

Responsibility for negligibility management (A comparative study)

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Abstract

Praise be to Allah, prayer and peace be to the Prophet Muhammad, peace be upon him, the subject of this research is the responsibility for negligibility management, where we learn through the concept of the responsibility for negligibility management, its origin and evolution in the Islamic Sharia and law, and then to analyze the elements of the responsibility for negligibility on responsibility for both management and individual depending on the legislative and unified judicial system, which is now adopted by the legislature and the Sudanese judiciary, and then the research also addresses the personal responsibility for the staff member when he makes a damaging act outside the framework of public service, whether in order to achieve personal interest or is actually he intends to do so, which results in compensation from his own money, and then the study researches the issue of responsibility for negligibility management, its situations in the law in which the damaging is to be compensated by the administration alone and not the member staff who caused the damage, and then the research concluded that management is responsible for risks and damage only.

Then, the conclusion of the research includes the most important findings and recommendations.

And Praise be to Allah, the Lord of the worlds, may Allah bless Prophet Muhammad, peace be upon him and blessed his family and his companions.

Introduction

Praise be to Allah and peace and blessings be upon his Messengers Our beloved prophet Mohammed, peace be upon him, and yet, no doubt that the provisions of Islamic Sharia is valid for every time and place, and human happiness is in the application of these provisions because it is the law of the Lord of the Worlds Creator world who knows the affairs of his devotes, the Almighty said (*Should He not know,- He that created? and He is the One that understands the finest mysteries [and] is well-acquainted [with them]*)¹, and the Islamic Sharia set provisions for the benefit of the individuals and the community and this is what is called the administrative responsibility of the governor and his aides, or the responsibility for negligibility management in

1- Surat AL Mulk verse no14.

the law, and this responsibility must be assigned to the provisions of Islamic Sharia and the law, and that is why the title of this research, the responsibility for negligibility management was chosen .

Reasons for selecting this research:

- 1- Sudanese legislation established administrative responsibility as a general rule on the public employee because he represents the management as moral entity.
- 2- Sudanese legislator states that the management is not responsible for the damage caused by the member staff if the harmful act has been done without intention and in good faith during the member staff service based on the base of affordability of public burdens, this statement is contrary to the guarantee rules in administrative responsibility in Islamic law .
- 3- That the management responsibility for the risk - without any infringement or adverse reaction from the administration –is an exceptional special responsibility stipulated by specific legislation, while Islamic Sharia set administrative responsibility and damage together and generally to make sure that the damage occurred.

research goals :

This research aims to:

- 1- Study the provisions of the responsibility for negligibility management, in legislation, judiciary, Sudanese Fiqh, compared with the legislation, judiciary and comparative jurisprudence.
- 2- State that the responsibility for negligibility management, in Sudanese legislation based on personal functional responsibility of the staff member of the department as a general rule.
- 3- That the responsibility for negligibility management as a moral figure is regarded as an exceptional responsibility that is proved in special cases and under certain conditions set by the law.
- 4- State that the administrative responsibility for the risk - without any violation or harmful reaction from the administration -in the Islamic Sharia and the law harmful is proved only by the occurrence of damage.

Research problem :

This research treats the following topics:

- * Personal responsibility of the staff member, if he commits an act outside the framework of his job, and he exploits, disregards or achieves personal benefits, compensation must be on his own money without any responsibility for the management.

* Management is responsible for certain issues in certain cases determined by law .

* Management is not responsible for a harmful action committed by the staff member while he is performing his job without intention.

* Management responsibility for risk only when damage causation happened. And without any violation or negligibility of the administration.

Research Methodology :

Researcher adopted inductive, analytical and historical method in this research, which presents and analyze the views of scholars and commentators of the law with respect to the themes of this research, with the comparison of other legislation and corresponding comparison in these subjects with an indication of exposure to the historical approach, and the origins and evolution of the provisions of the management responsibility in the Islamic and legal systems.

Structure of the research:

This research was divided into an introduction, six sections and a conclusion as follows:

Introduction: includes reasons of research selection, its objectives, its problem, approach and structure.

First topic: the definition of administrative responsibility its origin and evolution

The Second topic: the principle of administrative responsibility in Islamic Sharia and Law

The third topic: Elements of administrative responsibility as general

The fourth topic: personal responsibility of the staff member

The fifth topic: responsibility for negligibility management

The sixth topic: Management responsibility for risk

Conclusion : it includes the most important findings and recommendations

Sources and References

Index

The first topic

**Definition of administrative responsibility, origin,
evolution in the Islamic Sharia and law.**

First requirement

**The definition of responsibility for negligibility
management in language and idiomatically**

Section one: Definition of responsibility in the language:

Responsibility means to compel someone to compensate for the damage he caused to a third party as a result of a harmful action he did¹, and «morally» it means the person's commitment including words and deeds².

From this definition it is clear that responsibility in language means committing the person whatever natural or legal, or to ensure compensation for damage caused to others.

Section two: definition of responsibility in Islamic law:

Responsibility in Islamic law means: the instinctive preparing that the God put on human to be fit to do matters that God entrusted him in relation to religion and the present life, so if he fulfill the goods he will be rewarded if not, he will be punished³.

From this definition we conclude that the responsibility in Islamic law preceded by an obligation or assignment to the person and the adoption of the authority and power granted to him, followed by reward or punishment.

Section three: definition of responsibility in law:

Responsibility in the law means that the subordinate commits to perform activities to maximum capacity and to bear what may arise from this commitment⁴, or it is the obligation of the person, whether natural or legal person to compensate the damaged person⁵.

According to these definitions, the responsibility-in-law is obligations and duties that put on the person, whether natural or legal to carry out certain actions, whether these actions are physical or legal.

Section four: definition of responsibility in language:

The Arabic term (Gassara) indicates that someone fails to do something because he is unable to do it, therefore neglecting is the slowness or delay to do something that is considered as a duty of a person or he leaves⁶.

1- MujamLughatALFugha`a.p 425.

2- AL Mujam AL Waseet p 425.

3- AL Om , AL Imam AL Shafii p38.

4- AL Ragaba AL GadaiyaAlaAmaal AL Idara p89.

5- AL Dawa AL Idariya p246.

6- Lisanu AL Arab , IbnMandhoor.

Section five: Definition of negligence in Islamic law:

The scholars of Islamic law defined neglecting as: «overstepping the limit or the right»¹, and some scholars defined the term (negligence) as of the overstepping of what is illegal or non-permissible or what should be limited to², jurists also expressed it as carelessness, negligence, transgression and excessiveness³.

Section six: Definition of negligence in the law:

Negligence in the law means the breaking of the general duty that is imposed on a specific person, whether this person is of legal or natural personality, so that this duty imposes no harm upon⁴.

Section seven: definition of the administration in language:

The linguistic meaning of the word administration is treatment, which means to handle a person an administrative public of matters concerning the affairs of individuals, such as providing administrative services including health, education ... etc, in charge of accomplishing them by the powers and authorities granted to him, as well as an administrative person treats people and helps them to achieve their desires and demands.

Section nine: Definition of Management in Islamic law:

Administration in Islamic law means that the Muslim ruler and his helpers mastermind the people affairs in various ways of life, such as providing services to them, and the management of the affairs of their daily lives, according to the responsibility of the ruler because the God will ask him about that , as well as people who chose him to such situation⁵.

Section ten: definition of management in the law:

Management in the law is the statement of the organizational structure of the unit concerned with the detailed terms of reference and its activities in accordance with the principle of legality⁶ or is «the range of activities concerned with the direction of human effort to implement a policy in accordance with the methods of achieving social function and the final goals of the administrative system, the public interest as interpreted by and determined by the governing institutions⁷.

1- AL Nadhariya AL AamaLiL Muaamalat Fii AL Sharia al Islamiya p 86.

2- Tabyeen AL Hagaig Sharh Kanz AL Dagaig, p 145 -146.

3- Previous Reference, p 147.

4- AL Ganoon AL Idari AL Libi, p 152.

5- AL Idara AL Aama AL Mabadiwa AL Tatbeeg p .

6- Previous Reference, p.

7- AL Ganoon AL Idari, Manshorat Jamiaat AL Sudan AL Maftooha.

Through these definitions it is clear that the meaning of management in the law means a statement of administrative units in terms of the organization of its structures to clarify the powers and functions of these units

Through these definitions we conclude that the negligence responsibility of management means: a penalty for disturbing public duty that imposes on the administration not to cause injury to others, and thus responsibility entails on the administration in the case of any infringement of which happens to others, and this infringement as an incident, which built the right to compensation towards administration by others «injured.»

The second requirement **The origins and evolution of administrative responsibility in the Islamic Sharia law**

Section I: origins and evolution of administrative responsibility in Islamic law.

Since the appearance of Islamic law it has been shown that each individual is responsible for his administrative work to achieve the objectives of Islamic law, and to respect the work he is entrusted to .

The evidence that the responsibility of the ruler and the administrative officer of the Islamic Sharia is stated in the Koran verses, Allah says: *(Therefore, by the Lord, We will, of a surety, call them to account,)*¹, and also says: *(The [Qur`an] is indeed the message, for thee and for thy people; and soon shall ye [all] be brought to account.)*², and says: *(Come not nigh to the orphan`s property except to improve it, until he attains the age of full strength; and fulfil [every] engagement, for [every] engagement will be enquired into [on the Day of Reckoning].)*³.

The indication of these verses is that any person is responsible only for his own mistakes⁴, except that many of the basic principles are excluded because of justice and fairness therefore «Leaders» responsible for themistakes that have been done by followers, the Sunnah showed this responsibility very clearly and this statement has been supported by the keenness of the Prophet Muhammad, peace be upon him to raise the sense of responsibility for the majority of Muslims: Ibn Omar said that the Prophet, peace be upon him, said: «You are all responsible for your actions and as well as you are all responsible for the actions of the followers»⁵.

1- Surat AL Hijr verse no 92.

2- Surat AL Zukhruf verse no 44.

3- Surat al Isra`a verse no 34.

4- Musanafat al Nidham AL Islami, p428.

5- Saheeh Muslim Sharh AL Nawawi p 212.

Administrative system in Islam since its inception does not differentiate between the ruler and the ruled with respect to submit to Sharia in terms of responsibility and accountability, the Islamic Sharia is characterized by justice, equity and unity systems , there is no independent provisions applicable to the rulers without convicts everyone either, and I knew the administrative system in Islam are two types of justice, ordinary justice and eliminate injustices and the latter corresponds to what is now called the administrative judiciary, which specializes spend any grievances to adjudicate in disputes of an administrative nature, such as consideration.

Section Theme

Origins and evolution of administrative responsibility in Sudan

When the British administration started in the development and application of modern laws in Sudan, there was not what could be called a law administrative law of private sense, but was then the base applicable to administrative liability and other administrative disputes is the rule of justice, conscience , was first applied in article (4) of the civil Jurisdiction Act repealed for the year 1900 and read «in cases not governed by Article (3) of this Act or any other law, courts apply the rule of justice, equality and good conscience,»¹.

This base, later, became the basis of civil law in Sudan² and therefore the Sudanese judiciary has been facing one irreplaceable option : administrative disputes, despite the different nature are to be taken under the civil law .

There were special committees to decide on administrative artistic matters which have a special nature requires familiarity with things that are not found in the ordinary courts, and these committees play the role of the courts and they were concerning with matters like : administrative activity, such as housing, building planning and labor disputes, and the committees that decide on matters relating to social insurance 34- next

After the independence of Sudan, Sudanese courts started to observe the administrative system through what is known as the pretext cancellation based on the text of Article (7) of the Interim Constitution of the Sudan for the year 1956 and which states that :(natural and legal persons are subject to the rule of law), and in 1972 the Code of Civil Procedures was issued for the year 1972, which organized the appeal of administrative decisions

1- Ganoon AL Ijraat AL Madaniya 1983.

2- Nadhariyat AL Khatafi AL Masuoliya AL Idariya, AL Ganoon AL SUDANI.

cancellation and compensation procedures so as to determine the conditions and timing to accept the appeal of the administrative decision , then the text on the same conditions in a legal civil procedure 1974 m and 1983 m, and in 1984 transactions Act of 1984 provided for the administrative negligence in general, among which administrative responsibility for natural persons or legal persons where provision in Article 138 states : «every act causes damage to the others must be compensated».

In 1996 the Constitutional and Administrative Justice Act of 1996 was issued where making the jurisdiction of the Supreme Court Justice in the eyes of the administrative appeals issued by the President of the Republic or the Ministers Council or the Government of any state or any minister, State or Federal make competent to judge appeals court to consider the Administrative Appeals Apart from these administrative authorities contained in the jurisdiction of the Supreme Court.

In 2005, the Administrative Justice Act of 2005 was issued which organized the appeal ways system in the administrative decision and jurisdiction of administrative disputes and punishments of administrative responsibility, including compensation management of the injured person from the management business, where the provision in Article 19 of it :(judge will rule in requests for compensation for damage caused by administrative decisions.

Thus, the administrative responsibility in Sudan became subject to the rules of civil law - Civil Transactions Act of 1984 - in terms of subject and in front of the ordinary courts and under certain procedural ways to prove the administrative responsibility towards administration in other laws.

The second topic

The basis of administrative responsibility in the Islamic Sharia law

The first requirement

The basis of administrative responsibility in Islamic law

The basis of administrative responsibility in Islamic law is the actualize of the damage, because the damage is already prohibited and forbidden regardless of who causes it, a natural or legal person «the administration.»

The evidence for that on the responsibility of a natural person as stated in the Sunnah from Anas, may Allah be pleased with him said, some of the wives of the Prophet, peace be upon him, gave him food in a bowl, Aisha hit the bowl and destroyed, then the Messenger of Allah, peace be upon him said

«food with food and bowl with bowl»¹ and saying peace be upon him» do no harm»².

With regard to the responsibility of the legal person (Management) Imam Tirmidhi narrated in his Sunan that the Messenger of Allah, peace be upon him sent Ali IbnAbiTalib to pay compensations to some people who were attacked and kill by Khalid bin Walid, Ali paid them for everything regardless of its size, he paid them destructive - money even forthe least thing not only this but also for their children who were afraid of the horror that occurred to them : All that took place in the order of the Messenger of Allah, peace be upon him, the commander and head of the Islamic State «administration,» which indicates that the administration is responsible for administrative liability .

The second requirement

The basis of administrative responsibility in law

The administration operates and performs its functions through its staff because it cannot be attributed to the administration negligence or infringement because it is not only a moral character and it cannot practice its administrative work itself, and therefore harmful act concerns and attributed its employees, whether they are known or unknown³ so the public employee reaction of the management is an essential and necessary for the establishment of liability of the employee and the management. .

The basis of liability of administrative negligence-in-law are based on dependency relationship between the dependent and followers.

The scholars don't agree that always the administration is responsible for the act of public employee» . Some believe that the responsibility of management is based on the actions of another, «It is the responsibility of indirect», that the administration there is no one part, harmless act, administration is responsible for the actions of those who are following⁴.

Other scholars state this responsibility on the basis of guarantee, they say that the administration is responsible for harmful actions that have been committed by others as long as these actions occurred while employee performing their job, and thus the administration can not deny this responsibility away even if it proves that it is impossible to prevent the unlawful act that caused the damage.

1- Sunan AL Tirmidhi , Imam AL Tirmidhi, P 315.

2- Sunan AL Tirmidhi , Imam AL Tirmidhi, P 338.

3- Nadhariyat AL Khatafii AL Masuoliya AL Idariya, AL Ganoon AL SUDANI.

4- Al Waseetfii AL Ganoon AL Madani p 184.

This view is taken by the Sudanese legislator in responsibility in general negligence , whether natural or legal «administrative» Article (138) of the Civil Transactions Act of 1984 that: «Every act of the cause of damage should be compensated by the person who has done it even if undistinguished»

* Terms of administrative responsibility according to the relationship of subordination: administrative responsibility is to realized according to two important conditions:

First, the relationship between the dependency followed by «administration» and the «public employee».

The dependency relationship between the dependent (the administration) and the followed by (the employee) on the actual power of the followed in guiding the follower¹.

Therefore, the administration must have an actual authority to issue a subordinate commands to guide the employee , as well as in the implementation of these orders.

Second, public employee committed harmful action while performing his job.

Responsibility takes place if the employee committed an act of damaging to a third party, as in the text of Article (146 /1) of the Civil Transactions Act of 1984: «the followed (administration)will be liable for damage caused by the follower while he is performing his duties or because of it» and therefore there must not be a causal relationship close between the negligence and job, to prove that the «public employee» he couldn't have committed the harmful action unless he had had the job, so the job is the direct cause of the harmful act².

The third topic

The pillars of administration negligence Responsibility in general

When talking about the origins and evolution of administrative responsibility in Sudan that the Sudanese legislation Civil Transactions Act of 1984, according to the general rules based negligence management on the harmful action that caused by the employee while he is performing his job so the pillars of administration negligence responsibility in general and that including liability is, injury and a causal relationship between them, and as the following details:

1- Al Waseetfii AL Ganoon AL Madani p 869.

2- Al Waseetfii AL Ganoon AL Madani p 870.

First requirement

The harmful act

The Civil Transactions Act of 1984,takes the idea of compensation for damage or harmful action arising out, regarding Article 138 of the Civil Transactions Act of 1984 that: «Every act of the cause of damage to the non-necessary committed to compensation even if it is not described ,» the word harmful is the same as to ensure in the Islamic law (Article 5 / t from the Civil Transactions Act of 1984) .

The harmful act that considered responsibility as obligatory is in itself obligatory of compensation and it takes several different aspects Kalatlav and infringement and Altayib and irregularity, kidnapping and neglect¹ and the failure to reduce duty and willful² and not avoided and negligence and lack of attention, caution and vigilance etc, have tort be abstaining from Shara commitment dictated by law or this so-called «negative reaction»

And harmful act attributed to a natural person as well as can be attributed to moral or legal person, and the responsibility of the legal person «administration» responsibility does not mean in his being fixed as a body and it means, in fact, the responsibility of those who support it,

The conclusion is that the administration is responsible for compensation for the harmful act of the general employee while he is performing his job on the condition that this act should not be included in the framework of the civil service.

The second requirement

The damage

Damage is the harm that attacks human, whether physically or mentally, and so management is obligated to compensate the damage caused to a third party has to be on certain conditions they are :³

1- The damage must certainly take place :

And the damage is certainly confirmed which causes lost in the normal earning opportunities, and does not occur in the future because the rule is true only when it is based on fact and not on hypotheses and possibilities.

2- Damage must be special:

This means that damage infects a particular person or persons, but if it infected specified number of individuals, it would be public harm so it is considered as public burdens.

1- Majalat al ahkam al Gadiya al Sudaniya 2000, p 129.

2- Al Waseetfii AL Ganoon AL Madani p 644.

3- Al Waseetfii AL Ganoon AL Madani p 714.

3- The damage, which can be estimated with money:

And this condition is met in the physical damage, such as deprivation of earning a profit or the practice of a profession or compromising one of the movable or immovable property.

Third requirement

The causal relationship between the harmful action and the damage

It is a link between the harmful action and the damage to the injured, and expressed sometimes that damage is direct, and it means the reason of the harmful act is the one which caused the damage without the intervention of any other external reasons.

The causal link is eliminated between the harmful action and the damage if there is an existence of a foreign cause of force causes the act of the injury . In these cases, the defendant is not obliged to compensate the damage, This is stipulated in Article 141 of the Civil Transactions Act of 1984 that «if the person proves that the damage has arisen from an external reason or an act of the injured or the actions of another, it is not obliged to compensate the damage unless there is a text or an agreement on that, «but the defendant may not be relieved of the responsibility college if he had contributed doing harmful in bringing about the damage which is known as the status of joint action where necessary next to the defendant from compensation commensurate with its role in causing the damage.

Applying all of this, in the Commercial Bank of Sudan case against Dawud Idris: «there is a causal link between the error committed by the defendant and the damage done to the plaintiff, and the association exists if the result is because of a of a new factor, which is the mistake of a third person, a causal association is proved when he the third person's action is a reasonable action»¹.

We conclude from the above that the negligence responsibility is generally a penalty for disturbing public duty that imposes on everyone not to cause injury to others, and therefore the infringement, which is caused by the person who caused the damage is obliged to compensate the injured who suffered the damage, and the person who caused the damage, has intended to do that willingly.

The negligence responsibility of managing means: an administrative penalty for disturbing a general duty, which imposes harm to others, so its responsibility is not to cause harm to others and thus responsibility entails on

1- Majalat al ahkam al gadaia 1956 p 74.

the administration in the case of any infringement of which happen to others, and this infringement as an incident, which built the right to compensation to the administration by a third party «injured », responsibility of management and responsibility in general must have elements of harmful action, injury and a causal relationship between them.

The fourth theme

The personal responsibility of the employee (personal job damaging)

Previously we mentioned that the administration operates its actions by employees, if any one of them who commits a harmful action on behalf of the management and for its interest so management must take responsibility for damages resulting from such actions and behaviors on condition that the action is not personal, for example, the member staff is intended to achieve a personal interest ... etc. this is known as personal job damaging and in this case he is responsible for hi action and he, personally must pay compensation to the injured from his own money, but the administration is responsible only if the conditions set by law are available¹.

First requirement

The definition of personal job damaging:

Some jurists defined personal job damaging as : «the act actually has taken place by the public employee outside the scope of the civil service², the public employee who causes harmful actions to others and be an act outside the framework of his duties, then this act is regarded as personal job damaging and he is personally to be responsible and not his administration.

The second requirement

The condition of personal job damaging

Article 1601/ of the Civil Transactions Act of 1984 states that: (each person is an employee another or shall act to another cause harm to one another or to others exploited his job or disregard their duties or negligence is not justified in the performance in person is required to compensate the damage).

According to this text, if the public employee causes harm to any one as he intends to exploit his job, he is personally will be responsible for compensating the damage caused in his own money, and the administrative

1- Muhadaratfii AL Ganoon AL Idari.

2- Nadhariyat AL Khatafii AL Masuoliya AL Idariya, AL Ganoon AL Sudni.

body does not responsible for that damage , and personal responsibility of the employee in this case is the natural result of the harmful personal action, which has nothing to do with the nature of the principal public employee labor, harmful personal action is the cause of the personal responsibility of the employee.

Transactions Act of 1984 stated the following conditions :

First: the employee must be a public employee subordinate to a management .

This element is required to evidence the damage, as the lack of a link between the public employee and the administration does not make the administration responsible for any compensation.

and this association is governed and defined by the law, this association of dependency at the base of administrative responsibility in the law where this association is on the actual power of the «administration» and of the «public employee»¹.

Secondly: a public official causes harm to others

The public employee causes harm to others, and that this damage must be determined so that they can be evaluated and compensated as in that article 1611/ of the Act of Civil Transactions 1984 stated in that: « damage must be determined so that they can be evaluated and compensated.»

This damage occurred directly or because of certain reasons.

And harmful act that caused by public employee must be in the scope of his job and not because of others actions even if it has been done by the injured himself. but if the harmful act is committed by a public official as a result of what is happening to the right or wrong during the performance of his work, this harmful act is not considered a cause for compensation and this should be on certain conditions :

1. The harmful action must be intended : this is in the case that it took place intentionally and the public employee intended to commit the harmful action, but if his action happens as a result of right or wrong while he is doing his job , in this case no compensation will be paid.
2. The employee takes advantage and gets benefits as a result of unjustifiable exploitation of his job or negligence of his duties:

And the exploitation of the public employee's job, meaning that the acts of his duties were not imposed on him, either he benefits from these action he himself or any other person, such as the public employee's intends to harm one of the individuals, or to favor a service to one of his relatives or friends and differentiate between them and others².

1- SharhGanoon AL Mua`amalat AL Madaniya AL Sudani p 203.

2- SharhGanoon AL Muaamalat AL Madaniya, p 206.

Damage may result in by unjustified negligence issued by a public official, and some scholars¹ view that the neglected action is not justified, because every negligence resulting in injury requires responsibility, regardless of whether there is justifiable reason for this negligence or not.

The consequences of personal job damage :

1. A public official is responsible for committing harmful injured action.
2. The injured person has the right to bring an action of personal responsibility in the face of a public official, as the injured person can state this claim in the face of the both public administration and the employee.
3. If the injured states the claim in the face of both administration and public employee, the management compensates the injured person and then can accrue to the public employee to require the right of damage to personal damage proved against a public employee,²
4. If the injured complains the public employee without the administration the case will stop at that point and the administration has no right to punish the employee in any case, but if the injured comes back to the management and complains it without the public employee, in this case the management has the right to punish the public employee³, so the administration may return to the public employee to pay compensation.

At the conclusion of this section, the researcher finds that the Civil Transactions Act of 1984, gave more details, description and analysis of personal damaging it could be better to leave these details to the Competent Administrative Court to provide for the conditions that come out of this damage.

The basic function of administrative disputes is due to administrative judiciary in that it builds the rules and principles relating to administrative disputes and deciding where and which include administrative responsibility.

The Fifth Theme

Responsibility for Negligence Management

We mentioned above⁴ through the folds of this research that the administration operates through its employees and that the harmful action is often committed by the staff, since those employees engaged acts concerning the administration on its behalf and its interest, so management must hold

1- SharhGanoon AL Muaamalat AL Madaniya, p 206.

2- Nadhariyat AL Khatafi AL Masuoliya AL Idariya, AL Ganoon AL Sudni.

3- SharhGanoon AL Muaamalat AL Madaniya, p 209.

page 11 4- See page 11 in this research.

responsibility for damages arising from these acts, provided that the actions are impersonal and they are in the scope of public service or because of them, the Sudanese legislator has identified certain cases in the civil transactions Act of 1984 as an exception to the general rule - a personal public employee responsibility - in which the management is responsible for the harmful act committed by the employees, and these cases came in the view of the researcher were general and ambiguous, Article 163 of the civil transactions Act of 1984 states that: «The employer is not responsible for damage, unless the harm caused by his policy or his mistake or had given explicit consent to inflict harm».

This article confined situations that make the administration responsible for damage of the employee as follows:

- 1- The damaging takes place as a result of a mistake or policy of the «administration», for example, if a particular ministry plan or a particular public facility to prevent the export of goods or certain goods outside the country's borders, results in any harm from that plan, the employee is not responsible about that. does not ask about, as well as if a certain unit director issued a decree banning the appointment of any member of this unit temporarily by the employee in charge of the public to reject the request of any advanced appointment is not considered harmful to ask about public employee¹.
- 2- If the harm has resulted explicitly as an agreement of the «administration, for example, the reported examples in paragraph above, the administrative officer for public utility agreed explicitly to prevent the export of certain goods outside the country, or expressly do not set any temporary employee that resulted in any damages, the public official, is not responsible for such an action, instead of him, the «management» is responsible for any damage.
- 3- The third case is left to the court to classify the various conditions roles of the «administration» and the «public employee» in the circumstances of the injury and this Court is subject to the control of higher courts.

The conclusion in this article is that, in these three cases, there is an administrative negligence responsibility for damage that causes by a public official who is subject to this administration.

The researcher believes that the legislator was unsuccessful in paragraphs (12/) of Article 163 of the Civil Transactions Act of 1984 because it is not perceived that one of the public policies of public administration is to cause harm to others, or give explicit consent of harm to others,

1- Sharh Ganoon AL Muaamalat AL Madaniya, p 322.

even if we assume for argument that the damage is the result of an error of the administration's policy or that the administration gave the public employee explicit authorization of harming others, this does not prevent the administration to prove that the disposal of harmful came as an investigation with the requirements of the law or public policy of the State or to provide justifications to convince the court that the disposal was for the purpose of public interest, and highlights the important question here is, if the Court persuaded that the administration had at its disposal in accordance with the public interest or ... etc. who bears compensate for this damage?! This is because the administration then not be responsible for this damage it is accepted by the public employee because the administration had authorized him to commit damage, then Who takes responsibility?!

The researcher believes that it is more useful to the Sudanese legislator to provide administrative negligence responsibility in general all actions of harm, unless it is proved that this harmful act was personally set by the law under certain conditions that we talked about in details in the folds of this research, then the Department may ask the employee to pay the compensation from his own money.

• No responsibility for the public employee on harmful act of good faith :

Public employee should not be responsible for ordinary actions in good faith during the performance of his job. Article 1612/ of the Civil Transactions Act of 1984 states that: « a normal expected error, which happens in good faith is not considered as an employee responsibility, «this means that a public employee is not liable for the damage caused while performing his job in good faith !!

This text is no doubt doesn't agree with the general rules relating to rules of guarantee in Islamic law and which resulted in guarantee as soon as the damage takes place , regardless of whether the harmful act is ordinary or serious, and whether it is accompanied by good faith or in bad faith. so the researcher believes to deletethis text to match the general rules in Islamic law, which proves guarantee as soon as the damage takes place, without looking at the conditions identified above.

The Fifth Theme

Management`s responsibility for risk

First requirement

The concept and bases of management`s responsibility for risk

Individuals may be exposed to particular risks while the administration perform its work without causing harmful act or fault of the administration¹, in such a case the administration is to be asked for these risks based on the subordination rule that if someone takes advantage of a particular activity, he has to bear what caused this activity for other damages without searching whether there was a mistake or not.

Which led to the emergence of management`s responsibility for the damage without fault or infringement of them in the eyes of jurisprudence is the emergence of the so-called the major industrial renaissance in the nineteenth century which carry this development a significant hazard to human activity is now threatening his life where he used machines that have complex structure which is difficult toknow and follow the instructions of operating. and thus the rate of risk is significantly increased which led to the emergence of this responsibility on the basis of damage not only on the basis of error, based on the idea of carrying liability, thus the administrative responsibility for the risks is materialized only on two pillars: the damage and the causal relationship in terms of the damage to be material, exceptional, unusual, persistent and permanent.

A team of scholars of administrative law supported this view, but a lot of them turns away and stop supporting when they saw that to take this as a general principle is particularly dangerous in social terms for the execution of personal motivation for the establishment of projects by both individuals and management, and the elimination of self-motivation would weaken A trend toward work².

The position of the legislator and the Sudanese judiciary has settled on the basis of administrative responsibility in general is a harmful act, and that the general rules of negligence responsibility that contained in the Civil Transactions Act of 1984 is applicable to claims of negligence responsibility and on this basis, the plaintiff must prove the existence of harm against the administration.

The philosophy of the Sudanese legislator is that it satisfied with the application of administrative responsibility on the basis of harm, and

1- Masouliyat AL IdaraGheir AL Ta`agudiya, p 259.

2- Daman AL Mutlafatfii AL Figh AL Islami.

administrative responsibility on risk-based, there is no special laws necessitated the occurrence of responsibility on the administration to compensate the injured person, and these laws are: the Law of compensation of Injured 1981 and the Law of constructional Planning 1994 and other laws.

Applying to this, «that the administration is not responsible because of the implementation of the project» Transferring a canal «unless proven a fault on its part (1), and in the case of Michelle Qatranreferred to the trial court said : «that the administration within the limits of its discretion does not exercise satisfied diligence, the Court considered this asnegligence of contesting (management) and therefore this error requires management responsibility for the damage happened to the plaintiff»¹.

The researcher believes that there should not be restricted and limited administrative responsibility for risk under certain special legislation, but must look at the justice rules that require compensating to the injured when damage takes place.

The second requirement

Models of administrative responsibility for risk in the legislation and Sudanese judiciary

First : work accidents:

The idea of administrative responsibility for the risks in this case is established to protect the employees of administration, and also on the basis of equality of citizens in public rights and duties, which is a constitutional rule, where no person shall be prejudiced without fault, just because the administration actively does an unusual action or just the worker is injured by the machine during hours of work ... etc.².

Second: the damage arising from work and Public installations:

Public works means the preparations for a real estate or facilities in order to achieve public benefit, and to serve the public facility or persons of public law³.

To be compensated in this case damage must be physical and exceptionally unusual - and always have, such as digging a tunnel under the house to run the railway line⁴.

1- AL Ahkam AL Sudanya, HeneryRiyad p 89.

2- Masouliyat AL DawlaGheir AL Ta'agudiya, p 259.

3- AL Qanoon AL Idari, previous Reference p 191.

4- AL Qanoon AL Idari AL Libi p 113.

Compensation for the damage in this case is established on the basis of the idea of equality of citizens in rights and duties, if someone loses his home or his land, there is no doubt that this damage must be compensated for, and therefore the injured must be compensated for the re-planning without proof of fault on the management, but the injured must prove the damage, and the application of this was that the Supreme Court ruled that «the Department of Central States and Gedaref,» stated that it «is the plaintiff who has to prove the damage for compensation that was caused by an error»¹.

Administrative responsibility for works or public facilities is established on the basis of the responsibility of things guard, where Article 1481/ of the Civil Transactions Act of 1984 that: «Anyone who guards anything, he himself is to be responsible for this thing and what it causes of harm to others whether this thing a human or an animal or movable property, «as well as the text of Article 1491/ of the same Act states:» the guard of anything is someone who has an effective power on that thing»².

Third: the damage arising from the use of dangerous activities or things:

The dangerous objects, for example, the use of explosives ammunition, explosion of stores firearms, and also dangerous risk-neighborly such as unusual activities, where the French courts ruled to compensate the owners of neighboring houses which were damaged due to the explosion of the amount of explosives that were collected in one military forts on the outskirts suburban areas of Paris, rejecting the establishment of responsibility on the error and planned responsibility on the basis of risk, and another example is also an explosion of government factories, and the explosion of a railway vehicle loaded with explosives into neighboring houses, as well as, if a policeman used weapon, wounding people unintentionally, and also the damage caused by the government motor vehicle accidents³.

Fourth: The administration's failure to implement court rulings:

It is one of the areas of responsibility of management on the basis of equality, which requires the contribution of citizens in the obligations and burdens of administration and management of public utilities as determined by the law, and then must compensate the injured by the administration, where is the responsibility of management is realized without an error or its infection of them on this basis.

1- Gadiyat Dabitla'adat Takhteet Al Takaulat AGAINST Othman AL Haj Maala.2011.

2- Majalat al A HKAM al gadaiya AL Sudaniya, 2000 p 155.

3- Masouliyat AL DawlaGheir AL Ta'agudiya, Dr. Anwar Ahmad Raslan p 271.

Conclusion

Praise be to God that his grace is good deeds, prayer and peace be upon the prophet of guidance and blessings, we dealt with the negligence responsibility of management, where we studied the concept of administrative responsibility, its origins and evolution in the Islamic Sharia and the Law, and its basis, and the pillars of negligence responsibility in general, and then we talked about the personal responsibility of the public employee when he personally causes harmful action to others ,then we talked about negligence responsibility of management under the circumstances and conditions set by law.

The researcher concludes the most important findings and recommendations as follow:

First: results

- 1- Islamic law has generally shown in the context of negligence responsibility that everyone is responsible for harmful actions and the administration is not responsible unless under requirements of justice, fairness, circumstances and times.
- 2- The administrative system in Islamic law does not differentiate between the administration and public officials and ordinary individuals in that they are all subordinated to all the provisions of the Islamic Sharia.
- 3- That the basis of negligence responsibility in Islamic law is the realization of damage, but the basis of administrative responsibility in the law are based on the association of dependency between the public employee and the management, when this employee is performing his job or because of the condition of this act should not be personal to achievement personal interest.
- 4- That the elements of administrative responsibility in Sudanese law are the pillars of the negligence responsibility in Islamic law in general.
- 5- Administrative responsibility is realized on the risks on the availability of elements of damage and the causal relationship.
- 6- The injured person could claim for compensation for damage in the face of public employee or management, or both, and for the management to refer to public employee, including paid of the compensation due to the harmful act of him, as for the employee has the right to return to the administration, including the payment of compensation if he proves that the administration caused the harmful act or participated in it.

Second: Recommendations:

- 1- The researcher recommends that Sudanese legislation «Civil Transactions Act of 1984» is to determine the conditions of personal damaging and its obligations, leaving judicial management to eliminate the application of these conditions on each available case, allowing management to eliminate the Sudanese area to highlight the talent in inventing and innovating rules and principles of administrative assets relating to administrative disputes, a key administrative role to eliminate from its inception until now, and it needs to renew administration continued and individuals, and at the same time avoids the legislator of the redundancy of legislative models for this damage.
- 2- Researcher recommends not to look to the good faith of the public employee or the bad faith. This requires the responsibility of management for the damage caused by its employee, in order to safeguard the rights of others in compensation.
- 3- Researcher recommends the expansion of the special legislation that outlines the responsibility of management risk-based so that it becomes the responsibility in this extended legislation complementary to the general rules in administrative responsibility in general, and this can cover all the damages and compensation which would bring justice in the highest sense.

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