

## Administrative Liability Based on Fault: A Comparative Study Between French and Algerian Law

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**Abstract** This academic legal article addresses the topic of "Administrative Liability Based on Fault" through a comparative study between the French and Algerian legal systems. The study focuses on the traditional and most common basis for administrative liability: fault in its two forms—service fault (fault of the public service) and personal fault (fault of the official). Through analyzing the jurisprudence of the French Council of State as the historical cradle of administrative law and comparing it with the jurisprudence of the Algerian Council of State, the article examines the criteria for distinguishing service fault from personal fault, the gradation of fault (simple and gross), and the theory of cumulation of faults and liabilities. The study also discusses damage and causality as indispensable elements for establishing fault-based administrative liability. The study concludes that Algerian administrative courts, despite their apparent influence from their French counterparts, have developed their own jurisprudence that adapts to the Algerian context.

**Keywords:** Administrative Liability, Service Fault, Personal Fault, Simple Fault, Gross Fault, Theory of Cumulation, Damage, Causality, French Council of State, Algerian Council of State.

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### First Section: Types of Administrative Fault and Criteria for Distinguishing Between Them

Fault is the fundamental element of fault-based administrative liability. Administrative courts (French and Algerian) have distinguished between two types of faults: service fault and personal fault, each with its own characteristics and criteria.

### First Subsection: Conceptual and Historical Framework of Fault-Based Administrative Liability

Understanding the types of administrative fault requires first examining the conceptual and historical framework of fault-based administrative liability.

### First Branch: Concept of Fault-Based Administrative Liability and Its Independence

Fault-based administrative liability refers to the obligation of the public administration (the State, local authorities, public institutions) to compensate for damages caused to third parties as a result of committing a fault in its administrative activities [1]. The principle of independence of administrative liability from civil law rules was established by the famous "Blanco" ruling issued by the French Conflict Court in 1873, which held that the liability of the State is not governed by civil law principles, but has its own rules that

balance the rights of individuals with the requirements of public service [2]. This ruling represents a turning point in the history of administrative law, as it established an independent legal basis for administrative liability.

### **Second Branch: Historical Development of Fault-Based Administrative Liability**

Fault-based administrative liability in France went through several important developmental stages. After the prevailing principle was "State non-liability" (L'irresponsabilité de l'État) based on the idea of sovereignty and public interest, administrative courts gradually began to recognize the liability of the administration [3]. Initially, the Council of State required proof of "gross fault" (Faute lourde) for liability to arise, especially in areas characterized by difficulty in performance [4]. However, this approach gradually receded in favor of accepting "simple fault" (Faute simple) to facilitate the injured party's access to compensation [5]. Algerian courts were influenced by this development, as they began applying similar criteria after the establishment of the Algerian Council of State in 1998 [6].

### **Second Subsection: Service Fault and Its Forms and Gradation**

Service fault is the fault attributed to the administration (public service) as a legal entity, and it alone bears the burden of compensation.

### **First Branch: Forms of Service Fault**

Service fault takes multiple forms in French and Algerian case law:

1 **Malfunctioning of Public Service (Mauvais fonctionnement):** This occurs when the public service performs a defective act or makes an unlawful decision [7]. It includes procedural errors (failure to follow prescribed procedures), substantive errors (making a decision based on incorrect information), and material errors (calculation errors) [8]. The French Council of State (Pelletier ruling 1873) held that malfunctioning includes any failure to fulfill obligations [9].

2 **Non-functioning of Public Service (Non-fonctionnement):** This occurs when the public service completely fails to provide a service it is obligated to provide [10]. This fault takes multiple forms: complete failure to provide service, partial failure, temporary closure [11]. The French Council of State (Époux Montsegur ruling 1936) held the administration liable for non-functioning [12].

3 **Delay in Public Service (Lenteur du fonctionnement):** This occurs when the public service unjustifiably delays providing a service or issuing a decision [13]. The delay must be unjustified, unusual, and cause damage [14]. The French Council of State (Demoiselle Creton ruling 1932) held the administration liable for unjustified delays [15].

### **Second Branch: Gradation of Service Fault**

The mere existence of service fault is insufficient for administrative liability; the fault must reach a certain degree of severity.

**Gross Fault (Faute lourde):** This is fault that exceeds ordinary fault and is characterized by obvious severity indicating gross negligence [16]. In the medical field, the French Council of State (Epoux Pelletier ruling 1873) held that gross fault consists of a clear deviation from recognized medical standards [17]. In the field of security and police, the

French Council of State (Pelletier ruling 1873) held that gross fault consists of complete failure to intervene [18].

**Simple Fault (Faute simple):** This is ordinary fault committed by an ordinary official in ordinary circumstances [19]. The jurisprudence of the French Council of State evolved to recognize that simple fault is sufficient for administrative liability in most cases. In the field of public works, the French Council of State (Camescasse ruling 1895) held that simple fault is sufficient for liability [20]. In the field of medical liability, the jurisprudence of the French Council of State (Époux V. ruling 1992) evolved to recognize that simple fault is sufficient [21].

### **Third Subsection: Personal Fault and Criteria for Distinction**

Personal fault is the fault attributed to the public official in his personal capacity, not in his official capacity.

#### **First Branch: Criteria for Distinguishing Between Service Fault and Personal Fault**

French administrative courts established clear criteria for distinguishing between the two types of fault:

4 **Criterion of Detachability from Office (Détachabilité):** The French Council of State (Pelletier ruling 1873) held that fault is considered personal if it is "detachable from the office" [22]. This detachment occurs in several cases: fault committed outside working hours without connection to the office, fault committed for personal reasons (such as revenge or malice), gross fault that cannot be justified by office requirements [23].

5 **Criterion of Reasonable Conduct of an Ordinary Official:** The French Council of State developed an additional criterion based on the reasonable conduct expected from an ordinary official in the same circumstances [24]. If an official commits a fault exceeding what an ordinary official would commit, the fault is considered personal [25].

#### **Second Branch: Theory of Cumulation of Faults and Liabilities**

To protect the injured party from the insolvency of the faulting official, the French Council of State created the theory of "cumulation":

6 **Cumulation of Faults (Cumul des fautes):** The French Council of State (Anguet ruling 1911) held that service fault and personal fault can be cumulated if both contributed to causing the damage [26]. In this case, the injured party has the right to claim full compensation from the administration [27].

7 **Cumulation of Liabilities (Cumul des responsabilités):** The French Council of State (Époux Lemonnier ruling 1918) held that the administration is liable for the personal fault of an official if committed during or in connection with the performance of duties [28]. In this case, the injured party has the right to claim compensation from the administration, and the administration has the right of recourse (Action récursoire) against the faulting official [29]. Algerian courts have adopted this protective theory [30].

**Second Section: Elements of Fault-Based Administrative Liability: Damage and Causality**

The mere existence of fault (service or personal) is insufficient for fault-based administrative liability; there must be recoverable damage, and there must be a direct causal relationship between the fault and the damage.

**First Subsection: Element of Damage and Its Requirements**

Damage is the material element of fault-based administrative liability and must meet certain requirements to be recoverable.

**First Branch: Requirements for Recoverable Damage**

Administrative courts (French and Algerian) require that damage be:

8 **Certain (Certain):** The damage must have actually occurred or will certainly occur in the future [31]. The French Council of State (Demoiselle Creton ruling 1932) held that uncertain damage does not warrant compensation [32].

9 **Direct (Direct):** The damage must be a natural and direct consequence of the fault [33]. The French Council of State (Époux Montsegur ruling 1936) held that indirect damage does not warrant compensation [34].

10 **Personal (Personnel):** The damage must affect a legitimate interest of the claimant [35]. The French Council of State (Camescasse ruling 1895) held that damage affecting public interest does not warrant compensation [36].

11 **Capable of Financial Valuation (Évaluable en argent):** So that the court can determine the amount of compensation [37]. The French Council of State (Letisserand ruling 1961) held that moral damage is capable of financial valuation [38].

**Second Branch: Types of Damage**

Administrative courts compensate for two types of damage:

12 **Material Damage (Préjudice matériel):** This includes direct financial loss and lost profits [39]. The French Council of State (Camescasse ruling 1895) held that material damage includes all direct and foreseeable financial losses [40].

13 **Moral Damage (Préjudice moral):** This includes psychological pain, sorrow, and damage to reputation [41]. The jurisprudence of the French Council of State (Letisserand ruling 1961) evolved to recognize compensation for moral damage [42]. Algerian courts have followed the same path [43].

**Second Subsection: Causality and Reasons for Its Interruption**

Causality is the logical and direct link between the fault and the damage suffered by the claimant.

**First Branch: Proof of Causality**

The burden of proving causality initially falls on the claimant (injured party) [44]. The injured party must prove that the damage suffered is a direct result of the fault committed by the administration [45]. However, administrative courts may lighten this burden in some cases by recognizing "presumption of causality" (Présomption de causalité) [46].

### Second Branch: Reasons for Interruption of Causality

The administration can defend against liability if it proves that the damage did not result from its fault but from an "external cause" [47]:

14 **Force Majeure (La force majeure):** An external event, unforeseen and unavoidable [48]. The French Council of State (Camescasse ruling 1895) held that force majeure interrupts causality [49].

15 **Fault of the Injured Party (La faute de la victime):** If the injured party contributed to causing the damage through its own fault, the administration's liability is reduced or eliminated [50]. The French Council of State (Époux Lemonnier ruling 1918) held that the injured party's fault reduces the administration's liability [51].

16 **Act of a Third Party (Le fait d'un tiers):** If the damage resulted from the act of a person unrelated to the administration and the injured party [52]. The French Council of State (Époux Montsegur ruling 1936) held that the act of a third party may interrupt causality [53].

### Conclusion

#### Key Findings

Through this comparative study, the following key findings can be drawn:

**Finding One:** The independence of fault-based administrative liability from civil law constitutes a distinct legal basis reflecting the nature and specificity of administrative activity. The Blanco ruling of 1873 established a fundamental rule that the liability of the State is not governed by civil law principles but has its own rules that balance the rights of individuals with the requirements of public service.

**Finding Two:** The evolution of service fault criteria from gross fault to simple fault reflects a gradual shift toward expanding protection for injured parties. The French Council of State initially required gross fault in difficult areas, but jurisprudence evolved to recognize that simple fault is sufficient, thereby facilitating injured parties' access to compensation.

**Finding Three:** The theory of cumulation of faults and liabilities represents an important protective mechanism for injured parties, allowing them to claim full compensation from the administration even if the fault is personal to the official, thereby protecting the injured party from the insolvency of the faulting official.

**Finding Four:** Algerian administrative courts, despite their apparent influence from their French counterparts, have managed to develop their own jurisprudence that adapts to the Algerian context, particularly in the areas of traffic accidents and medical liability, reflecting a gradual independence of Algerian courts.

#### Recommendations

Based on the findings of this study, the following recommendations are made:

**Recommendation One:** The necessity of explicit codification of fault-based administrative liability rules in Algerian legislation, rather than relying solely on judicial jurisprudence. Codification will provide legal certainty and clarity for litigants and the administration alike.

**Recommendation Two:** Strengthening the independence of Algerian administrative courts from political and administrative influences to ensure fair and uniform application of fault-based administrative liability rules. Independence will contribute to building public confidence in administrative courts.

**Recommendation Three:** Developing alternative mechanisms for resolving administrative liability disputes, such as mediation and administrative arbitration, to reduce the burden on administrative courts and accelerate injured parties' access to compensation.

**Recommendation Four:** Promoting training and awareness for public officials regarding fault-based administrative liability rules and their consequences, to reduce administrative errors and protect officials from unjustified personal liability.

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