

The disadvantages of the administrative judiciary compensation claim as a model - (comparative study)

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Abstract

The case for remuneration is one of the managerial cases that the adjudicator appreciates with wide powers and plans to review the harms coming about because of the organization's action and spoken to by the regulatory choices gave by it by its will and material activities, and obviously, it is planned for accomplishing the open intrigue, however the issue isn't without overabundances hurtful to other people. On its side, which requires a contest among it and those influenced by its movement, and this question is submitted to the legal executive to explain its decision with pay for its deficiency in that department, and this case is known as a "total claim suit" and requires the arrangement of an attorney, and readies an underwriter to secure rights and change the harm, and appraising crafted by the organization and deciding its obligation on the off chance that it goes amiss from the way that the law has set for it. The organization implies the official developments in full. Nonetheless, the laws of the common help in Iraq didn't manage the arrangements identified with the case of pay in the regulatory field and alluded it to the customary legal executive, and this is a stifling authoritative lack that must be focused on.

Keywords: Administrative, judiciary and compensation claim.

Foreword

Considering the exciting bends in the road of our darling country, it might be envisioned that the organization, which is a piece of the official, evades it from exemplary nature and disregards the guideline of lawfulness that administers the open office, that it passes and doesn't get some information about it. It is for the "awful" the board post. The case for remuneration is the one depended on by the abused party who propels the organization, its position and abuse of its optional power, requesting pay for the harm it caused to it, whatever its sort, however what is the decision on authoritative choices that cause damage to people (characteristic or lawful) and are simultaneously insusceptible from Looking at the court? Thus, the vaccination of the organization's activities from thought by the legal executive is one of the reasons for regulatory defilement and a component of the destruction of the ideal steadiness of legitimate focuses, consequently the significance of the case for remuneration in the authoritative legal executive as it is a fundamental column in it, and its significance isn't not exactly the common claim and Penalty as far as the effect it has and the advantages coming about because of it.

First: The significance of the examination: its significance lies in accomplishing the privilege and reestablishing the privilege to the person who was taken from it, and adjusting the way of conservative organization.

Second: The dangerous of the examination: The Iraqi administrator didn't determine the power able to consider remuneration applications in the laws of the open office in regards to the court of workers 'decisions, not in a unique or a reliance way, and this discards the most significant ensures that must be given to the open representative,

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notwithstanding making the above solicitations considered as Reliance before the authoritative legal executive, i.e., as indicated by the crossing out claim, and this implies thought of it happens under the watchful eye of customary courts, and it has nothing to do with the open occupation, and here the issue emerges.

Third: The extent of the exploration: With this examination, we are attempting to explain the extent of state duty regarding the activities of its specialists, and is the state getting some information about the entirety of its activities? Or on the other hand is the state invulnerable from responsibility in activities given by specific specialists? This and that the examination answers.

Fourth: Exploration strategy: We will receive in our examination this near investigation technique between the law and the legal executive and the French and the Egyptian and the law and the Iraqi legal executive, and we attempt to reveal insight into what the law utilized in each piece of the subject however much as could reasonably be expected.

Fifth: Exploration Targets: The examination expects to cause the student or peruser to comprehend the restrictions of the pay guarantee and the work hatched for its progression, and is the judgment for remuneration consistently the appointed authority? This is notwithstanding the preeminent objective of the claim, which is the acknowledgment of reality, and the last mentioned, if the legal executive won't get to it, the legal executive denies equity, and this in itself is a wrongdoing deserving of law. Consequently, the case for pay is one of the prerequisites of the authoritative work, since the organization isn't insusceptible to staying away from nobility, as it isn't invulnerable to committing errors, and this isn't an imperfection yet rather the deformity is its stubbornness and its emphasis on it, so it is compulsory for it to consent to the rule of lawfulness to evade the acceptance of accountability.

Sixth: The research plan: We deal with the issue of compensation claim through the following vocabulary:

The first topic: the concept of a compensation claim.

The first requirement: Definition of the compensation claim.

The second requirement: distinguishing the compensation claim from other cases.

The first branch: distinguishing the compensation claim from the annulment claim.

The second branch: distinguishing the compensation claim from the civil lawsuit.

The second topic: State responsibility for the work of the authorities, the second topic.

The first requirement: the responsibility of the state for the actions of the legislative authority.

The second requirement: the responsibility of the state for the actions of the judiciary.

The third requirement: the state's responsibility for its administrative activities (the administration's negligence).

The first branch: State responsibility for the actions of the wrong-based administration.

The second branch: The state's responsibility for the actions of the administration based on the idea of risks.

The third topic: the implications of proving the responsibility of the state for its actions and deciding on a compensation claim.

The first requirement: compensation.

The second requirement: compensation in the tolerant Islamic Sharia.

The first topic

The concept of a compensation claim

When the administration intends to achieve a public interest, it issues an administrative decision of its own volition, provided that it agrees with the law to achieve the principle of legality and that the administrative decision does not offer compensation or cancellation, or both, through two cases: the cancellation case and the compensation claim, and accordingly, we will divide this topic into two requirements that we address in The first: defining the compensation claim, and in the second: distinguishing the compensation claim from the suspected cases.

The first requirement

Definition of a compensation claim

The lawsuit in the language: it is a name from the prosecution and it is the source of this name, i.e. a name for what is called and collected on claims to open or break the (W), (Al-Alaiwi, 2012) and the Hanbalis defined it as being the addition of a person to himself deserving of something in the hands of others or his custody, and Maliki defined it as a specific request Or regarding what is a particular matter, or what one of the two assumed, according to Sharia, that the habit does not deny them, and when the Shafi'is are news about the existence of the right of the informant over others with a ruler to abide by it, (Al-Thaher, 2009) and in the law, the lawsuit is defined as the request of a person from another of his right before the judiciary. (Law, 1969) As for the definition of the compensation claim, because of its importance, it has been defined by several definitions, including: "The lawsuit brought by a person to the judiciary to demand the inclusion of the harm he sustained as a result of the administration's behaviour." (Al-Helou, 1999) Also: "is the lawsuit in which the concerned person requests a personal right towards the administration, so he has Claiming a ruling for compensation for the unlawful decision. "Also: A lawsuit in which the plaintiff requests the judiciary to assess the legality of the actions of the administration and to cancel, amend, or compensate for it, (Al-Atham, 2005) and this is the most appropriate definition for it. The Hammurabi Law stated that the state was obligated to compensate the victims of the crimes of theft and murder if the state could not know the murderer, (Obaid, 2012) or could not find him, and certainly, the way for the victim in those cases is the judicial claim to his right and according to the means available to him in that era.

The second requirement

Distinguishing compensation claim from other cases

The claim for compensation is unique to other cases with several characteristics and advantages, and the cases that are suspected with the compensation suit can be limited to three branches as follows:

First branch :

Distinguishing the compensation claim from the annulment claim

We can make a comparison between the two cases through the following:

1. In terms of the date for filing the lawsuit: the time limit is the period during which the person has the right to file his lawsuit before the judiciary to contest the administrative judiciary, so if the lawsuit is filed during the period, the court will consider the case in form and subject if other strips are available, and if it is held outside the period, the case will be returned in the form (Obaid, 2012) , And the time limit for filing a cancellation case before the administrative judiciary is (60) days from the date of the expiry of the grievance period before the authority issuing the administrative decision. As for the time before the employee's judiciary, it is (30) days from the date of informing the employee of the grievance refusal, in fact, or a ruling, if this is The case is a disciplinary case, but if the case relates to job rights, the employee will file the appeal within (30) days if he is inside Iraq and (60) days if he is outside it), and the compensation case is subject to the regular dates in the civil lawsuit, i.e. from the date the fee was paid or issued Decision of the judge to forgive or postpone it according to the text of Article (47) of the Civil Procedures Law No. (83) of 1969 (Obaid, 2012).
2. In terms of the applicant's requests: The plaintiff requests in the cancellation lawsuit, to cancel the defective administrative decision issued against him (Al-Naddawi, 1409 AH) , but in the compensation case, the plaintiff requests to include the damage he sustained as a result of the administration's actions (Al-Ani, 2013).
3. In terms of jurisdiction: The annulment lawsuit is filed only before the Administrative Court, so if it is filed with other courts, the case is dismissed for lack of jurisdiction, and the aforementioned court does not

consider the claim for compensation in an original way, but rather, according to the provisions of Article (7 / seventh / b) of the law The State Council No. (65) for the year 1979 in force, and there is no jurisdiction for the Court of the Judicial Personnel on the claim of compensation, not in a subordinate or original capacity (Al-Ani, 2013).

4. In terms of the judge's powers: In the annulment lawsuit, the judge's authority is limited to revoking the administrative decision that violates the principle of legality to achieve the rule of law and the public interest. Suitable for dispute (Obaid, 2012).
5. In terms of the authenticity of the judgment issued in the lawsuit: In the annulment lawsuit, the judgment shall enjoy the authority of the order issued, i.e. the absolute authority, meaning that it applies to everyone and everyone who adheres to it, (Al-Husseini, 2018) even if he is not a party to the lawsuit, and has the right to invoke it against others, either in The compensation claim shall have the relative authenticity, that is, its effect on the parties to the lawsuit (Al-Hawa, 2012).

The second branch

Distinguishing the compensation lawsuit from the civil lawsuit

A civil lawsuit is defined according to the text of Article (2) of the Civil Procedure Law No. (83) of 1969, which is enforced by it (the application of another person's right before the judiciary), as both the civil lawsuit and the compensation claim is aimed at the reparation of the damage, and the compensation claim is distinguished from The civil lawsuit includes the following:

1. In terms of litigants: In the civil lawsuit, there are two parties, the plaintiff and the defendant, who may be natural or juridical persons. In the compensation case, there are two parties, the plaintiff and the administrative decision, and in both cases the formal requirements outlined in the Civil Procedure Law No. (83) for the year 1969.
2. In terms of legal determination: Administrative judiciary cases are specific to the exclusivity, and thus are more specific than civil cases such as the compensation claim and the cancellation suit, and the provisions prescribed by the general law in general and the administrative law in particular (Al-Sanjari, 2018) apply to them as for the regular personal justice cases. There is no limit to it, but its kind was given as an exclusivity.
3. In terms of the party looking into the case: The civil case is brought before the ordinary courts of the courts, such as the beginning, and the administrative case is brought before the administrative judiciary, represented by the courts of the State Council established under the jurisdiction of the judiciary about the dual judiciary states, noting that the most important characteristic of the administrative judiciary is the presence The government commissioners body that prepares the case before the pleading goes on, as in Egypt and France, but in Iraq, there is no such body in the Council of State (Al-Shammari, 2015) , and in all cases, the administrative and civil judge's role ends when the judgment is issued in the case, he has no right to compel the administration To do or refrain from doing, according to what is established in the administrative Sharia (Radhi, 2018).

The third branch

Distinguishing the claim for compensation from the lawsuit of interpretation, the suit of restraint and punishment

Based on the judge's ruling on the lawsuit, the traditional jurisprudence classifies the cases into several sections, including the annulment, compensation, interpretation, restraining, and punishment suit, as follows:

1. Interpretation action: The judge's role is limited to the interpretation of administrative decisions after they are referred to him by the ordinary judiciary without deciding on the merits of the case.

2. The lawsuit of punishment and punishment: the judge's authority in it is unfamiliar as the authority enjoyed by the administrative judge, and through it, he obtains punitive provisions against the aggressors of public funds and obliges them to pay the fine, but the modern meaning of this lawsuit is managed to eliminate the discipline to which the underage employee is subject in Performing his work (Al-Helou, 1995), as is the case in Egypt, where the disciplinary employee applies to administrative violations and is practised by the Egyptian State Council, and is practised in France by the French State Council and has no applications in Iraq (Radhi M. L., Encyclopedia of Administrative Judiciary, 2008).

The second topic

State responsibility for the actions of the authorities

The prevailing principle in the past was the lack of responsibility of the state for the actions of its authorities vis-à-vis all and the sovereignty of the state was united with the rule of the infallible ruler and this wasted rights and away from justice, until the French Revolution came with the principle of the sovereignty of the nation where the State Council decided responsibility for the administration of Its work, then decided the responsibility of the police facility for its work until it gradually included all state facilities (Al-Sharif, 1990), and to brief the topic, we divided this topic into three demands. We allocate the first to study the state's responsibility for the work of the legislative authority, the second is its responsibility for the actions of the judicial authority, and the third is to discuss its responsibility For the work of the administration (the default liability of the administration) as follows:

The first requirement

State responsibility for the actions of the legislative authority

Legislative acts mean all legislated laws and parliamentary acts issued by Parliament issued by its bodies or members, as the rule previously is the state's lack of responsibility for the actions of the legislative authority. If personal harm is caused to any member of society as a result of issuing a specific law, the state does not bear Compensation for several arguments, including taking into account the public good and the principle of separation of powers, so it does not enter the executive authority over the legislative authority, because that makes the first control over the work of the constitutional legislator, and this is not permissible by law (Radhi M. L., Encyclopedia of Administrative Judiciary, 2008). In this regard, George Nodal says: The lack of state responsibility for The damage caused by the legislation is considered a legal doctrine, and no one should claim compensation for it, as it is not reasonable to demand compensation for the laws of agricultural reclamation at the time of political transformation, as legal jurisprudence asserts at those times that it is permissible to sacrifice private interests to save society's interest as necessary (Al-Helou, Administrative Court, 1995). As for the position of the administrative judiciary In France, the State Council has been silent on deciding to compensate the aggrieved and explains his silence in rejection of compensation. However, the Council allowed the demand for compensation for laws in its famous rule (LaFlurette) on 14/1/1938, but with the condition: aN The damage is a special one suffered by a specified number of people in addition to the severity of the damage (Radhi M. L., 2008). In Egypt, the Egyptian State Council denies the state's responsibility for the laws, citing that it is concerned with adjudicating administrative disputes only, and that compensation for the damage caused bylaws to some individuals falls outside the framework of these disputes, and in Iraq, the State Council agreed with its Egyptian colleague and this refutes The text of Article (8) of the Universal Declaration of Human Rights, which determines the human right to review national courts for his effective redress of any actions that violate the basic rights granted to him by the constitution, so the claim for compensation is subject to legislative deficiencies in Iraq (Radhi M. L., 2008).

The second requirement

State responsibility for the actions of the judiciary

The work related to the organization of the judiciary, such as setting up courts, distributing them to the regions, appointing judges, and others, are among the actions that do not affect the judicial career, so the state is not immune from responsibility for them, but actions affecting the course of the judiciary, so we distinguish about them between responsibility for the provisions and responsibility For preparatory and executive actions: As for responsibility for judgments, the general principle is that the state is not responsible for judicial rulings, except for the limits of what the legislator has excluded. As for preparatory work for judicial rulings, the state is asked about it. In France, the French State Council is the first council to recognize the principle of state responsibility for the work of the judiciary in 1972 when the French legislator decided the state's responsibility for the error of the judicial facility, as well as the personal responsibility of the judges themselves (Al-Sharif, 1990) . The Egyptian State Council also decided that the state should not be responsible for the actions of the judiciary in the ruling of the Cairo Court of Appeal on 10/12/1932, "The basis for the government's lack of responsibility for judicial errors is the authenticity of the rulings." And in Iraq, the Iraqi legislator decided in the law of civil pleading in force the responsibility of the judiciary facility under the title of complaint from the judge and organized it in articles (from 286 to 292) of the law mentioned in specific cases exclusively: fraud, fraud, serious professional error and denial of justice (Al-Husseini, 2018) , And we see that the administrative courts have jurisdiction to consider cases of state responsibility in compensating the judges' mistakes resulting from their functional mistakes instead of the civil courts because they are the errors of elbows.

The third requirement

Responsibility of the state for its administrative work (the administration's default responsibility)

The responsibility of the state for its administrative actions that cause harm to individuals and compensate them for it was not an easy matter because the jurists decided that sovereignty and responsibility are the opposite of not meeting (Al-Tamawi, 1986), and therefore we divided this requirement into two branches, as detailed below.

First branch

State responsibility for wrongful administration

The administration's responsibility for its actions can only be achieved if its foundations are available, and it is the error and the harm and the causal relationship between them, and the error in the language is wrong and wrong and it has been mistaken, and it is an act against intentionally and in the honorable download: (Women 92) The mistake is the subject of the default administrative responsibility, and that is that the administration undertakes physical action or legal behavior that is contrary to the provisions of the regulations, instructions and regulations that it must observe in its work, and work has been done in the administrative judiciary to distinguish between the attachment error or the interest in which negligence is attributed and The default to the public utility and between the personal error that is attributed to negligence and the failure in it to the employee who bears compensation from his own money (Al-Zubaidi, 2012), there are several criteria to distinguish between personal error and the elbow error and are as follows:

1. The criterion of the gravity of the error: the serious error is the error issued by the public employee, whether in estimating the facts or in interpreting the law and that taking this direction is critical because the administrative judiciary did not adopt a criterion to distinguish between gross and non-grave error (Radhi M. L., The Administrative Judicial Origins, 2018) , so how can originally distinguish personal error Of the elbows?
2. The criterion of separation of error from the job: the error is an attachment according to the leader of (Hauriou) if he falls within the functions of the job and cannot be separated from it. Otherwise, the error is personal and criticized this criterion for not providing sufficient legal cover to protect the victim.

The State Council did not adopt any of the previous criteria alone, but took all of them and counted the error personally if it was disconnected from the public utility, and even if the employee from it aimed to achieve a public

interest, and in Egypt we find that the ordinary judiciary, unlike the administrative judiciary, did not adopt a theory of Personal error and elongation error, and in Iraq, the Iraqi legislator was silent on this subject (Al-Thaher, 2009), and we note his adoption of the idea of the supposed error.

The second branch

State responsibility for the actions of the administration based on the idea of risk (non-fault responsibility).

This theory appeared in the famous Blanco case in 1873, according to which the administration asks about its actions that cause harm to others without requiring the plaintiff to prove the administration's fault, but that the administration asks once there are damage and a causal relationship between it and the administration's fault, and in our estimation, this theory is considered to be from The work of the judiciary is to secure a balance between the authorities of the administration and those affected by them, and here the responsibility is realized as soon as the damage and the causal relationship are available without error and for this reason, it was called (non-fault responsibility), and in France, the administrative judiciary recognized the responsibility of the administration without error in its ruling issued on 2/10 / 1905, the judge compensated Mr Grecco as a result of a gunshot wound and inside his house following the chase of the public by a raging bull (Al-Ani, 2013). In Egypt, the provisions of the State Council were repeated between the recognition of the responsibility of the administration without error and between the denial of this responsibility (Al-Ani, 2013), and in Iraq, some denied The existence of the idea of risks in the Iraqi legislation and judiciary. The legislator was satisfied with the idea of the supposed error as a basis to compensate for the mistakes committed by the administration, but this opinion is returned because the Iraqi legislator referred to it in Article (231) of Civil Law No. (40) for the year 1951. And it is stipulated in the error that requires the responsibility of the administration that it be a special injury that affected one or several people and is unfamiliar in addition to its gravity and perpetuation, and the administration can pay the responsibility if it proves force majeure or proves the wrong of the injured (Obaid, 2012). And from the applications of the responsibility of the administration without error: The administration is obligated to compensate the houses adjacent to the project in which the public works are carried out just because of the damage that befalls them without proving the administration's fault unless the administration can pay the responsibility by presenting legitimate reasons (Hadi, 2010).

The third topic

The effects of establishing the state's responsibility for its actions and deciding on a compensation claim

Responsibility is one of the most important legal issues and is almost the most important among them because it is a common denominator between the branches of law. There is criminal, international, and administrative responsibility ... etc. And the effect of proving the responsibility of the state is to file a compensation claim and decide upon it, and finally the ruling to compensate the aggrieved party, the department has to divide this topic into two requirements. We devote the first to researching compensation, and in the second we deal with the tolerant position of Islamic Sharia on compensation.

The first requirement

Compensation

The term compensation is applied to the allowance, so the compensation, that is, the allowance in the language, is the return or the back. It says: So and so, or to give or replace him: so and so, and the compensation is a source of compensation, the compensation is said to be compensation, that is: I gave him. And as far as the matter relates to the subject of our research, compensation is how the harm caused to the person affected by the administration's decision marked unlawful after documenting this by the court's ruling is compelled and divided into two monetary compensation, i.e. the monetary compensation that the court rules in favour of the victim of the administration's decision and is Mostly in administrative and civil courts, and compensation in kind and intended to restore the

situation to what it was before the damage occurred and is better than its predecessor because it leads to erasing and removing the damage instead of retaining it and giving the injured a handful of money (Lifta, 2001).

And the elite of saying: The administrative judiciary permits compensation for material and moral damages as a result of the actions of the administration, provided that the administration does not bear the compensation in its entirety if the injured person or another person (such as the employee, for example) participates in his events, but the responsibility is divided between them, and everyone bears compensation according to what he caused of a mistake attributed to him, whether material or moral, and from that his ruling which states: "Upon scrutiny and deliberation, he found that the second defendant in addition to his job has decided to arrest the prosecutor (25) days on the pretext of not paying the amounts he spent ... and this is not It is correct that one who claims rights before the last civil courts can review the claim by filing a litigation suit, so that the second defendant standing above has no basis in the law and calls for compensation. " As for the Egyptian and French State Council, we declared that the law does not refer to an exclusive concept regarding the nature of the damages that must be compensated for, and that the state is responsible for losses and damages of any kind as long as it is a direct result of the administration's activity.) On the damages that were caused to a dismissal employee due to the abolition of the job grade and his dismissal was surprising (Safa, 2009). Also, the statute of limitations is the passage of the period precluding hearing the lawsuit, and it is divided into two parts, the first is a statute of limitations for rights and the second is the statute of limitations for it (Ghebrial, 1988), and as long as the claim for compensation is originally brought before the ordinary judiciary, then the statute of limitations mentioned in the civil law and law Influential pleadings. Noting that the damage-causing initiative is to repair the damage at any time before the compensation award is issued, such as offering it to it, and the offer was equal to the value of the damage, and the injured person may not claim more than that offer (Taha, 2010), but the damage may increase during the period between its occurrence and the issuance of the judgment In it, it is estimated based on its transformation into permanent disability and added to monetary compensation against the administration as well as the expenses incurred by the lawsuit, all during legal times, and otherwise, rights will be lost and obsolescence (Zaid, 2017). And in Iraq, there is no legal basis or judicial ruling that determines for the administration the right to estimate compensation in isolation from the judiciary and favours the opinion that the administration can do so if the administrative contract includes this, so we call on the Iraqi legislator to include a text in the General Contracts Law No. (87) for the year 2004 gives the administration the right to include such a condition.

The second requirement

Compensation in the tolerant Islamic Sharia

One of the issues in which the position of the Islamic judiciary emerges in compensation for unlawful decisions issued by the administration in the case of Khaled bin Al-Walid when he killed members of the tribe of Bani Jadhima after his family entered Islam thinking that they were deceiving him and did not surrender, and the Great Messenger (peace be upon him) denounced And God and blessings.) What Khaled did and sent Imam Ali bin Abi Talib (peace be upon him) to this tribe to remove from them the damages caused to them from the army facility and pay the blood-money of their dead, so he went to them and with him the money so he compensated them for the damage until he (may God bless him He and his family (may God bless him and grant him peace) compensated them for the amount of the dog (i.e. the vessel from which the dog drank) (Mali, 2017). The claim for compensation is one of the most prominent specializations of the ombudsman, as he takes charge of the cases brought against the tax collectors, and looks at what they have harvested. And if they took it for themselves, he would restore it to his lords, and thus the Ombudsman would have the full powers of the judiciary to cancel the decision, amend it and compensate him to restore the situation to what it was. And from this and that we have seen that the just Islamic judiciary based on the divine constitution and the Sunnah of the Prophet Muhammad (PBUH) has refused to compel the administration and obligate

it to reform and make reparation, and from it, the legal status has devised its provisions in this regard and if there are lapses, then it is sought by the legislator to overcome it To achieve justice and to avoid injustice. (Hisham).

Conclusion

1. The claim for compensation is a personal case filed by the party affected by the decision or illegal work of the administration before the judiciary, demanding fair compensation for the damage caused to him, and whether it is material or moral damage.
2. The state's responsibility has been legally established and its jurisprudence for the failure of its institutions if it deviates from the path established for it by law. This responsibility (if proven) is considered directly to compensate, and the latter is usually critical.
3. The state's responsibility for the actions of the administration that is responsible for its default responsibility is only established after the foundations of that responsibility are fulfilled, namely: error, harm, and the causal relationship between them.
4. We saw that the authority responsible for examining compensation applications in an original and incidental manner in France and Egypt are: the French State Council and the Egyptian State Council.
5. The Iraqi legislator is still enthusiastic about the theory of the supposed error, despite the abandonment of jurisprudence and its elimination in France and Egypt.
6. The legal basis for the state's responsibility for the actions of its employees is the same as the basis for the responsibility of the subordinate for his subordinate actions in the civil law.
7. The claim for compensation works in the field in which the cancellation action does not work, meaning that the latter does not serve the purpose of redressing the damage caused by the administration to the party affected by its administrative decision.
8. There is no effect of determining who is the competent court to consider disputes of administrative liability based on personal and elbows error. In all cases, the Court of First Instance is competent to consider compensation claims in an original way.

Recommendations

1. We seek from the Iraqi legislator to drop the curtain on the idea of the supposed error in the scope of state responsibility for the actions of its employees and take the idea of risks and that the latter is despite its denial, but the ambition is to include explicit legal rules in the laws governing the public job.
2. We call on the Iraqi legislator to grant the administrative judiciary, represented by the Staff Judicial Court, the Administrative Judicial Court, and others the power to consider the claim for compensation in an original and subordinate manner about the Staff Judicial Court, and as a subordination about the Administrative Judicial Court.
3. We call on the legislator to organize the responsibility for the judges' functional mistakes more accurately and to make the jurisdiction assigned to them by the administrative courts of law.

References

- Adam Wahib Al-Naddawi. (1409 AH). Civil Procedures. Baghdad: Al-Sanhoury for Legal Books.
- Ahmad Ali Muhammad Mali. (2017). Provisions for Compensation in Administrative Contracts. *the site of the Iraqi Academic Academic Journals* .102.
- Ali Yunus Al-Sanjari. (2018). the administration centre in the lawsuit of complete annulment and elimination. *research published on almerja.net* .26-29.
- Aziz Jawad Hadi. (2010). Compensation for Workers' Injuries (Comparative Study). *the Journal of Legal Sciences* .85.

- Aziza Al-Sharif. (1990). Responsibility of the Public Authority and its employees (Compensation Court). Cairo: Arab Renaissance House.
- Ghazi Faisal Mahdi and Adnan Aajel Obaid. (2012). Administrative Court. Iraq: Al-Nebras Foundation for Printing, Publishing and Distribution.
- Hisham Jalil Ibrahim Al-Zubaidi. (2012). The Principle of Separation of Powers and its Relationship to the Independence of the Judiciary in Iraq. *Master Thesis submitted to the College of Law Council*) 29). Al-Nahrain University.
- Ibn Hisham. Biography of the Prophet. Cairo: Library of Azhar Colleges.
- Iraqi Civil Procedure Law. (1969). *the Iraqi Civil Procedure Law No. (83) of 1969 in force*.
- Jihad Safa. (2009). Research in Administrative Law. Beirut: Al-Halabi Human Rights Publications.
- Jinan Muhammad Al-Qaisi and Mazen Lilo Radhi. (2018). The administration's failure to implement the rulings of the administrative judiciary. Baghdad: Dar Al-Masalla Publishing and Distribution.
- Khaled Khalil Al-Thaher. (2009). Administrative Court. Riyadh: Library of Law and Economics.
- Maher Al-Shammari. (2015). Evidence of Administrative Claim. *Master Thesis submitted to the College of Law*) 21). Iraq: Al-Nahrain University.
- Majed Ragheb Al-Helou. (1995). Administrative Court. Alexandria: University Press House.
- Majed Ragheb Al-Helou. (1999). Administrative Cases. Alexandria: Monshaat Al-Maaref.
- Mazen Lilo Radhi. (2008). Encyclopedia of Administrative Judiciary. Lebanon: The Modern Book Foundation.
- Mazen Lilo Radhi. (2008). Modern Evolution in the State's Responsibility for Laws. *Journal of Law/Al-Nahrain University*. 23.
- Mazen Lilo Radhi. (2018). The Administrative Judicial Origins. Baghdad: Dar Al-Masalla Publishing and Distribution.
- Muhammad Al-Alim Adam Abu Zaid. (2017). Estimating the Changing Damage. *The Journal of the Iraqi University* .493.
- Muhammad Taha Al-Husseini. (2018). Principles and Provisions of the Administrative Judiciary. Beirut: Al-Halabi Human Rights Publications.
- Muhammad Taha Al-Shir and Ghani Hassoun Taha. (2010). Rights in Kind. Cairo: Al-Atek for Book Production.
- Muhannad Abu Al-Atham. (2005). Administrative Judiciary Between Theory and Practice. Amman: Dar Al-Thaqafa for Publishing and Distribution.
- Naseer Sabbar Lifta. (2001). Compensation-in-kind. *Master Thesis Submitted to the Faculty of Law*) 18). The University of Al-Nahrain.
- Nidah Abu Al-Hawa. (2012). Management Responsibility for Compensating Illegal Administrative Decisions. *Master Thesis submitted to Middle East University*) 19). Algeria: Middle East University.
- Suleiman Al-Tamawi. (1986). Administrative Court. Cairo: Dar Al-Fikr Al-Arabi.
- Suleiman bin Ahmed Al-Alaiwi. (2012). The lawsuit between Sharia and positive systems. Riyadh: Al-Tawbah Library.
- Wajdi Thabet Ghebrial. (1988). The principle of equality before public burdens. Alexandria: Establishment of Knowledge.
- Wissam Sabbar Al-Ani. (2013). Administrative Judiciary. Baghdad: Sanhour Library.