—including ransomware, data breaches, and supply chain disruptions—there is growing pressure on the judiciary to clarify what qualifies as unforeseeable and irresistible in digital environments. Future jurisprudence may adopt a higher threshold for invoking force majeure in cyber incidents. Where cyber threats have become routine and foreseeable, state entities may be expected to maintain robust anticipatory defenses, failing which they may remain liable even in the absence of direct fault. This would reflect a shift toward objective standards of cyber resilience, aligned with contemporary risk management practices.

With the digital state increasingly handling sensitive personal data and making decisions that affect fundamental rights, the intersection between public liability and human rights law is becoming more pronounced. Courts may begin to impose positive obligations on the state not only to avoid harm, but to actively protect digital rights. In Europe, this evolution is influenced by the General Data Protection Regulation (GDPR) and the jurisprudence of the European Court of Human Rights under Article 8 of the European Convention (right to private life). Failures in data protection or algorithmic transparency by public authorities may increasingly give rise to state liability, even without conventional fault, especially when fundamental rights are implicated.

One of the most pressing future concerns is the legal responsibility for harms caused by automated or algorithmic decision-making within the administration. As governments adopt AI to process applications, assign social benefits, or prioritize public services, the need for legal frameworks to determine accountability becomes urgent. Traditional liability models—centered on human error—struggle to address black-box systems whose outcomes may not be easily traced to an individual decision. There is growing scholarly and judicial interest in treating these systems as "technical public agents" whose outputs can generate

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state responsibility in the same way as human officials.^4 This may lead to the development of sui generis liability regimes for algorithmic harm, particularly where systemic bias or exclusion occurs.

Finally, the evolution of digital public administration may prompt a conceptual shift in the function of state liability itself—from a reactive model (focused on redress after harm) to a preventive or systemic model. In this emerging paradigm, liability frameworks would be used not merely to compensate but to incentivize better design, implementation, and oversight of digital services. Courts may increasingly evaluate whether public bodies have adopted adequate cyber security protocols, engaged in impact assessments, or ensured inclusive design before determining liability. This aligns with broader regulatory trends emphasizing governance, transparency, and accountability in the use of emerging technologies.

To conclude, as the digital transformation of the state accelerates, the legal framework governing public liability must adapt to ensure that citizens' rights are preserved, access to public services remains equitable, and technological complexity does not shield the administration from responsibility. The future of state liability will likely be shaped by a convergence of administrative law, human rights doctrine, and technological ethics—anchored in the fundamental principles of risk internalization, equality before public burdens, and the evolving nature of public service in a digital society.

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