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The Civil Liability of the Public Official under Algerian Law

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Abstract:

This study examines the civil liability of public employees under Algerian law, a key mechanism for protecting individuals' rights and ensuring administrative accountability. Influenced by French legal theory, Algerian law adopts fault as the basis for personal liability, distinguishing between personal fault, for which the employee is liable, and service-related fault, for which the administration is responsible. Civil liability arises when three elements coexist: fault, damage, and a causal link. Fault must be personal and separate from official duties; damage must be actual, personal, affect a legally protected right or interest, and not previously compensated; and a direct causal relationship must exist. The administrative judiciary plays a crucial role in assessing these elements and determining compensation, which aims to repair harm without unjust enrichment. The system balances protection of employees against excessive liability with safeguarding individuals from administrative abuse, ensuring the proper functioning of public services, strengthening public trust, and reinforcing the rule of law in Algeria.

Keywords: Civil Liability ; Public Employee ; Damage ; Principle of Legality ; Tort Liability.

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INTRODUCTION

Public officials are more exposed than others to committing errors that may cause harm to third parties, as they represent the state and its extensive authorities. This circumstance renders the damage they inflict on others both greater and far more serious than that caused by ordinary citizens. Consequently, this gives rise to tortious civil liability of the public official before ordinary courts, which entails the obligation to compensate for the resulting harm. Accordingly, we will first address the definition of civil liability of the public official in the first Chapter, and then examine the consequences arising from its establishment in the second Chapter.

Chapter I*:* The Concept of Civil Liability of the Public Official and Its Legal Basis

In this Chapter, we will examine the civil liability of the public official by first defining its concept (**Section One**) and then identifying the legal basis on which this liability is established (**Section Two**).

Section One: Definition of the Civil Liability of the Public Official

Defining the civil liability of the public official requires, first, clarifying the meaning of legal liability in general, and then, secondly, specifying the meaning of the civil liability of the public official in particular.

Subsection One: Liability in Language

Liability in General: It is the condition or characteristic of a person who can be held accountable for a matter that entails consequences. For example, one may say, "I am not responsible for this act." In an ethical sense, it refers to a person’s obligation to account for their words or actions[1]. It also implies that any individual who performs an act or engages in conduct is responsible for its outcomes. Liability can be understood as the state of being subject to accountability or bearing a burden. It is also defined as “the condition of a person who has committed an act that warrants being held accountable.[2] ”

Subsection Two: Liability in Terminology

Liability, in terminology, refers to that legal mechanism which is primarily based on a voluntary interaction whereby the burden of harm or social obligations is transferred to another person, who is regarded as the one bearing the responsibility[3]. Legally, it is also defined as the obligation to remedy a wrong caused to a third party in accordance with the law[4].

There are two types of liability: tortious liability and contractual liability. Tortious liability is defined as “liability arising from an act by a person who is responsible for its consequences.” Contractual liability, on the other hand, is primarily based on a voluntary act that causes harm to another person as a result of violating natural, biological, or social laws.

Subsection Three: Civil Liability of the Public Official

Civil liability of the public official refers to the liability arising from harmful acts committed by the official. It is the legal condition in which the public official is obliged to compensate for the damage or damages caused to others as a result of their harmful actions, based on the personal fault they committed[5]. It is also defined as the financial liability incurred by any public official when their conduct causes harm to another person. Civil laws worldwide include provisions recognizing this principle and specifying the manner in which such damages are to be compensated[6].

Every public official is responsible for performing the tasks assigned to them and is not exempt from this responsibility due to the actions of a subordinate[7]. Civil liability thus extends to any harmful act, whether committed intentionally or through negligence. Accordingly, a public official incurs civil liability as a result of the damage they cause to others[8].

Civil liability, in general, is divided into two categories:

Contractual liability, which arises from the breach or non-performance of a contractual obligation. Contractual liability occurs when one of the parties to a contract fails to fulfill a contractual duty imposed by the agreement, whether by non-performance, defective performance, or delay in performance, thereby causing harm to the other party. Contractual liability presupposes the existence of a valid contract between the parties, a breach of one of the obligations arising from that contract, and resulting harm to the obligee, with a causal link between the breach and the damage. When these elements are present, contractual liability is established, and the debtor is obliged to compensate for the damage.

The purpose of contractual liability is to protect contractual relationships and ensure compliance with agreed-upon obligations. It is based on the principle that a contract is the law between the parties, and that anyone who breaches it bears the legal consequences arising from such a breach.

Tortious liability arises as a sanction for breaching an obligation imposed by law; it is the liability incurred by a person for an act for which they are responsible. It occurs when a person causes harm to another through an unlawful act, without any prior contractual relationship between the parties, with the source of the obligation to compensate being the law rather than a contract. This liability is established upon the fulfillment of three essential elements: fault, which encompasses any conduct contrary to the law or general duty not to harm others, whether by action or omission; damage, which refers to harm inflicted on another's property, body, honor, or legal status; and a causal link, meaning the harm must be a direct result of the committed fault. Tortious liability aims to protect individuals from unlawful harmful acts and to achieve justice by obliging the person responsible for the damage to compensate the injured party and repair the harm as much as possible.

From the foregoing, it is clear that tortious liability differs from contractual liability in that the former does not require the existence of a prior contract, and its scope is broader, as it is based on a general duty owed by everyone not to harm others. Accordingly, tortious liability constitutes the general foundation of civil liability and arises whenever unlawful damage occurs as a result of a fault, regardless of the existence of a contractual relationship between the parties.

The liability of the public official is tortious in nature, arising from negligence and errors resulting from the breach of duties and tasks performed, which cause harm to others and necessitate compensation to remedy the damage, without any contractual relationship between the person responsible for the harm and the injured party. Public officials are more exposed than others to committing errors that may cause harm to third parties, as they operate within a large and important apparatus vested with extensive, and sometimes sensitive, powers, making the damage they cause greater and more serious than that caused by ordinary individuals[9].

Section Two: The Basis of Civil Liability of the Public Official

The Algerian legislator has adopted the same approach as the French legislator in regulating the personal civil liability of the public official, by making fault the basis for establishing such liability. This approach reflects the historical and legal influence of French theory in the field of administrative law, particularly regarding the regulation of the relationship between the administration and its officials on one hand, and the protection of individuals' rights on the other.

The adoption of fault as the basis for liability aims to achieve a balance between two conflicting interests: the first is to protect the public official from being held accountable for every harm occurring in the course of performing their duties, so as not to unduly restrict their official activity; and the second is to protect individuals from the abuse or misuse of authority by the official. Accordingly, it is only a serious or personal fault that justifies holding the public official civilly liable in their personal capacity.

Algerian legislation addresses the provisions of tortious liability in Chapter Three of the First Title of the Second Book of the Civil Code, under the first section entitled "Liability for Personal Acts," covering Articles 124 to 133. The basis of the personal civil liability of the public official is fault, meaning an act committed by a person through their own error that causes harm to others, thereby obliging them to provide compensation[10].

Within the framework of the personal civil liability of the public official, the official is held responsible for any fault they commit that causes harm to others, whether the fault consists of an act, i.e., a positive action, or an omission, i.e., a negative action. For the liability of the erring official to arise, the injured party must prove the damage. Accordingly, the personal civil liability of the public official is always based on fault attributed to them, which must result in harm or loss inflicted on another. Liability requires a direct link between the committed fault and the resulting damage, that is, the existence of a causal relationship between the fault of the public official and the harm suffered by the third party. When these elements are present, the official may be held civilly liable for damages resulting from both positive and negative acts.

It should be noted here that there is a difference in the nature of liability between civil law and administrative law, based on the nature of the fault and its consequences. While any fault in civil law gives rise to the liability of the person who committed it, obliging them to compensate the victim for the harm caused, this absolute rule in civil law does not apply with the same force in administrative liability; the administration is not held liable for every fault committed by one of its officials or affiliated entities. The theory of fault in administrative liability has, however, undergone significant development in protecting the rights of victims, particularly through the administrative judiciary's distinction between service-related fault and personal fault. This development expanded the scope of service-related fault at the expense of personal fault and was further advanced through the theory combining personal and service-related fault and the consequences arising therefrom.

Subsection One: Personal Fault

The courts consider a fault committed by a public official to be personal fault if the act attributed to the official is unrelated to their official duties, such as when it occurs outside the scope of their employment or in their private life. For example, if an official drives their private car and causes harm to a passerby, this constitutes personal fault[11]. This principle is well-established in administrative jurisprudence worldwide.

A fault is considered personal if it is committed by a public official outside the scope of their duties, outside working hours, or during the exercise of their private life, without any connection to their administrative tasks or the authority vested in their position. In such cases, the act is not attributed to the administration but to the official personally, as an ordinary individual, who bears civil liability in their personal capacity.

A personal fault is considered intentional when the public official commits it deliberately, aiming to achieve private purposes rather than the objectives dictated by the public interest. Accordingly, it is incumbent upon the judge to investigate the bad faith of the person committing the fault, which is attributed to the public official. The difficulty lies in the fact that intent is often not apparent but hidden, making it challenging for the judge to establish. A well-known example in this regard is the French Conflict of Jurisdiction Court's ruling of 14 December 1959, in which a criminal prosecution carried out by a security officer against a citizen, without justifiable cause and merely intending to harm him, was deemed a personal fault that entails liability[12].

The French Council of State defined personal fault, stating: "In personal fault, the fault that causes the damage is attributed to the official themselves, and the liability falls on them personally; compensation is paid from their private funds, and ordinary courts have jurisdiction.[13]" This approach is based on the necessity of distinguishing between the official's professional and private life. Faults committed in the context of their private life are subject to the general rules of civil liability, just like any other individual, and the official does not enjoy any special protection by virtue of their public status.

Subsection Two: The Concept of Damage

If a public official commits a fault against individuals, whether in the form of a tangible act or an unlawful decision, the fault alone is not sufficient to establish the official's civil liability; it must also result in damage. Damage is generally classified into two types:

First: Material Damage

It affects financial interests within the patrimony of the injured party, leading to a partial or total reduction or destruction of these assets. It may also affect property, causing damage or destruction, or the physical integrity of a person, impacting their life or body[14]. This type of damage is considered the most tangible, as it can be directly assessed financially and compensated accordingly.

Material damage occurs when harm is inflicted on a person's property or financial rights, such as the destruction or impairment of their possessions, or the deprivation of an actual financial benefit, whether involving movable or immovable property. Material damage also encompasses harm to a person's physical integrity, as injury to life or body results in financial consequences, including medical expenses, loss of income, or incapacity to work.

The importance of material damage lies in its role as a fundamental element in establishing civil liability, as such liability cannot arise unless actual and proven damage has occurred. In assessing compensation for material damage, the principle of reparation is applied, aiming to restore the injured party, as far as possible, to the state they were in prior to the occurrence of the damage.

Second: Moral Damage

Moral damage refers to any harm that does not directly affect a person's financial interests but instead impacts their psychological, emotional, or moral well-being, or infringes upon their family or personal rights. It is a non-material harm, manifested in the mental suffering and psychological distress endured by a person as a result of an unlawful act[15].

Moral damage encompasses harm to feelings and emotions, such as grief, sorrow, anxiety, and fear. It also includes violations of dignity, honor, and reputation, or interference with family life, such as the loss of a relative, damage to family bonds, or harm to personal reputation. It is not required for this type of damage to result in a financial loss that can be precisely quantified.

Although it is difficult to quantify moral damage in financial terms, the judiciary recognizes it as an independent element of damage and allows compensation for it in order to achieve justice and redress the psychological harm suffered by the injured party. The judge is granted discretion to determine appropriate compensation based on the circumstances of each case, the severity of the harm, and its effects on the injured person. The legislator addressed this element in the provisions of Article 182 bis, following the amendment of the Civil Code under Law No. 05-10, dated 20 June 2005, stating: "Compensation for moral damage includes any violation of freedom, honor, or reputation[16]."

Most jurists agree that a set of conditions must be met regarding the element of damage.

1. the damage must be actual and realized. Actual damage refers to harm that has already affected the injured party at the time the claim is brought, whether material or moral, such as the destruction of property, bodily injury, or confirmed psychological suffering. Future damage is also considered actual when its occurrence is inevitable or certain, such as the loss of the ability to work due to a permanent disability, even if all its consequences have not yet manifested. On the other hand, potential or hypothetical damage—that is, harm that may or may not occur—is not considered actual damage, since compensation in such cases would be based on uncertain assumptions, which conflicts with the principles of legal justice. Therefore, courts reject compensation for uncertain damage or damage not supported by established facts. The requirement that damage be actual ensures the seriousness of a civil liability claim and guarantees that compensation serves to redress real and concrete harm rather than providing unjust enrichment. Accordingly, the realization of damage is an essential condition without which civil liability cannot be established.
2. The damage must be personal to the claimant, meaning that it directly affects the person seeking compensation and no one else. This implies that the claimant is the very individual who has suffered the harm, whether in their property, their body, or their moral or psychological well-being.

The condition of personal damage is satisfied when the harm affects a right or legitimate interest belonging to the claimant themselves. Claims for compensation for damage suffered by another person are generally not admissible, except in cases expressly provided by law, such as when heirs claim compensation for harm suffered by their deceased ancestor, or when relatives of a victim claim compensation for the moral damage personally inflicted upon them as a result of the death of their loved one.

The requirement that damage be personal aims to define the scope of liability and prevent unjustified expansion of compensation claims, ensuring a direct link between the claimant and the alleged harm. Compensation is granted to redress actual harm, not for those who have not suffered real damage.

2. The damage must not have been previously compensated, meaning that the injured party has not already received reparation for the same

harm, whether through judicial proceedings, by mutual agreement, or from any other legal source.

This condition is based on a fundamental principle of civil liability, namely that compensation aims to redress harm, not to provide unjust enrichment. If the damage has already been fully compensated, there is no basis for claiming further compensation, as this would result in the injured party receiving an undeserved benefit.

However, if the previous compensation was partial and did not cover the entire damage, the injured party may claim supplementary compensation to the extent of the remaining uncompensated harm. In this case, it must be ensured that the total amount of compensation does not exceed the actual value of the damage suffered by the injured party.

This condition applies whether the previous compensation was provided by the person responsible for the damage or by another entity, such as guarantee or insurance funds, with the legal consequences varying according to the source of compensation. In all cases, the judge must verify that the damage has not been previously compensated before awarding any new compensation.

3. The damage must affect a recognized right or a legitimate interest protected by law. This means that the harm must concern a right acknowledged by law or a legitimate interest that does not conflict with public order or public morals.

Damage affecting a recognized right is that which infringes upon a legally established right, such as the right to property, the right to physical integrity, or the right to reputation and honor. Damage affecting a legitimate interest, on the other hand, is that which impacts a lawful benefit or legal position, even if it does not amount to a full legal right, such as the interest in continuing a lawful activity or in benefiting from a genuine and legitimate opportunity.

Damage is not recognized if it affects an illegitimate or unprotected interest, such as interests contrary to the law or public order, as compensation cannot be granted for harm resulting from unlawful activity. This requirement aims to prevent the use of civil liability claims to protect or support illegal or improper situations[17].

Subsection Three: Causal Link

The causal link constitutes a fundamental element for establishing the civil liability of a public official for their actions. It is not sufficient to prove personal fault or the occurrence of damage alone; a direct causal connection between the two must exist. The causal link means that the personal fault committed by the public official is the principal and direct cause of the harm suffered by the injured party.

This element is established when it is proven that the damage would not have occurred but for the fault committed by the public official, meaning that the fault set in motion the chain of events leading to the harm without any intervening cause breaking this link. If the causal connection is absent, or if it is established that the damage resulted from an independent cause, the civil liability of the official is negated, even if a fault was committed.

The causal link serves as a criterion for defining the scope of liability, as it prevents holding the public official accountable for the consequences of harm that did not result from their fault. It also contributes to achieving justice by limiting compensation to damages that directly arose from the official’s wrongful conduct.

Courts may exclude liability if it is established that the damage resulted from force majeure, the fault of the injured party themselves, or the act of a third party, as such causes are considered factors that break the causal link. However, if the fault of the public official combines with another cause in producing the damage, the official’s liability arises only to the extent of their contribution to that damage[18].

The Civil Code exhaustively defines the notion of an external cause by providing that: “If a person proves that the damage arose from a cause beyond their control, such as a fortuitous event, force majeure, a fault on the part of the injured party, or the fault of a third party, they shall not be obliged to compensate for such damage, unless there exists a legal provision or an agreement providing otherwise[19].”

Chapter Two: The Compensation Claim as a Consequence of the Civil Liability of the Public Official under Algerian Legislation

Where the administration’s liability for the acts of its officials is established, the resulting sanction is compensation, which aims to remedy the damage incurred, whether such liability is based on fault, risk, or the principle of bearing consequences. This necessitates addressing the competent judicial authority to hear compensation claims in the first section, followed by an examination of the nature of compensation and the manner of proving it in the second section.

Section One: The Competent Judicial Authority for Compensation

If a person suffers harm as a result of the activities carried out by state officials in the course of their duties, the injured party has the right to bring a liability claim, seeking judicial redress for the damage caused by the acts of those officials. Such actions are brought against the public official who committed the fault before the ordinary courts, based on the principle of the public official's civil liability[20].

However, by way of exception, an action may be brought against the administration, considering it as the principal and the public official as its agent. In this context, the administration is deemed to have failed in fulfilling its duties of supervision and guidance over its officials in a manner that would prevent the occurrence of such harmful errors, with the aim of obtaining compensation through the most expedient means. The injured party resorts to this avenue to avoid the risk of the public official's potential insolvency, which could hinder the prompt recovery of compensation. In such cases, the State retains the right of recourse against the official responsible for the fault.

Subsection One: The Jurisdiction of Ordinary Courts

A civil action for compensation refers to a personal claim initiated and brought by the entitled parties before the ordinary courts, in accordance with the formalities and procedures prescribed by law for seeking just compensation, in order to repair and redress the harm caused to their rights by the fault of a public official who harmed another. This principle is established in Article 124 of the Civil Code, which provides: "Any act, whatever its nature, committed by a person through their fault and causing harm to another obliges the person responsible for its occurrence to provide compensation.[21]"

Therefore, a compensation claim is considered a judicial action, initiated and brought in accordance with the procedural rules established by law. Jurisdiction lies with the ordinary courts, which are distributed among the civil courts according to the provisions of the first and second chapters of Book One of the Code of Civil Procedure; that is, both subject-matter and territorial jurisdiction[22]. Accordingly, as a general rule, a compensation claim, being a civil action, falls within the competence of ordinary civil courts of all levels, in accordance with the rules of subject-matter jurisdiction, unless the act constitutes a criminal offense. In such cases, alongside the compensation claim, a criminal action may arise, which falls within the jurisdiction of the criminal section. The law grants the injured party the right to bring a civil claim subsidiary to the criminal proceedings, as provided in

Article 3 of the Code of Criminal Procedure, or alternatively, the injured party may choose to maintain the civil action before the civil section; however, in this case, they must adhere to the principle that “criminal proceedings suspend civil proceedings” until a decision is rendered in the public prosecution case[23].

Subsection Two: Administrative Courts as the Competent Authority

An administrative compensation claim is defined as a personal judicial action initiated by entitled parties before the administrative courts, seeking compensation to remedy the damage inflicted on their rights as a result of harmful administrative activity arising from the acts of public officials[24].

It should be noted that the Algerian legislator has been significantly influenced by French theory in the field of administrative liability, as it has adopted fault as the basis for the personal civil liability of public employees, while clearly distinguishing between personal fault, for which the employee is held liable, and service fault, for which the administration bears responsibility[25]. Furthermore, it has applied the theory of the combination of faults[26] in cases where damage arises from the interaction between an individual act committed by the employee and a malfunction in the organization or operation of the public service. In such situations, the wrongful act simultaneously constitutes both a personal fault and a service fault, thereby giving rise to dual liability borne jointly by the employee and the administration.

Exceptions to the Jurisdiction of Administrative Courts: There are certain subjects and matters that fall outside the jurisdiction of administrative courts and instead fall within the competence of ordinary courts. We will address this issue by examining the most significant exceptions to the jurisdiction of administrative courts, as provided in Article 802 of the Code of Civil and Administrative Procedure, as follows:

- Traffic violations;
- Disputes arising from any claim for liability seeking compensation for damages caused by a vehicle belonging to the State, a province, a municipality, or a public institution of an administrative nature.

Subsection Three: Conditions and Procedures for Filing a Compensation Claim

First, we will review the conditions for filing a compensation claim, and second, we will examine the procedures required to initiate such a claim.

First: Requirements for Initiating a Claim for Compensation

The Code of Civil and Administrative Procedure establishes a general rule containing a set of conditions applicable to various appeals before the courts. Article 13 of the Code of Civil and Administrative Procedure provides that: “No person may bring an action unless they have a present or potential legal standing and interest recognized by law.” The judge must raise the lack of standing ex officio, whether on the part of the plaintiff or the defendant. Additionally, the judge must raise ex officio the lack of authorization if such authorization is required by law[27].

Accordingly, the parties to a compensation claim must satisfy the requirements of standing, capacity, and interest.

1. **Standing**: This means that the compensation claim must be brought by the person holding the legal position personally, or through their agent or legal representative, if they are a natural person. In the case of a legal entity, the claim must be brought by or against the competent authorities that possess the legal capacity to litigate[28].
2. **Existence of a Present or Potential Interest**: Applying the principle of “no action without an interest,” a compensation claim is admissible only if the claimant has a legal interest, despite the ambiguity surrounding the concept of interest[29]. The requirement of interest in a compensation claim differs from that in an annulment action. To satisfy the interest requirement in an administrative compensation claim, it is not sufficient that the person merely occupies a general legal position or status affected by an unlawful administrative act. Rather, the claimant must hold a personal legal position that has been directly harmed by the administrative activity in order for the claim to be admissible.
3. **Existence of Legal Capacity:** The Code of Civil and Administrative Procedure provides that: “The judge shall raise the lack of legal capacity ex officio, and may also raise ex officio the lack of authorization of a natural or legal person’s representative[30].” This article clarifies the nature of this requirement and the legal consequences of its absence.

It is noteworthy that the Algerian legislator did not refer to legal capacity in Article 13 under the chapter entitled *Conditions for Admissibility of the Claim*. Instead, it appears in Chapter Four under the heading *On Raising the Nullity*. This requirement is not limited to the conditions for filing a judicial claim; rather, it is a general condition that must be met by any person engaging in any legal act. Accordingly, the legislator did not include it in the text of Article 13. According to civil procedure doctrine, legal capacity is not a condition for the admissibility of the claim itself but a condition for exercising a judicial action. If a person brings a claim without possessing the necessary legal capacity, the procedural act is void because initiating a claim constitutes a legal act that requires the person to have a specific capacity—namely, the capacity to litigate.

This is the view adopted by the Algerian legislator, who detailed this requirement and removed it from the article on the conditions for filing a claim, placing it instead in the appropriate provisions, Articles 64 and 65. It also clarified that cases of nullity in non-judicial contracts are exhaustive and arise only in the absence of legal capacity of the parties, whether plaintiff or defendant. This discussion was necessary to clarify this condition and to highlight the amendment introduced by the Code of Civil and Administrative Procedure, in line with modern civil procedure doctrine.

Second: Procedural Steps for Initiating a Compensation Claim in Administrative Liability

The Code of Civil and Administrative Procedure refers to the objection of inadmissibility, which aims to declare the claimant's request inadmissible in various cases, including lapse of time and prescription[31]. Referring to Article 322 of the same code, it provides that any time limits established by this law for exercising a right or for filing an appeal result in the forfeiture of the right or the exercise of the right if not observed. Failure to comply with these time limits leads to the loss of the right to file the appeal, except in cases of force majeure or the occurrence of events that affect the normal functioning of the justice system.

1. **Drafting the Petition:** The petition submitted by the claimant before the administrative courts in a compensation claim must include a set of specific details, namely:

a. The petition must be in writing and signed by the claimant or by an attorney registered with the Bar Association.
b. The petition must include the full identification and address of both the claimant and the defendant.
c. The petition must specify the competent judicial authority to hear the claim.
d. The petition must include a concise summary of the facts and legal grounds, accompanied by the required supporting documents.

e. The petition must be accompanied by a copy of the prior decision being challenged in the compensation and administrative liability claim.
f. All facts, claims, and memoranda submitted by the State must be certified by the competent administrative authority, i.e., the entity that possesses the right to litigate.
g. The petition must be submitted in multiple copies, corresponding to the number of defendants.
h. A receipt evidencing payment of the court fees, or exemption therefrom, must be attached.

2. **Filing the Petition**: The petition must be filed with the court registry before the locally competent court. The registrar issues a receipt to the claimant upon filing. Thereafter, the defendant is formally notified to appear at the hearings[32].

Subsection Four: Proof in the Compensation Claim

Legal evidence is considered the strength of the right. A right without proof is equivalent to a nonexistent right, even if it exists in fact and reality, because the right, which is the subject of litigation, loses all value if there is no evidence supporting the event upon which it is based. Evidence constitutes the foundation and essence of the right, and its utility depends on it—without evidence, there is no enforceable right[33].

Thus, the theory of evidence is regarded as one of the most important legal doctrines and among the most practically applied in daily legal practice. Courts consistently apply this theory in every case and dispute brought before them[34]. The judge renders a decision only in accordance with their conviction and belief[35], which underscores the crucial importance of evidence in the judicial field.

Evidence is defined as the presentation of proof before the court, using the methods prescribed by law, to establish the occurrence of a legal fact and the consequences arising therefrom. In this sense, legal evidence is strictly limited to the procedures provided by law. Moreover, evidence concerns the legal fact that produced its effects; the subject of proof is not the claimed right itself, but rather the legal source that gives rise to that right[36].

The term evidence in the field of law carries multiple meanings. It may refer to the process itself, namely the procedure of proving the existence of a fact claimed by an individual. It may also refer to the evidence as such, upon which the process of proof relies, such as presenting specific pieces of proof. The process of adducing evidence contributes to the formation of the judge's belief regarding the existence or non-existence of the fact in question, as evidence essentially entails establishing the truth of something to another.

The claimant initially bears the burden of proof for the administrative facts on which their claim is based, supporting their assertion with files or administrative documents. The administrative court may provide documents related to the case[37]. The administration is required to submit the necessary papers, as its refusal is considered an acknowledgment of the facts alleged by the claimant. If the individual alleges a non-administrative fact, they must prove it in accordance with general legal rules. The means of proof are as follows:

First: Written Evidence

Written documents constitute the most important type of evidence in judicial disputes in general, and in administrative disputes in particular. It is an established principle in case law that proof is primarily by writing, except where expressly provided otherwise by law. This exception applies when the document was created at a time when there was no dispute or litigation, and it records the facts in their original form[38]. Documentary evidence often consists of an administrative document held by the administration, which corroborates a specific legal fact. Such documents may be issued by the administration itself or may take the form of a written request submitted by an individual concerning a particular matter[39].

While documentary evidence enjoys significant probative value in establishing facts, the extent of this value varies depending on the type of document. Its weight is greatest in official and customary instruments, whereas it ranges from the probative value of a customary instrument on one hand to merely serving as a guideline or reference in the case of private writings on the other.

Article 324 of the Civil Code defines an official instrument as follows: “An official contract is one in which an officer, public official, or a person entrusted with a public service records what has come to their knowledge or what they have received from the concerned parties, in accordance with the legal forms and within the limits of their authority and competence.”

Failure to meet any of the conditions specified in this article renders the document invalid. Conversely, once the three conditions are fulfilled, the document acquires official status and attains autonomous probative force. Anyone presenting an official document to the court that meets these requirements is not required to prove its authenticity, as official instruments enjoy absolute evidentiary value under the law. Any challenge to their validity must be based solely on forgery. An official document is considered conclusive and cannot be disregarded unless its falsification is proven[40].

This differs from criminal matters, where the value of official and customary instruments is equivalent, and all are subject to the discretionary evaluation of the judge[41].

Second: Admission

An admission is the acknowledgment by a party before the court of a legal fact alleged against them, made during the proceedings relating to that fact[42]. It has also been defined as a recognition by a person of a claim directed against them by another. In this sense, a judicial admission constitutes a declaration by the admitting party in favor of their opponent, affirming the truth of a legal fact[43]. Thus, it represents a waiver by the admitting party of the right to contest or prove the fact asserted by the opponent. For this reason, it is said that admission is exempt from proof[44].

In civil law, a judicial admission enjoys absolute probative value, and the trial judge has no discretion to assess its validity[45]. By contrast, a non-judicial admission is subject to the full discretion of the judge regarding its probative weight. However, if the judge finds that a non-judicial admission was genuinely made with the intention of resolving the dispute, it is accorded the same probative force as a judicial admission and becomes binding on the judge[46].

Accordingly, a judicial admission is constituted by four essential elements, namely:

1. The admission must be made by the defendant, either personally or through their authorized representative.
2. The admission must be made before a judicial authority, which is the element that distinguishes a judicial admission from a non-judicial one. This authority must have subject-matter jurisdiction to hear the dispute; otherwise, the admission is deemed non-judicial. This includes admissions made before the Public Prosecution or any other administrative body lacking the power to adjudicate the dispute.
3. The admission must be made during the course of the proceedings relating to its subject matter, and not in any other case pending before the courts. It may be made at any stage of the proceedings.
4. The admission must not violate public order, such as admitting a debt arising from gambling or games of chance. Rules of public order may be invoked at any stage of the proceedings, and the judge is required

to apply them ex officio once they become aware of their existence and legal nature[47].

Third: Witness Testimony

The judge may hear any person deemed necessary, other than the parties to the dispute. The court may also order the conduct of an investigation either directly or through a person it appoints for that purpose.

Witness testimony is the statement made by a person before a court regarding a fact committed by another, from which a right arises in favor of that other person. The fact testified to must have come to the witness's knowledge through direct perception, such as hearing or sight. If, however, the witness learned of the fact through another person and merely reports it secondhand, this constitutes hearsay testimony, which is not considered testimony in the legal sense. In such cases, the judge may take it into account only as indicative or corroborative evidence, rather than as conclusive proof.

It should be noted that the Algerian legislator has provided for exceptions to cases where proof is originally required to be in writing, allowing witness testimony under strictly limited conditions, namely:

1. Commencement of proof in writing;
2. The existence of a material or moral impediment preventing the acquisition of written evidence;
3. Loss of the written evidence due to an external cause beyond the creditor's control;
4. Fraud against the law[48].

It is beyond doubt that witness testimony is legally permissible; however, it remains subject to the discretionary evaluation of the judge regarding its consideration and weight. In some cases, other circumstantial or documentary evidence may suffice, rendering witness testimony unnecessary[49]. Alternatively, the facts to be proven may be so improbable that the judge sees no way to be convinced by the testimony, and therefore does not rely on it.

Legal doctrine and case law agree that it is not enough for the law to permit proof by witness testimony for it to be accepted; rather, the testimony must be deemed credible and acceptable according to the judge's assessment. The law does not subject the judge's discretion and evaluation in this matter to review by the Supreme Court, provided that any refusal to rely on the testimony is accompanied by a logical and reasonable explanation. The reasons upon which the court bases its conviction must be capable of supporting the judgment. Conversely, if the judgment lacks any reasoning—

even implicitly—to address the claimant's request, the judgment is considered defective and subject to annulment.

The most important conditions for witness testimony are:

a. The witness must be a third party; testimony from any of the parties to the dispute, or their representative—such as an attorney, guardian, or curator—is not valid.
b. The witness must be legally competent to testify and not barred from doing so; otherwise, the judge may consider their testimony merely for guidance.
c. The information provided to the court must have been obtained through the witness's own senses.
d. The testimony must relate directly to the facts of the case and the matters that need to be verified.

Fourth: Judicial Inspection (On-Site Examination)

A judicial inspection is the observation conducted by the court in its entirety, or by a judge delegated to examine the subject of the dispute. It may require expert input if specialized scientific or technical knowledge is necessary. An inspection can concern movable or immovable property, or even persons. It may be carried out within the courtroom, or the court may travel to the disputed item if it is immovable, or if a movable item cannot be transported to the court.

The purpose of the inspection is to establish certain facts in the pending case by visiting the location of the event to collect relevant information, enabling the court to render a decision based on direct observation and insight. The court prepares a formal inspection report at the site, and the session is considered officially convened for this purpose.

A judicial inspection is conducted at the location of the fact to be proven when it is impossible to present it or bring it to the court. This is the case, for example, when the inspection concerns immovable property or movable property that is difficult to transport, such as large household furniture. In criminal matters, it is necessary to inspect all elements related to the offense, including the site where the crime occurred.

If the disputed item is movable and can be easily brought to court, the judge has the authority to order its presentation before the court for inspection, as in the case of counterfeit currency, weapons, or tools used in a crime. Thus, the place of inspection may be either outside or inside the court, and the subject of the inspection is not limited to a specific type of case. It varies depending on the dispute, whether it involves commercial transactions, criminal matters, or other types of cases.

From this perspective, judicial inspection is one of the most important means of proof, especially in matters involving physical or material facts. In some cases, it may even constitute the only conclusive evidence. For example, if a homeowner alleges that a contractor deviated from the agreed-upon architectural plan during construction, an inspection of the property provides definitive proof as to whether it conforms to the plan or not. Numerous other examples exist where inspection serves as critical evidence.

The court has the discretionary authority to conduct an inspection based on the circumstances of the case and the interests of the proceedings; it is not compelled to do so by the parties. The court may decide to inspect the disputed site on its own initiative or at the request of one of the parties. However, if the court already possesses sufficient documentary and other evidence to adjudicate the case, there is no need to carry out an on-site inspection[50].

Fifth: Expert Evidence

In some cases before the court, it may be impossible for the judge to personally investigate all or part of the facts of the case, especially when such investigation requires specialized technical knowledge beyond the judge's legal expertise. Judicial experts possess scientific or technical backgrounds in fields such as forensic medicine, engineering, or data analysis, depending on the specific nature of the case. Their expertise is presented to the court to clarify technical or scientific aspects that undoubtedly assist in fully understanding the matter.

Therefore, the legislator permits the judge to rely on experts who are specialized in areas requiring technical insight or when the resolution of the dispute depends on knowledge of a specific technical field in any branch of science or knowledge. It is not reasonable to expect the judge to be an expert in all technical subjects presented; rather, the judge is presumed to be well-versed in legal principles, jurisprudential rules, and judicial precedents, which are the core of their function. Accordingly, the law authorizes the judge to appoint experts to assist in the adjudication of such matters.

The judge has full discretion to appoint experts, determining both their number and the field of specialization, without delegating any of the judicial powers legally vested in him. This authority is affirmed in Article 48 of the Code of Civil and Administrative Procedures, which states: *"The judge* *appoints the expert either on his own initiative or based on the agreement of the parties."*

Expert evidence is considered a form of direct evidence, similar to judicial inspection, because of its direct connection to the fact to be proven. It is conducted by individuals possessing technical competence not available to the judge. The law thus permits the judge to rely on experts in cases where the resolution of the dispute depends on technical matters that the judge cannot assess independently, enabling the judge to benefit from the expert's opinion to form a well-grounded decision.

The Algerian legislator has paid particular attention to judicial expertise, establishing a body of rules governing expert evidence, some of which are contained in the Code of Civil and Administrative Procedures, and others in the Code of Criminal Procedure[51].

Sixth: Presumptions (Legal and Judicial Inferences)

Presumptions refer to the indications or signs available to the plaintiff that support their claim. They are considered the second most important form of evidence after written documents and are recognized as evidentiary proof before the administrative courts.

From the perspective of their source, presumptions are divided into two main types: legal presumptions and judicial presumptions, a classification well-established in both doctrine and case law.

Legal presumptions are those specifically defined by the legislator in legal texts, which the judge is obliged to consider when their conditions are met. Under such presumptions, the occurrence of a particular fact is assumed upon proof of another fact specified by law. These presumptions may be either:

- Conclusive presumptions, which do not allow proof to the contrary; or
- Rebuttable presumptions, which admit evidence to the contrary.

Examples of legal presumptions include:

- The presumption of validity of an administrative decision;
- The presumption of knowledge of the law following its publication;
- The presumption of the accused's innocence in criminal matters.

Their importance lies in achieving legal stability and reducing the burden of proof on one of the parties. Judicial presumptions, on the other hand, are those inferred by the judge from the facts and circumstances of the case, without being bound by a specific legal provision. The judge deduces an unknown fact from a proven fact, relying on logic and the normal course of events.

For such presumptions to be valid, they must be strong, consistent, and capable of leading to the fact to be proven. Judicial presumptions are characterized by their flexibility, as they grant the judge broad discretion in establishing the truth, particularly in administrative litigation, where it is often difficult for the plaintiff to provide direct evidence due to the administration's retention of documents.

Judicial presumptions carry significant importance as a means of evidence. Consequently, legislation has paid attention to them, organized their use, and recognized them as an independent method of proof, considering them an excellent tool for ascertaining the truth.

Beyond the judicial benefits they provide—by assisting in the establishment of evidence before the court—judicial presumptions also serve a social purpose, as they help protect the rights and interests of individuals and promote stability within the community.

Although the Algerian legislator has dedicated only a single article to judicial presumptions, without specifying their probative value as was done for legal presumptions, judicial presumptions possess substantial practical significance. This significance stems, first, from their diversity and open-ended nature, and second, from the judge's broad discretion in applying them. They often reduce the burden of proof on the plaintiff, and in some cases may even shift this burden to the defendant.

It is also noted that the repetition, regularity, and stability of certain judicial presumptions may lead the legislator to elevate them to the status of legal presumptions through explicit statutory provision[52].

CONCLUSION

Through the study of civil liability of public officials under Algerian law, we have reached a set of conclusions, as follows:

1. Liability as a manifestation of legality: Civil liability represents a form of the administration's and its agents' adherence to the principle of legality, reinforcing the rule of law and ensuring the protection of individuals' rights against the abuse of authority by public officials.
2. Influence of French administrative law: The study indicates that the Algerian legislator was significantly influenced by French theory in the field of administrative liability. Civil liability of public officials is primarily based on fault, with a clear distinction between personal

fault, for which the employee is responsible, and functional fault, for which the administration bears responsibility.

3. Elements of liability and burden of proof: Civil liability of a public official arises only with the presence of its three essential elements: fault, damage, and causal link. The burden of proving these elements rests primarily on the injured party, while granting the administrative judge broad discretionary powers in assessing fault and evaluating damages to ensure balance between the administration and individuals.
4. Role of the administrative judiciary: The Algerian administrative courts play a pivotal role in determining the nature of the fault attributed to a public official, by distinguishing acts related to official duties from those unrelated. This distinction directly affects the determination of the responsible party for compensation, whether the official personally or the administration.
5. Purpose and conditions of compensation: Compensation under the civil liability of public officials aims primarily at reparation of damage without unjust enrichment. It is subject to specific conditions, including that the damage must be real, personal, and affect a legal right or legitimate interest, and it must not have been previously compensated.
6. Balancing protection and accountability: An important conclusion is that the civil liability system seeks to achieve a delicate balance between protecting public officials while performing their duties—so they are not overburdened with liability for every error—and safeguarding victims from unlawful acts, thereby ensuring the smooth and continuous functioning of public services.

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