ADMINISTRATIVE LIABILITY ARISING FROM DAMAGE CAUSED BY A PUBLIC ROAD FACILITY: A COMPARATIVE STUDY

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ABSTRACT

Objective: This study reviews the legal aspect of administrative responsibility for the damages that arise from the public road facility and a statement of the basis of that responsibility in French law and Iraqi law. The aim is to prove that justice requires the court to compensate the victim of the public road facility whether there is a fault of the administration or not there is fault in certain circumstances, which indicates that the court's discretion takes into account the circumstances in which the damage occurred, as well as the character of the injured person.

Theoretical framework: The court has discretion to determine the administration's liability for damages caused to individuals by the public road facility, in order to administer justice and preserve the rights of individuals.

Method: The researcher followed the two inductive rooting approaches, which depend on extrapolating court decisions and the deductive analytical approach, to analyze the legal texts on management responsibility.

Results and conclusion: The system of management liability for damage resulting from a public facility is based on proven fault, but the matter differs in the scope of liability for damage arising from the public road facility, where the responsibility of management is based on presumed fault and liability without fault.

Implications of the research: The results have implications for legal practice, emphasizing the importance of the Iraqi judiciary applying what the French judiciary went to, and stresses the importance of fairness and justice in redressing the affected by the public road facility.

Originality/value: It is possible to apply the rules followed in the French judiciary and apply them in the Iraqi judiciary in order to protect the rights and freedoms of individuals

Keywords: Administrative Liability, Fixed Fault, Assumed Fault, Liability Without Fault, Usufructuary.

RESPONSABILIDADE ADMINISTRATIVA DECORRENTE DE DANOS CAUSADOS POR UMA INSTALAÇÃO RODOVIÁRIA PÚBLICA: UM ESTUDO COMPARATIVO

RESUMO

Objetivo: O presente estudo analisa o aspecto jurídico da responsabilidade administrativa pelos danos causados pela infraestrutura rodoviária pública e uma declaração sobre a base dessa responsabilidade no direito francês e no direito iraquiano. O objetivo consiste em provar que a justiça exige que o tribunal indenize a vítima da infraestrutura rodoviária pública, quer exista culpa da administração, quer não, em determinadas circunstâncias, o que indica que o poder discricionário do tribunal tem em conta as circunstâncias em que o dano ocorreu, bem como a natureza da pessoa lesada.

Quadro teórico: O tribunal tem poder discricionário para determinar a responsabilidade da administração por danos causados a indivíduos pela infraestrutura rodoviária pública, a fim de administrar a justiça e preservar os direitos dos indivíduos.

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Método: O pesquisador seguiu as duas abordagens indutivas de enraizamento, que dependem de extrapolação de decisões judiciais e abordagem analítica dedutiva, para analisar os textos legais sobre responsabilidade de gestão.

Resultados e conclusão: O sistema de responsabilidade de gestão por danos resultantes de uma instalação pública baseia-se em culpa comprovada, mas a questão difere no âmbito da responsabilidade por danos decorrentes da instalação rodoviária pública, onde a responsabilidade da gestão se baseia em culpa presumida e responsabilidade sem culpa.

Implicações da pesquisa: Os resultados têm implicações para a prática jurídica, enfatizando a importância do Judiciário iraquiano aplicando o que o Judiciário francês foi para, e enfatiza a importância da justiça e da justiça na reparação dos afetados pela infraestrutura pública.

Originalidade/valor: É possível aplicar as regras seguidas no sistema judiciário francês e aplicá-las no sistema judiciário iraquiano, a fim de proteger os direitos e liberdades das pessoas

Palavras-chave: Responsabilidade Administrativa, Falha Fixa, Falha Assumida, Responsabilidade Sem Falha, Suportário.

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1 INTRODUCTION

Administrative responsibility is one of the most important topics in administrative law, and it is one of the main means that aim to achieve justice between the individual and the administration on the one hand, and between the individual and society on the other hand, and represents a mirror that reflects the level of civilization reached by any society.

It is noted that responsibility has passed through long times and periods that are not recognized with regard to the accountability of rulers for their powers and the actions they perform, and as a result of the changes that have occurred in the theory of authority and its transition from one theory to another, and its subjection to multiple philosophies that undoubtedly targeted the authority of the administration and subject it to responsibility.

The French Council of State had the most prominent role in reaching or subjecting the administration to responsibility after passing through long periods and phased fluctuations, and its efforts in establishing the rules of administrative responsibility, and this role emerged when the state implemented its public works and built public facilities, and its emergence as a sponsor of the interests of individuals, and through that communication between individuals and the administration appeared, and the individual began to seek from the state within the framework of its construction of public facilities, the benefits achieved from this by taking advantage of those facilities and benefiting from them, and in return The beneficiary was exposed to damages resulting from these establishments or from the public works carried out by the administration, and the most important of these facilities and the works carried out on them are public roads.

Public roads are the most important application of the theory of administrative responsibility, as the matter settled in France on the establishment of administrative responsibility since the ruling of the French Court of Dispute issued on February 8, 1873 in the case of (Blanco), which is summarized in that girl (Blanco) who was subjected to a road accident between one of the buildings of a tobacco factory by one of the vehicles that were traveling on the road in the city of (Brdo), where the court ruled the jurisdiction of the courts
of state councils to consider cases of harmful administrative liability, whether from public utilities or from one of its employees.

2 METHODS

For the purpose of reaching solutions and results to the problems that will be raised, the research follows several approaches, as the nature of the subject imposes an inductive rooting approach, which depends on extrapolating the decisions of the French courts, especially the French Council of State, especially in the field of management responsibility regarding the damages resulting from the public road facility and extracting facts from those judicial precedents to reach the common rules between the Iraqi and French laws, and determining the extent to which these principles can be applied in Iraqi law and the judiciary, in order to achieve Justice, and may be used when needed deductive analytical legal approach, which is based on the analysis of the legal texts on the responsibility of the administration for the damage of the public road facility in French law and Iraqi law, to understand and interpret, in order to draw legal conclusions, as well as the comparative method, and whenever required to be used in this study, and in front of this topic many questions arise:

- What is the legal basis for the administration's liability for damages caused to public road users?
- What is the nature of the judicial system in Iraq that governs liability for damage caused by public roads?
- What are the types of damage that affect the beneficiaries of public roads? How are they determined?

3 THEORETICAL FRAMEWORK

The importance of this topic comes from a legal point of view that some countries, including Iraq, did not include in their legal texts a special text for this type of responsibility, but rather included within the framework of tort liability known in the Iraqi Civil Code, and therefore should shed light on this topic and stand on it in detail towards this responsibility.

The responsibility of the administration arising from the public road facility has not been researched independently, but most of them came related to the research that dealt with the responsibility of the administration resulting from the errors of the public facility, specifically the damage caused by public facilities in accordance with French law, and that the Iraqi legislator did not address this type of responsibility, but came within the general rules that dealt with tort liability in civil law.

4 RESULTS AND DISCUSSION

4.1 The Legal Basis for Administrative Responsibility for Damage to Public Roads

In general, there are three systems as a basis for liability in administrative law, responsibility for error, responsibility for presumed error, and liability without fault, and the system of liability based on fault is the origin of liability systems, but the matter is different in the scope of liability for damages arising from public roads, as liability based on presumed error and liability without fault occupies an important place.

Jurisprudence and the judiciary differed on the basis on which the responsibility of the administration for the damage created by public roads is built, according to the type of damage and the character of the injured person, while a section of jurists went to assign the responsibility of the administration for the damage caused to the injured in general based on the proven error,
while others went to determine responsibility based on the supposed error, and the other section went to assign that responsibility based on the responsibility without error, and this is what will be discussed as follows:

4.1.1 Determine the scope of responsibility for damages resulting from the public roads facility

The scope of liability for the damage of the public road facility is determined by clarifying the concept of whether the public road facility, Public installations, or not, and public works carried out by the administration on public roads, whether when implementing or running, and requires first knowing the concept of public facilities, in terms of the scope of damage they create, and then knowing the concept of public works.

4.1.1.1 Public installations

"Public installations are defined as a completed project as a result of public works and were intended to meet collective needs or were intended for the benefit of the public” (Farhat, 2012, p. 848).

"One of the basic principles governing public facilities is that it is real estate, prepared to meet the needs of the public, and not demolishable even if their construction is contrary to the law based on the principle of immunity of public installations” (Abd al-Latif, 2014, p. 328).

Therefore, for public installations to verify the following conditions, it is required:

- Real estate capacity: Public installations must be real estate, and this is the characteristic that distinguishes it from other topics, as the mobile home is not considered a public installation, provided that the intended real estate is those referred to in the Civil Code (Matar, 2018, p. 17).

- The necessity of allocating the property, rehabilitating or preparing it for the public benefit: that is, that public installations are prepared and rehabilitated for the public benefit, and that it does not remain as it is, as a result of human work, as the road is land that has been prepared by human action to become what it is, so the French Council of State goes to consider the parking lot of public installations, as it was considered one of the public installations, the pool dug into the rocks of the beach, while it is not considered as such, the beach on which no rehabilitation or organization has been carried out (Roukoz, 2003, p. 30).

Through the above, the availability of public installations on public roads has been achieved, as roads are not conceivable to be a non-real estate, and by their nature, they are intended for public benefit, and they are attractive to the public, as they are intended for direct collective public use (Al-Helou, 2007, p.143).

As a result of the convergence between the concept of public works and public installations, it does not matter after that whether the damage is caused by a public origin completed or during implementation or still being a project, or construction or maintenance of installations, so the word works are used, whether to determine a Completed installation or work belonging to it (Danoun, 2009, p. 241).

4.1.1.2 Public works

Public works: works of public benefit, carried out on the real estate, for the account of a person from the administrative law, or by him, or under his management (Baz, 1971, p.578), this definition contains the elements necessary for public works on public roads:
• The subject of public works is related to the real estate on which public roads are based, and includes all construction and maintenance work that is contained on the roads, as well as the construction of bridges, tunnels, barrages, etc., and comes out of public works, movables of any size, as the French administrative judiciary did not consider public works contracts agreements that are replaced by the construction or restoration of a ship or the establishment of an aircraft (Baz, 1971, p. 578).

• Work must be done for the state or one of the local units (provinces - municipalities), as the decision of the French Council of State in 1928 in the Sigalas case is the starting point to confirm that the works carried out and bearing the status of public works, must be linked to the account of a public person (Al-Helou, 2007, p. 173).

• The purpose of road works must be to achieve the public benefit, as the administration aims to achieve the public benefit through the implementation of public works, to satisfy public needs and ensure the regular and steady functioning of public utilities (Al-Helou, 2007, p. 174).

The damage of these works shall wear multiple forms or forms, including damage resulting from the construction of public roads or failure to maintain roads or bridges built on them, works that led to the elevation or lowering of the public road, or the failure to secure the access of individuals to their homes due to excavations conducted by the administration on the public road, and any damage related from near or far to public works, and whether this damage occurred during its performing, or after its completion (Mohamed, 2015, p. 224).

Public works have a broad concept, as they include the works carried out by the administration, and the works that it should have carried out, as the failure to carry out public works or installations, does not entail any responsibility on the public authority, except in cases where it should have carried out these works, i.e. the work entrusted to it, whether it was carried out or not (Sarhan, 2010, p. 717).

4.2 Management Liability Based on Established Fault

It is the general origin and the first legal basis in the establishment of administrative responsibility for the mistakes committed by the administration when carrying out the administrative activity, whether as a result of legal or material actions, and responsibility generally rises on three pillars error, damage, and the causal relationship between the error and the damage caused by the error itself, and this responsibility based on error, meaning that the responsibility of the administration, the presence of error on the part of the administration (Al-Tamawi, 1986, p. 143).

The French administrative judiciary has established the idea of the responsibility of the administrative authority based on error, and this judiciary invented the theories of personal error, and the error of the elbow or error of the public facility, based on the idea of error, and adopted them as a basis for responsibility in administrative law, has shown the administrative judiciary that personal error, is that error attributed to the employee himself, so his responsibility for the damage caused by this error is achieved, meaning that this responsibility is based on civil liability, and the judiciary of the French Council of State has considered that the error Be in person on three occasions (Al-Tamawi, 1986, p. 143).

If the act of error causes damage that is related to the public facility

If the error was intentional and the employee did not target the public interest.

If the fault is very serious or has reached a special degree of gravity, then the fault is personal and not attached.

If the error is not attributed according to the above, it is attributed to the facility or the so-called attachment error, so it is objective, not personal, and it is an original non-consequential responsibility, and in this case, it is attributed to the public facility directly as it...
is the one who committed the error giving rise to the responsibility, even if it was carried out by an employee, the assumption and this case are that the public facility is the one who carried out the illegal wrong activity, and its responsibility is determined before the administrative court, and compensation is paid to the affected by state funds, The rule followed by the judiciary in France is to expand the forms of elbow error in order to protect individuals and employees, so it can be said that the elbow error is all that is not considered a personal error (Al-Tamawi, 1986,p.144).

In order to take note of the acts that constitute the elbow error, the sense that the acts in which the error is embodied and that would cause harm to individuals can be traced back to three categories:

- The facility performed the service badly: Under this name, all positive actions issued by the administration and involving error, such as poor construction of the public road or poor maintenance of it, which would harm road users, and this would lead to the responsibility of the administration concerned with public roads for what causes damage to the beneficiaries (Al-Tamawi, 1961,p. 885).

- Failure of the facility to perform its services: This name includes the administration's failure to carry out its duty by taking a negative position by refraining from carrying out a certain behavior, i.e. it had to take positive action, such as the road facility's failure to carry out the necessary maintenance work for the road, or not to put signs or signs or signs indicative or warning or the necessary lighting devices, which are public road requirements, which leads to this negative action to cause road accidents and damage to the beneficiaries, including the decision of the French Council of State issued on 10/ May 1907 in the Dep. De la Dordogne case, where the Board held that the administration was liable for damages arising when it did not erect a barrier it was supposed to erect to prevent pedestrians from falling on a high road (Nassar, 2007,p. 304).

- Slowing down the facility in carrying out its services: The error lies in this case, the slowness of the administration in performing its work more than the reasonable time, as the administration is asked about this when it causes harm to individuals as a result of that delay, provided that the delay is not intended that the law has set a date during which the administration must perform its services, but that what is meant here is that the administration is not restricted to a certain date, and yet it slows down too much and without an acceptable justification, exceeding the normal limits and reasonable (Nassar, 2007, p.306).

The French administrative judiciary is not satisfied with ruling on the responsibility of the administration by its error and the conduct involved in it, but it is required that the error is of a tangible degree of gravity, as this position requires the administrative judiciary to examine the cases separately, according to the following considerations:

- Considerations that take into account the circumstance of the time and time in which the facility performs its services: The Council went by a decision issued on 31/January/1917 in the case of (Champagne), taking into account the time of the administration's work, it happened that the administration made some repairs for maintenance of a public road, and left a pile of stones on the road, as a result of the presence of dark darkness on the road, which led to a collision with a doctor who was called for an urgent case in the middle of three o'clock in the morning, where the Council refused compensation given that the accident occurred in late-night conditions.

- Considerations that take into account the circumstance of the place where the facility performs its services: The more the facility performs its services in a remote location, the more emphasis is placed on the degree of error required, and the stricter than those in which the facility performs its work near city centers or the capital, in which the Council is satisfied with a small error.
• Considerations that take into account the burdens and resources of the facility to meet its obligations: The French Council of State requests a high degree of gravity of error, whenever the burdens placed on the facility are large and not commensurate with its resources and means of little or few, the Government Commissioner (Rivet) stated on the occasion of the judgment issued by the French Council of State On 20 March 1926 in the case (Grimaud) "The power of the judge to estimate the degree of maintenance that the administration must undertake public works, is quite broad, he may estimate the difficulties that the administration suffers in order to face all the errors attributed to it, and to take into account the actual means it has to use on that, and the degree of lack of these means from those that used to perform a task to the fullest, and he must above that examine the nature of the facility, the number of beneficiaries of it, and whether their number allows making all the sacrifices required in order for maintenance to be perfect (Tolba, 1997,p.351).

The Council of State rejected in its judgment these recommendations, which estimate the gravity of the duties placed on the shoulders of the road facility, and its responsibilities, means, and actual capabilities to confront them, so the Council of State rejected in a decision issued on April 5, 1927, in the case of (Soual) the rejection of the ruling on the responsibility of the administration, because it did not lift a piece of wood placed in the middle of the road by an unknown person at night, which led to a cyclist colliding with it and injuring as a result, and it was proven that the supervisor of the road He had to take into account a few kilometers (Tolba, 1997,p.351).

As a result of these considerations, the Council has crystallized an idea that it always repeats in some of its provisions related to damage caused by public facilities, which stipulates that the administration is responsible for every error that can be avoided by regular maintenance, and is not responsible if that error can only be avoided by taking extraordinary measures in public establishments, and this will be discussed late.

4.3 Fault Assumed as a Legal Basis for Administrative Liability for Fault Caused by a Public Road Facility

Part of the jurists in France, as a result of their analysis and readings of the provisions of the French Council of State, went to assign the responsibility of the administration for the utility error arising from public works or public facilities, on the basis of the supposed error, represented (not to carry out the regular maintenance required in public facilities), which includes that the responsibility is not based on an error that must be proven by the aggrieved, and then the beneficiaries affected by the public road are sufficient to prove the damage and the causal link between it and the works or the public road, until it is assumed defect in the required maintenance, they benefit from the existence of the presumption of error that affects them and resulting from their use of these facilities(Abd al-Latif, 2014,p.383).

However, this presumption of error can be refuted by the administration concerned with the public road, which must prove that it has carried out the required maintenance in public facilities, the French Council of State went by a decision issued on 23/1/2011, that the road in which the accident occurred, was exposed to falling stones continuously, and that the administration has placed warning signs to road users of the existence of these risks, and that this road was subject to continuous control from the administration and that it took a set of measures to protect the road from those risks, They have proven that they have carried out the required maintenance of the road (Abd al-Latif, 2014,p.384).

The concept of regular maintenance is that it is all the work and measures that the concerned administration must carry out, in order to provide the public with the use and use of public facilities, consistent with the purpose for which it was established and that these
measures are sufficient to ward off dangers and draw the public's attention to it (Al-Majzoub, 2015,p.224).

The loss of maintenance is achieved when the beneficiary is exposed to risks that exceed what he usually expected as a result of using the public road according to the purpose or purpose prescribed for it, and jurisprudence and the administrative judiciary have set three conditions that must be met in order to achieve normal maintenance:

- The beneficiary shall not be exposed to any danger from the public works or public facilities that he uses, as the administration shall ensure that the road is repaired regularly to ensure that the public uses it in a manner that applies to the purpose for which it was established (Al-Khoury, 1998,p.472).
- The need to alert in the event of danger, through the placement of signs and warning instructions, so the French Council of State considered cases of maintenance where they are missing, the decision of 25/3/1988 in the case (Societe des Autoroutes de France) that there is a lack of maintenance "when a traffic accident occurs due to the absence of a signal to alert the driver to the danger (Marwa, 2011,p.248).
- The source of the damage is unexpected or unknown by the administration to be able to take the necessary precautions and measures to remedy its consequences or to alert it, the French Council of State went in the decision issued on 10/5/1965 that the collapse of a bridge when a truck passed, causing damage to the beneficiary, is a lack of maintenance (Al-Qaisi, 2007,p.249).

There are four cases, in which the administrative judiciary denied the existence of a defect in the normal maintenance of the road, namely:

- If the defect in the road is small, or if it is one of the defects that the beneficiary of the public road is supposed to encounter, and he must avoid it, the French Council of State ruled by a decision issued on December 10, 1952, in the case of (Valadon) that there is no lack of normal care in the road because of the presence of a hole that does not reach a depth of five centimeters, and in another case, it was considered that the roads that became sticky by rain falling on them are not considered as a defect in normal maintenance Unless this sticky is unusual, and if the road is widened or a new road is opened and this leads to depriving the shop owner of a section of his customers, he is not entitled to claim compensation, unless these works lead to depriving him of access to the shop, in which case he is entitled to compensation because the burdens imposed on him exceed the burdens that the neighbor must bear. (Marwa, 2011,p.248).
- If the defect is not unknown, by the usufructuary of the public road, that is, it is known to them as a result of their knowledge of the places, full knowledge, or because of the presence of a sign or signal indicating the presence of danger or drawing their attention to it, the French Council of State ruled on May 22, 1968, that the responsibility between the administration and the schoolgirl who injured her eye in a tree branch on the public road, is a joint responsibility, as this girl knew the location of the tree because she knew the road she passes on a daily basis.
- The administration shall not be liable for damage resulting from public works or public origin as a result of its occurrence shortly after the occurrence of the defect, if the administration does not have enough time to repair the defect, such as a hole that suddenly opened in the road, and a vehicle was damaged as a result of passing by it.
- If the administration is unaware of the existence of the defect, and it cannot notice it, such as the presence of a tree planted on the side of the road, which is one of the consequences of the road, and its external appearance does not suggest the presence of a necrotic cavity in its interior, the administration is not responsible for the sudden fall of that tree, but if there is something in its external appearance that indicates that it is
prone to fall or that necrosis is visible, the administration is responsible for the damage resulting from its fall, because it had enough time to uproot it (Baz, 1971,p.612).

The administration responsible for roads can be exempted from liability if there is one of the reasons for the exemption, namely the foreign cause, force majeure, the fault of the injured person, and the sudden accident.

The affected beneficiary does not have to prove the fault on the part of the administration, but it is sufficient for him to prove the damage and the causal relationship between the damage and the public road, and the administration is hereby responsible for compensating the beneficiary of the victim, and if it wants to get rid of that responsibility, it only has to prove the opposite of what the plaintiff claims, that is, it took care of the public road naturally, and it is exempted from that responsibility if the error is caused by the action of the injured person or there is force majeure, or there is a sudden accident that prevented it from carrying out its duty Regular maintenance (Fodel,Delvolfier, 2001,p.556).

4.4 Administration Responsibility (Without Fault) as a Legal Basis for Administrative Liability Resulting From Damages to Public Roads Facility

Another section of jurists in France went to assign the responsibility of the administration for the damage caused by public roads on the basis of responsibility without error, which is meant, that responsibility based on only two pillars, namely damage and causal relationship, and without requiring error in it, that is, even if there is no error, so it stands next to the general origin of administrative responsibility that is built on the basis of error (Al-Rubaie, 2015,p.69).

To determine this responsibility, there must be two conditions in the damage caused to the injured by public facilities or public works, the first, is the character of privacy, meaning that the damage has been focused on a group of individuals appointed by themselves, so that they have a special status before it, not shared by other individuals, and the second, extraordinary gravity, that is, that the damage exceeds what must be borne by individuals whose homes or places of work are located near the public road or public works, the private damage alone is not compensated, Unless it reaches a level of gravity that exceeds that borne by each individual because of life in society, such as the decrease in the value of the property, and it is not due to a specific general origin error (Al-Rubaie, 2015,p.71).

This responsibility appeared when the general basis of fault-based liability was unable to keep pace with the many emerging cases in the daily lives of individuals, as the administrative judiciary resorted to another complementary basis represented by the responsibility of the administration without fault, in order to do justice to the affected by the work of the project management.

The application of this system within the scope of damages arising from public establishments or public works is due to two main reasons: The first reason: Based on the idea of risks, as this system is considered opposite to the risks posed by public facilities and public works to individuals when the state performs its tasks towards society, it bears part of the risks of damage resulting from individuals, and as a result, bearing the damages resulting from the public works it performs, and whoever creates risks that benefit him, he must bear those damages. Since the state represents society, the conscience of society pushes it to address the exceptional damage caused to a member of society, by making reparation for that damage (Ammar, 1998,p.197).

The second reason is: This system is based on the principle of equality between citizens in front of public costs and burdens, as the group must bear the risks of the administration's activity if some individuals are damaged because this activity is what the administration has done except for their benefit, so its burden should not be borne by a few individuals among
them, but its burdens must be distributed to everyone, which is what the state does when it pays the value of compensation from the state treasury, which is funded by taxpayers and fees from the general Citizens (Al-Tamawi, 1955,p.153).

One of the most important applications that are established for administrative responsibility without error in the field of public roads is the responsibility of the administration (without error) for damage as a result of adjacent to the homes of individuals or their shops for roads and public works, the French Council of State has decided that the responsibility of the administration without fault for permanent or semi-permanent damage that results for some individuals as a result of adjacent to their shops or homes to the public road or public works, but the damage is required to be special and unfamiliar or serious, and an example This decision issued on April 2, 1965, the decrease in the value of the property for one of the individuals as a result of the construction of a highway next to it, which gives the owner of the property the right to compensation (Abdel Wahab, 2005,p.285 ).

The French Council of State has distinguished between persons related to these establishments or the public works based on them, in terms of being beneficiaries, workers, persons who are cut off or relatedly related to public works, and they are (Others) who do not derive from public real estate or public works any direct benefit or advantage (Hathout, 2007,p.294), and this will be discussed later.

4.5 The Position of the Iraqi Law and Judiciary on the Responsibility of the Administration for the Damage Caused by Public Roads

The Iraqi judiciary considers the liability arising from the damage of public facilities and public works, based on civil tort liability, and leaves the adjudication to the ordinary or civil judiciary, and the Iraqi Civil Code No. (40) of 1951 regulates the provisions of administrative liability that arise from the damage caused by public facilities and public works under different headings, such as (liability for construction and liability for things) based on error.

4.5.1 The Iraqi judiciary considers

The liability arising from the damage of public facilities and public works, based on civil tort liability, and leaves the adjudication to the ordinary or civil judiciary, and the Iraqi Civil Code No. (40) of 1951 regulates the provisions of administrative liability that arise from the damage caused by public facilities and public works under different headings, such as (liability for construction and liability for things) based on error.

It is noted that the legislator has stipulated that the building has a defect that led to its collapse, as the existence of the hidden defect is equal to collapse or fall; the existence of the defect in construction or lack of maintenance, and by linking responsibility to ownership, it makes the owner liable even if it is in the possession of another person, or his custody.

The responsibility of the owner for negligence in maintenance, if he was alerted to that defect or knew about it or should have known about it without being alerted to it, the responsibility is based on the error is not provable to the contrary, because it is a default that cannot be denied, and the injured person is exempted from proving the negligence of the owner of the building, and the latter can get rid of responsibility by proving the foreign cause (Bakr, 2016,p.155).

4.5.2 Responsibility of the Administration for Doing Things

Article 231 of the Civil Code stipulates that "whoever was at his disposal .... Other things that require special care to prevent damage shall be responsible for the damage caused unless it
is proven that he has taken sufficient care to prevent the occurrence of such damage without prejudice to the provisions contained therein, "and responsibility for damage caused by dangerous things, are those that require care to prevent harm between people, and there is no difference between things of movement or stability, whether movable or real estate, building or non-construction, and the concept of special care, may It includes dangerous things due to the circumstances and circumstances surrounding them, these things may derive their danger from the circumstances and circumstances that surround them, regardless of their nature, they may not be dangerous in nature, but when they exist in a certain circumstance or a certain place they may be dangerous, for example, trees, rocks and bridges are not dangerous things, but when they are found in certain circumstances that may be dangerous, and require special care, strong winds may uproot the tree from its roots and throw it on the side of the public road, these are Dangerous, and a speeding car may collide with it on the public road, and the car over-turns and crashes and injures those who were in it, As well as electricity poles in the streets when they are installed in their places, they are not dangerous, but if they are installed wrongly, they are dangerous, they are prone to fall at any moment, causing harm to pedestrians or passengers, as well as the case for protective fences placed in the middle islands or on the shoulders of the road, and the Court of Cassation of Iraq ruled that "the mayor is obligated to compensate for the death of a person with electric current as a result of the error leading to the leakage of current from the wires to the poles." Erected in the street. (Bakr, 2016, p.173).

Responsibility is attributed to those who had at their disposal that thing in accordance with Article 231 of the law, and although the legislator has made the error presumed capable of proving the opposite, he gave way to what is decided by the special rules, or the rules that exist in the future, meaning that it is benefited from this implicitly that the Iraqi legislator does not deny the existence of responsibility without fault based on risks in guarding things or the possibility of the existence of those risks in the future, which requires the regulation of the rules of responsibility for them in the provisions of In particular, this is what has already been achieved as the rules of the Compulsory Insurance Law against Car Accidents No. (52) of 1980 (Al-Ani, 2015, p. 230).

What reinforces this trend is that the Court of Cassation issued its decision on 18/2/1974, based on the idea of risks as a basis for administrative responsibility, where it ruled "obliging the Minister of Transport and the Director of Roads and Bridges, in addition to their functions, to pay compensation for causing damage to the crops of an individual as a result of opening a public road in his land (Saeed, 2015, p.110).

The text of Article 8 of the Public Roads Law No. 35 of 2002, as amended, gives the impression that the legislator has taken the path of determining the responsibility of the administration without fault of its legitimate work, as it stipulates that "updates belonging to non-parties stipulated in item IV of this article shall be lifted with a fundamental license or the approval of one of the official authorities if they were updated before the implementation of the road or determine its prohibitions after compensation for them if they negatively affect the road technically or on the safety of its traffic.

Whereas the administration's implementation of the road represents the administration's legitimate work, which requires compensation for the affected person when removing those facilities that were created with an original license, as a result of the responsibility of the administration concerned with the roads without fault of the material damage caused to individuals during the performance of its function or because of it.

As for administrative legislation, it is not possible to search for this idea to establish administrative responsibility without error, as the Second Amendment Law to the State Council Law No. 106 of 1989 amending Law No. 65 of 1979, is the only legislation in this regard, which stipulated in Article 7 / II / I, thereof that the award of compensation is only for damages resulting from administrative orders and decisions when illegal (Al-Ani, 2015, p.248).
In addition, the award of compensation is made in a consequential manner to the cancellation lawsuit based on Article 7 and thus robbed the legislator of the administrative judiciary of its jurisdiction to consider compensation claims originally resulting from the responsibility of the administration by its legitimate or illegal activities, and even the Civil Code did not take the theory of liability without fault on the basis of risks explicitly, as we mentioned earlier.

Accordingly, the Iraqi administrative judiciary considers the administrative responsibility for the damage of public facilities to be a civil tort liability and leaves the adjudication of it to the ordinary civil judiciary.

4.6 Determining the Responsibility of the Administration According to the Status of the Victim of the Public Road

Those affected by the public road or the works carried out on it are mainly divided into three categories:

4.6.1 Category of affected usufructuary or beneficiaries

The beneficiary or usufructuary of public facilities and public works means a person who uses such facilities or works and reaps a benefit from it, and thus bears the normal risks of carrying out or managing works or maintaining public facilities (Matar, 2018, p.27).

The beneficiaries or usufructuary are those who benefit or use public facilities personally and directly according to the purpose prepared for them, such as pedestrians and vehicle owners for the streets and public roads on which they walk, and therefore the beneficiary must bear the risks resulting from it, the usufructuary is the one who was at the moment of the damage benefiting from the road because he used it directly and personally and effectively, for example when the road collapses and leads to the death of one of its passengers, he is considered a beneficiary of public facilities at the moment of the damage.

From all this, it can be said that the beneficiary or usufructuary is the person who uses public facilities directly, effectively, and personally at the time of the damage.

The responsibility of the administration is assigned for the damage that affects this category of those affected by an emergency or accidental damage from public roads or ongoing works on them, based on the assumed error represented in (not performing the required regular maintenance on the public road), and the assumed error includes that the responsibility is not based on a fault that must be proven by the affected usufructuary, but it is sufficient for them to prove the damage and the causal link between it and the road or the ongoing works on it, they benefit from the presumption of the supposed error that affects them and resulting from their use. For these facilities, this presumption can be refuted by the administration concerned with the public road, which must prove that it has carried out the regular maintenance required for the road, or by proving the foreign cause, sudden accident, fault of the injured party or the fault of others. (Al-Qaisi, 2007).

4.6.2 Category of affected third persons or third parties

The third person or third party is the one who does not contribute or does not participate in the implementation of road works or their operation, and he does not use the road directly during the damage and does not reap a benefit from it, and they are usually adjacent to public roads, such as owners of real estate and shops adjacent to the street or road or a pedestrian near public works that implement a public road (Al-Qaisi, 2007).
The administrative jurisprudence of the third person or third parties retains a better and easier treatment than the beneficiary of the public road, but there are cases in which the character of the injured combines between the road user and others, when the idea based on integration, for example, if there is a public work or public origin that resulted in damage and integrated or connected with a public road, the affected person is considered a beneficiary, and in this regard, the French Council of State ruled in the decision issued in the case of (Allamargot) on 12/1/1962, "led to the digging of a trench to pass water extensions And gas to a decrease in the level of the public road, causing an accident to the beneficiary of the public road "either in the event of non-integration of facilities or public works that resulted in damage with the public road, the beneficiary of the public road who transferred the damage is not considered a beneficiary, but a third person, such as the injury of a pedestrian on the public road by the fall of an electric wire over the road, the wire is not integrated with the road, and this is confirmed by a decision of the French Council of State in the case of (Sidora Tratta) issued on 12/10/1962. (Al-Majzoub, 2015).

When a third party or third person is affected by an emergency or incidental damages, it is sponsored by a special system, the responsibility in such a case is completely free from the idea of error and is based on the idea of liability without fault (equality before public burdens and sometimes jurisprudence is based on the idea of risks), and the responsibility of the administration for this damage is proven by proving two things, the occurrence of unusual damage, and the causal link between the road or public works and the damage complained of. (Al-Qaisi, 2007).

4.6.3 Category of shareholders

Shareholders are the persons who carry out public works for the implementation of public facilities, and this contribution is required to be in return or benefits obtained from the implementation of these public works (Abd al-Latif, 2014), an example of them is the contractors of public works and their followers, and the owners of the concession, and the procedure at one of them, to implement, manage, or maintain a public facility (Matar, 2018,p.39), the administrative judiciary treats shareholders who implement public enterprises strictly, as the French administrative judiciary does not consider the administration responsible towards them, unless they prove that the damage they suffered, resulting from the error of the administration (Sarhan, 2010,p.847), the French Council of State went in a decision in the case of (Seguin) issued on 5/8/1961 when the road restorer was run over by a car in which (asphalt) to pave the road, and the Council went, that the administration is not obligated to compensate the shareholder or subscriber unless the damages result from the fault of the management owner of the project (Sarhan, 2010,p.849), the aggrieved party must establish evidence of the error, so the liability is based on the fixed error, and the burden of proof is on the injured shareholder, and the justification for this is that this shareholder bears part of the responsibility, they share the act resulting from the damage, directly or indirectly, as they are unlike the beneficiary, as these know the risks of the business, and they must take the duty of caution and caution to prevent the damage from occurring, and they also receive a wage for their work, or reap profits, as they earn fined them (Matar, 2018,p.89).

5 CONCLUSION

1. The French Council of State has the credit and foregone the foresight of the theory of administrative liability, in particular the responsibility of the administration for damage caused by the public road facility.
2. Originally, the system of management responsibility for damages resulting from the public facility within the scope of the administrative judiciary, is based on proven error, but the matter is different in the scope of liability for damages arising from the public road facility, as the responsibility of the administration is based on the supposed error, and responsibility without fault.

3. In Iraq, the judiciary applies the civil law to the responsibility of the administration arising from the damage of the road facility, on the basis of tort liability, and the rules of civil law do not take the status of the injured into account in the face of roads or public works, and the civil judiciary is competent to consider lawsuits filed for damage to public roads.

REFERENCES


