

Analysis of Administrative Liability Arising from the Fault of Administrative Authorities in the Legal Systems of Iraq and Lebanon

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Abstract

This study aims to analyze administrative liability arising from administrative fault in the legal systems of Iraq and Lebanon. It examines the constituent elements of such liability, namely fault, damage, and the causal relationship, while also clarifying the manifestations of administrative fault (fault attributable to the public service) and personal fault, as well as their effects on determining the authority responsible for compensating the injured party. The significance of the study lies in assessing the adequacy of the statutory rules and judicial practices of the two countries in protecting individuals' rights against damage resulting from administrative actions, while also maintaining a balance between the requirements of the public interest and the necessity of compensating individuals for losses sustained. The present study employs descriptive-analytical and comparative methods through the analysis of statutory texts, legal scholarship, and relevant judicial decisions, as well as a comparison of the approaches adopted by the Iraqi and Lebanese legal systems regarding administrative liability and compensation for damage. The findings indicate that, in both legal systems, the establishment of liability is contingent upon the existence of fault, damage, and a causal relationship. However, differences exist between the two systems in the manner in which administrative fault is determined and distinguished from personal fault. The study further demonstrates that Lebanese judicial practice provides greater clarity in recognizing the principle of concurrent administrative and personal fault and in apportioning liability between them. By contrast, Iraqi judicial practice relies to a considerable extent on general legal rules and court-appointed expert assessments in evaluating damage and determining the amount of compensation. Furthermore, establishing causation, particularly in cases involving environmental damage, health-related harm, and damage arising from contemporary administrative activities, constitutes a major challenge. This highlights the need for the further development and refinement of legislative and judicial rules in both countries in order to strengthen the legal protection afforded to injured parties and to ensure their entitlement to fair compensation.

Keywords: administrative fault, effects of administrative fault, acquired rights, public employee, Iraqi law, Lebanese law.

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1. Introduction

Administrative liability arising from administrative fault is one of the fundamental issues in administrative law because it is directly related to the protection of individuals' rights and the assurance of administrative compliance with the principle of legality. Unlawful or defective administrative decisions and actions may cause material or moral damage to individuals and adversely affect their rights and legal positions. Accordingly, the role of the administration is no longer limited merely to exercising its powers and realizing the public interest; rather, whenever the conditions for liability are fulfilled, the administration must also bear the legal consequences arising from its own faults in such a manner as to establish a balance between the requirements of administrative functioning and the continuity of public services, on the one hand, and the rights of injured persons, on the other. In this context, administrative liability in the legal systems of Iraq and Lebanon is of particular importance because both systems have undergone legislative and judicial developments concerning the regulation of administrative liability and the mechanisms established for compensating damage resulting from administrative activities. The research problem concerns the adequacy of the legal and judicial rules governing administrative liability arising from administrative fault in Iraq and Lebanon and the extent to which these rules are capable of providing effective protection to persons injured by administrative actions and decisions. It also encompasses the determination of the concept and manifestations of administrative fault, the examination of the extent to which the constituent elements of administrative liability—particularly fault, damage, and causation—are established, the identification of the competent judicial authorities for hearing liability claims, and the assessment of the degree of consistency between judicial decisions in the two countries regarding the conditions for establishing liability and determining the amount of compensation arising therefrom.

The significance of the study lies in its examination of one of the most important legal mechanisms for ensuring administrative compliance with the law and preventing the administration from enjoying immunity from liability for damage caused to individuals. The study also contributes to clarifying the safeguards established to protect individuals against unlawful administrative activities and to revealing the role of administrative adjudication and ordinary courts in creating, interpreting, and developing the rules governing administrative liability. Its comparative significance further lies in identifying similarities and differences between the Iraqi and Lebanese legal experiences and drawing on the judicial practices and applications of both systems, which may contribute to strengthening the legal protection afforded to injured persons.

The objective of the study is to analyze the legal basis of administrative liability arising from administrative fault in the legal systems of Iraq and Lebanon, clarify the concept, manifestations, and elements of administrative fault, and determine the conditions for establishing administrative liability and the legal consequences resulting therefrom. The study also examines the positions adopted by the legislation and judicial practice of both countries regarding liability claims and compensation.

The research employs descriptive-analytical and comparative methods in order to identify, through comparison of Iraqi and Lebanese legal provisions, the similarities and differences between the two systems in dealing with administrative faults and their consequences and, ultimately, to assess the effectiveness of the legal and judicial protections provided in both systems.

2. The Element of Fault

Fault constitutes the first element required for establishing fault-based administrative liability. This means that, for the administration to be held liable, a fault must have been committed by the administration itself or by one of its employees in the course of, or in connection with, the performance of official duties. In addition, for liability to be attributed to the administration, the fault must, in principle, constitute an administrative or service-related fault rather than a personal fault of the employee.

2.1. Factors Affecting Administrative Fault (Service Fault)

The French jurist Planiol defined fault as a breach of duties and obligations and reduced such breaches to four principal categories, which collectively constitute his conception of fault. These are: (1) the obligation to refrain from infringing upon persons or their property through the use of force; (2) the obligation to refrain from employing fraudulent or deceptive means; (3) the obligation to refrain from performing acts for which the person lacks the necessary ability or competence; and (4) the obligation of a person to supervise those under his or her authority and the objects placed in his or her custody.

This definition is among those considered closest to the concept of fault because it encompasses any breach of obligations imposed upon a person by law or moral requirements and regards such breach as giving rise to legal accountability and liability. Nevertheless, this definition has been criticized by some jurists on the ground that Planiol merely identified the instances and forms of breach of obligation without defining the substantive nature of “fault” itself. In other words, critics argue that Planiol concentrated primarily on classifying and enumerating the types and manifestations of fault rather than on its essential nature, thereby limiting the comprehensiveness of his definition. One of the principal criticisms directed at this definition is that it fails to take into account the necessity of discernment and awareness on the part of the person responsible for the wrongful act. Accordingly, some jurists have proposed refining Planiol’s definition by adding this important element in order to make it more precise. On this basis, fault may be defined as “the breach of a pre-existing obligation, provided that the person breaching the obligation possesses the capacity for discernment and awareness.” A more commonly used definition describes fault as a “harmful and unlawful act,” which some scholars regard as a more comprehensive and flexible understanding of the concept of fault.

With regard to the position of the Iraqi ordinary courts, these courts historically exercised, and continue to exercise, jurisdiction over administrative claims arising from the administration’s material acts. Iraqi judicial practice has used the term “transgression” to describe the fault giving rise to administrative liability and has defined it as “a deviation from the customary and ordinary conduct of a reasonable person” (Muhammad). In one Iraqi judicial decision, it was also stated that “after examination and judicial deliberation, it was established that the appellant, by virtue of his administrative capacity, was responsible for the damage caused by the driver as a result of his transgression and negligence” (Al-Hilu, 1999). As for the concept of fault in legal doctrine, jurists have disagreed over its definition. Some have defined fault as “a violation of legal rules and provisions, which may take the form of either a material act or a legal disposition and may be manifested either through positive conduct or negative conduct resulting from failure to perform a legally prescribed duty” (Al-Sayyid, 2011). Others have defined fault as “an act committed by a person possessing will without having a legal right to perform it, or conduct through which the perpetrator breaches a legal duty; in other words, fault is the breach of a pre-existing obligation accompanied by awareness and understanding on the part of the person committing the breach” (Dannon, 2009). Still others have defined fault as “the cause giving rise to the administration’s obligation to compensate for damage” (Zain al-Din, 2010).

Administrative fault, or service fault, may take various forms, such as negligence, delay, refusal to perform a duty, failure to exercise due care, lack of prudence and necessary foresight, and similar forms of misconduct (Al-Husseini, 2018). As noted above, the law does not establish a specific and determinate criterion for distinguishing administrative or service fault from personal fault; rather, this determination is left to the discretion of the judge, who must examine each case separately in light of its particular circumstances. Nevertheless, several factors must be considered when identifying and assessing administrative fault, the most important of which are as follows:

1. Consideration of the temporal and spatial circumstances in which the administration performs material acts: The assessment of fault is not limited solely to the difficulties and obstacles confronting the public service; the time and place in which the service is provided must also be taken into account. For example, the manner in which administrative liability is established and assessed under normal circumstances differs from that applicable under exceptional circumstances (Al-Tamawi, 1968), because circumstances may arise in which there is no opportunity for hesitation or deliberation in decision-making, such as wars, disturbances, revolutions, and floods. In the first situation, namely ordinary circumstances, whenever fault, damage, and causation are established, the administration will be held liable, with the extent of such liability varying according to the seriousness of the fault and the magnitude of the damage.

In the second situation, namely exceptional circumstances, the position differs because certain acts may be considered permissible under exceptional conditions even though the same acts would constitute fault and give rise to an obligation to compensate if committed under ordinary circumstances. Accordingly, under exceptional circumstances, the administration is generally held liable only for particularly serious and exceptional faults reaching the level of intentional abuse accompanied by bad faith. Similarly, where there is a manifest fault exceeding ordinary limits and lacking acceptable justification, the extent of administrative liability may be reduced; and where circumstances are abnormal and the administration’s conduct was undertaken in pursuit of the public interest, liability may be excluded altogether.

The basis for this approach is that the interest of one individual may be weighed against that of another individual, whereas an individual interest cannot be regarded as equivalent to the public interest, because fear of liability arising from a particular action may become an obstacle preventing public authorities from performing their duties and responsibilities (Al-Tamawi). Accordingly, when such exceptional circumstances arise, the administration's liability may be reduced or may cease to exist altogether (Ruslan, 1982).

The place where the fault occurred may also influence the assessment of administrative liability. Where the fault occurs in a remote area far from major administrative centers, greater flexibility may be exercised in determining its degree and seriousness. Accordingly, administrative adjudication has required the existence of a gross fault in order to establish administrative liability in cases where the fault was committed, for example, in colonial territories (Farhat, 2012).

As provided by the Iraqi legislature in Article 4(3) of the State and Public Sector Employees Discipline Law No. 14 of 1991, an employee is required to obey the orders of superior authorities concerning the performance of his or her duties within the limits established by laws, regulations, and instructions. If such orders involve a violation of law or regulations, the subordinate employee must notify the superior authority in writing of that violation and may execute the order only if the superior confirms the order in writing and insists upon its implementation. In such circumstances, liability is removed from the subordinate employee and is instead borne by the superior authority that issued and confirmed the order (Radi, 1994).

In such a case, an independent inquiry into the employee's good faith is not required in order to exempt the employee from liability; the exercise of ordinary and sufficient care is enough to prevent liability from being attributed to the employee. Liability will therefore attach to the superior who issued the order. Article 40(2) of the Iraqi Penal Code No. 111 of 1969, which remains in force, provides that "an act committed by an employee or a person entrusted with a public service shall not constitute an offense in the following cases: Second—where the act was carried out in execution of an order issued by an authority whom the employee was required to obey, or whom the employee believed he was required to obey" (Radi, 1994). Accordingly, in the second situation, where the law does not permit the employee to question, review, or object to the order issued, the employee will not be punished for executing it.

It is evident that, in this context, two duties are imposed upon the subordinate employee. The first is to examine the legality of the order whose execution is required. This obligation is addressed in Article 40 of the amended Iraqi Penal Code No. 111 of 1969, because the justification of executing an unlawful order requires that the subordinate employee believe the order to be lawful and have exercised sufficient caution (Radi, 1994).

The second duty is to refrain from executing an order once its unlawfulness has been established. Two views exist in this regard. According to the first, the employee must inform higher authorities of the unlawfulness of the order, and such notification is sufficient to exempt the employee from liability even if the order is subsequently executed. According to the second view, the employee has the right to refuse execution, provided that the unlawfulness of the order is manifest and clear or that its execution would pose a threat to the public interest (Al-Husseini, 2018). It appears that where the illegality of the order is clearly and manifestly apparent, the employee should refuse to execute it and should inform the superior authority of the defect in the order. For example, an error in military operations may result in the loss of innocent lives, in which case compensation for the resulting harm may be extremely difficult or even impossible.

The Lebanese State Council, like the French Council of State, has not adopted a single, fixed criterion for distinguishing personal fault from administrative or service fault; rather, it has relied on multiple approaches and standards. At the same time, the Lebanese legislature has defined the limits of a public employee's responsibility for orders received from an administrative superior. Although obedience to a superior authority is among the most important administrative and employment-related duties of a public employee, such obedience is neither absolute nor unlimited. Therefore, the duty of obedience cannot extend so far as to compel the employee to commit legal violations, gross faults, or criminal offenses.

Accordingly, the Lebanese legislature has paid particular attention to clarifying the limits of such obedience and the duties of an employee when ordered by a superior to perform acts contrary to law. Article 14 of Legislative Decree No. 112 of 1959 provides that an employee, in general, "must obey his direct superior and implement his orders and instructions unless such orders and instructions are expressly and manifestly contrary to law. In such a case, the employee must notify the superior in writing of the violation and will be required to execute the orders and instructions only if the superior confirms them in writing.

The employee may also send copies of the relevant correspondence to the Central Inspection Administration” (Abdullah, 2005).

Accordingly, if the employee fails to notify the superior in writing of the legal violations contained in the orders issued, the employee will also be liable for executing such orders; nevertheless, the liability of the superior authority that issued the order will remain in place (Abdullah, 2005).

2. Consideration of the administration’s financial burden in relation to its obligations: Where the administration bears a heavy financial burden and its capacity to compensate injured persons is limited, judicial authorities tend to apply stricter standards in establishing administrative liability and determining the gravity of the fault. Nevertheless, in such situations, greater consideration should be given to the condition of the injured person than to the financial condition of the state, because the state, even if confronted with a deficit or fiscal imbalance, possesses several means of addressing such problems, including the imposition of new taxes, issuance of currency, and borrowing, whereas the injured person generally lacks comparable means and resources (Naji).

It appears that a claim for compensation should be available irrespective of the administration’s financial position and needs, the extent of its obligations and financial burdens, or any other factor. Nevertheless, the President of the Iraqi Administrative Judiciary Court has emphasized that the amounts of compensation paid to injured persons are extremely high and impose a substantial financial burden on the state and has therefore argued that such amounts should be reduced. We do not agree with this view because amended Law No. 20 of 2009 does not provide injured persons with adequate and proportionate compensation, particularly in relation to moral and aesthetic damage and deprivation of the pleasures and benefits of life. Accordingly, the state should provide compensation that is sufficient and proportionate to the totality and actual extent of the damage sustained by injured persons and should pay such compensation as expeditiously as possible.

3. Consideration of the injured person’s relationship to the public service: Where the service provided is of considerable importance, administrative adjudication applies stricter standards when determining and assessing the degree of fault attributable to the administration. In our view, the withdrawal of security forces and abandonment of residents of areas exposed to ISIS constitutes a gross fault for which the administration should bear responsibility.

2.2. Concurrent Administrative (Service) Fault and Personal Fault

Administrative or service fault is a fault attributable to the public service in such a manner that the public authority or service itself is regarded as the source of the damage. This means that the expected public service was not performed in accordance with the rules and standards governing its operation, or that its employees failed to comply with the limits of their powers or with the regulations governing the activity of the public service and committed negligence or errors associated with the manner in which the service operated and was administered. Such fault may occur within the course and framework of the public service. Because such fault is unintentional and does not reach an unacceptable degree of seriousness, it cannot be regarded as wholly detached from the public service (Dannon, 2009). Typical examples include closing an administrative office before the prescribed time, communicating or providing incorrect information, losing a file, and a driving error committed by a military driver (Al-Husseini, 2018).

With regard to personal fault, the administration carries out its activities through its employees and agents. These persons constitute the human and executive component of the administration upon whom it relies for the performance of various public-service duties and activities. They also possess and use the material means and facilities required for the administration and continuity of public-service activities. Accordingly, where an employee or agent of a public authority commits a fault in the course of, or in connection with, official duties and that fault causes damage to a third party, the administration will, in principle, be responsible for compensating the resulting damage and paying the appropriate indemnity. However, if the fault is entirely detached from public duties and bears no connection to them, the employee or administrative agent alone will be responsible for compensating third parties for the resulting damage (Dannon, 2009).

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The distinguished jurist Hauriou similarly defined personal fault on the basis of the separation of the fault from public duties and adopted this criterion for identifying personal fault. Accordingly, personal fault consists of harmful conduct or an act that is materially or morally completely detached from administrative and occupational duties. Such separation may be material, as where the employee commits the fault outside the scope of the public service and in private life, or where the act committed is not one that the performance of administrative duties requires. The separation may also be moral, as where the employee, even while outwardly acting within the framework of official duties, intentionally performs the act with the purpose of harming another person, such that the intentional and harmful nature of the conduct prevents it from being regarded as falling within the genuine scope of administrative and occupational duties (Dannon, 2009).

Administrative liability for personal fault committed outside the framework of the public service has also been recognized (Khalifa, 2010). The principal consequence of the concurrence of personal and administrative or service fault is the apportionment of the burden of compensation between the state and the employee in proportion to the contribution of each to the occurrence of the fault, as well as the injured person's right to choose the person or authority from whom compensation is sought. The judge may also determine the share of each source of liability in compensating the damage.

The concurrence of these two forms of liability may arise in two situations. The first is concurrence resulting from multiple faults, meaning that both the employee's personal fault and the administrative or service fault contributed to the occurrence of the same damage. In such a situation, liability attaches both to the employee or employees and to the administration, and the administration may be ordered to pay the full amount of compensation. The first case in this field likewise concerned administrative liability arising from personal fault (Khalifa, 2007).

The second situation concerns the concurrence of two faults within a single event, which is referred to as a "single fault." In this context, the Council of State distinguishes between two situations:

The first situation arises where the single fault is committed in connection with the performance of administrative duties. In such a case, the fault must be independent of, and antecedent to, the performance of the duty. This may occur, for example, as a result of inadequate supervision and direction or the use of public-service equipment and resources to commit the fault.

The second situation arises where the single fault is committed outside the framework of administrative duties but is not entirely unrelated to the public service. In principle, if a fault is committed outside official duties, it cannot be directly attributed to the public service. Nevertheless, if it is established that the administrative authority failed to perform its supervisory and oversight duties, the fault attributable to it will constitute an administrative or service fault. In such circumstances, both the employee's personal fault and the administration's service fault will be present, and consequently both forms of liability—personal liability and administrative or service liability—will arise (Khalifa, 2010).

The rules governing administrative liability in this field gradually developed toward recognizing state responsibility for the personal faults of employees, particularly where it was impossible to separate personal fault from administrative or service fault. Lebanese judicial practice has similarly accepted the doctrine of concurrence between personal and administrative fault and, consequently, the apportionment of liability between the employee and the administration.

In this regard, the Lebanese State Council ordered the apportionment of liability between public employees and the administration in a case involving police officers who fired upon a detainee attempting to escape and who refused to surrender after being warned; however, the officers failed to exercise the necessary care and caution in their use of firearms (Abdullah, 2005). Similarly, in a case in which a court clerk embezzled funds entrusted to him, the administration was also held liable because it was found to have been negligent in supervising and controlling the employee's conduct (Abdullah, 2005).

An employee's fault may consist of either a positive act or an omission. It may also be temporally or spatially connected with the administrative duty. However, the question arises as to whether a mere temporal connection is sufficient to establish state liability.

A mere temporal relationship between the fault and the administrative duty is not necessarily sufficient to attribute the fault to the duty or establish state liability. An employee may commit a fault during official working hours and while assigned to perform administrative duties, yet the state may still not be liable despite the temporal connection. For example, a creditor of an indebted employee may visit the employee at the workplace during official hours, and a dispute may arise concerning the debt, leading the employee to assault the creditor. In this case, although the fault occurred during the hours assigned to the performance of administrative duties, the state cannot be held liable because no relationship exists between the fault and the administrative duty other than the temporal connection.

Conversely, a temporal connection between the fault and administrative duties may be absent, yet state liability may nevertheless arise where a causal relationship between the fault and the administrative duty is established (Dannon, 2009).

3. The Elements of Damage and Causation

This section examines damage and causation as two essential elements of administrative liability that, together with fault, must be present in order to establish the administration's liability. Proof of administrative fault alone is insufficient unless that fault has caused actual damage to a person and there is a direct causal relationship between the damage and the fault attributable to the administration.

3.1. Damage

Damage is of fundamental importance within the general framework of liability because it constitutes one of its essential elements, and liability cannot arise in its absence. Although it is possible in some circumstances to conceive of administrative liability without fault, it is impossible to establish such liability without damage.

Damage is one of the essential elements of state liability for administrative acts, and once liability is established on this basis, the injured person acquires a right to compensation. The resulting financial burden ultimately falls upon the state treasury, which explains the considerable importance of damage as a constituent element of liability. To regard damage as an element of liability means that liability depends upon its existence. Accordingly, where no damage has occurred, the individual is not entitled to compensation, and the state bears no liability.

Where the necessary elements of liability are established, however, the state is required to compensate the injured person. Damage means the occurrence of harm to a person, and where such damage is accompanied by a harmful act and a causal relationship between the two, the state is obliged to pay compensation. Conversely, if no damage has occurred, or if damage has occurred but there is no causal relationship between it and the administration's act, state liability will not arise. In the latter situation, the injured person must bear the loss because, in the absence of causation, no right to obtain compensation from the state exists.

Accordingly, where administrative liability is based on fault, damage is also necessary for liability to arise. Administrative adjudication has accepted this principle and has justified its approach in claims concerning damage resulting from public works and public installations by examining the relationship between the person participating in such operations and the public works themselves. Thus, a person participating in the construction of public buildings or installations and in the execution of public works is not regarded as wholly external to the risks arising from those operations because that person participated in carrying them out (Al-Tamawi, 1968).

With regard to the maintenance and repair of roads, however, where a claim is based on the administration's failure to maintain and repair public works and road facilities, the jurisdiction of the special administrative court responsible for damage resulting from public works cannot be justified, because that court hears compensation claims arising from public works themselves, not damage caused by the administration's negligence, omission, or failure to maintain and repair them.

Moreover, compensation claims, by their very nature, are generally not suitable for collective filing by several injured persons because the amount of compensation must be determined independently in light of the damage personally sustained by each claimant. Accordingly, a joint claim will be admissible only in relation to the person whose name appears first in the statement of claim.

On this basis, the state is liable for the collapse or destruction of a road resulting from the administration's negligence and failure to maintain and repair it (Al-Tamawi, 1968). The administration bears responsibility for maintaining and repairing public works and installations that it has created, and any negligence or failure in performing that duty gives rise to administrative liability (Abu Ras, 2010). A contractor's obligation to maintain and repair exists only during the warranty period, the duration of which varies according to the circumstances and characteristics of each case (Al-Husseini, 2018).

Where the administration leaves a stone 40 centimeters high in a public road, it has failed to perform its duty to maintain and secure the road. As a result of colliding with the stone, a tractor overturned, although the driver survived. On that basis, one-third of the liability was attributed to the administration and two-thirds to the tractor driver (Abdullah, 2005). Where damage results from the collapse of a road because it was not maintained or repaired, the administration will be liable for the overturning of, or damage to, a truck caused by the road collapse, provided that the administration failed to repair the road or to prevent traffic from using it. Where the truck owner also violated traffic regulations while driving or operating the vehicle, liability will be apportioned between the administration and the truck owner (Abdullah, 2005). "The state is obliged to compensate for damage resulting from public works and their maintenance and repair. In furtherance of its duty to maintain and secure installations and thoroughfares used by the public, it must also identify, supervise, and eliminate risks threatening the lives of pedestrians and users" (Abdullah, 2005). The Lebanese State Council has consistently held that the concept of damage resulting from public works encompasses any damage directly or indirectly connected with public works, as well as any damage directly or indirectly caused by public works or public installations, regardless of whether such works were carried out in accordance with technical standards and requirements.

Accordingly, a compensation claim arising from the flow of rainwater onto privately owned premises as a result of the administration's negligence in adopting the necessary technical precautions when paving and raising the level of a street falls within the jurisdiction of the special administrative court (Abdullah, 2005). Where the alleged damage results from public works and is caused by the collapse of a retaining wall along a public road as a consequence of the use of that road and the proximity of the injured person's property to it, state liability for the resulting damage will be based not on administrative fault but on the theory of risk (Al-Husseini, 2018).

The Lebanese State Council has adopted a broad approach to determining the scope and concept of damage arising from public works and has considered it to include damage resulting from negative conduct or omissions by the administration, rather than merely damage resulting from positive administrative acts. Accordingly, the State Council has interpreted public works broadly so as to include both works actually performed by the administration and works that the administration was required to perform but failed or neglected to carry out.

In this context, damage resulting from rainwater flowing from a public road into a factory because the administration failed to take the necessary technical precautions when paving and raising the level of the road has been regarded as damage arising from public works or public installations. Likewise, damage sustained by persons or their vehicles as a result of excavations carried out by the administration on public roads has been classified as damage resulting from public works.

Judicial practice has also treated damage caused by an accidental event occurring during the execution of public works as equivalent to damage arising from the public works themselves. In addition, certain forms of damage resulting from the provision of public services fall within the same framework, such as damage caused when a municipally owned vehicle, while performing an official mission and providing a public service, collides with a privately owned vehicle (Abdullah, 2005).

From the overall jurisprudence of the Lebanese State Council, the conditions for liability may be inferred as requiring that any person benefiting from a public installation, or using it in accordance with the purpose for which it was established, should not be exposed to danger. Accordingly, the administration must continuously and regularly supervise the repair and maintenance of roads so that the public can use them safely in accordance with their intended purpose. Where a danger exists, the administration is also required to warn users of its existence through appropriate warning signs so that they can avoid it.

It may further be inferred from this judicial practice that ordinary and proper maintenance of public installations is deemed to exist where the defect is minor and insignificant; where it is a type of defect that users could ordinarily anticipate and avoid by exercising appropriate care and caution; where adequate warning of the danger has been provided; and where the defect causing the damage was unknown and unforeseeable to the administration, such that it was impossible to take the necessary

measures to prevent it—for example, where trees situated along roads or in public squares, or their branches, fall upon users of those areas (Abdullah, 2005).

The position of Iraqi judicial practice in this field, however, has not been uniform or consistent and has demonstrated a degree of fluctuation. In one decision, the Iraqi Court of Cassation rejected the existence of such damage and held that the installation of telecommunications towers and antennas near the claimant's residence did not constitute harm. The judgment stated: "In light of the documents and correspondence submitted in the case, it has been established that AsiaCell obtained the necessary legal licenses and approvals to provide mobile telecommunications services throughout Iraq. Furthermore, according to Letter No. 394 dated March 12, 2009, issued by the Diyala Governorate Environmental Department, there was no objection, from the perspective of environmental restrictions and requirements, to the installation of the equipment at its current location. Accordingly, the claimants' action lacks legal basis and must be dismissed ..." (Al-Rubaie, 2013).

Similarly, the Iraqi Federal Court of Cassation held in another judgment that the trial court had conducted sufficient and comprehensive investigations and that, according to the reports of court-appointed experts, no present or probable damage had been established in relation to the appellant; therefore, the claim was subject to dismissal (Al-Khalayleh, 2009).

By contrast, in another judgment, the Iraqi Court of Cassation reached a different conclusion and held that, following a local inspection conducted in the presence of a specialized expert, it had been established that the tower in question was a subsidiary telecommunications station and that the safety measures and requirements adopted were insufficient because the tower was located within the protected zone of another telecommunications tower belonging to Zain. It further found that locating one tower within the protected zone of another could produce adverse effects and consequences (Al-Rubaie, 2013).

Although judicial practice has not consistently recognized such forms of damage, the fact remains that mobile telecommunications companies in Iraq have committed certain violations and exceeded applicable standards by constructing telecommunications towers in unauthorized locations and contrary to World Health Organization recommendations. A number of Baghdad residents living near buildings on whose roofs telecommunications towers have been installed have reported physical and psychological changes and symptoms, including loss of appetite, nervous tension, and difficulty concentrating.

On the other hand, mobile telecommunications companies operating in Iraq have rejected claims concerning the impact of telecommunications towers on human health. Zain, for example, has emphasized that such allegations are exaggerated rumors lacking a sound basis and are raised merely to attract attention. By contrast, the Iraqi Communications and Media Commission has criticized intervention by the Ministry of Environment in this matter, emphasizing that the Commission is the authority directly responsible for licensing telecommunications companies (Al-Rubaie, 2013).

In light of the foregoing, it becomes apparent that violations occurring in Iraqi governorates and residential areas have exceeded the limits and conditions prescribed by the World Health Organization as well as the standards established by the Ministry of Environment, indicating the possibility of future damage and risks. Accordingly, the redistribution and relocation of such towers to locations distant from residential areas should be considered so that innocent citizens and children, who may observe these towers without being aware of their potential dangers, are not exposed to their harmful consequences. International organizations likewise continually seek to protect public health against various hazards. The question therefore arises as to who bears responsibility for damage caused by these towers: the Communications Commission or the telecommunications service providers?

It appears that the administration, represented by the Communications Commission, bears direct responsibility for such damage for several reasons:

When entering into contracts with telecommunications companies, the state is required to ensure minimum safety requirements and standards. The location and height of telecommunications towers must also comply with applicable safety standards, and ensuring compliance with such requirements constitutes a legal responsibility imposed on the state. Accordingly, the environmental monitoring system provided for under the Iraqi Law on the Protection and Improvement of the Environment should be effectively implemented and activated for the supervision of telecommunications towers.

Communications and telecommunications services constitute administrative public services whose provision and supervision fall within the duties of the administration. Delegating the management or operation of such a service to other persons or companies does not in any way eliminate or discharge the administration's responsibility.

The Iraqi Constitution of 2005 also provides that every Iraqi has the right to healthcare and that the state is obliged to safeguard public health and guarantee the means and measures necessary for prevention and treatment (Al-Husseini, 2018). The Constitution further provides that every individual has the right to live in a healthy environment characterized by appropriate environmental conditions (Al-Husseini, 2018). Accordingly, protection of public health, as one of the functions of administrative police, falls within the responsibilities of the administration, which is required to adopt all necessary precautionary measures and actions to prevent health-related damage and harm. Any failure by the administration to supervise and control will give rise to its full responsibility. Moreover, under the contract concluded with the service provider, the administration remains responsible toward citizens because individuals may request administrative intervention to prevent violations and misconduct by the company. If the administration refuses to intervene, liability will arise from a negative administrative decision, namely its refusal to act.

Article 205 of Iraqi Civil Code No. 40 of 1951, as amended, addresses moral damage and provides for compensation for injury to a person's reputation, honor, dignity, standing, financial credit, or social position. Article 205(2) also provides compensation for parents and close family members who suffer harm as a result of the death of a relative (Ghaidan, 2003). The Iraqi Administrative Judiciary Court likewise issued a judgment holding that the wife of a person abducted by a terrorist group was entitled to compensation and fell within the scope of the Law on Compensation for Victims of War Operations, Military Mistakes, and Terrorist Operations (Al-Husseini, 2018). It can therefore be observed that the Iraqi legislature, in Law No. 20 of 2009, as amended, also recognized compensation for moral damage. Article 1 of that law provides that its purpose is to compensate any natural or legal person who has sustained damage. The term "damage" is used in an indefinite form within an affirmative context, which, according to principles of legal interpretation, indicates generality. It therefore encompasses both material and moral damage and consequently permits compensation for both forms of loss.

Nevertheless, Iraqi judicial practice has adopted a cautious and restrictive approach in applying this statutory rule, generally limiting compensation to consequential or derivative damage expressly contemplated by the law.

Compensation for moral damage may be awarded for emotional pain and suffering, disruption of the ordinary course of life, or both. In some cases, compensation for disruption of life may also encompass all resulting effects and consequences, including emotional distress and suffering.

The categories of persons entitled to claim compensation for moral damage may include a spouse, father, mother, son, daughter, grandfather, grandchild, brother, and sister, enabling them to claim compensation for moral damage personally suffered as a result of the death or martyrdom of a relative (Hind). Nevertheless, the Iraqi legislature has remained silent regarding compensation for other forms of moral damage, including psychological pain and suffering resulting from deprivation of the pleasures and benefits of life, as well as aesthetic or bodily-appearance damage. Accordingly, it is recommended that the Iraqi legislature further amend Law No. 20 of 2009 on Compensation for Victims of War Operations, Military Mistakes, and Terrorist Operations, as amended, so as to allow injured persons to receive full compensation for both material and moral damage. It would also be appropriate to establish criteria or limits for determining the amount of compensation, thereby enabling the trial judge to assess appropriate compensation in each case by taking into account its particular circumstances and factors such as the injured person's age, sex, type of damage, impact on the person's life, and future opportunities in employment and social relationships.

3.2. Causation

Administrative judicial practice requires the existence of a causal relationship between administrative fault and the damage sustained by the injured person in order to establish administrative liability, such that the administration's act must constitute the direct cause of the damage. In other words, the damage must be the result and consequence of the fault committed.

Accordingly, the mere existence of fault is insufficient to establish administrative liability; the fault must have caused damage. In other words, the administration's conduct, whether liability is based on fault or on the theory of risk, gives rise to liability only where damage results from that conduct and can be attributed to it as a direct consequence. This connection between administrative conduct and the resulting damage is what is referred to as causation. Thus, where this relationship is absent, administrative liability will likewise be absent.

The significance of causation lies in identifying the conduct or act that caused the damage. Accordingly, such a relationship is necessary in all forms of liability, whether based on fault, damage, the theory of risk, or the principle of equality before public burdens. Only when causation has been established may the administration be held liable and ordered to compensate the damage; otherwise, no liability arises and compensation is therefore unavailable (Al-Sayyid, 2011).

Under the general rules of liability, a direct causal relationship must exist between the damage and the harmful act attributable to the administration. Administrative liability arising from damage connected with the issuance of administrative licenses and permits is subject to the same requirement, so that such liability can arise only where there is a direct causal relationship between the act attributed to the administration and the damage for which compensation is sought.

A direct causal relationship means that the fault must be the direct cause of the damage; that is, the damage must be the direct result of the fault or activity attributable to the state, so that the act attributed to the state constitutes the immediate source or direct cause of the loss (Al-Husseini, 2018). Determining whether a direct causal relationship exists is a matter for the judge. In fact, the determination of direct causation is not governed by an abstract or purely theoretical logic imposing predetermined solutions upon the judge. Rather, the judge adopts a position in light of the actual circumstances and particular conditions of each case and may sometimes take a pragmatic approach in assessing causation (Al-Sayyid, 2011).

Although, under the general rules, a direct causal relationship must exist between the act attributable to the administration and the damage for which compensation is claimed, and the burden of proving that relationship rests upon the claimant—such that failure to prove it will result in dismissal of the claim—in practice, proving causation in administrative liability cases generally, and particularly in cases involving environmental damage or damage arising from telecommunications activities, places a substantial burden on the claimant. The distinctive characteristics of this type of damage can be considered from two perspectives.

First, such damage generally does not occur instantaneously or all at once; rather, its effects may appear over several months or even years. Damage arising from pollution, for example, often does not become apparent immediately after the pollution occurs but instead develops progressively over time.

Second, scientific and technological advances in the contemporary era have led to the emergence of new inventions, mechanical machinery, and large-scale installations capable of causing environmental harm, affecting natural elements, and damaging human health. Under such circumstances, proving a causal relationship between the conduct in question and the resulting pollution and damage may involve serious difficulties.

Causation may be established through all legally recognized forms and methods of proof. In the context of mobile telecommunications permits, causation may likewise be demonstrated in various ways. For example, it may be sufficient to establish that the administration failed to exercise necessary supervision and control; that certain telecommunications towers were installed without obtaining authorization from the competent administrative authority; or that the administration became aware of non-ionizing radiation pollution in a particular area yet nevertheless delayed or neglected the performance of its statutory duties. Likewise, the existence of relationships involving discrimination, favoritism, or undue influence between an administrative authority and certain companies may be relied upon and proven in this context (Al-Khalayleh, 2009).

4. Discussion Conclusion

The foregoing analysis demonstrates that administrative liability arising from administrative fault in Iraq and Lebanon is based on three elements: fault, damage, and causation. These elements constitute a safeguard for protecting individuals against damage resulting from administrative activities.

The study further demonstrates that judicial authorities in both countries play an important role in distinguishing administrative or service fault from personal fault, assessing damage and the amount of compensation, and establishing causation in light of the circumstances of each case. It also highlights the need to develop legislative and judicial rules in order to strengthen protective safeguards for injured persons and to maintain a balance between individual rights and the requirements of the public interest. On this basis, the following findings may be presented:

1. The study demonstrated that both the Iraqi and Lebanese legal systems recognize the principle of administrative liability for damage arising from administrative activities where the constituent elements of liability—fault, damage, and causation—are established. However, the legal and judicial structures of the two countries differ in the mechanisms used to determine and

establish these elements. In Iraq, the rules of administrative liability are, in certain circumstances, intertwined with the provisions of civil law, whereas Lebanese administrative judicial practice demonstrates greater clarity and coherence in formulating and developing the rules and conditions governing administrative liability.

2. It was found that Iraqi and Lebanese judicial practice has not adopted a fixed and inflexible standard for identifying administrative or service fault and distinguishing it from personal fault, leaving such assessment to the circumstances of each individual case. Nevertheless, Lebanese judicial practice has more clearly tended toward the criterion of the fault's connection with the public service and has recognized the possibility of concurrent liability of the administration and the employee where personal fault and administrative fault coexist. This approach makes it possible to apportion the burden of compensation in proportion to the contribution of each fault to the occurrence of the damage.

3. The comparative analysis demonstrated that temporal and spatial circumstances, the nature of the public service, and the duties and obligations imposed upon the administration influence the determination of the seriousness and degree of fault in both legal systems. Nevertheless, Lebanese judicial practice has shown greater flexibility in assessing administrative liability in light of the nature of the activity and the surrounding circumstances, whereas Iraqi judicial practice relies more heavily on general legal rules, the material facts of the case, and technical expert evidence in determining the extent of administrative fault and negligence.

4. It was established that damage constitutes one of the essential elements of administrative liability in both countries and that proof of fault alone is insufficient to justify an award of compensation. Rather, the damage must be actual, certain, and compensable. Lebanese judicial practice has adopted a broad approach to damage arising from public works and public installations, whereas Iraqi judicial practice has encountered certain difficulties in assessing some forms of prospective damage, particularly environmental and health-related damage arising from modern activities such as telecommunications towers.

5. The study demonstrated that the legal systems of Iraq and Lebanon agree on the necessity of a causal relationship between administrative fault and damage before compensation may be awarded, such that the administration's activity or omission must constitute a direct and effective cause of the damage. Nevertheless, proving this relationship is more difficult in cases involving environmental and health-related harm and damage whose effects emerge gradually. This highlights the need in both legal systems to develop methods of proof and make greater use of technical and specialized expert evidence.

6. It was found that compensation constitutes the primary mechanism for redressing damage resulting from administrative fault in both legal systems and, in principle, encompasses both material and moral damage where the legal requirements are satisfied. The Iraqi legal system contains specific statutory provisions governing certain categories of compensation arising from war operations, military mistakes, and terrorist operations, whereas Lebanese judicial practice plays a prominent role in determining compensation for material and moral damage in light of the circumstances of each case and the seriousness of the harm sustained.

7. The study concludes that the judiciary plays a central role in developing the rules of administrative liability in Iraq and Lebanon, particularly in identifying fault, assessing damage, establishing causation, and apportioning liability between the administration and the employee. Nevertheless, both legal systems require further legislative and judicial development in order to harmonize the standards governing the determination of liability and the amount of compensation and to provide more effective protection for injured persons while simultaneously preserving a balance between individual rights and the requirements of the public interest.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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