

The Legal Liability of Public Employees for Personal Faults under Administrative and Civil Law: A Comparative Study

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Abstract

This study examines the legal liability of public employees for personal faults by defining personal fault, distinguishing it from service-related fault, and identifying the legal consequences arising from such liability. It also examines the administration's liability for personal faults committed by public employees and the possibility of combining the two forms of liability.

Using an analytical and comparative approach, the study analyzes relevant legal provisions, legal scholarship, and judicial decisions. It concludes that distinguishing between personal and service-related faults does not depend on a single decisive criterion, but rather on the nature of the fault, the circumstances of its occurrence, and its connection with the public service. A public employee is personally liable when a personal fault causes damage to a third party or the administration. However, the administration may also be liable where the fault is connected with the public service or accompanied by a service-related fault contributing to the damage.

The study recommends establishing clearer legal criteria for distinguishing between personal and service-related faults and regulating compensation and recourse between the employee and the administration to ensure effective protection of injured parties while safeguarding the rights of public employees.

Keywords: Public Employee; Personal Fault; Service-Related Fault; Legal Liability; Administrative Liability; Compensation.

1.Introduction

The liability of public officials for damage arising from their acts is an important issue within the scope of administrative liability, given its legal implications for protecting individual rights on the one hand and ensuring the proper and regular functioning of public services on the other. Under the general rules of the Jordanian Civil Code of 1976, a person is liable for damage caused to others, whether the fault is minor or gross. This is based on Article 256 of the Jordanian Civil Code, which provides that: "Any harm caused to another person obliges its perpetrator, even if legally incompetent, to compensate for the damage."

However, applying the general rules of liability to public officials involves particular considerations arising from the nature of public employment and the requirements of the public interest. Administrative courts have therefore not adopted an absolute approach under which public officials are liable for all errors committed in the performance of their duties. Instead, they have distinguished between personal fault and service-related fault. This distinction serves to allocate liability between the public official and the administration according to the nature of the fault and its connection with the official's duties and the public service. Where the fault is service-related, liability is attributed to the administration as the entity responsible for the functioning of the public service. Where the fault is personal, the public official may be held personally liable. The two types of fault may also combine to cause the damage, resulting in overlapping liability between the public official and the administration, a situation commonly referred to as concurrent or shared fault.

The importance of this distinction lies in achieving a balance between protecting public officials and safeguarding the rights of injured parties. Attributing service-related faults to the administration enables public officials to perform their duties without the constant fear of incurring personal liability

for errors connected with the functioning of the public service. This promotes occupational stability and prevents officials from becoming hesitant or slow in making decisions. Conversely, recognizing the personal liability of a public official for personal fault prevents public employment from becoming a means of avoiding liability for conduct that is detached from the requirements of public office or reflects a personal deviation in behavior.

Nevertheless, determining the boundary between personal fault and service-related fault is not straightforward. Neither legal scholarship nor the courts have settled on a single comprehensive criterion that can be applied to all cases. Various criteria have emerged to distinguish between the two types of fault. Some focus on the nature of the act committed and its connection to the public official's duties, while others consider the seriousness of the fault or the motives that led the official to commit it. These criteria, however, have themselves been subject to considerable criticism. Consequently, determining the nature of the fault remains a matter requiring examination of the relevant legal provisions, judicial precedents, and legal scholarship.

The significance of this study lies in identifying the legal basis for the liability of public officials and the administration for damage arising from acts performed in the course of public service, and in analyzing the boundaries between personal fault and service-related fault, given their direct impact on determining the party responsible for compensation. The study is also significant in examining the positions of Jordanian and comparative courts regarding the criteria used to distinguish between the two types of fault and assessing the extent to which these criteria are capable of achieving an appropriate balance between protecting public officials and safeguarding the rights of injured individuals.

The study aims to define the concept of a public official and the legal basis of his or her liability; identify the concept and forms of personal fault; analyze service-related fault and distinguish it from personal fault; examine the legal and judicial criteria used to differentiate between the two; and determine the positions of Jordanian and comparative courts regarding these criteria. It also aims to identify the circumstances in which a public official incurs personal liability for personal fault and to examine whether the administration may assume liability for compensation arising from such fault and the legal basis for doing so.

Accordingly, the research problem is formulated around the following principal question: To what extent does the distinction between personal fault and service-related fault succeed in determining the scope of liability of public officials and the administration for damage arising from acts performed in the course of public service, and to what extent are the criteria adopted by Jordanian and comparative courts adequate for achieving this distinction?

This principal question gives rise to several subsidiary questions, including: What is meant by a public official? What is personal fault, and what are its forms? What is service-related fault? What criteria have been adopted by legal scholarship and the courts to distinguish between personal and service-related fault? What position have Jordanian and comparative courts taken regarding these criteria? When does a public official incur personal liability for personal fault? Can the administration assume liability for compensation for damage resulting from the personal fault of a public official, and what is the legal basis for such liability?

To answer these questions and achieve the objectives of the study, the research adopts the descriptive-analytical methodology. This approach involves describing the legal and doctrinal framework governing liability for acts of public officials and analyzing the relevant legal provisions and judicial decisions, particularly those of Jordanian and comparative administrative courts,

alongside an analysis of legal scholarship addressing the criteria for distinguishing between personal and service-related fault. This methodology makes it possible to identify judicial and doctrinal approaches in this field and assess their adequacy in determining liability for damage arising from acts performed by public officials.

2. The Concept of a Public Employee

The Jordanian legislator has endeavored to establish different definitions of the public official (Aljazi, 2024). The Constitution has addressed public office in general, while certain criminal legislation has also referred to the concept of a public official for criminal-law purposes. In particular, the Human Resources Management System of 2024 defines the public official, as this system constitutes the general legislative framework and reference for matters relating to public employees.

Article 76 of the Jordanian Constitution of 1952 and its amendments provides that:

1“No person may simultaneously hold membership in either of the following:

b. The Senate or the House of Representatives and any public office whose holder receives any amounts of public funds, including the Greater Amman Municipality, municipalities, and governorate councils”.

It should be noted that this provision does not establish a comprehensive definition of a public official. Rather, it addresses the prohibition on combining membership in the Senate or House of Representatives with public employment. In this regard, the Jordanian High Court of Justice held that “Article 76 of the Constitution was not enacted to define the public official; rather, it was intended to identify those public officials who are prohibited from combining membership in the National Assembly with public office. Therefore, this provision does not encompass all public officials.” (Decision of the Jordanian High Court of Justice No. 109/1975)¹.

The legislator defined a public official in Article 2 of the Human Resources Management System as “a person appointed by a decision of the competent authority to a position included in the staffing table, excluding a person employed on a part-time basis or a person who receives a daily wage.” This definition encompasses both permanent employees and employees under probation (Al-Shibli, and Al-Jazi, 2019).

The provision requires that the appointment decision be issued by the competent authority and that the position be included in the staffing table issued pursuant to the General Budget Law or the budget of independent units. In particular, such an appointment decision is subject to administrative review by the courts as well as by the competent oversight authorities (Aljazi et al,2024).

Two consequences follow from this provision: (Al-Shatnawi,1994)

1.The position must be within the positions belonging to a public service managed by the State or one of its affiliated entities. Accordingly, persons working in public services operated through concession, indirect exploitation, or public shareholding companies are not considered public officials.

2. The legislator did not require the position to be permanent for a person to be considered a public official. The status of public official is therefore extended to all persons working in public services, whether the position they occupy is permanent or non-permanent, with the exception of persons who receive daily wages.

¹ It should be noted that this court no longer exists under the latest organization of the Jordanian administrative judiciary, as it has been replaced by the Administrative Court.

Legal scholarship has also defined the public official. Dr. Ahmad Awda Al-Ghuwairi defined a public official as a person who works in a permanent or temporary position in the service of a public facility managed directly by a public legal person. (Al-Ghuwairi,1989)) Dr. Nawaf Kanaan, however, required several conditions for a person to be considered a public official, namely: appointment by the competent authority, occupying a permanent position, and providing service in a public facility directly managed by the State or the administrative authority (Kanaan, 1996). Dr. Fouad Al-Attar defined a public official as a person entrusted with permanent work in the service of a public facility managed by one of the persons governed by public law. (Al-Attar, 1970).

The administrative judiciary has not confined itself to the definitions of public officials found in legislation and legal scholarship. Rather, the High Court of Justice has also referred to the concept of a public official in several of its judgments. It defined a public official as “a person entrusted with permanent work in the service of a public facility managed or supervised by one of the persons governed by public law.” (Jordanian High Court of Justice, Decision No. 74/1991).

In particular, such an employee has numerous rights established by the Constitution (Al-Hilat, , and Aljazi, 2025).

In another judgment, the Court stated that “according to the prevailing definition in administrative jurisprudence, a public official is a person entrusted with permanent work in the service of a public facility managed by the State or one of the persons governed by public law, and this definition extends to employees of public institutions.” It also defined a public official as “every person entrusted with permanent work in the service of a public facility managed by the State”. (Jordanian High Court of Justice, Decision No. 88/1988)

3. The Concept of Personal Fault

Personal fault may be defined as the fault committed by a public official when he or she violates obligations and duties imposed by law, such that the fault is attributed to the official in his or her personal capacity and has no connection with the public office occupied. In such circumstances, the public official is responsible for compensating for the resulting damage, and jurisdiction lies with the civil courts (Aouabdi, 2004)

A review of legal scholarship and judicial decisions in comparative jurisdictions reveals that they have identified several forms of personal fault, which may be summarized as follows:

3.1. The Case of a Public Official Committing a Criminal Offence

A criminal offence refers to an act or conduct committed by a person, whether positive or negative, that violates the provisions of the law and consequently results in the imposition of a penalty proportionate to the gravity of the act (Ehjelah et al,2026)

A public official is personally liable on the basis of personal fault when he or she commits a criminal offence, whether murder, assault, or any other offence, and is required to compensate for the damage caused to others from his or her own property. The French Council of State has established criteria for treating a criminal offence as personal fault for which the official is personally liable. These criteria include the commission of the criminal offence outside working hours and outside the scope of official service, meaning that the act is entirely disconnected from the official's duties; the intentional commission of the offence; or the offence reaching a particular degree of seriousness (Ruslan, 1982). A public official may sometimes commit criminal

offences while suffering from mental disorders that require special procedures for dealing with such cases (Ehjelah et al,2026)

The French administrative judiciary has consistently been responsible for developing the criteria and standards for determining the rules governing administrative liability in order to prevent their overlap with other areas of law. This approach may be justified from a practical perspective, since administrative liability first emerged in France and certain other European countries and therefore required the establishment of criteria and standards to regulate its rules.

A public official may commit a criminal offence while performing his or her duties, and the commission of such an offence may occur by virtue of the official's position; that is, the offence would not have been committed but for the public office. Accordingly, it is fair that the official should not be held personally liable for such an offence and that the fault be regarded as service-related rather than personal, with the administration bearing the resulting liability rather than the official (Altaani et al ,2024).

The Jordanian judiciary has considered a criminal offence that is committed and is completely disconnected from the official's duties to constitute personal fault, for which the official bears personal liability without any involvement of the administration. Such offences may be committed by a human public official as well as by a robot (Ehjelah, & Al-Qawasmeh,2026)

Article 181 of the Jordanian Penal Code provides that: "1. Any public official who, in his capacity as a public official, enters the dwelling of any person or any premises attached thereto in circumstances other than those permitted by law shall be punished by imprisonment for a period of three months to three years and a fine of between twenty dinars and one hundred dinars".

It follows from this provision that a public official who commits an unlawful act in violation of the law, whether by entering another person's dwelling or any premises attached thereto, is deemed to have committed an offence punishable by law and, consequently, is subject to a criminal penalty. This indicates that the fault committed is personal, since the act is separate from the official's duties. A public official may also commit an offence relating to tax matters (Ehjelah, 2023). In this regard, the Court of Cassation held in one of its decisions that: "1. The acts committed by the accused by entering the complainant's residence at night and taking an amount of 350 dinars constitute the misdemeanor of theft contrary to Article 406/1/b of the Penal Code, contrary to the court's finding that the act constituted the misdemeanor of theft contrary to Article 407 of the Penal Code; however, since this appeal was submitted by the accused, he may not be adversely affected by his appeal. 2. If the accused is a member of the Public Security Forces, his entry into the complainant's residence, disclosure of his identity as a member of the Public Security Forces, and commission of the offence of theft constitute an infringement of the freedom of persons and the sanctity of their homes contrary to Article 181/2 of the Penal Code. 3. If the judgment imposed a sentence of one year's imprisonment and costs after consolidation of the sentences, the decision to dismiss him from service is consistent with Article 72/6 of the Public Security Law". (Jordanian Court of Cassation, Criminal Division, Decision No. 461/2008)

3.2 The Case of a Public Official Committing a Disciplinary Violation

Disciplinary fault refers to the fault committed by a public official in violation of the duties and responsibilities of his or her profession and position (Al-Sheikhli, 1983). Such violations may be committed by a public official during the performance of his or her duties or in connection with them, while others may be committed outside the scope of employment (Ruslan, 1982)

This raises the question of whether every disciplinary fault committed by a public official constitutes personal fault giving rise to the official's personal liability, or whether it may instead be regarded as service-related fault.

Dr. Ammar Aouabdi considers that disciplinary fault does not necessarily constitute personal fault, as disciplinary fault is generally a minor fault. The general rule is that not every disciplinary fault constitutes personal fault, whereas every personal fault may constitute a disciplinary fault if committed during or in connection with the performance of official duties, since it may be intentional or unintentional but nevertheless reach a significant degree of seriousness (Aouabdi, 2004). Such conduct is also subject to oversight by the administrative disciplinary authorities within the public administration, which exercise their administrative powers in this regard (Aljazi & Al Heilat. 2026).

The relationship between personal fault and disciplinary misconduct is determined on the basis of the extent to which the disciplinary fault is connected with the public official's duties (Al-Qudah, & Abu-Zeitoun 2010). If the disciplinary fault is connected with the public official's duties, it constitutes service-related fault, and the administration is therefore liable for compensation. The administration may subsequently impose the appropriate disciplinary sanction on the official according to the seriousness of the disciplinary violation.

However, in our view, considering the seriousness of the disciplinary violation as the decisive criterion for determining whether the fault constitutes personal fault is not sufficiently precise. This is because, whether the disciplinary fault is minor or serious, the official committed it by virtue of, or in connection with, his or her position; without that position, the official would not have been able to commit the disciplinary violation in the first place.

3.3 Material Assault

Material assault refers to the administration committing a serious fault while carrying out a material act that entails an infringement of an individual's personal liberty or private property. Since material assault is closely related to the concept of personal fault in terms of the seriousness of the fault, this has led to the view that material assault and personal fault are inseparable, meaning that material assault constitutes personal fault in itself and in all circumstances (Al-Saghir, 1997). Such faults may also be evidenced by traditional or digital evidence (Ehjelah et al, 2026 : Al Qudah et al, 2025).

Material assault may arise either from the administrative decision on which the material act was based, where an unlawful administrative decision is issued and subsequently implemented on the basis of that decision, or from the material act itself, despite the validity of the administrative decision upon which the administration relied in carrying out the act, where the administration resorts to direct execution in circumstances not legally authorized (Al-Shatnawi, 2008). The Jordanian judiciary has regarded material assault as a form of service-related fault for which the administration bears liability and must provide compensation (Al-Suwailmiyeen, 2013).

3.4 Execution of Superiors' Orders

A question has arisen concerning the nature and type of fault committed pursuant to an order issued by a superior to a subordinate: should such fault be regarded as personal fault or service-related fault? To answer this question, two situations must be distinguished:

First situation: Where the subordinate exceeds the limits of the order issued by his or her superior. In this case, the subordinate implements the order in a manner or by means different from those intended. The subordinate therefore bears full personal liability, as though the superior's order had no existence. An example would be where a subordinate exceeds the law and the limits of a superior's order to evict a farmer from a particular area and consequently destroys his agricultural crops and demolishes his house (Al-Shatnawi, 2008). This situation was also addressed in the former Civil Service System (Adwan et al,2023)

Second situation: Where the subordinate merely executes the order as issued. If the subordinate implements the order issued by the administrative superior exactly as instructed, does the resulting fault constitute personal fault or service-related fault? Legal scholarship has differed in answering this question, and the judiciary has also adopted positions that differ from some of the doctrinal views, as follows:

The jurist Barthélemy argued that a fault committed by a public official in executing an order issued by his or her administrative superior is always a service-related fault. In contrast, Duguit argued that a fault committed by the subordinate in executing the superior's order constitutes personal fault and gives rise to the official's personal liability, because a public official is bound to respect the law, and if the official executes an unlawful order, the fault is personal.

Lépine, however, considered that the public official's duty is limited to verifying the legality and formal validity of the orders received. Accordingly, the official must ascertain whether the order was issued by an authority competent to issue it, whether the execution of such an order falls within the official's duties, and whether the order satisfies the formal requirements governing its issuance. Beyond this, the official is not entitled to question the legality of the order. Consequently, a fault committed in executing an order that is substantively unlawful would be regarded as service-related fault. However, this approach is criticized because it permits the execution of an order that is substantively contrary to law, which is inconsistent with the position subsequently adopted by the judiciary and the legislature.

The French administrative judiciary distinguishes between two situations. Where the violation is particularly serious and the unlawfulness of the order is manifest, the subordinate's fault in executing the order constitutes personal fault. Where the violation is minor and the official had no reasonable alternative but to execute the order, the fault is considered service-related, and the administration bears liability for compensation (Aouabdi, 2004).

Upon examining the forms of personal fault identified in legal scholarship, it appears that the personal liability of a public official may arise where the official commits a criminal offence or a disciplinary fault, provided that either is entirely disconnected from the public office. Likewise, personal fault may arise in connection with a superior's order where the public official executes an unlawful presidential or administrative order that violates the law without notifying the superior that the order is unlawful.

However, the form identified in legal scholarship that, in our view, cannot be considered personal fault is material assault. Material assault may take the form of an unlawful administrative decision that leads to the execution of an unlawful material act causing damage to a third party. It may also arise where the administrative decision itself is lawful, but the material manner in which the decision is implemented is unlawful and causes harm to others. Accordingly, in our view, only service-related fault can arise in this situation.

4. Distinguishing Between Personal Fault and Service-Related Fault

Administrative legal scholarship and jurisprudence distinguish between two types of fault: personal fault and service-related fault. The liability of the administration may arise in connection with one of these types, whereas it does not arise in connection with the other. The question that arises in this context, however, is: when does the administration play a role in the occurrence of the fault, and when does it not? In other words, what constitutes personal fault, and what does not?

In this regard, scholars have differed as to the criteria for distinguishing between personal fault and service-related fault, which they derived from the jurisprudence of the French Conseil d'État. Comparative administrative courts have adopted some of these criteria in applying the rules of administrative liability. Accordingly, this section is divided into two subsections, as follows:

4.1 The Position of Legal Doctrine

The criteria adopted by legal scholars to distinguish between personal fault and service-related fault have varied, and they can be summarized as follows:

4.1.1. Laferrière's criterion, based on the concept of personal impulses

According to this criterion, the distinction is based on the personal impulses of the employee to whom the fault is attributed. If the fault bears a personal character revealing the individual's weaknesses, desires, or lack of prudence, it is considered a personal fault. However, if the fault reflects the conduct of an ordinary employee who is susceptible to making mistakes or acting correctly in the performance of his duties, the fault is considered a service-related fault. In other words, this criterion is essentially a personal criterion based on the employee's bad faith or improper intention while performing his duties. Whenever the employee intends to cause harm or pursue personal interests, the fault is considered personal. However, this criterion has been criticized on the ground that it is too broad and requires an additional criterion to define and regulate its scope, which makes it a relative criterion subject to judicial discretion. Moreover, it is inconsistent with the jurisprudence of the French Conseil d'État, which considers cases of gross fault to constitute personal faults for which the employee may be held personally liable from his own assets. (Al-Shatnawi, 2008)

4.1.2. Hauriou's criterion, based on the concept of fault separate from the public service

According to this criterion, a fault is considered a personal fault if it can be separated from the public service either materially or morally. A fault is materially separate from the public service when the act in question does not fall within the duties of the position. An example of this would be a mayor publicly announcing through street notices that a particular person has been declared bankrupt, despite the fact that such an act does not fall within the mayor's official duties (Al-Nahri, 1997)

An act is morally separate from the public service when it falls within the employee's official duties in a material sense, but the employee performs it for purposes other than those for which the authority was granted. An example of this is an order issued by a mayor to ring church bells

in celebration of a civil funeral at which the bells are not ordinarily rung. Although authorizing the ringing of the bells falls within the mayor's jurisdiction, using that authority in this particular case does not fall within the circumstances for which such authority is intended to be exercised.

This criterion has been criticized on the ground that it would logically result in excluding the personal liability of the employee where the employee commits gross faults while performing his official duties, provided that the act is not morally or materially separate from his official functions. Consequently, this criterion may lead to results that are, in many cases, inconsistent with the jurisprudence of the French Conseil d'État.

4.1. 3. Jeze's criterion, based on the concept of the seriousness of the fault

According to this criterion, an employee is considered to have committed a personal fault whenever the fault is sufficiently serious to amount to a criminal offense punishable under criminal law, or when the fault is so serious that it cannot be regarded as one of the ordinary risks to which an employee is exposed in the course of performing his daily duties.

However, this criterion has been criticized because, in some cases, a gross fault may nevertheless constitute a professional or service-related fault. Furthermore, there may be minor faults that are, at the same time, considered personal faults. (Al-Shatnawi, 2008)

4.1 4. Duguit's criterion, based on the concept of purpose (the employee's intention)

This criterion is based on the purpose underlying the erroneous administrative conduct. If the employee acts in order to achieve one of the objectives entrusted to the administration and falling within the scope of its administrative functions, the fault is considered a **service-related fault**. However, if the employee acts with the intention of achieving purposes unrelated to his official duties or administrative objectives, but rather to satisfy a personal desire, the fault is considered a personal fault.

This criterion has been criticized on two grounds: (Al-Shatnawi, 2008)

First: This criterion relies on the internal factors of the employee who performed the act, making it difficult in many cases to determine what is going on in the employee's mind in order to identify such motives and intentions.

Second: Adopting this criterion would result in the employee not being held personally liable for gross faults arising from his acts when he did not intend, through his conduct, to achieve any personal purposes or interests.

In assessing the foregoing criteria, it can be concluded that none of them can rise to the level of a conclusive criterion. Rather, they constitute mere guidelines that may be applicable in some cases but fail to provide an adequate basis in others.

4.2. The Position of the Judiciary

It should be noted that comparative administrative jurisprudence has not adopted any one of these criteria to the exclusion of the others. Rather, it has consistently taken into account the circumstances and particular facts of each case and has been guided by the criterion that

provides the greatest benefit to the injured party and affords broader protection to the right that has been violated. This is because French administrative jurisprudence has consistently sought to safeguard the rights and freedoms of individuals (Al-Shatnawi, 2008).

Accordingly, French courts have, on numerous occasions, relied on the purpose criterion as a basis for distinguishing between personal fault and service-related fault. On other occasions, French jurisprudence has adopted the intentional fault criterion, considering intentional fault to constitute personal fault. The French Conseil d'État has also relied on the gross-fault criterion in certain cases. However, the Conseil d'État has not applied the criterion of the seriousness of the fault without qualification, as it has considered that a fault committed by an employee may, in certain circumstances, constitute a service-related fault despite its seriousness.

As for the position of the Egyptian judiciary regarding the criterion for distinguishing between personal fault and service-related fault, the position of the ordinary courts has differed from that of the administrative judiciary in this regard. The ordinary judiciary has rejected the distinction between personal fault and service-related fault and insisted on applying the general legal rules governing liability (Al-Suwailmiyeen, 2013).

At the end of this discussion, a question arises as to the position of the Jordanian judiciary regarding the criteria for distinguishing between personal fault and service-related fault.

The Jordanian High Court of Justice has issued several judicial decisions concerning compensation since it was granted jurisdiction to hear disputes relating to compensation for administrative decisions. In one of its decisions, the Court held that: "A person may be sued in his personal capacity in addition to his official capacity where the claim concerns material or moral damage arising from a non-service-related fault committed by an administrative official. Accordingly, such an action is admissible, and if the plaintiff succeeds in proving the claim, the defendant may be held liable for the damage where such damage resulted from his personal fault, i.e., what is known as a non-service-related fault." (Jordanian High Court of Justice, Decision No. 101/1993).

The Jordanian High Court of Justice also affirmed this distinction in another judgment, holding that: "The Water Authority is liable for compensation for damages caused by its employees to third parties, except in cases of non-service-related fault, for which the employee is personally liable." (Jordanian High Court of Justice, Decision No. 146/1994).

The Jordanian High Court of Justice adopted the criterion of the seriousness of the fault as a basis for awarding compensation for decisions annulled due to substantive defects, rather than as a basis or criterion for distinguishing between personal fault and service-related fault. The Court held in one of its judgments:

"Its reliance on the Crime Prevention Law was not based on sound legal grounds, and its decision to detain the applicants was therefore issued in violation of the law and constituted a gross fault. Since the detention of the applicants prevented them from carrying out their work, particularly as one of them was a driver, the second was a Tawjihi student, and the third was a farmer, they suffered harm as a result of their detention without a legal basis. Accordingly, they were entitled to compensation to remedy the material and moral damage they sustained." (Jordanian High Court of Justice, Decision No. 155/1992).

he Court held in another judgment :“The Governor’s exercise of the powers vested in him under the same law constituted a gross fault, as it was issued in violation of the law. Accordingly, the applicant was entitled to compensation for the material and moral damage sustained. Therefore, the Court ordered the respondent, the Governor of Irbid, in addition to his official capacity, to pay the applicant one hundred dinars as compensation for the damage.”(Jordanian High Court of Justice, Decision No. 91/1995).

The Court also held :“A defect in form does not constitute a basis for holding the administration liable for compensation, as it constitutes a minor fault that does not reach the level of a gross fault affecting the decision and does not undermine its substantive validity, thereby precluding compensation.”(Jordanian High Court of Justice, Decision No. 146/1994).

The Court further held :“The mere annulment of a defective decision does not necessarily constitute a basis for awarding compensation unless the defect is serious and materially affects the substance and essence of the decision.”(Jordanian High Court of Justice, Decision No. 366/1995).

In conclusion, the Jordanian High Court of Justice clearly adopted the gross-fault criterion as a basis for determining compensation for decisions annulled due to a substantive defect, rather than as a criterion for distinguishing between personal fault and service-related fault.

Before concluding the discussion of the criteria for distinguishing between personal fault and service-related fault, it is necessary to consider the position of the Jordanian Court of Cassation on this issue (Khawira et al,2026).

The position of the Jordanian Court of Cassation has varied with regard to the criteria for distinguishing between personal fault and service-related fault (Obeidate et al., 2023). In some of its judgments, the Court adopted the criterion of a fault separable from the public service. Under this criterion, a fault is considered personal if it can be separated from the employee’s official duties, whereas it is considered a service-related fault if it cannot be separated from those duties. The Court held in one of its judgments :“An action against the Government for damage caused by one of its employees is not admissible except in two cases, one of which is where the elements constituting the harmful act are inseparable from the employee’s official duties or fall within the scope of his official functions.”(Jordanian Court of Cassation, Civil Division, Decision No. 343/1968).

In other words, recourse may be made against the employee personally for the damage caused by him if the elements constituting the harmful act are separable from his official duties or do not fall within the scope of his functions (Al-Tarawneh et al., 2025).

The Jordanian Court of Cassation also adopted, in some of its judgments, the criterion of the purpose underlying the act. It held :“The act performed by the military governor and the police commander was carried out in the course of their official duties and for governmental purposes, rather than in their personal capacities or for their private purposes. Accordingly, the Government is liable for the damage caused by the military governor and the police commander.”(Jordanian Court of Cassation, Civil Division, Decision No. 304/1973).

Finally, in other judgments, the Court adopted the criterion of a close causal relationship between the fault committed and the official function. It held:

“Where there is a close causal relationship between the fault committed by the employee and his official function, the Government is liable to compensate the person who suffered damage as a result of that fault. Since the harmful act committed by the soldier who was driving the military vehicle did not arise from his fault, negligence, or breach of his official duties, the Government had no right of recourse against him for the amount it had paid to the injured party as a result of the collision between the military vehicle and the injured party’s vehicle.”(Jordanian Court of Cassation, Civil Division, Decision No. 359/1985).

It can be inferred from the foregoing judgment that the Jordanian Court of Cassation applied the provision of paragraph (1)(b) of Article 288 of the Jordanian Civil Code, which requires, for the principal’s liability to arise, that the harmful act be committed by the subordinate in the course of performing his duties or by reason thereof. In the case in question, the harmful act occurred during and because of the performance of the employee’s duties, and there was a direct causal relationship between the act and the official function, such that the harmful act would not have occurred but for that function.

5. The Legal Provisions Governing Personal Fault

A public employee bears personal liability when it is established that the fault committed constitutes a personal fault, in which case the employee is liable to pay compensation from his own funds. In some cases, the administration may initially bear the compensation on behalf of the employee and subsequently exercise its right of recourse against him. The administration may also bear part of the compensation where it has contributed to causing the damage. Accordingly, this section will be divided into two subsections:

5.1. The Personal Liability of a Public Employee

The personal liability of a public employee is based on a personal fault committed by the employee. Once it is established that the fault is personal to the employee, the injured party, whether an individual or the administration, must prove that the public employee committed the personal fault that caused the particular harm (Jararweh & Obeidat, 2026).

In order for an individual to bring a compensation claim against the employee who caused the harm, which may arise from personal misconduct or from the employee’s involvement in activities of certain companies that conflict with public-service legislation (Alomar et al., 2025), the French Conseil d’État has required the administration, upon the injured party’s request, to disclose the identity of the employee who committed the fault, as well as the employee’s address, so that the injured party can bring an action against the responsible employee.

In such a case, if the injured party wishes to sue the employee alone under the French system, the action must be brought before the ordinary courts. Alternatively, the injured party may sue both the administration and the employee jointly, in which case the action is brought before the administrative courts (Al-Saghir, 1997).

It should be noted that the rule holding an employee liable for his personal fault is not absolute, as the French Conseil d’État has recognized the possibility of a service-related fault committed by the administration occurring alongside the public employee’s personal fault, thereby giving rise to the liability of both the administration and the employee personally.

In Egypt, the rules governing jurisdiction passed through two stages. Before 1972, jurisdiction over compensation claims was divided between the ordinary courts and the administrative courts according to the nature of the act rather than the type of fault. The ordinary courts had jurisdiction over compensation arising from material acts, regardless of the characterization of the fault, while the administrative courts had jurisdiction over compensation arising from defective administrative decisions, whether the fault was personal or service-related. Following the enactment of State Council Law No. 47 of 1972, the Egyptian State Council became vested with general jurisdiction over administrative disputes, which resulted in its jurisdiction extending to all compensation claims, whether arising from a material act or an administrative decision (Haloul, 1990).

A public employee may also commit a personal fault that causes damage to the administration itself. In such a case, it is necessary to distinguish between personal fault and service-related fault. If the fault is considered a service-related fault, the employee is not personally liable, because the burden of compensation for such fault falls on the administration. However, if the fault constitutes a personal fault, the employee is liable for it and must compensate the administration for the damage resulting from his personal fault. The administration may enforce the decision requiring payment of compensation for the damage through direct enforcement and deduction from the employee's salary. This principle has been adopted by the French Conseil d'État (Al-Saghir, 1997).

The Egyptian State Council also adopted the principle that an employee is liable for damage directly caused to the administration, provided that such damage results from a fault (Haloul, 1990). This principle was applied by the Egyptian Administrative Court in its judgment issued on 10 March 1973, the facts of which may be summarized as follows: "The damage sustained by the administrative authority resulted from the gross negligence committed by the employee, which constituted a personal fault. The damage consisted of the administration's payment of an amount of money that was not legally due to an individual. The Court held that the administration was not required to bring an action against the individual to recover the amount paid to him without legal justification. Rather, it could directly seek recovery from the employee who committed the fault. With regard to the means adopted by the administration to obtain compensation for the damage resulting from the employee's personal fault, it could simply recover the amount from the employee's entitlements held by the administration through direct enforcement." (Al-Saghir, 1997).

The Jordanian Court of Cassation held in one of its judgments that: "The employees of the Amman Municipality are required to carry out its orders. If damage arises during the performance of the work assigned to them, liability in such a case falls upon the Amman Municipality, which may then exercise recourse against the employee if the harmful act resulted from a personal fault committed by him." (Court of Cassation of Jordan, 1975, Decision No. 135/1975).

It follows from this judgment that the Greater Amman Municipality is liable to compensate third parties for damage resulting from the performance of its activities. However, if it is established that the harmful act is attributable to an employee and that the fault committed constitutes a personal fault, the Municipality is entitled to exercise recourse against the employee to recover the compensation it has paid. In this case, the liability is based on personal fault rather than service-related fault.

The Jordanian High Court of Justice also held in one of its judgments :“A person may be sued in his personal capacity and in addition to his official capacity where compensation is sought for material or moral damage arising from a non-service-related fault committed by an administrative official. Since the applicant alleged in her appeal that the fourth respondent, in his personal capacity and in addition to his official capacity, had refused to comply with a decision of the High Court of Justice, and that his failure to implement that decision had caused her material and moral damage, bringing an action against him was therefore permissible. If the applicant succeeds in proving her claim, the respondent may be held liable for the damage if it resulted from his personal fault, namely, what is known as a non-service-related fault.”(Supreme Court of Justice of Jordan, 1993, Decision No. 146/1993).

A public employee may also commit a personal fault against a third party through ordinary or digital means (Ehjelah et al., 2026). Such fault may have no connection with the employee's official duties, such as an infringement of the moral rights of another person (Obeidat et al., 2025). Accordingly, the injured party may seek compensation directly from the employee on the basis of his personal fault, without holding the administration liable for such compensation. The injured party may therefore bring an action before the ordinary courts on the basis of tort liability arising from a harmful act. In this regard, Article 256 of the Jordanian Civil Code provides :“Any harm caused to another renders its perpetrator, even if he is not legally competent, liable to guarantee the damage.”

5.2. The Extent of the Administration's Liability for the Personal Fault of a Public Employee

Circumstances led the French administrative judiciary to develop the concept of combining the administration's liability for a service-related fault with the employee's liability for a personal fault, where service-related and personal faults jointly contribute to causing the damage. It may be argued that the recognition of the possibility of combining personal and service-related fault is attributable to the ambiguity surrounding the criteria for distinguishing between them, particularly since the fundamental distinction between the two lies in their degree of seriousness rather than their nature. Thus, a fault may be considered service-related up to a certain degree, but once it exceeds that degree, it may be regarded as a personal fault.

There is no doubt that a difference in degree alone is insufficient to bring about a complete change in the applicable legal rules. Moreover, the insolvency of an employee who has committed a personal fault may result in the injured party being unable to obtain compensation for the damage suffered (Al-Shaer, 1989).

However, the question that arises here is: Is the administration liable for all personal faults committed by a public employee? To answer this question, we will consider the following judicial decisions:

5.2.1. The Administration's Liability for Personal Fault Accompanied by Service-Related Fault (Concurrent Fault)

The administrative judiciary recognized the principle of combining personal fault and service-related fault where both contribute to causing the same damage giving rise to liability. In particular, where the circumstances constituting the personal fault overlap with those constituting

the service-related fault and the resulting damage is attributable to both, the administration is liable for the circumstances constituting the service-related fault, while the employee is liable for the personal fault. This gives rise to the principle of combining administrative and personal liability.

The French Conseil d'État first recognized this principle in its judgment in the Anguet case. The case concerned Mr. Anguet, who had entered a post office before its official closing time. After completing his business, he attempted to leave but found that the doors had already been locked. One of the employees advised him to leave through the rear door designated for workers and employees. While making his way to the rear door, Anguet passed through the parcel area, where some employees mistakenly believed that he was a thief and assaulted him, resulting in a broken leg.

It was established that the office clock was inaccurate and that, as a result, the doors had been locked several minutes before the officially निर्धारित closing time. It was also established that a piece of metal had been improperly placed at the threshold of the door, which contributed to causing the fracture of Anguet's leg. The case therefore raised the question of whether the administration's service-related liability could be combined with the employee's personal liability. The French Conseil d'État held that such combination was permissible because multiple, interconnected, and concurrent faults had contributed to causing the damage. Subsequent judgments of the Conseil d'État followed this approach and established the principle of combining the two forms of liability (Aouabdi, 2004).

In this situation, the administration is not liable for the personal fault itself; rather, its liability is based on an independent service-related fault that occurred alongside the personal fault and contributed to causing the damage. Consequently, the injured party has two potentially liable parties: the administration and the employee. The injured party may choose which of them to sue and may also claim full compensation from both the administration and the employee. The trial court may then apportion the compensation between the administration and the employee according to the degree of seriousness of the fault attributable to each of them (Al-Saghir, 1997).

In such circumstances, the injured party may choose to sue the employee personally before the ordinary courts, sue the administration before the administrative courts, or bring proceedings against both. Resorting to either jurisdiction and the position adopted by that court regarding the claim does not affect the position of the other jurisdiction if proceedings are subsequently brought before it concerning the fault falling within its jurisdiction (Allouzi et al., 2026).

The Jordanian judiciary has also recognized the possibility of combining the employee's personal fault with the administration's service-related fault, acknowledging the existence of a joint fault that renders both parties liable for compensation according to the extent of each party's contribution to causing the damage (Al-Suwailmiyeen, 2013).

5.2.2. The Administration's Liability for Personal Fault Not Accompanied by Service-Related Fault

Building upon the principle of safeguarding the rights of injured parties (Kasassbeh, 2012), the French Conseil d'État recognized the administration's liability for personal faults committed by public employees, without requiring proof of a separate service-related fault on the part of the administration. Accordingly, the rule excluding the combination of personal and service-related fault, insofar as the administration's liability is concerned, is now applicable only to faults

committed by an employee that have no connection whatsoever with the public service. However, distinguishing between a personal fault that is completely unrelated to the public service and one that is not completely unrelated is a matter left to the trial judge, given the absence of a decisive criterion for making such a distinction (Al-Saghir, 1997).

The French Conseil d'État established the administration's liability for a personal fault committed in the course of official duties in its judgment of 26 July 1918. The facts of the case concerned the mayor of a village who had failed to take the necessary measures to protect citizens during the village's annual festival. He had permitted a target-shooting competition to be held over the waters of a small river, despite knowing that any bullet missing its target would inevitably endanger passers-by on the opposite bank. He should have prevented such risks by selecting another location for this dangerous activity. Moreover, he failed to prohibit the activity until it could be moved to another location, despite residents having repeatedly warned him of the risks to which passers-by were exposed. The mayor's negligence constituted a personal fault, which resulted in one of the persons being injured by a bullet fired by the participants (Haloul, 1990).

In this case, the French Conseil d'État concluded that the fault was a personal fault. Nevertheless, the existence of a judgment by the ordinary courts to that effect did not prevent the injured party from bringing a claim directly against the administration to which the employee was attached in order to obtain compensation.

The administration may also be held liable for a personal fault committed by means provided by the public service. In a judgment delivered by the French Conseil d'État on 26 October 1973, the facts concerned a police officer who, while sitting at home with one of his colleagues, was cleaning a firearm that he was legally authorized to possess outside working hours. A bullet was accidentally discharged from the firearm and fatally injured his colleague. The Conseil d'État held that the fault was not completely unrelated to the public service, on the ground that the public service had placed in the police officer's possession the means by which the fault was committed (Haloul, 1990).

The Egyptian Conseil d'État adopted the same principles as those established by the French Conseil d'État, recognizing the administration's liability alongside the employee's liability for personal faults committed by an employee in the course of performing his official duties or by reason thereof. The injured party may therefore bring an action against the employee alone, the administration alone, or both jointly.

The Jordanian judiciary has likewise followed the approach adopted by comparative administrative jurisprudence, recognizing joint liability even where there is a single fault committed in connection with the employee's official duties, whether as a result of the administration's failure to exercise supervision and oversight or through the tools and means provided by the administration to its employees, which enabled the employee to commit the fault (Al-Suwailmiyeen, 2013).

Article 288(1)(b) of the Jordanian Civil Code provides: "No person shall be liable for the act of another. Nevertheless, upon the request of the injured party and where it considers it justified, the court may order the person against whom the harmful act was committed to pay the compensation awarded:

(b) A person who has actual authority over the person who caused the harm in terms of supervision and direction, even if that person was not free to choose the subordinate, provided

that the harmful act was committed by the subordinate in the course of performing his duties or by reason thereof.”

It follows from the foregoing provision that the State’s liability toward an injured party arising from an employee’s fault is essentially vicarious liability, namely, the liability of the principal for the acts of his subordinate. For such liability to arise, several conditions must be satisfied, namely: the existence of a relationship of subordination; the commission of a harmful act by the subordinate; and the commission of the harmful act in the course of performing the employee’s duties or by reason thereof.

5.2.3. The Effect of Dual Liability on Compensation

It is evident that, under comparative jurisprudence, if the injured party chooses to resort to the ordinary courts and obtains compensation for the damage sustained as a result of the personal fault (Obeidat, 2016; Ehjelah et al,2026), he or she may not subsequently resort to the administrative courts to claim compensation for the same personal fault in order to obtain additional compensation. If the injured party resorts to both jurisdictions, each court awards compensation only for the portion of the concurrent fault falling within its jurisdiction (Kasassbeh, 2022;Alhejoj et al,2025). In all cases, if the administration pays the entire compensation, whether in cases of concurrent fault or where the administration pays compensation on behalf of the employee, it has the right of recourse against the employee for the proportion of the compensation attributable to his or her fault, or for the entire amount of compensation where the fault is purely personal.

The Jordanian judiciary has also adopted the principle of combining personal and service-related fault within the scope of administrative liability. At the same time, it has recognized that compensation for personal fault and compensation for service-related fault may not be combined where this would result in unjust enrichment at the expense of either the administration or the employee. Rather, each party must bear compensation in proportion to its contribution to causing the damage.

Where several employees are responsible for causing the damage, each employee bears his or her share of the compensation according to the proportion of his or her contribution to the occurrence of the damage. This is based on Article 265 of the Jordanian Civil Code, which provides:“Where several persons are responsible for a harmful act, each shall be liable in proportion to his share thereof. The court may order that liability be apportioned equally among them or that they be jointly and severally liable.”

6. Conclusion

It is evident that a public official may commit various types of errors. Some of these errors may be entirely unrelated to public employment and are therefore regarded as personal faults, for which the official bears personal liability for compensating any damage caused to third parties. In other cases, the official may commit faults connected with the public service, namely service-related faults, for which the administration bears liability for compensation. Since the official would not have committed such a fault but for the performance of public duties, it is fair, and consistent with the protection afforded to public officials, for the administration to bear the resulting compensation.

Personal fault may take several forms. A public official may commit a criminal offence, such as murder, assault, embezzlement, or another offence, where the act is entirely disconnected from the public

service, in which case the official bears personal liability. Other forms include committing a disciplinary violation or unlawfully executing an order issued by a superior. However, material assault cannot, in our view, be regarded as anything other than service-related fault, which is the position adopted by both comparative and Jordanian jurisprudence.

Based on the foregoing, it is recommended that the Jordanian legislator place administrative liability within the jurisdiction of the administrative judiciary, consistent with the approach adopted in comparative legislation and jurisprudence. The administrative judiciary is better positioned to protect individual rights and freedoms and to safeguard the right of injured parties to seek compensation. In addition, clear and well-defined criteria should be established to distinguish between personal fault and service-related fault, particularly within public employment legislation, most notably the Human Resources Management System.

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