

Administrative Liability of Public Healthcare Facilities in Light of Legislative and Administrative Judicial Precedents

المسؤولية الإدارية للمرافق الاستشفائية العمومية على ضوء التشريع و

الاجتهاد القضائي الإداري

Senoussaoui Somia

University of Algiers 1, Faculty of Law

Laboratory of mechanisms for achieving comprehensive development in Algeria

senoussaoui@univ-alger.dz

Date of submission: 01/04/2025 Date of final acceptance: 13/07/2025 Date of publication: september

Abstract:

The constitutional and legal safeguards of health rights underscore the pivotal role of public health facilities in delivering healthcare services. These institutions, staffed by civil servants, extend a gamut of services ranging from medical and therapeutic to administrative, embodying the state's commitment to health rights. The operational dynamics of these facilities often precipitate incidents where beneficiaries may suffer harm, thereby invoking considerations of administrative liability. This form of liability mandates compensatory measures from the state for harms inflicted by lawful or unlawful acts during operational duties. Such liabilities are not only central to the jurisprudential development of administrative law but have also evolved significantly in response to the unique operational risks associated with public health services and the rapid progression of medical conditions and pandemics.

Keywords: Public health facilities; administrative liability; fault; risks.

ملخص:

عرف الحق في الصحة حماية دستورية و قانونية مهمة، و تعتبر المؤسسات العمومية الاستشفائية المرافق العمومية التي تضمن تجسيد الحق في الصحة من خلال ضمان الحق في الرعاية الصحية بتقديم خدمات للجمهور عن طريق موظفيها، و التي تنقسم عموماً إلى خدمات طبية و علاجية و أخرى تنظيمية و إدارية، و قد ينجم عن قيام المرفق العمومي الاستشفائي أثناء تقديمه هذه الخدمات عدة أضرار للمتفاعلين يمكن أن تقيم مسؤوليته الإدارية التي تهدف إلى إلزام الإدارة بالتعويض عن الأضرار التي تسببها للغير خلال قيامها بمختلف أعمالها التي يمكن أن تكون أعمالاً ضارة مشروعة أو غير مشروعة، و تعتبر المسؤولية الإدارية للمرافق الاستشفائية العمومية أحد أهم التطبيقات القضائية لنظام المسؤولية الإدارية والتي عرفت تطورات كبيرة خلال العقود الأخيرة نظراً لخصوصية هذه المرافق في حد ذاتها و الطبيعة الخطرة لنشاطاتها و سرعة تطور الأمراض و الأوبئة.

الكلمات المفتاحية: المؤسسات العمومية الاستشفائية؛ المسؤولية الإدارية؛ الخطأ؛ المخاطر.

Auteur correspondant : Senoussaoui Somia

Introduction:

The enshrinement of healthcare as a fundamental right reflects its intrinsic value to both individuals and the wider community. Indeed, this right is codified under Article 63 of the Constitution and further reinforced by national health legislation, thereby committing the state to a comprehensive, coherent, and enduring provision of health services¹. Moreover, the distinctive nature of public hospital facilities stems from their complex, risk-laden operations that cater to both routine and emergent health needs.

The discourse on administrative liability within the field of public services is rich and contested, reflecting deep jurisprudential and judicial engagement. In this regard, administrative courts have consistently sought to strike an equitable balance between the individual grievances of aggrieved parties—often considered the more vulnerable entities in these disputes—and the broader public interests upheld by healthcare institutions encumbered by inherently high-risk operations. Such operations, critical to public health mandates, frequently precipitate conditions where potential hazards materialize, leading to substantial, unforeseen damages that surpass the injured party's resilience. Consequently, the judiciary has been instrumental in crafting a legal framework that acknowledges the unique challenges of administering healthcare services, gradually shaping the principles governing administrative liability.

Against this backdrop, the present study delves into the foundational principles of administrative liability as they pertain to public healthcare facilities considered within the framework of the legal relationships that regulate these administratively oriented entities and the specific nature of the services they deliver. Additionally, it seeks to shed light on the judiciary's perspective regarding the implementation of these liability principles. In pursuit of these goals, the study critically examines and synthesizes both legislative provisions and administrative judicial precedents that have shaped the conceptualization of such liability.

In light of these considerations, and given the complexity of the legal framework governing public healthcare institutions, a central problematic arises that guides the present inquiry: What are the legal foundations of administrative liability for public healthcare institutions, and how have legislative and judicial developments shaped their contours in light of the unique nature of medical activity and the public interest it serves?

. Consequently, the analysis is divided into two principal themes:

1. The Scope of Administrative Liability in Public Healthcare Facilities
2. Judicial Applications of Administrative Liability for Public Healthcare Facilities

Section I: The Scope of Administrative Liability in Public Healthcare Facilities

As stipulated by Article 297 of the Health Law, public healthcare facilities represent a unique amalgamation of administrative governance and medical service provision, endowed with both juridical personality and financial independence. These institutions function within a sophisticated legal framework that requires management of complex operational and regulatory landscapes.

A) Legal Relationships within Public Healthcare Facilities:

To adequately address the scope of administrative liability for public healthcare facilities, it is imperative to explore the nuanced legal relationships that govern these entities.

1 - Professional Dynamics within Healthcare Facilities:

The workforce of public healthcare institutions is segmented into distinct roles, each critical to the institutional mandate:

- **Administrative Personnel**

These professionals are charged with the administrative and financial stewardship of the institution. Their responsibilities span the management of equipment, the oversight of logistical operations, and the maintenance of infrastructure integrity. Their professional conduct is regulated

by public administrative law, ensuring alignment with the statutory mandates and protocols that govern public service operations.

- **Healthcare Practitioners**

Beyond administrative functions, the core of patient care in public hospitals involves a diverse team of healthcare practitioners. This team includes physicians, therapists, and auxiliary technical staff, all of whom collaborate to provide comprehensive healthcare services. As outlined in Article 165 of the Health Law, these practitioners engage directly in the delivery of health services or support thereof. Article 167 further clarifies their employment status, whether as civil servants or contractors, is governed by public service law, aligning their professional duties with statutory requirements.

2- The Relationship Between Public Healthcare Facilities and Patients

The legal relationship between a public healthcare facilities and a patient is established the moment the patient seeks medical services from a public healthcare facility. While medical treatment is administered by physicians, therapists, or other healthcare professionals, the legal engagement is directly between the patient and the institution itself. This interaction emerges specifically through the medical and therapeutic services that the institutions render to their patients.

B) Administrative Liability Arising from in Public Healthcare Facilities Services:

Public healthcare facilities deliver an extensive array of services to individuals seeking medical assistance. These services can be categorized into the following groups:

1- Medical and Therapeutic Services

The primary rationale for establishing public healthcare facilities is to offer accessible health services to the general population, undertaken by a multidisciplinary workforce. Conceptually, these services can be grouped into two overarching clusters: medical and therapeutic activities.

Differentiating between the two is often challenging, given their inherent overlap. A thorough review of relevant legislative provisions indicates that Algerian law does not provide a precise legal definition for either “medical” or “therapeutic” activities. Instead, the legislator outlines the responsibilities linked to each category across various statutory texts.

- **Medical Services**

The term “medical activities” encompasses any actions performed by individuals authorized to practice medicine or pharmacy, as well as by those holding a legal license to engage in medical care. These undertakings are aimed at diagnosing illnesses, relieving or eradicating symptoms, reducing pain, and implementing preventive measures².

Although Algerian legislation does not present a singular, comprehensive definition of medical activities, certain statutes—particularly those governing the medical profession—reference specific tasks that fall within the scope of medical practice. For example, the Code of Medical Ethics underscores the mandate of physicians and dental surgeons to safeguard public health and alleviate suffering. This mandate includes diagnosing, preventing, and treating illnesses, in addition to rendering urgent care to patients in critical or life-threatening conditions³.

Likewise, foundational laws regulating medical practitioners delineate a broad spectrum of professional obligations, covering activities such as diagnosis, treatment, patient monitoring, preventive and therapeutic research, rehabilitation, functional assessments, laboratory analyses, and specialized medical and pharmaceutical services, including dental procedures⁴.

- **Therapeutic Services**

By the same token, the legislator has refrained from offering a singular, definitive description of “therapeutic services.” Nevertheless, an examination of the legal provisions pertaining to para-medical professionals in the public healthcare sector demonstrates that these statutes do specify the duties falling under the purview of this cohort. Collectively, these duties are integral to therapeutic services, encompassing tasks such as maintaining patient hygiene and a sanitary environment, administering basic nursing care, carrying out hospitality and sanitation functions, assisting in

equipment upkeep, and systematically observing and documenting patients' health status. Such documentation is conveyed both verbally and in writing to ensure the seamless continuity of care⁵. Moreover, public healthcare nurses perform nursing interventions on the basis of medical prescriptions, under the direct supervision of a physician, or through predetermined emergency protocols in urgent circumstances. They also bear responsibility for monitoring, evaluating, and following up on patients' health conditions.

2- Management Activities in Public Healthcare Facilities

The management of public healthcare facilities encompasses a comprehensive set of administrative, organizational, and technical measures designed to ensure the seamless delivery of healthcare services. These measures span the entire patient experience, from admission to discharge. Broadly, these activities can be categorized into administrative management, organizational oversight, and technical functions.

- **Administrative Services in Public Healthcare Facilities**

Effective administration is central to the operation of any public healthcare facility, as it governs patient access, service delivery, and institutional coordination. As the first point of contact, the administrative department ensures equitable access to medical services, upholding principles of dignity, non-discrimination, and continuity of care. Public healthcare facilities are legally obligated to provide medical services free of charge and without interruption. Beyond patient intake and coordination, administrative services also intersect with medical and therapeutic service management. These responsibilities include ensuring that each patient has a comprehensive medical file, informing patients about their diagnosis, treatment options, and associated risks, and upholding confidentiality and data protection laws concerning their medical information. The right to privacy and informed consent remains paramount⁶.

- **Organizational Services in Public Healthcare Facilities**

Organizational services within public healthcare facilities focus on ensuring continuity, efficiency, and quality in healthcare service delivery. These responsibilities encompass structuring patient care pathways, maintaining medical on-call rotations to guarantee 24/7 service availability, and overseeing the hospitalization process, which includes ensuring appropriate accommodation, nutrition, and hygienic conditions for inpatients. Additionally, healthcare institutions are responsible for implementing infection control measures, maintaining clean and secure environments, and ensuring that hospitalized patients receive adequate monitoring and care.

The operational efficiency of public healthcare facilities is also contingent on the availability and proper maintenance of medical and technical equipment. Essential infrastructure includes radiology and diagnostic imaging systems, laboratory equipment, operating theaters, intensive care units, and ventilators, all of which require meticulous oversight. Additionally, hospital infrastructure management extends to power generators, heating and ventilation systems, and hazardous waste disposal mechanisms, particularly for biohazardous and chemical waste generated within medical facilities.

Given the technical complexity and high-risk nature of hospital equipment, public healthcare facilities maintain specialized technical units dedicated to equipment maintenance, compliance with safety standards, and risk management. These efforts are paramount in protecting patients from undue harm and ensuring the uninterrupted provision of vital healthcare services.

Section II: Judicial Applications of Administrative Liability for Public Healthcare Facilities

Administrative liability holds public authorities accountable for compensating individuals harmed by their actions, whether such actions are lawful yet harmful or unlawful. The administrative liability of public healthcare facilities has become one of the most significant judicial applications within this legal framework, evolving considerably over recent decades.

Administrative liability of public healthcare facilities did not emerge as a fully developed legal doctrine but rather evolved through progressive legislative and judicial refinements. This evolution marked a shift from a fault-based liability system to a strict liability framework.

This transformation was primarily shaped by scientific and technological advancements in the medical field. As a result, the traditional model—premised on the requirement to prove fault—gradually gave way to a system in which the mere occurrence of harm, provided it can be causally attributed to the healthcare facility, suffices to establish liability.

A) Judicial Nexus Between Fault and the Administrative Liability of Public Healthcare Facilities:

Public healthcare facilities are mandated to provide **medical, therapeutic, and administrative** services. Any breach or deficiency in fulfilling these obligations may trigger administrative liability, provided that the traditional elements of liability—fault, damage, and causation—are established. The evolution of administrative jurisprudence in this domain reveals a judicial inclination toward fault-based liability, with administrative courts emphasizing that the nature of services provided by these institutions necessitates fault as the legal foundation of liability.

1- Foundations of Fault-Based Administrative Liability in Public Healthcare Facilities

Fault, in the legal sense, is defined as a deviation from the standard of care expected of a reasonably prudent individual. As a general principle, liability is rooted in personal fault, but when such fault is directly connected to the operation of a facility, it gives rise to institutional fault (or service-related fault). Consequently, administrative liability in public healthcare facilities has traditionally been structured around both personal and institutional fault.

Under this framework, public healthcare facilities assume liability for wrongful acts committed by their personnel; however, this liability is not absolute; there is a difference between personal fault and institutional fault. In some instances, these forms of fault are concurrent and interwoven, while in others, they remain distinct and independently assessed. However, the evolving framework of administrative liability in public healthcare facilities has narrowed the scope of personal fault, shifting toward a model that prioritizes institutional fault.

- **The Erosion of Personal Fault as a Basis for Medical Liability**

The administrative liability of public healthcare facilities was conceptualized and solidified later than expected, largely because of the distinctive nature of medical practice and the unique regulatory relationship between physician and patient. This relationship establishes the rights and obligations of each party, and it likewise governs the ties between the physician and the public healthcare facility itself—both of which are subject to public service law and specific healthcare regulations.

French jurisprudence only began addressing this form of liability in 1957, when two rulings by the French Tribunal of Conflicts affirmed the jurisdiction of administrative courts over liability claims filed by injured parties against public hospitals⁷. These decisions held that physicians working in public hospitals qualify as public agents and that their professional autonomy in performing medical services does not negate the oversight inherent in public employment. Consequently, liability for harm arising from medical errors rests with the public healthcare facility. In principle, the administrative liability of public healthcare facilities arises from the acts of their personnel—be they healthcare professionals (including physicians), administrative workers, or technical staff. In practice, however, assigning fault to a specific individual or group of employees can be challenging, owing to the collaborative nature of healthcare services. Thus, physicians are not held personally liable for professional faults unless those faults can be clearly separated from the service itself. A fault is deemed separable when it is committed with gross negligence that contravenes basic professional standards and norms⁸.

Public service law⁹ draws a clear distinction between personal fault and institutional (or service-related) fault. Article 31 states: “If a public employee faces legal proceedings from a third party for a service-related fault, the institution or public administration to which that employee

belongs must protect them from any civil penalties, unless the fault is deemed personal and separate from the duties assigned to them.”

Accordingly, the criterion of separability from public service is the key factor in differentiating personal fault from institutional fault. Moreover, an employee’s failure to uphold professional duties, breaches of discipline, or any errors or offenses committed during or in the context of fulfilling those duties are classified as professional faults, carrying disciplinary sanctions as set out in Article 160 of the Public Service Law, without ruling out possible criminal proceedings if necessary.

Personal faults that give rise to the individual liability of the perpetrator—rather than the liability of the public healthcare facility—can be summarized as follows:

- Faults fully independent of the public healthcare facility, committed outside the scope of the employee’s professional role.
- Faults committed during or in connection with official duties, driven by malice or deceit, aiming to inflict harm on the patient’s health or public health.
- Unintentional faults of extreme severity, where the degree of negligence, incompetence, or lack of foresight significantly exceeds reasonable norms, revealing a gross disregard for standard professional conduct.

- **The Shift from Personal Fault to Institutional Fault in Public Healthcare Facilities**

Institutional fault arises when harm results not from an individual’s misconduct in isolation but from deficiencies in the organization, operation, or management of the public healthcare facility itself. Even if the act that caused harm was carried out by an individual employee, the underlying liability is attributed to failures in the institutional framework.

The nature of the relationship between patients and public healthcare facilities reinforces this shift; patients do not have the autonomy to choose their medical team, just as physicians and other healthcare professionals lack control over the selection of their colleagues or the working conditions imposed by the institution. This fundamental absence of choice removes the basis for personal liability, placing the legal responsibility on the institution under the doctrine of institutional fault. Personal liability presupposes freedom of action and decision-making, a condition that is inherently constrained within the operational structure of public healthcare services.

As a result, employees of public healthcare facilities are generally insulated from personal liability and are not individually subject to legal action unless the wrongful act is entirely dissociable from their official duties. In principle, the public healthcare facility assumes liability and bears the obligation to compensate for harm. Moreover, the identification of the specific individual responsible for an error does not alter the legal attribution of liability, as the medical team is collectively accountable¹⁰. Institutional fault operates on the premise that, although the error may originate from an individual within the institution, it is the institutional framework that renders the fault service-related rather than personal. Consequently, the public healthcare facility remains legally responsible, irrespective of whether the responsible party is identified—whether they are a physician, an assistant, or an administrative employee.

- **The Administrative Judiciary’s Approach to Personal and Institutional Fault**

An examination of several **Council of State** decisions reveals that administrative judges often **broaden the scope of institutional fault** at the expense of personal fault, thereby **holding the public healthcare facility liable** even when a **professional or criminal fault** committed by its employees has been established. For instance, in one decision, the Council of State observed:

“It emerges from the case file that the dispute concerns a compensation claim based on institutional fault, which led to the mother’s neglect upon her admission to Azaba Hospital... Ultimately, the three midwives working in the maternity ward were prosecuted for failing to assist a person in danger and were criminally convicted... Under these circumstances, the public healthcare facility bears liability for the detrimental conduct of its employed midwives and the resulting harm...¹¹”

In another decision, the Council of State found the **public healthcare facility** liable even though the **medical error** committed by its staff had been conclusively proven, stating:

“Given these circumstances, medical liability is firmly established against the appellant healthcare institution, since the medical error committed by its healthcare personnel has been proven with respect to the incident that occurred on March 6, 2016¹².”

Along the same lines, the Council of State has held that **any damages caused by employees of a public healthcare facility** must be borne by the facility itself, given that **these faults—albeit personal in nature—occurred during the performance of public service duties**. One ruling reads:

“(B.B.) and (B.M.), both serving as midwives at the Hakim Ogbi Public Healthcare Facility, were responsible for delivering (K.F.), and this took place while they were carrying out their duties at the institution in question. Consequently, the compensation awarded to (K.F.) and her husband in the contested judgment is incumbent on the public healthcare facility¹³.”

- **The Administrative Judiciary’s Approach to the Intersection of Criminal, Personal, and Institutional Fault in Medical Liability**

Historically, personal fault and criminal liability were closely intertwined in judicial reasoning. However, this approach shifted following the landmark ruling of the French Tribunal of Conflicts in the Thepaze case on January 14, 1935, which established that a criminal offense committed by a public employee in the course of duty does not necessarily constitute personal fault.

An analysis of Algerian administrative jurisprudence in this domain reveals that the administrative judiciary has entirely dismissed the notion that criminal fault equates to personal fault. Courts have consistently ruled that a criminal conviction—or acquittal—of a public healthcare employee does not negate the liability of the public institution. Several Council of State rulings illustrate this principle.

For instance, in one decision, the Council of State upheld the administrative liability of a public healthcare facility, despite the criminal conviction of its employees, stating:

“The case file confirms that the three respondents—a physician and two midwives at Houari Boumediene Hospital in Souk Ahras—were convicted of involuntary manslaughter and failure to assist a person in danger following the death of the newborn delivered by the appellant. Their liability for the infant’s death arose from deficiencies in the performance of this public healthcare service... The harm suffered by the appellants is inseparable from the public healthcare facility’s operations, which renders the institution liable for the compensation sought¹⁴.”

Conversely, the Council of State has also ruled that an acquittal in criminal proceedings does not preclude administrative liability, provided that the causal link between the wrongful act and the harm suffered is established. In another ruling, the court held:

“The hospital has appealed this decision, contesting liability on the basis that no personal fault was established, arguing that the nurse who administered the vaccine to the minor was acquitted in the criminal court. Consequently, the absence of criminal fault negates administrative liability. However, given that the causal link between the vaccine and the harm suffered by the minor has been firmly established, the Council of State upholds the lower court’s ruling.”

In yet another case, the Council of State explicitly dissociated criminal liability from institutional fault, ruling that a public healthcare facility remains liable for risks inherent in its service, even in the absence of criminal fault:

“The absence of criminal liability on the part of the nurses does not exempt the public healthcare facility from assuming responsibility for the inherent risks associated with public service operations.¹⁵”

Furthermore, in another decision, the Council of State disregarded a judicial expert report ordered by an investigating magistrate, which had failed to establish medical fault, and instead commissioned a new technical assessment to determine the administrative liability of the public healthcare facility. The ruling stated:

"When the case was presented before the administrative court, the lower court dismissed the plaintiff's claim for lack of legal basis, relying on an expert report commissioned by the investigating magistrate, which found no medical fault. However, the lower court's reliance on a judicial expert opinion issued within a criminal investigation is legally insufficient, as such an inquiry is intended solely to determine criminal liability. The present case, however, seeks to establish whether the harm suffered by the appellant falls within the scope of the hospital's administrative liability¹⁶."

From the foregoing, we conclude that the administrative judge assesses the administrative liability of the public healthcare facility by distinguishing between personal fault and institutional fault. On multiple occasions, the administrative judge has affirmed that administrative fault is independent of criminal fault, declining to follow the legal characterization adopted by the criminal judge in criminal matters. Nor does such a characterization prevent the administrative judge from determining whether, stripped of its criminal nature, the act in question constitutes a breach of professional duties—thus enabling the imposition of administrative liability on these facilities on the basis of institutional fault, regardless of the existence or absence of criminal fault.

2- Judicial Applications of Fault Severity in Establishing Administrative Liability

Assessing institutional fault in public healthcare facilities—whether arising from medical, therapeutic, or organizational acts—requires evaluating the degree of fault severity. Errors vary in gravity; some are minor and inconsequential, while others are severe and consequential. The extent of administrative liability hinges on this distinction, with liability either established or dismissed based on the seriousness of the fault committed.

- **Assessing Fault Severity in the Administrative Liability of Public Healthcare Facilities**

The classification of public healthcare services—whether medical, therapeutic, or administrative—has led to a corresponding distinction in the gravity of errors that may arise from these functions

- a. **Minor Fault and Institutional Liability in Organizational, Managerial, and Therapeutic Functions**

Unlike medical procedures, therapeutic and administrative tasks require less technical expertise and primarily involve routine operations essential to service continuity. Given this, the Council of State has consistently held public healthcare facilities liable for organizational, managerial, and therapeutic faults—even in cases of minor negligence. Judicial precedents illustrate this principle:

- **Failure to maintain hospital equipment:**

In one ruling, the Council of State found: "Institutional fault is established as the hospital's negligence resulted in a fatality. The preliminary investigation, based on site inspections and witness statements, confirmed that the hospital's elevators suffered recurrent malfunctions. The failure to conduct regular maintenance or suspend their use, when necessary, constitutes a clear dereliction of duty."¹⁷

- **Failure to ensure patient safety:**

In another case, the Council of State ruled: "The fact that the deceased was found dead outside the hospital, while his family believed he was under medical supervision, reflects a serious mismanagement of public service and a failure to uphold patient care obligations."¹⁸

- **Failure to provide adequate surgical conditions:**

The Council of State held: "The lower court correctly established liability, noting that the physician performed the surgery without assistance, leading to ureteral injuries. The healthcare institution failed to ensure proper surgical conditions, thereby increasing the likelihood of medical error."¹⁹

- **Failure to uphold hygiene standards:**

Another Council of State decision stated: "The patient suffered from severe vision impairment. While compensation was granted, it was insufficient given the deterioration caused by unsanitary medical equipment and hospital conditions, which directly contributed to the worsening of his condition."²⁰

- **Gross Fault as a Prerequisite for Medical Liability**

Fault in medical practice arises when a physician fails to perform the professional duties required by medical science and ethical standards, inherently linked to the technical demands of the profession²¹. In public healthcare facilities, administrative liability for medical fault is predicated on the demonstration of gross fault. This standard is imposed due to the intrinsic difficulty and precision of medical work, the fact that a physician's duty is typically one of exercising due care rather than guaranteeing a specific outcome, and the urgency inherent in medical emergencies that may lead to severe errors.

Gross fault may manifest in various ways, such as misdiagnosis, improper treatment selection, failure to adequately inform the patient, or errors in the execution of treatment. The Council of State has, on several occasions, applied the gross fault standard—even when not expressly articulated—because the severity of the harm justifies a higher threshold for establishing liability. For example: In one ruling, the court describes the fault as a severe medical error. It stated:

"It is established that the surgeon responsible for operating on Ms. (A. L.) erroneously ligated the femoral artery instead of the appropriate vein. This clear and severe medical error suffices to establish the hospital's liability."²²

Another decision observed, reaffirming that a physician's obligation is one of due diligence, not guaranteed results: "Although the appellant had pre-existing visual impairment, the additional 70% disability was not entirely attributable to the postoperative infection. A physician is obligated to exercise due care and provide appropriate treatment while anticipating complications, but is not required to guarantee a specific outcome, such as the full restoration of vision."²³ In a further case, the court held that inadvertently leaving surgical dressings inside the patient, which led to infection, constituted a clear medical error: "The causal link between the harm suffered and the error committed during the cesarean section is evident. The appellant's request for an expert opinion on whether a medical error occurred is unwarranted, given that the expert report confirmed the excision of approximately 14 cm of colon due to infection caused by surgical dressings left inside the patient."²⁴ Lastly, the court explicitly used the term "Gross Fault" stating:

"It is established that the surgeon who operated on Ms. (A. L.) mistakenly ligated the femoral artery instead of the appropriate vein. This constitutes a gross medical fault, thereby establishing the hospital's liability."²⁵

3. Presumed Fault as a Flexible Standard for Public Healthcare Liability

The doctrine of administrative liability within public healthcare institutions, particularly concerning medical actions, has traditionally been predicated on the principle of gross fault due to the inherent challenges these entities face in fulfilling their duties. Initially, liability would only be attributed if an error reached a significant level of severity. However, this principle has evolved with the advancement of medical diseases and treatments, which may inflict significant harm without clear attribution of fault. This evolution has led to the adoption of minor faults and, more expansively, presumed faults as bases for liability.

a. Minor Fault as a Basis for Administrative Liability in Medical Acts

Proving medical negligence, especially when severe, is a daunting task for victims. To mitigate this burden, French administrative jurisprudence has shifted towards recognizing minor faults as sufficient for liability. This shift was notably marked by a Council of State decision dated April 10, 1992, which embraced this more lenient standard²⁶.

b. Presumed Fault as a Flexible Standard for Medical Liability

Later developments in French jurisprudence expanded the use of presumed fault as a flexible standard for attributing administrative liability for medical faults. This approach is justified by the complex and often opaque nature of contemporary medical procedures that could harm patients without a traceable error. In such scenarios, where the cause of damage remains indeterminate, it becomes nearly impossible for the patient to prove fault. Thus, a liability system based on presumed fault serves as an intermediary between traditional fault-based liability and strict

liability²⁷. The presumed fault approach applies when harm results from actions that are inherently difficult to prove—particularly in cases of hospital-acquired infections. Its application requires:

- Demonstrating a causal connection between the patient's treatment within the facility and the harm suffered.
- Establishing the impracticality of pinpointing the precise error leading to harm.
- Confirming that the harm was severe and unforeseeable.

This approach is especially applicable in instances of liver fibrosis, bacterial infections, and complications from medical treatments.

B) The Shift Toward Strict Administrative Liability in Public Healthcare Facilities:

Traditionally, the liability of public healthcare facilities hinges on establishing fault, damage, and causation. However, the unique operational nature of these institutions sometimes results in harm to beneficiaries through no fault of their own. Instead, damages might arise from lawful acts integral to the institution's functions. To ensure that victims are not unfairly denied compensation, a no-fault liability regime has been instituted. Under this system, liability does not require the establishment of fault but rather focuses on the occurrence of a harmful act, the resultant damage, and the causal link between them.

1- Foundations of No-Fault Administrative Liability in Public Healthcare Facilities

The no-fault administrative liability of public healthcare facilities is predicated on the occurrence of harm without any proven or presumed fault on the part of the institution responsible for the act that caused the damage. French jurisprudence established this legal framework to safeguard patients' rights and ensure equitable access to compensation, irrespective of the context in which medical care is administered²⁸.

The French Council of State formally recognized this principle in the landmark Gomez case²⁹, which was later reinforced by the Bianchi ruling. These decisions affirmed that public healthcare facilities can be held liable without fault³⁰.

Since these rulings, no-fault liability has evolved into a cornerstone of administrative law, expanding its scope to encompass various situations where patients suffer harm in the absence of an identifiable fault. This legal evolution has been driven by the need to balance institutional accountability with the inherent risks of medical treatment. Several theoretical justifications have emerged to support the continued expansion of this liability framework, each offering a distinct rationale for ensuring fair compensation for individuals harmed by medical procedures.

- **Exceptional Therapeutic Risk**

This principle is closely linked to risk-based liability, which is often considered synonymous with no-fault administrative liability in medical law. It acknowledges that certain medical procedures inherently involve unpredictable risks, even when performed in strict compliance with professional standards. As a result, public healthcare facilities bear responsibility for adverse medical outcomes stemming from unforeseeable complications, recognizing that the very nature of medical practice carries inherent uncertainties.

- **The Guarantee Principle**

This rationale is founded on the state's obligation to protect individuals from harm, regardless of the precise cause of injury. Under this framework, public institutions are required to compensate individuals for damages incurred due to their operations, irrespective of fault.

- **Equality in Bearing Public Burdens**

The principle of equal distribution of public burdens serves as a broad legal foundation for no-fault liability across all public services, including healthcare facilities. This doctrine asserts that citizens should only contribute to public expenses within the limits set by law and should not be disproportionately burdened by the operational costs of public services.

Expanding no-fault liability in healthcare administration has increasingly relied on this principle, particularly in disputes where no fault can be attributed to the facility, yet the harm suffered by patients assumes the nature of a public burden³¹.

- **The State as the Insurer**

This theory conceptualizes the state as an insurer, responsible for compensating individuals harmed by the legitimate activities of public institutions. Similar to an insurance provider, the state collects financial contributions from citizens through taxation and, in return, is expected to bear the financial consequences of harm resulting from essential public services.

Given that the primary function of the state is to meet the fundamental needs of its citizens, it follows that when public services inadvertently cause harm, the financial burden should be absorbed by the state, irrespective of fault³².

2- The Administrative Judge's Approach to No-Fault Liability in Public Healthcare

No-fault administrative liability in public healthcare facilities is precautionary in nature and subject to strict conditions. Nevertheless, it remains an exceptional flexible recourse that facilitates compensation for individuals harmed by lawful medical acts performed within public healthcare facilities.

- **Precautionary Nature of No-Fault Administrative Liability**

Under general principles of legal proof, the burden of evidence falls on the claimant. However, this standard becomes problematic in public healthcare liability cases, particularly in medical procedures involving inherent risks and specialized expertise. Recognizing these complexities, French administrative courts have progressively eased the evidentiary burden in medical liability disputes.

Initially, courts moved away from requiring gross fault as a prerequisite for liability, instead considering minor faults as sufficient grounds in some cases. Over time, they introduced presumed fault, shifting the evidentiary burden from the patient to the institution. This evolution ultimately led to the establishment of no-fault liability, a framework in which public healthcare institutions can be held accountable even in the absence of fault.

While both fault-based and no-fault liability hinge on the existence of damage, administrative judges impose stricter conditions for establishing harm in no-fault cases. For liability to be recognized, the damage must be specific, affecting a clearly identifiable individual or group. It must also be exceptionally severe, exceeding the ordinary risks associated with medical treatment. Additionally, the injury must not be linked to the patient's pre-existing medical condition or its foreseeable progression.

French jurisprudence has extended no-fault liability to several high-risk medical scenarios. One of the key applications is in cases involving the supervision of psychiatric patients. Similarly, courts have recognized no-fault liability in instances of compulsory vaccinations. Another significant area of application includes hospital-acquired infections. Moreover, procedures involving medical implants or removals have also been subject to no-fault liability³³.

- **The Flexibility and Judicial Caution in No-Fault Administrative Liability for Public Healthcare**

The no-fault administrative liability framework for public healthcare facilities introduces a flexible mechanism for compensating individuals harmed by lawful medical activities. Requiring proof of fault to grant compensation, even when a causal link is evident between the harm suffered and the facility's activities, would place an unjust burden on affected individuals. Although the facility itself may not have engaged in wrongful conduct, the harm would not have occurred but for its operations, even when carried out in accordance with legal and professional standards.

Imposing the burden of proof on the injured party in such cases risks effectively denying their right to compensation. Consequently, administrative courts play an active role in striking a balance between institutional immunity and victims' rights. This explains why, in most cases concerning administrative liability in public healthcare, the Council of State mandates expert evaluations, acknowledging the inherent difficulty plaintiffs face in proving fault—or even establishing that a medical act caused their injury. Notably, the court has disregarded forensic reports from parallel criminal proceedings, opting instead for independent assessments specifically aimed at determining administrative liability.

Despite the judiciary's general reliance on fault-based liability, notable rulings have affirmed the application of no-fault liability in particular cases. In one decision, the Council of State concluded:

"Although the expert report did not definitively establish that the injury resulted from medical fault, the available evidence indicates that the infection affecting the respondent's right leg stemmed from treatment provided by the public healthcare facility. As such, the facility bears liability for compensation under the no-fault liability framework applicable to public service institutions.³⁴" The ruling further emphasized that the severity of the harm suffered by the claimant was a fundamental criterion for no-fault liability:

"...The expert assessment determined that the claimant sustained a 60% disability, along with significant moral and overall damages."

Similarly, in another case, the Council of State upheld no-fault liability, ruling that the absence of a demonstrable professional fault does not exonerate the public healthcare institution from responsibility:

"Where no specific professional fault can be established, but the injury results from medical complications, the public healthcare institution remains liable for compensation. This liability is not derived from professional negligence but rather from complications inherent to the procedure itself, as is the case in the present dispute.³⁵"

Furthermore, the Council of State has recognized the principle of social solidarity as a basis for no-fault administrative liability. One ruling held:

"The Council of State finds that, although medical staff acted appropriately during the delivery of patient (B.W.), unforeseen complications led to severe hemorrhaging, necessitating a hysterectomy.

While no medical error fault was evident in the procedure, the unexpected consequences constitute unforeseen medical complications, warranting fair compensation in accordance with the principle of social solidarity, which must be assumed by the healthcare administration.³⁶"

Conclusion:

The administrative liability of public healthcare facilities has undergone significant legal evolution, reflecting the need to balance individual rights to redress with the imperatives of public service continuity. Over time, this framework has extended beyond fault-based liability for medical errors to encompass broader administrative and operational responsibilities, acknowledging the intricate nature of healthcare delivery and its associated risks. Moreover, administrative liability has progressively shifted from a strict fault-based system to include presumed fault and no-fault liability, particularly in cases where harm results from inherent medical risks rather than identifiable negligence.

In response to the central question of this study—regarding the legal foundations of administrative liability for public healthcare institutions—it is clear that the current framework rests on a combination of legislative provisions and judicial doctrines. These sources jointly recognize fault-based, presumed fault, and strict liability principles, reflecting a more inclusive and human-centered approach that adapts to the complexity of medical services and the vulnerability of patients.

This legal development embodies a principle of fairness, ensuring that individuals who suffer harm due to public healthcare facility operations—whether through proven medical fault, inferred negligence, or even in the absence of fault—are entitled to adequate compensation. By shifting towards a more equitable system, administrative courts have alleviated the evidentiary burden on claimants, particularly in cases when harm results from unavoidable medical risks or unforeseeable complications. This approach reflects an awareness that certain medical procedures inherently carry exceptional risks, which should not be borne exclusively by the patient.

Ultimately, the liability framework for public health facilities remains a cornerstone of legal protection, striking a delicate balance between public interest obligations and individual rights to

redress. In light of emerging challenges within the healthcare sector, several recommendations may be proposed:

- Codifying evolving judicial principles into comprehensive legislative instruments to ensure greater clarity and predictability in administrative liability cases.
- Establishing specialized compensation funds for no-fault medical harm to ease the burden on both claimants and healthcare institutions.
- Promoting continued training for legal and healthcare professionals on the intersection of medical risk and administrative responsibility.
- Encouraging jurisprudential consistency through enhanced publication and dissemination of administrative court decisions related to healthcare liability.

In doing so, the legal system fulfills its broader objective of upholding human dignity by guaranteeing that those harmed by public health facility services receive fair and equitable compensation without undue procedural burdens, while preserving the continuity and integrity of the public healthcare mission.

¹ Article 6 of Law No. 18-11 dated July 2, 2018, on Health, published in the Official Journal No. 76.

² Abdel Fattah Bayoumi Hegazy, *Medical Liability Between Jurisprudence and the Judiciary*, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 1st edition, 2008, p. 18.

³ Article 9 and Article 16 of Executive Decree No. 92-276, dated 5 Muharram 1413 / 6 July 1992, establishing the Code of Medical Ethics, published in *Official Journal No. 52*.

⁴ Article 19 of Executive Decree No. 09-394, dated 7 Dhu al-Hijjah 1430 / 24 November 2009, establishing the Special Status of Public Health Specialist Practitioners, published in *Official Journal No. 70*.

⁵ Articles 22 and 23 of Executive Decree No. 11-121, dated 15 Rabi' al-Thani 1432 / 20 March 2011, establishing the Special Status of Para-Medical Personnel in the Public Health Sector, published in *Official Journal No. 17*.

⁶ Articles 3, 13, 16, 18, 21, 23, 24, 25, and 26 of the Health Law.

⁷ TC 25 mars 1957, Chilloux et Isaad Slimane, concl Chardeau, M. Long/ P. Weil/ G. Braibant/ P. Delvolle/ B. Genevois, les grands arrêts de la jurisprudence administrative, 17^{ème} édition 2009, Dalloz, France, p. 12.

⁸ Judges of the Third Chamber of the Council of State, *Medical Liability of Healthcare Institutions*, Issue No. 13, 2015, p. 22.

⁹ Ordinance No. 06-03 of 19 Jumada al-Thani 1427 (15 July 2006), establishing the General Statute of the Civil Service, *Official Journal No. 46*.

¹⁰ Ben Saleh Mohamed El-Hadj Aissa, *The Presumption of Fault in Medical Administrative Liability*, *Journal of Law and Humanities*, Vol. 11, No. 1, p. 151.

¹¹ Council of State Decision No. 063344, dated 28 April 2011, in the case of the Skikda Public Healthcare Facility and Others v. (H.R.) and Others, published in the Council of State Journal, Issue No. 12, pp. 196–199.

¹² Council of State Decision No. 172791, dated 18 November 2021, in the case of the Algerian Insurance and Reinsurance Company v. (H.F.) and the Maternity, Gynecology, and Pediatric Public Healthcare Facility of Biskra, represented by its Director (unpublished decision).

¹³ Council of State Decision No. 211619, dated 21 April 2022, in the case of the International Insurance and Reinsurance Company (CIAR) v. (K.F.) and Others (unpublished decision).

¹⁴ Council of State Decision (Unpublished), 16 January 2004, *Case of (B. R. and Others) v. Houari Boumediene Health Sector*, cited in Lahcen Cheikh Ath Melouia, *Lessons in Administrative Liability*, Vol. 1, Dar Al-Khaldounia, 2007, pp. 169–171.

¹⁵ Council of State Decision (Unpublished), 3 June 2003, *Case of Ain Oulmene Health Sector v. Heirs of the Late (Ch. M.)*, cited in Lahcen Cheikh Ath Melouia, *Op. Cit.*, p. 186.

¹⁶ Council of State Decision (Unpublished), 17 June 2021, *Case of (K. S.) v. National Security Hospital Facility*, Decision No. 169941.

¹⁷ Council of State Decision (Unpublished), 18 February 2021, *Case of University Hospital of 1 November 1954 (Oran) v. Heirs of the Late (B. A.)*, Decision No. 161400.

¹⁸ Council of State Decision (Published), 20 February 2014, *Case of Heirs of (Z. N.) v. Mohamed Boudiaf Public Hospital*, Decision No. 088725, *Council of State Journal*, No. 17, 2019, pp. 125–129.

¹⁹ Council of State Decision (Published), 15 June 2017, *Case of Ain Taya Public Hospital v. (B. F.)*, Decision No. 117209, *Council of State Journal*, No. 15, 2017, pp. 102–105.

²⁰ Council of State Decision (Unpublished), 23 May 2013, *Case of (W. N. A.) v. Ben Aknoun University Hospital*, Decision No. 081733.

²¹ Raïs Hamidou, *Civil Liability of Physicians Under Algerian Law*, Dar Houma for Publishing and Distribution, Algeria, 2007, p. 149.

²² Council of State Decision No. 4166, dated 03/06/2003, in the case of Director (Q. S.) of Bologhine v. (A. L.) and Others, *Council of State Journal*, Issue 4, Year 2003, p. 99.

²³ Council of State Decision No. 93535, dated 18/09/2014, in the case of (A. Z.) v. Ben Aknoun University Hospital, *Unpublished Decision*.

²⁴ Council of State Decision No. 093536, dated 18/09/2014, in the case of Khaldi Abdelaziz Specialized Maternity and Pediatric Hospital v. (B. F.), *Published in Council of State Journal*, Issue 17, Year 2019, pp. 129–132.

²⁵ Council of State Decision No. 4166, dated 03/06/2003, in the case of Director (Q. S.) of Bologhine v. (A. L.), *Council of State Journal*, 2003, Issue 4, p. 99.

²⁶ CE Ass.10 avr 1992, EPOUX V ;Rec.171,conc.Legal ,les grands arrêts de la jurisprudence administrative, op cit, p684-692.

²⁷ Oussaïd Imane, *Administrative Liability of Public Health Facilities*, Doctoral Dissertation, University of Algiers 1, Faculty of Law, 2018-2019, p. 167.

²⁸ Mohamed Hassan Kassem, *Proving Fault in the Medical Field*, New University Publishing, Egypt, 2016 edition, p. 118.

²⁹ A ruling issued by the Administrative Court of Appeal of Lyon on 21/12/1990 involved the case of a 15-year-old patient, Serge, who underwent spinal correction surgery at a specialized hospital in 1983. The procedure employed innovative treatment methods that resulted in severe complications, ultimately causing paralysis in his lower limbs. Following an appeal against the administrative court's decision, the Administrative Court of Appeal of Lyon ruled in favor of the victim's family, establishing the liability of the public health facility and affirming the patient's right to compensation. The ruling stated that the use of new treatment methods poses inherent risks to patients when their outcomes remain uncertain. It further held that applying such methods without a vital necessity renders the healthcare facility liable for extraordinary and severe complications suffered by the patient, even in the absence of demonstrable fault.

³⁰ In another case, Bianchi underwent a routine spinal artery imaging procedure involving radiological contrast injections, which resulted in paralysis. The court-appointed experts confirmed that the incident was not due to any fault, but rather stemmed from the instruments used or the medications administered for the procedure. The Council of State upheld the hospital's liability, ruling that when a medical procedure necessary for diagnosis or treatment carries a known but exceptionally rare risk, the public health facility is liable if the procedure directly causes harm that is unrelated to the patient's pre-existing condition or its foreseeable progression and reaches an extraordinary level of severity.

³¹ Amal Bekouch, *Objective Liability for Medical Consequences*, New University Publishing, Algeria, 2017 edition, p. 211.

³² Slimane Haj Azzam, *Administrative Liability of Public Hospitals*, Doctoral Dissertation, Mohamed Khider University of Biskra, Faculty of Law, 2010/2011, p. 105.

³³ Regarding damages resulting from the monitoring of psychiatric patients, liability arises from therapeutic leave policies in psychiatric facilities, where patients undergoing institutional care are permitted to leave for supervised outings or rehabilitation trials to assess recovery progress. While these practices aim to benefit the patient, they carry inherent risks, as the patient may pose a danger to themselves or others. Consequently, public health facilities may be held liable under the no-fault liability framework, even in the absence of fault.

As for damages arising from compulsory vaccinations, French administrative courts have applied the no-fault liability doctrine to compensate individuals for harm caused by mandatory vaccines, whereas liability for voluntary vaccinations remains fault-based. It should be noted that Algerian administrative courts have not yet addressed such cases, as available judicial decisions suggest. Meanwhile, the Algerian legislature has mandated compulsory vaccinations under Article 40 of the Health Law but has not specified the applicable liability regime for risks associated with vaccinations.

Concerning hospital-acquired infections, liability extends to any illnesses caused by bacterial or microbial contamination during a patient's stay at a public health facility, whether the symptoms manifest during hospitalization or after discharge.

Finally, injuries resulting from blood transfusion procedures have led French administrative courts to recognize no-fault liability for infections transmitted through transfused blood, including HIV/AIDS and viral hepatitis C and A. The French legislature has formally codified this position, establishing a no-fault liability regime for damages caused by blood transfusions. Conversely, the Algerian legislature has regulated the conditions surrounding blood transfusion, storage, and distribution but has not explicitly addressed the liability regime applicable to risks associated with transfusion procedures.

³⁴ Decision issued by the Council of State under No. 113702, dated 22/12/2016, in the case of the Public Health Facility of Slimane Amirat in Touggourt, represented by its director, against (M.B.), unpublished decision.

³⁵ Decision issued by the Council of State under No. 174966, dated 23/12/2021, in the case of the Public Health Facility Mohamed Boudiaf, represented by its director, against (M.M.), unpublished decision.

³⁶ Decision issued by the Council of State under No. 186690, dated 17/03/2022, in the case of the Public Health Facility of N'Gaous, represented by its director, against (B.W.), unpublished decision.

References:

A- Constitutions

- Constitution of Algeria (1996), as amended and supplemented.

B- Laws

- Law No. 18-11 of July 2, 2018, on Public Health, Official journal No. 76.

C- Ordinances

- Ordinance No. 06-03 of July 15, 2006, establishing the General Statute of the Civil Service, Official journal No. 46.

D- Executive Decrees

- Executive Decree No. 92-276 of Muharram 5, 1413 (July 6, 1992), containing the Code of Medical Ethics, Official journal No. 52.
- Executive Decree No. 09-394 of Dhu al-Hijjah 7, 1430 (November 24, 2009), establishing the special status of specialized medical practitioners in public health, Official journal No. 70.
- Executive Decree No. 11-121 of Rabi' al-Thani 15, 1432 (March 20, 2011), establishing the special status of paramedical professionals in public health, Official journal No. 17.
-

E- Published Judicial Decisions

- *Council of State Journal*, Issue No. 4.
- *Council of State Journal*, Issue No. 12.
- *Council of State Journal*, Issue No. 15.
- *Council of State Journal*, Issue No. 17.
- *Les grands arrêts de la jurisprudence administrative*, 17th edition, 2009, Dalloz, France.

F- Books

- Amal Bekouch, *Objective Liability for Medical Consequences*, New University Publishing, Algeria, 2017 edition, p. 211.
- Raïs Hamidou, *Civil Liability of Physicians under Algerian Law*, Houma Publishing and Distribution, Algeria, 2007.
- Abdel Fattah Bayoumi Hegazy, *Medical Liability Between Jurisprudence and the Judiciary*, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 1st edition, 2008.
- Lahcen Cheikh Ath Melouia, *Lessons in Administrative Liability, Volume I*, Khaldounia Publishing, 2007.
- Mohamed Hassan Kassem, *Proof of Fault in the Medical Field*, New University Publishing House, Egypt, 2016.

B- Journal Articles

- *Medical Liability of Public Health Facilities*, study conducted by the Third Chamber Judges of the Council of State, *Council of State Journal*, Issue No. 13, 2015.
- Ben Saleh Mohamed El-Hadj Issa, *Presumption of Fault in the Field of Administrative Medical Liability*, *Journal of Law and Humanities*, Vol. 11, Issue No. 1.

C- Doctoral Theses

- Oussaïd Imane, *Administrative Liability of Public Health Facilities*, Doctoral Dissertation, University of Algiers 1, Faculty of Law, 2018-2019.
- Slimane Haj Azzam, *Administrative Liability of Public Hospitals*, Doctoral Dissertation, Mohamed Khider University of Biskra, Faculty of Law, 2010/2011.