

The Basis of State's Responsibility for its Employee's Actions under Jordanian Civil Law and General International Law

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Abstract

This research discusses the basis of State's responsibility for its employees work under the Jordanian Civil Code and international law by determining the conditions for liability in both laws, in addition to the legal basis on which the State bears responsibility for the damage caused by the illegal employee work, provided that such work was happened by employee in the course of job performance or because of job, then to reach the conclusion that the most appropriate legal basis for reality and law is to be based on carrying liability or responsibility in both laws.

1. Introduction

In general, liability was defined as the case of a person who committed an act that would require an assignee, so that compensation is required as a result of such act if it causes harm to others, whether under civil law, which means responsibility for personal action or act of others or act of things, which has the same effect under general international law in the event that a person of public law has actually caused harm to another person of public law, which necessitates compensation for the damage caused to him under certain conditions and controls.

The general principle is that a person does not responsible in consensus of laws except for personal mistakes or acts that harm others, however, as a result of internal and international relations, legislation has expanded in the sense of responsibility, so that it no longer requires the need for a fault or a malicious act to be personally charged, but that the harmed person is relieved of the burden of proving the fault of the responsible in cases where the direct cause of injury is those who are employed by the civil official in exercising his activity, which is defined as responsibility for others actions.

It is stated in Jordanian Civil Code through Article 288, no one is asked about the actions of others, and however, at the request of the injured party, the Court may have justified the obligation to perform guarantee to be imposed on the person who caused the damage,

In his neck and direction and was not free to choose , if the act was done by the subordinate in the event of performing his or her job, In addition, Article 219 of the Iraqi Civil Code stipulated that the government, municipalities, and industrial or commercial establishments that serve the public are responsible for the damage caused by their employees, if the damage is caused by an act of them while in service, the situation is not different if it concern with the state responsibility for the work of its employees under the international law, which international custom is the most important source, If a diplomatic person commits any act contrary to international conventions or international law principles and causes harm to a particular state or to one of its nationals, it is the responsibility of the State for the mistake or act directly.

This requires the accountability of state for others action under conditions set by both civil and international order in this regard, which we will study through subsequent research pages.

But the question arises in this study, what is the basis for the responsibility of state to compensate for damage caused by one of its employees, is it a presumptive error? Or just a malicious act or a liability or an abuse of using right and if so, it demand examining what the two legislations rules of basis to this responsibility and adding to assessment of what was reached.

2. Study problem

The problem of study is determined by answering the following question: Were both civil and international legislators proper in considering the basis of responsibility for supposed wrongdoing of others in light of reality that we perceive, or were it appropriate to choose another basis that is compatible with reality?

3. Research Methodology

We will follow through this study the descriptive analytical methodology of the legal texts contained in civil and international legislation which is based on determining the responsibility basis of state for its employees work within civil law and general international law framework.

4. Research Plan

We will discuss this research through two topics, the first which is the basis of state responsibility for its employees mistakes in the framework of Civil Law, through two demands, the first is the conditions of State responsibility and second is general basis of responsibility under the Civil Law and the Jordanian legislator position. The second research focuses on the basis of state responsibility for its employees work through two requirements: the first is responsibility conditions and the second is the legal basis of state responsibility. We conclude the research by concluding our findings and recommendations.

5. The first topic

5.1. The basis of State's responsibility for its employee's actions under civil law

State responsibility for its employees actions is based on others actions not on the basis of error or personal action, but on the mistake that made by third parties, in this case it is subordinate so that the person cannot get rid of his responsibility once the mistake is denied. In order to know the subject in its aspects, it is necessary to determine the condition of state responsibility of its employees through the first demand briefly and then move on to the basis of that responsibility, and the theories that have been said and then to our estimate, which corresponds to reality through the second demand as follows.

5.1.1. The first demand: the conditions of State responsibility for its employee's actions under the Civil Code.

In order to ask the state that it is dependent on its employees actions, "dependents", certain conditions must be met, which we will clarify in the following paragraphs referred to in Article 288 of the Jordanian Civil Code(1).

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- (1) Article 288: (A) No one shall be held responsible for the action of any other person. However, the court may justify committing the performance of security to person who caused the damage at the request of injured party. (B) Who is responsible for the person who causes the damage even if He was not free to choose if the malicious act was done by the subordinate in the event of his or her job?

5.1.2. First section: subordination relationship between employee and state.

The fulfillment of State responsibility for its employee actions must be by the subordination association, so that the staff member is subordinate to the State, subject to its control and supervision, and the State has the authority to issue orders to conduct o the work (1).

The dependency relationship is based on State actual power over its employees through the contract between the parties for the employee to perform public service functions under the supervision and control of the State. In this case, if the employee is entitled to harm third parties, the State is responsible for compensating the third party for the damage caused by the employee's fault (2).

When the actual authority is found, the responsibility of executor existing even if he is not the one who chose him to do the work, and this is the case in Civil Service Bureau employee choosing to work in any government department(3).

If a doctor is appointed to work in the Ministry of Health in one of its hospitals, in case that he makes an error causing damage to third parties, the third parties can demand ministry to compensate him as subordinate, as well as an administrative subordinate to concerned Ministry.

(1) See in this sense dr. Suleiman Marks, 1964, World Press, p49.

(2) Dr. Amjad Mansour, The General Theory of Obligations, Explanation of Civil Law, II, Obligations Sources of Commitment, Comparative Study, Dar Al-Thaqafa Publishing, 2015 p. 318.

(3) See in this sense Amjad, Mohammed Mansour, previous reference, P. 318.

Based on this, in order for the responsible person to be existing, the relationship of subordination must be achieved in addition to the actual authority in control and supervision and then moving to the second condition until the responsibility is achieved, which will be through section II.

5.1.3. Second Section: doing an Illegal harmful action to others by subordinate while performing his job

It is stated in article 288 of Jordanian Civil Code that in order to have responsibility on subordinate who is responsible for an act of his or her subordinates, harm should be in the performance of his or her job(1).

Accordingly, Government shall not be liable for the work of its staff unless the harmful action is committed by employee in the course of his or her employment or because of his job, which requires distinction between two cases as follows.

A- The action occurs during the performance of employee's job.

In order to have an effect of action, it must be occurred during action performance by employee, State is responsible for damage caused by one of its soldiers while driving military vehicle and causing harm to

others to complainant house(2).

(1) Article 288 Civil Code of Irbid.

(2) Article 326/82 Journal of Bar Association 19/6/1982 C 8-12 p1388.

In case that an officer fires a shot while performing his duty, here, government will be responsible for actions of its subordinates(1).

So employee must act in the course of his / her job without having bad faith in order to fulfill this requirement.

(B) The action occurs by employee because of his job.

The requirement that action causing injury to third parties is caused by the job, the job is primary driver of action that has caused injury to third parties, so that the causality between action and function becomes achieved, employee could not have caused harm to others, if he is not in his job(2).

As a result, ministry of health will be asked, if public health officer close a commercial store without law justification and caused harm to store owner.

However, if causal link between action and job is no longer exists, action exists without having any relation by job; government is not responsible about its employee work who caused harm to others.

(1) Dr. Amjad Mansour, previous reference, P. 320.

(2) Dr. Amjad Mansour, previous reference, P. 20.

If a driver of a ministry has an accident by ministry vehicle and he causes harm to any person to take revenge, he would be responsible personally and ministry would not be responsible for his actions.

According of this, action by any employee must be because of job in order to be state responsible for that action. Thus, we have outlined the conditions for State responsibility to guide us towards the legal basis of responsibility through the second requirement.

5.2. The second demand: the basis of state responsibility for its subordinate's actions

In order for state to be responsible for its employee works, there must be a basis for that responsibility. Jurisprudence and law have stated that the basis of liability may be based on presumed error, as well as establishment of liability on the basis of subordination, Jordanian legislator determine that responsibility also.

Therefore, we will discuss the basis of responsibility through this requirement as follow: first section: through the error.

(1) Dr. Abdul-Razzaq Al-Sanhouri, part 1 p. 682 Heritage House.

- Anwar Sultan Sources of Compliance in the Jordanian Civil Code fourth edition, 1968.

Second section is attached to bear liability, third section prosecution as a basis for liability. Then we will discuss the position of Jordanian legislator and our personal evaluation of this foundation, respectively.

5.2.1. First section: error as a basis of State's responsibility for its employee's actions.

The beginning of error is a deviation in person's behavior than what usual person behaves in same circumstances. A normal person does not violate his obligation for reasons beyond his control (1).

According to this theory, the responsibility of state for subordinate (employee) work assumes an error on state side on the basis of negligence in choosing, it trusts a bad not committed person (2).

It should be noted that responsibility is based on a presumed error on state side which is a fault in control, direction, choice, or all of them, since this error is presumed to be an assumption that cannot be proved otherwise.

(1) Adnan Al-Sarhan, Nuri Khater, Explanation of Jordanian Civil Law, Sources of Commitment, National Library, Amman, 1977, p. 313.

(2) Dr. Samir Montaser, responsibility of commander on subordinate, its foundation and scope, Dar al-Nahdah al-Arabiya, p. 13.

(3) Dr. Abdul Qader Al-Far, Sources of Commitment, Dar Al-Thaqafa for Publishing and Distribution, 2015, p. 219.

if employee performs action through his job or because of it and causes harm to third parties Accordingly, it is responsibility of State for employee's action based on a presumed error in choice of State for the employee who caused harm to third parties, so state is committed to compensate third parties and that cannot be proved otherwise.

5.2.2. Second section: basis of responsibility on the principle of liability:

The concept of bearing responsibility is based on the fact that State is responsible for its subordinates work on the basis of services they provide.

So that state which bears responsibility for its subordinates actions because the dependent works for its benefit, he puts his activity under the command of the government in order to achieve its interests, so commandment must bear results of this activity as much as benefits (1).

In addition, the commander is usually richer than subordinate, the beneficiary who benefits from his subordinates must bear consequences of their mistakes, and based on that, if an employee of a particular ministry has done a work (2) through his or her job and caused a harm to others, the Ministry bears responsibility for compensation on the basis that the employee works for its benefit by employing his activity to achieve that.

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- (1) Dr. Samir montaser, previous reference, P. 20 and beyond.
 - (2) Adnan Al-Sarhan , Fawzi Muhammad Khater, previous reference, P. 521.

5.2.3. Third section: basis of representative responsibility.

Firstly, representative means that a person acts on behalf of original so that the will of the representative will replace the will of original; in addition he contracts in his name and to his account not in original name, he should not exceed the limits of representative(1).

Related to job, he is a representative for the commander, what is issued by subordinate as if it was issued by commander; it is not fair that the commander refuses to take responsibility even though the acts were issued by him rather than the subordinate (2).

Accordingly, if an ambulance driver of ministry of health causes damage to a person while driving, ministry of health bears responsibility on the basis that driver is a representative.

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- (1) See detailed, d. Ibrahim Al-Dessouki Abu Al-Layl, Theory of Contract Kuwait, Kuwait University Press, 1995, p. 73.
 - (2) See detailed d. Suheir Mansour, previous reference, P. 31.

5.3. The position of Jordanian legislator and our personal assessment of the basis of responsibility:

The position of Jordanian legislator was to determine the basis for employer responsibility of the work of the employee, which was said that it is based on error or subordination or representative, so Jordanian legislator's approach to consider the basis of responsibility based on presumed error that based on conclusive evidence does not accept proving the contrary, except in the case of Proof of the foreign cause. This error comes from not choosing the right choice of employee in addition to lack of control (1).

However, we believe that considering the presumed error in rooting the responsibility is not matching with the fact, selection of the employee subject to substantive conditions prepared in advance through regulations related to this matter, the subsequent employee error does not necessarily mean the poor choice by state, error may be occur from those who were selected according to objectivity basis in addition to control them.

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- (1) See Amjad Mansour. Previous reference, P. 322.

6. Second topic

6.1. The basis of State responsibility for its employee's actions under general international law

Firstly, international responsibility is defined as the sentence under general international law for the failure of persons to respect this law to comply with their international obligations (1).

In order to determine the legal basis for state responsibility for its employee's actions, there are general conditions relating to the responsibility of the State in general, as well as special conditions relating to state responsibility. In addition, we should look at the theories on the legal basis even to inquire state about its employee's activities and actions, if that employee has made an action cause injury to another person of an another state, in order to remedy such damage through compensation.

On this basis, this topic will be discussed through two demands, the first conditions of state responsibility and in the second demand we will discuss the legal basis for that responsibility as follows:

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- (1) Abdul Aziz Sarhan, general international law, 1975, p. 277.

6.1.1. First demand: conditions of state responsibility for its employees actions:

Even to ask state about its employee's actions, it should issue illegal action and assign this illegal act to an international person.

In addition to harm occurrence, it is obliged to ask state if the illegal act was issued by employee in the framework of his or her job or because of it, accordingly this demand will be discussed through the following points (1):

6.1.2. First section: illegal action

Even to bear responsibility toward international person as a result of an international obligation breach, even if this act is consistent with the provisions of domestic law "State failure to protect aliens in its territory and negligence in dealing with ill enemy who were capture". This breach is a result of state non-compliance to international conventions, international custom and general principles recognized (2).

Accordingly, in order to be internationally wrongful conduct, it should be prohibited to follow by state because it is considered a breach of an international obligation (3).

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- (1) See d. Rashad Aref Al-Sayed, State Responsibility, Dar Al-Forgan, 1984, p. 77.
 - (2) Ibid. P. 78.
 - (3) Dr. Rashad al-Sayyed, Principles of Public International Law, 2000, p. 180.

It should be noted that there are three types of international responsibility for the conduct of its executive organs: Such as ill-treatment of foreigners by security forces, the International Court of Arbitration judge in its judgment in the year 1902 in the case of Cessation between Italians and Venezuela for an Italian employee(1). Another case, a Panamanian policeman who attacked and stole a US official during his official mission. The attack caused an injury of a US employee. The dispute was referred to American Panamanian Court of Arbitration, which found that Panama was responsible for the actions of its security officer in official mission (2). In addition to Illegal actions in event that executive authority does not provide effective protection to foreigners residing in its territory, finally, failure of security services to prosecute criminals who have committed crimes against foreigners "(3).

6.1.3. Second section: to attribute conduct to an international person

In order to carry responsibility, conduct must be attributed to an international person by exercising his or her activity

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- (1) R.S.A, Vol. Pp 302-305 referred to as d. Ghassan Al-Junidi Civil Liability, Al-Tawfiq Press Amman, 1996, p. 29.
 - (2) Ibid. P. 30.
 - (3) Ibid. P. 30.

through natural persons and to be responsible for such conduct in contravention of international law provisions.

6.1.4. Third section: employee's illegal action is related to job or because of it:

We would like to point out that, action that employee has caused and harm another person from another state must be during his or her job until employee be responsible.

majority of jurists as well as courts provision have agreed that state is responsible for its employee's actions as long as it has been issued on the basis of their jobs, in case that an employee has committed an illegal action without authorization of his or her state. (2). state is not responsible if action occurred outside scope of job and not because of it, and now we moves to second demand to determine the basis of liability.

6.1.5. The second demand: basis of international responsibility for its employee's actions under international law.

Jurists of international law found several directions to establish basis of international responsibility for its employee's actions, so that state would bear compensation for affected person by employee action.

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- (1) Rashad al-Sayyid, op. Cit., P. 181.
 - (2) Aref al-Sayyed, op. Cit., P. 95.

This was founded on the basis of error and some of them said on the basis of abuse of right. Accordingly, this demand will be divided into three sections. Firstly we discuss the error as the basis of state responsibility and in second section, the abuse of using right, and finally carrying responsibility, therefore we value this as follows.

6.1.6. First section: error as a basis for state responsibility for its employee's actions.

The error theory is based on the fact that state is responsible through its employees, if employee has committed or acted unlawfully in performing his or her job or caused damage to third parties as a result of a breach of an international obligation(1).

Responsibility focus is doing conduct that is contrary to an obligation should be observed, that results in unlawful injury of an international person (2).

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- (1) Dr. Rashad al-Sayyid, op. Cit., P. 177.
 - (2)) Ibid, P. 177.

Accordingly, the theory of error assumes that a person does an illegal action against international obligation unlawfully resulting in injury to a person of international law on the territory of a state which is committed to compensate on the basis of error assuming in choice.

6.1.7. Second section: Abuse in using right as a basis of liability

abuse of using right is one of the general principles of general international law, as stipulated in Article 38 of the statute of International Court of Justice.

The abuse of using right is that state exercise a right of its rights conferred by international law in a way results harm to another state or a person of its employees (1).

So rights and freedoms for states as well as freedoms of individuals, it will not be legitimate unless it is consistent with purpose for which it has been established. Accordingly, state exercising of its legitimate powers and international rights is described as arbitrary if its conduct is prejudicial to rights or interests of other states (2).

- (1) Rashad al-Sayyid, previous reference, p. 79.
- (2) Dr. Rashad al-Sayyid, previous reference, P. 180.

It is equivalent to do conduct of state's employee on the occasion of his or her job doing until state bear responsibility for it on the basis of principle of responsibility of.

6.1.8. Third Section: bearing responsibility as a basis to State responsibility (risk theory)

As a result of scientific progress in discovery, invention and machine using, it was necessary to find another basis to carrying responsibility for state.

This theory assumes that state is responsible for its employees mistakes based on the benefit it obtains from employees activity. and this is the basis (1) on which State must be responsible.

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- (1) Dr. Hafez Ghanem, International Responsibility, Cairo, 1962, p. 100.

7. Epilogue

we began with the subject of state responsibility for its employees actions under Jordanian Civil Code and general international law, we have discussed the conditions of civil liability of state, so person should be employed and subordinate to state, until state bear responsibility and compensate injured party, in addition to clarify the basis of that responsibility and its foundation on assumed error basis as well as bear liability.

Then we turned to other part of research related with state responsibility under international law. We have discussed conditions of liability as well as the basis of that responsibility in terms of its foundation on error, as well as abuse of using right.

8. Recommendations

Establishing the basis of state responsibility for its employee's action under international and civil law, on the basis of subordination registration theory of liability for reasons were mentioned in research.

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