



Administrative Responsibility of the Hospital for Medical Errors

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ABSTRACT: The article addressed the administrative responsibility of public hospitals for medical errors, explaining the difference between personal error on the part of an employee and an error associated with the facility itself, for which the administration bears responsibility. Liability depends on the existence of fault, damage, and causation, taking into account the specificity of medical activity and patient protection, and may include liability for minor errors or the normal risks of the activity.

The article reviews the legal development of this liability from linking the employee's fault directly to the administration to indirect liability according to the principle of guarantee, highlighting the role of the administrative judiciary in applying the rules of administrative liability and ensuring compensation for the injured, thereby achieving a balance between the rights of patients and the continuity of the health facility.

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1. Introduction

Public hospitals are among the most important facilities directly related to human life and physical dignity, as they undertake the task of providing health care as an essential and indispensable service. From this perspective, they are not ordinary institutions, but public bodies subject to the provisions of public law in their organization and management. Their funds are considered to be allocated for the public benefit, and their employees are considered part of the public service, performing their duties within a framework that authorizes the administration to exercise public authority privileges. Accordingly, disputes arising from its activities, particularly those relating to harm that may be caused to patients, fall within the scope of administrative liability rather than traditional civil liability.

The hospital's liability derives its specific nature from the nature of medical work itself, which is based on precise scientific principles, is complex and sensitive, and requires a high degree of vigilance and adherence to professional standards. However, errors may occur during the provision of health services, whether committed by a doctor in his personal capacity, or as a result of a failure in the organization of the facility, a lack of resources, or poor supervision. In such cases, the question arises as to the extent of the administration's liability and the right of the injured party to compensation.

Liability in this area is based on the well-known elements of general law: the existence of an error, the occurrence of damage, and a causal link between the two. However, the specific nature of healthcare facilities may sometimes require a more flexible approach to protecting patients, such as reducing the burden of proof or recognizing the facility's liability for certain risks associated with medical activities that are inherently high-risk.

In this context, a distinction is made between personal fault and institutional fault. Personal fault arises when an employee exceeds the limits of his or her job or commits a serious breach in its performance, in which case he or she bears the consequences of his or her actions. Facility error, on the other hand, is related to a malfunction in the facility itself, such as a failure in organization, supervision, or equipment. In the first case, the employee's responsibility may be combined with that of the administration, while in the

second case, the administration bears the burden of compensation as the supervisor of the public facility. Therefore, the examination of the responsibility of public hospitals is of particular importance, as it addresses the delicate issue of striking a balance between protecting patients' rights and ensuring their compensation when harm is proven, and maintaining the stability of the health facility and enabling it to perform its function without abuse or excessive accountability. Framing this liability within the rules of public law reinforces the principles of administrative justice and contributes to building trust in public health institutions as tools for serving society and protecting its members.

2. Legal adaptation of hospital liability:

For a long time, the prevailing principle was based on denying the state's liability for its actions, leaving affected individuals with no recourse but to seek compensation from the employee personally. However, this approach was often ineffective, as the employee was usually unable to pay compensation, thereby depriving the injured party of effective redress. (Saïd, n.d.)

However, this situation did not last long, as both jurisprudence and the judiciary sought to devise more equitable and balanced solutions that would maintain the employee's responsibility for his or her personal mistakes on the one hand, and hold the state or administration liable for part of the damages on the other. This shift was first embodied in France by the Law of 28 Plovdiv, which established the principle of state liability for damages resulting from public works, thus opening the door to the recognition of the liability of public utilities. (Baïa, 2006)

The rule established by the "Blanc" ruling is considered a real turning point in the establishment of administrative liability for public utilities, as it constituted a decisive turning point in this area. This ruling was issued by the French Court of Cassation on February 8, 1873, confirming that the state's liability for damages caused by public utility employees in the performance of their duties is not subject to the rules of civil law governing relations between individuals, but is governed by special rules derived from the nature of the public utility and the requirements of its operation. (Farida, 2011)

With this ruling, the Court of Cassation laid the foundations for the legal system governing the liability of public authorities and defined the general framework for compensation due to victims of administrative errors. This approach was based on the concept of administrative error as the basis for administrative liability, reflecting the specific nature of administrative activity and the independence of its rules from those of private law. (Farida, 2011)

In view of Article 01 of Executive Decree No. 97-466, which confirmed that health sectors are public institutions of an administrative nature enjoying legal personality...

Accordingly, it became possible to apply the general rules of administrative liability whenever the activity of a public service was concerned. This trend was also confirmed by the Civil Chamber of the French Court of Cassation in 1952, when it overturned a ruling on the grounds that the court that heard the dispute lacked jurisdiction, considering that the hospital where the medical error occurred was a public sector institution and that jurisdiction therefore lay with the administrative courts rather than the ordinary courts.

This decision highlights the French judiciary's keenness to enshrine the principle of administrative jurisdiction in disputes related to public facilities and to apply the rules of administrative liability whenever a facility error is committed by a public institution..

We can therefore conclude that "the liability of the hospital for damage caused to users is governed by the general rules of liability under public law". (Snouci, 2006)

3. the nature of the medical error giving rise to the hospital's liability:

In most cases, the hospital's liability arises as a result of negligence, which may be the act of a doctor within the hospital, or in other cases, it may be outside the act of doctors, which is called negligence.

3.1 Personal negligence:

3.1.1 Definition of personal negligence:

1- Definition of personal negligence according to French jurisprudence (Léon Duguit)

Personal error is an error that reveals a person's weaknesses, desires, and whims, and goes beyond the

scope of performing a public function. (Duguit, 1913)

2- Definition of personal error according to Maurice Horiou

Personal error is one that is separate from the function, whether due to the seriousness of the act or because it was motivated by personal reasons. (Hauriou, 1925)

3. Definition of personal fault according to French jurisprudence

Personal fault is that which is committed by an administrative employee outside the scope of his duties, whereby the employee bears responsibility for the consequences of his actions, while the state bears responsibility for the faults of the public service. (Hauriou, 1925)

4. Definition of personal fault in Arab jurisprudence (Suleiman al-Tamawi)

Any fault committed by an employee outside the scope of his duties or because of them but for personal reasons, such that it can be separated from his duties. (Al-Tamawi, 2004)

Personal faults are those committed by an employee that are separate from the act of the administration itself. They sometimes give rise to controversy regarding the jurisdiction to hear them. In the case of personal liability of the employee, the error is subject to civil jurisdiction. However, if the error is related to a public facility and the employee is affiliated with the public administration, it may be referred to administrative jurisdiction as an exception, because in this case the error is related to the job, and the administration is responsible for the actions of its employees.

3.1.2 : Cases of diagnostic error:

The first case concerns the lack of connection between the error committed and the employee and the public facility. If the employee acts outside the scope of his job, this action is considered part of his personal life, and the civil courts have jurisdiction to hear it. An example of this is an employee going for a drive in his private car and injuring a passerby. The second case is a serious error committed by an employee: this is characterized by its serious nature and the presence of bad faith. In the absence of bad faith, the error is considered to be related to the employee's work, and these cases take three forms:

The first form: An employee may commit a serious error in their work, such as a doctor vaccinating a patient against a certain disease without taking the necessary precautions, leading to the patient's death, or an engineer neglecting safety standards during the construction of a facility, causing it to collapse and injure people.

Second scenario: The error may take the form of a flagrant abuse of authority or the powers vested in the employee, such as a police officer arbitrarily arresting a person without a court order, or a financial officer issuing decisions outside his or her powers, causing harm to those dealing with the administration.

Third scenario: The employee's actions may constitute a criminal offense subject to criminal law, such as divulging medical secrets or concealing sensitive financial information relating to the state, or committing treason or embezzlement of public funds.

As for mistakes made during the performance of the technical work itself, such as a medical misdiagnosis or medical misjudgment during surgery, the employee bears sole responsibility for his actions, even if they were committed while performing his job duties, and is subject to appropriate legal or disciplinary accountability.

3.1.3: The standard of medical error that gives rise to hospital liability:

The **principle of fault as the basis for liability** has played a central role in the development of administrative law, particularly with regard to the liability of the administration for the errors of its employees. Initially, an employee's fault was considered to be **the fault of the administration directly**, meaning that any fault committed by an employee in the performance of his duties was automatically attributed to the administration, which was held responsible for it. This principle remained in place until the mid-20th century, approximately until 1937, and was consistent with the concept of **vicarious fault**, which was considered a primary and direct fault, independent of the individual actions of the employee.

Over time, the legal view changed, and the traditional organic theory that directly linked management to every error made by its employees was abandoned. Instead, management's responsibility came to be seen as **indirect**; it bears the consequences of errors made by its employees even if the person who made the error is separate from it.

Despite this development in legal theory, the role of the principle of fault as the basis for liability has not diminished in importance. This principle formed the starting point for establishing state liability and helped develop the idea of holding management accountable for the actions of its employees, until modern jurisprudence arrived at a more balanced framework between the individual liability of employees and the liability of management for the actions of its employees within public facilities. (Berlia.Essa, 1951)

Professor Isman's opinion:

According to **Isman**, the basis of liability is the reason that justifies it, and this reason is usually a legal or moral principle or rule, such as the principle of justice, which dictates that those who commit a wrong must bear the consequences. This is reflected in **Article 1382 of the French Civil Code**, where fault is considered the basis of liability, even if this basis is indirect.

Isman points out that liability in civil law is based on **fault and risk**, i.e., there is liability for wrongful acts and liability for the risks resulting from the activity. In public law, **Valin** has made it clear since 1946 that the liability of legal persons (such as the administration) is not based on fault, but on **the obligation to guarantee**.

Eisman considers that **the basis of management's liability for the wrongdoing of its employees** is based on the principle of liability for gains, i.e., management bears the consequences of the actions of its employees, which is similar in concept to the liability of a principal for the actions of his agent in civil law. (Al-Tamawi, 2004)

Leon Dugi believes that the basis of management's responsibility for the mistakes of its employees is guarantee, which is also the view of some contemporary jurists. The essence of this theory in its modern form is that the right to security is not an end in itself, but is linked to the obligation of security, as this security allows individuals to pursue their endeavors and activities in a manner that ensures the prosperity of their work and the exercise of their fundamental rights and duties. (Al-Sanhouri, 1992)

Chabi's opinion: According to **Chabi**, the administration's responsibility for the mistakes of its employees becomes a **guarantee responsibility**. The administration or employer is obliged to compensate for damages caused to others as a result of the mistakes of its employees, as the guarantee is based on the nature of the relationship between the employer or administration and its employees. Employees perform their duties for the benefit of the administration or public body, just as subordinates perform their work for the benefit of their employer, and therefore the administration is responsible for the results of this work. (Al-Tamawi, 2004)

Public hospitals are considered public institutions of an administrative nature, as stipulated in the law governing the operation and organization of hospitals. The activities of these public institutions have undergone continuous development in line with advances in medical science, in addition to being characterized by various complex aspects that may cause damage that is difficult to determine due to its specificity in relation to medical activity.

Although most of its rules are subject to the general system of administrative liability, the liability of public hospitals is characterized by special rules due to the nature of their activities, as the liability of public hospitals is based on negligence, including simple negligence and gross negligence, This is according to the nature of the doctor's work, and the rules of this system are still evolving. In 1991, the French Council of State intervened and ruled that the liability of the hospital is based in some cases on negligence and, more precisely, on risk.

In fact, there is no distinction between gross negligence and minor negligence in determining the doctor's liability. It is sufficient that the doctor committed an error that a doctor of average competence would not have committed in the same circumstances. The doctor is therefore liable if the patient suffers harm, and the hospital is liable for compensating the patient for the harm suffered. A mistake is what a person in a position of responsibility (a doctor) would normally do, as the standard is material and not personal, and the seriousness of the mistake in this sense is not evidence of the extent of the damage caused. (Farida, 2011)

Judicial applications:

The Algerian judiciary has issued several decisions, including the decision issued by the Administrative Chamber of the Algerian Judicial Council on March 2, 2005. The facts of this case are that the patient (R.R.) was admitted to the "Barney" University Hospital in Hussein Dey to treat nearsightedness in her right eye, but poor care led to her permanent loss of vision. This prompted the victim's father to file a lawsuit before

the Administrative Chamber of the Council of Justice of Algeria, seeking compensation. On March 2, 2005, the Administrative Chamber issued a decision confirming the hospital's liability, basing its ruling on simple negligence. The operative part of the decision reads as follows: "... Whereas we are faced with the hospital's liability based on medical malpractice, which is considered a simple error, and whereas the elements of medical liability are present and combined, namely simple error, damage, and the causal relationship between them... and since in the case of medical malpractice, the hospital replaces the doctor in paying compensation to the victim and has recourse against the doctor when necessary..."

It can thus be concluded that the judiciary did not require gross negligence for the hospital to be liable, but rather based liability on simple negligence, paying no attention to the degree of negligence, but rather focusing on the existence of negligence regardless of its severity, in order to preserve the rights of the injured party against the hospital, as long as the damage was the result of medical treatment.

3.1 For ancillary negligence:

3.2.1 Definition of service-related fault

Ancillary negligence is considered personal negligence associated with the hospital's ancillary services and is therefore considered ancillary negligence. It has been defined as an objective error directly attributed to the facility, on the basis that the facility committed the error regardless of who committed it. Whether it is possible to attribute the error to a specific employee or not, it is assumed that the facility itself committed an illegal act and is therefore solely responsible for the error. (Danoun, 2009)

Dr. Ammar Awadbi defines "functional or operational error" as an error that constitutes a breach of prior legal obligations and duties through negligence or carelessness attributed to the facility itself, and establishes and imposes administrative responsibility. The jurisdiction to adjudicate and consider such cases lies with the administrative judiciary in legal systems with a dual judicial system. The jurist defines it as "an error that cannot be separated from the public facility."

Therefore, a facility error, which is originally committed by a natural person who is an employee and for which the administration is responsible, represents a breach of a legal obligation incumbent upon the administration. (Aouabd, 1998)

It can therefore be said that a facility error arises from an act or omission of misconduct, negligence, lack of organization, or misconduct, and the administration is committed to the proper management of the facility and its financing with all tools and equipment, and all the means necessary to ensure the achievement of its objectives. Any failure or negligence on its part in equipping the hospital, monitoring and supervising it, or the inefficiency of its equipment is considered a facility error.

We can therefore say that a facility error that can establish the liability of a public facility is an error or defective action on the part of the facility, consisting of a failure to fulfill its obligations. Consequently, the judge hearing the liability case must determine at the same time what those obligations are and how they were breached. This means that the error is objective in nature, even if the perpetrator is known. (Aouabd, 1998)

3.2.2 Distinction between personal fault and fault of the public entity:

When an employee of the administration commits a fault that causes damage to individuals as a result of the administration's activity, the question arises as to liability under Algerian law. Is the employee alone always liable? Or is the administration alone responsible for financial compensation?

Or, according to specific conditions, are the employee and the administration to which he or she belongs either alternately responsible or jointly responsible to the victim? The latter is revealed by distinguishing between the concept of personal fault and vicarious fault. (Aouabd, 1998)

A- Criteria for distinguishing between personal fault and contributory fault:

We should first note that the distinction between personal fault and contributory or contributory fault does not mean that the former is attributable to the action of an employee and the latter to the action of the contributory interest itself. Errors that occur in the course of the facility's work are almost always the result of the actions or activities of one or more employees, because administrative entities are legal persons that operate through their employees. Therefore, the distinction between the two types of error is that personal error originates from the employee and is attributed to him personally, so that he bears responsibility for it from his own money. As for facility or institutional fault, although it usually occurs through the actions of one or more employees, it is attributed to the public facility, considered to have originated from it, and the

facility is held accountable for it without reference to the employee. There are many criteria for distinguishing between the two types of error, because the judiciary is not bound by fixed rules and specific criteria, but rather focuses on finding the appropriate solution for each case according to its circumstances. In general, it can be said that personal error is an error that is separate from administrative work, while administrative error is one that is not separate from it.

We can derive from judicial rulings some ideas that guide the distinction between the two types of error. These are general ideas and flexible factors, not specific criteria, and these factors revolve mainly around the objective position of the error in relation to the job, the degree of contribution of the employee who committed the harmful act, and the severity of the error.

First criterion: If the error is proven to be related to the public facility (hospital):

If the error committed and attributed to the employee is completely unrelated to his job, i.e., he committed it in his private life, such as if he went out for a drive in his private car and injured a passerby, or if the harmful act committed by the employee was during work, but is completely related to his job duties, then in the view of the Council of State, the mistake is considered a personal mistake of the public employee (the doctor), and he alone is responsible for it, whether it was intentional or unintentional.

The second criterion: if the fault was intentional and not in the public interest:

If the employee commits a mistake in the performance of his duties or in connection with them, i.e., if the mistake is not proven to be related to the public facility (the hospital), it is considered a personal mistake if the employee (the doctor) who committed the mistake had intentions and purposes other than those of the public interest, such as if he committed it intentionally with the intention of revenge against his opponent or to please **a friend or** relative, i.e., he acts, in the words of the jurist Laffier, as a human being with his weaknesses, desires, and lack of insight.

In this type of error, the judge examines the bad faith of the person who committed the error, and the error is considered personal if it was committed by an employee whose actions in this case were motivated by personal motives such as the desire for oppression, revenge, and self-interest.

Third criterion: If the error has reached a particular degree of seriousness:

The error is considered personal even if it was intended for the public interest, if the error is serious and the seriousness of the error appears in three forms:

The first form: the employee commits a serious error, such as if a doctor vaccinates a number of children against electria without taking the necessary precautions, resulting in the poisoning of the children. This mistake exceeds the severity of the mistake that could have been expected and anticipated in such circumstances, so that the mistake is considered by the administrator to be a personal mistake that entails and complicates the employee's responsibility.

The second scenario: the employee commits a serious legal error, such as an employee who grossly exceeds his authority and jurisdiction, as if he ordered one of the employees to demolish a wall owned by an individual without justification.

The third scenario: the act committed by an employee constitutes a crime subject to criminal law, whether the crime is limited to employees, such as the crime of divulging secrets or the crime of treason.

b- Absence of hospital liability:

The hospital is not liable because the incident is considered force majeure, which requires that it be unforeseeable and impossible to prevent or guard against, and that there be a causal link between the error and the damage, in which case there is no basis for compensation.

The assessment of whether the alleged incident is force majeure is an objective assessment made by the court of first instance. An example of this is the death of a heart patient following a sudden thunderstorm or earthquake. (Hussein, Algeria)

c- Hospital liability based on risk:

Liability for damages resulting from medical activity in public hospitals is generally based on fault as a general principle, but this rule may not always apply. Exceptions to this rule began to emerge after certain cases arose, such as in the case of compulsory immunization. This liability is based on the following conditions:

-Damages are not compensated in administrative liability without fault unless they reach a certain degree of seriousness.

-The injured party in the liability system without fault must prove a causal relationship between the damage and the administration's action. Unlike liability based on fault, the condition is to prove the administration's wrongful conduct.

-The administration cannot be exempted from liability except in cases of force majeure and fault, whereas in the fault-based liability system, the administration may be exempted in cases of third-party fault and unforeseen circumstances.

The basis of this liability has been the subject of considerable legal debate in France, with some arguing that the only basis for this liability is risk and the principle of equality before public burdens. (Hussein, Algeria)

4. Conclusions

In conclusion, this research has reached the following conclusions:

1. Administrative liability has a special character: the liability of public hospitals differs from traditional civil liability, as it is based on the rules of public law and reflects the specific nature of medical activity and the sensitivity of health facilities.

2. Distinction between personal error and facility error: Personal error is committed directly by an employee, who bears the consequences, while facility error is linked to the facility itself, and the administration bears responsibility for it, even if the act was not committed directly by a specific employee.

3. The evolution of the legal basis for liability: Over time, management liability has shifted from being directly linked to every error committed by an employee to indirect liability based on the principles of warranty, balancing patient protection and management stability.

4. The importance of patient protection: The judiciary and legal thought have recognized the need to reduce the burden of proof on the injured party in certain medical cases and to establish liability even for minor errors, in order to guarantee patients' rights and compensate them for damages resulting from medical activity.

5. The role of the judiciary in establishing rules of liability: Through the application of principles such as the famous "Blanco" ruling and national laws, the administrative judiciary has become competent to consider errors made by public hospitals, emphasizing the role of the administration in compensating for damages resulting from the activity of a public facility, whether the error is personal or institutional.

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