



جامعة الجزائر 1  
بن يوسف بن خدة  
كلية الحقوق



Université d'Alger 1  
BENYOUCEF BENKHEDDA  
Faculté de Droit



# المجلة الجزائرية

للعلوم القانونية و السياسية

مجلة علمية دولية فصلية

المجلة الجزائرية

للعلوم القانونية و السياسية  
مجلة علمية دولية فصلية

المجلد : 61 العدد : 04

# R E V U E ALGERIENNE

Des Sciences Juridiques  
et Politiques

Revue Scientifique Internationale Semestrielle

الترقيم الدولي : 2676-1912

ISSN : 2676-1912

## افتتاحية العدد

يسرّ المجلة الجزائرية للعلوم القانونية والسياسية أن تُقدم إلى قرائها الكرام المجلد 61، العدد 04، والذي يضم مجموعة من المقالات العلمية القيّمة والملبية لشروط البحث العلمي في مجال العلوم القانونية والسياسية. نطمح أن يكون هذا الإصدار مواكباً لتطلعات القراء الكرام، ويمثّل مساهمة قيّمة ومضافة للبحث الأكاديمي.

تتقدّم هيئة التحرير بأسمى آيات الشكر والامتنان إلى جميع الذين ساهموا في إعداد هذا العدد، من باحثين، أو مراجعين من داخل وخارج الوطن بمستوى متميّز واحترافية عالية. نعبر عن امتناننا العميق لهم، وتبقى المجلة مفتوحة لاستقبال كل البحوث العلمية الأكاديمية المتميزة التي تلي شروط البحث العلمي شكلاً وموضوعاً.

رئيسة التحرير

د/بن رجّال أمال

# الفهرس

## الافتتاحية

**Bader Chennouf**

**What role can temporary Hybrid Criminal Courts play in the presence of a permanent international criminal court?** 1-17

**Fouzia Hamel**

**Cyberbullying in the Digital Space: Between Risks of misuse and Protective Mechanisms** 18-30

**Salima Attia . Ilham Benkhalifa**

**The effectiveness of the participatory approach in the promotion of tourism investment between territorial collectivises and actors interested in tourism affairs "A comparative study"** 31-45

**Atmani Ali**

**The Development of Algerian Environmental Legislation in Comparison to International Environmental Legislation** 46-69

**Haouam Khalida . Hassane sid**

**Medical errors resulting from transplantaion of human organs between criminalization and legal protection under Algerian legislation** 70-81

**Abdeldjabar benarour**

**The role of Research Laboratories at the Algerian Universities in promotin the Scientific Research Humman Security Laboratory ,Batna 01-as sample** 82-93

**Zaadi Mohamed Djelloul**

**Protection of underwater cultural heritage in international law** 94-108

**Benahmed houria**

**Novelty in the Principle of Two - Tiered Litigation in the Administrative Affairs-law22-13-** 109-122

<b>Lebachiche Souhila</b>	
<b>Local participatory democracy as a mechanism to promote citizenship values</b>	<b>123-136</b>
<b>Charif Amina. Ait Dahmen Sid Ali</b>	
<b>International and national mechanisms to combat economic crime</b>	<b>137-146</b>
<b>Ziane Saidi</b>	
<b>Jurisprudential Implications of Robot Liability and Legal Applications for Smart Machines</b>	<b>147-159</b>
<b>Rezal Hakima</b>	
<b>Intellectual Property and Food Security: Opportunities and Challenges</b>	<b>160-175</b>
<b>Amina Latroche</b>	
<b>Mechanisms for saving commercial companies from bankruptcy in Algerian legislation</b>	<b>176-193</b>
<b>Adel Aissaoui . Adel Lemouchi</b>	
<b>Hospital Legal Responsibility In Algerian Legislation</b>	<b>194-211</b>
<b>Kabouche Elahouas</b>	
<b>Exploring Emerging Horizons: Future Prospects for Sino-Algerian Economic Cooperation</b>	<b>212-229</b>
<b>Arar Lyakout</b>	
<b>Criminal Protection of Real Estate Cultural Heritage Under Law 98-04 Related to the Protection of Cultural Heritage</b>	<b>230-247</b>
<b>Bouroubi Mustapha. Hadid Noufeyle</b>	
<b>Diplomatie et Intelligence Économiques : Leviers Stratégiques pour Renforcer la Souveraineté Économique de l'Algérie</b>	<b>248-272</b>
<b>Ouabri Farid</b>	
<b>La criminalité économique et financière : point de vue du criminologue</b>	<b>273-288</b>
<b>بن يحيى شارف</b>	
<b>306-289</b>	<b>النظام القانوني للذمة المالية للزوجين بين الاستقلالية والاشترك في التشريع الجزائري والفرنسي.</b>

328-307

التبليغ القضائي الإلكتروني؛ دعامة أساسية لتفعيل التقاضي الإلكتروني

محمد الطاهر رحال

349-329

مصير الوقائع الجديدة أمام محكمة الجنايات (دراسة مقارنة بين القانون الجزائري والقانون المصري)

خليفة فتحة . مهداوي محمد صالح

370-350

حجية الدليل الإلكتروني في إثبات الإعتداءات المنصوص عليها في المواد 394 مكرر إلى 394 مكرر 2 من قانون العقوبات الجزائري.

يحي بدائرة

390-371

تقنية التقاضي الإلكتروني في الجزائريين فحوى النص التشريعي وواقع التطبيق القضائي

## Hospital Legal Responsibility In Algerian Legislation المسؤولية القانونية للمستشفى في التشريع الجزائري

Adel Aissaoui

University of Khenchela  
Abbes Laghrour

aissaoui.adel@univ-khenchela.dz

Adel Lemouchi

Mohamed-Cherif Messaadia University  
Souk Ahras

a.lemouchi@univ-soukahras.dz

Date of submission:18/05/2023 Date of final acceptance06/12/2024 Date of publication :December 2024

### Abstract :

Hospital has a leading role in maintaining public health, Therefore, it was entrusted with various tasks in this field in order to take care of the health of individuals, However, this entails legal responsibility that varies between civil and administrative, The Algerian legislator worked through many texts to improve the service in general ; Especially when it comes to faults made by the medical and administrative staff, which sometimes lead to damaging the health of the individual instead of taking care of it. In addition, what is happening in terms of strife of responsibilities, as the citizen remains in many cases a victim of neglect, this is what drives him to resort to the courts seeking justice, here, the judge stands on the extent of the shortcomings of some legislative texts that require reconsideration and making them more appropriate and rigorous.

**Keywords:** Hospital, Civil Responsibility, Administrative Responsibility, Damage, Compensation.

ملخص:

يلعب المستشفى دورا رياديا في الحفاظ على الصحة العمومية، ولذلك فقد أوكلت له مهام متنوعة في هذا النطاق من أجل العناية بصحة الأفراد، غير أن ذلك يرتب مسؤولية قانونية تتنوع بين المدنية والإدارية، وعمل المشرع الجزائري من خلال العديد من النصوص على تحسين الخدمة بصفة عامة، ولاسيما عندما يتعلق الأمر بالأخطاء الصادرة من الطاقم الطبي والإداري والتي تؤدي أحيانا بالإضرار بصحة الفرد عوض العناية بها، وما يحصل من تقاذف المسؤوليات، حيث يبقى المواطن في العديد من الحالات ضحية الإهمال، وهو ما يدفعه للالتجاء للقضاء طلبا لإنصافه، وهنا يقف القاضي على مدى قصور بعض النصوص التشريعية التي تستوجب إعادة النظر فيها وجعلها أكثر ملاءمة وصرامة. الكلمات المفتاحية: المستشفى، المسؤولية المدنية، المسؤولية الإدارية، الضرر، التعويض.

Auteur correspondant :Adel Aissaoui

## **Introduction:**

In many countries, public health is considered one of the pillars on which public order is based, and therefore it receives legislative attention to provide means of treatment for individuals. Hospitals assume a leading role in providing all that is necessary for health care, which is considered a criterion for the extent to which the well-being of nations is achieved.

However, hospitals, including their human staff, ensure the provision of health services by harnessing all capabilities. It may happen that the hospital causes damage to patients, varying between material and moral, which requires taking legal responsibility towards them and ensuring compensation for these errors. These errors may be related to the facility, personal, or administrative aspects. Therefore, the subject of the legal responsibility of hospitals in Algerian legislation needs to be studied to understand the responsibility they bear towards others as a result of mistakes made by their affiliates while performing their duties.

In light of the widening scope of diseases and the need to enforce healthcare, the responsibility of the hospital has become significant, both as a public administration and due to civil and administrative responsibilities for errors that cause damage to others. This raises the following question : Has Algerian legislation been sufficient to provide legal protection for patients against hospital errors ?

To answer this question, the descriptive approach will be adopted alongside the analytical approach. The descriptive approach will be used to describe the nature of related and personal errors and to state the administrative responsibility of the hospital. This approach also involves outlining the penalties imposed for infringing on the general frameworks regulating the medical profession. The analytical approach will begin with a general description, moving to specific details regarding doctors' personal errors and analyzing the responsibility relationship between the hospital and the doctor based on their hierarchical relationship, and the possibility of recourse. This requires further analysis to determine who is responsible for compensation.

To address these research details, the study will be divided into four sections. These sections will reveal parts related to determining the hospital's responsibility for medical errors (Section 1). After determining responsibility, the hospital's role in compensating for damages caused to the patient will be examined (Section 2). This will be followed by a discussion on the administrative responsibility of the hospital (Section 3), and finally, insurance as a means to contribute to reparation for damages (Section 4).

### **Section I : The Responsibility Of the Hospital For Medical Errors.**

Hospitals have been subjected to systematic efforts to change organizational behaviour over the last decades<sup>1</sup>, In view of the increase and multiplicity of disease causes, it has become necessary to make the hospital an effective tool in fulfilling the responsibility entrusted to it by law to preserve public health. Determining responsibility remains a serious matter because it impacts compensation. Therefore, work should be done in accordance with the law to control it carefully, whether it is facility-based or personal. This raises the possibility of recourse against the one who caused the damage by the follower. This will be detailed as follows :

#### **A) The facility error and personal error.**

Error in the medical field is among the most critical aspects in the application of tort responsibility due to the nature of the work performed by doctors and their substitutes. Providing care is fundamental to medical practice. However, fault may be personal, and the individual responsible bears it alone in the event of a breach of legal obligations. There is also the concept of joint responsibility, where the hospital may share responsibility. This will be further explained as follows :

#### **1- The basis for the existence of the hospital's responsibility due to the personal and facility fault**

The Algerian legislator is keen to give public health a high status through the idea of free treatment for all citizens across the national territory, where diagnosis, treatment, and hospitalization of patients are carried out in all public health structures. This was clearly articulated

in Article 13 of the Health Law<sup>2</sup>. Consequently, hospitals and their staff, as healthcare service providers, aim to achieve a level of patient satisfaction that ensures a good reputation<sup>3</sup>. From these noble principles arises the responsibility of hospitals towards patients. This idea has been the subject of jurisprudential disputes regarding the administration's accountability for actions committed by its affiliates, whether related to facility operations or personal conduct. These debates have given rise to various theories.

### **1-1 The theory of equality in bearing public burdens.**

According to this theory, the responsibility of management for personal or facility errors is based on the principle of equality before public costs. This principle asserts that each individual should bear costs and responsibilities within their capabilities as defined by law. Any deviation beyond these limits and burdens may necessitate compensation from public funds. Thus, public facilities mandated to provide services to citizens may be liable for damages caused to them, should there be a violation of their equality in bearing public costs<sup>4</sup>.

### **1-2- The guarantee theory.**

The essence of this theory is that the employer, i.e., the management, is responsible for compensation caused by its employees, in addition to the employee's personal responsibility. In this context, the law designates the hospital as a guarantor for the employee's obligation to compensate others. This guarantee is established by law, not by contract, and is determined for social reasons. According to this theory, the doctor or the hospital acts as a joint guarantor for the employee in relation to the patient. This ensures the patient's rights, as they are the weaker party in the medical relationship, allowing them to seek compensation for damages caused by the employee's actions<sup>5</sup>.

### **1-3- Presumptive error theory.**

According to this theory, the responsibility of the doctor or the hospital for the actions of their affiliates is due to an inherent error on the part of both the hospital and the doctor, whether in choosing, monitoring, or supervising the affiliates. This error is not required to be proven by the injured party but is assumed by the law as soon as the damage occurs. This means that the hospital is held responsible based on the presumed fault. If it is proven that the doctor's actions, considered a mistake, cause damage to others, this simultaneously assumes a mistake on the part of the hospital administration, represented by poor selection of affiliates or failure to supervise and direct them properly<sup>6</sup>.

Through the comparison between the different opinions regarding responsibility, it becomes clear that each of the previous theories alone is unable to fully explain and control the responsibility for damaging the patient. Therefore, these theories must be synthesized and combined to obtain a comprehensive and accurate perspective. This is particularly important since employees are subject to management, its supervision, and accountability. Management has a duty to protect its employees, as well as bear the consequences of their mistakes in the exercise of their jobs.

## **2- The extent to which the facility error is related to the personal in estimating the damage.**

The principle is that facility errors and personal errors each have their own distinct entities. However, this distinction is not absolute, as they may be interconnected according to the following details :

### **2-1- Combine the responsibility of the employee and the administration in the event of multiple errors.**

It is possible to combine the two responsibilities in this case because of the presence of both personal and facility faults. Here, the fault is of a double nature—both facility and personal—and the damage results from both faults<sup>7</sup>, and therefore the two responsibilities are realized together as well, and an example of this is that the ambulance driver of the public hospital is driving while he is in Drunk and in this car there is a defect in the brakes, which leads to committing an accident, so there will be a personal fault of the employee and a fault of his facility in causing the damage<sup>8</sup>.

## **2-2-Combine the responsibility of the employee and administration in the event of a single error.**

Legal accountability can arise from a personal error, leading to shared responsibility between the employee and the administration. This shared responsibility can multiply despite the unity of the error. The damaging act may involve a personal error distinct from facility errors, or a facility error attributable to the administration. The administration bears responsibility if the facility played a role in causing the error. Whether the personal error occurred during or outside of work, using facilities available to the employee, the damage may not necessarily be attributed to the facility itself<sup>9</sup>.

An example of this would be a doctor who uses drugs outside of working hours. If a colleague is present and administers an overdose during surgery, resulting in the patient's death<sup>10</sup>.

For that the relationship between a doctor or hospital and a patient in the health's sector is based that doctor or hospital are legal subject who is obliged to make every effort to provide the possible health services based on his ability and expertise to implement the patient's, in the aim of healing<sup>11</sup>.

### **B) The criminal and disciplinary nature of the error.**

The responsibility arising from the hospital staff may not remain confined to the scope of the civil law and the resulting compensation, but rather the matter may devolve into the criminal aspect, especially if the error is of a criminal nature that necessitates the appearance of the penal responsibility according to which the penal punishment is monitored within the scope of the penal law.

#### **1-The doctor's criminal error.**

The criminal responsibility of the doctor in the public hospital includes if he commits a mistake that carries a criminal description, which is referred to in Article 288 of the Penal Code<sup>12</sup> by talking about cases of unintentional error leading to death, injury or illness, In addition, Article 182 of the Penal Code criminalizes anyone who refuses to provide assistance to a person in danger or damages their bodily safety in any way. However, the penalties remain relatively simple, ranging from three months to five years of imprisonment and a fine between 500 and 15,000 DZD.

Also the Health Law referred to the punitive follow-up to which the doctor is subject in the case of negligence or a professional error that damages the patient or exposes him to danger.

The doctor is independent in exercising his duties and is expected to exercise vigilance and foresight. If it becomes apparent that he could have avoided the wrongdoing imputed to him and that his conscience is troubled by his actions, he would then be considered at fault<sup>13</sup>, which makes him bear responsibility for his penal errors, because he is the person who is legally qualified to provide medical services, especially diagnosing and treating disease, as well as other services related to the healthcare<sup>14</sup>, even if he exercises his work as an employee in a public hospital body, his penal responsibility is based on a personal basis, meaning on the basis of a fault separate from the public body, just as the criminal law does not consider collective responsibility, because the penal fault is personal and only the concerned person is held accountable for it, unlike the civil fault<sup>15</sup>.

Also the Algerian legislator separated between civil and criminal wrongdoing and that both are independent of the other, which can be deduced from Article 10 of the Code of Criminal Procedure, which stipulates that the civil lawsuit shall be prescribed according to the provisions of the civil law, and Article 339 of the Civil Code has indicated that The judge is not bound by the verdict penal, except in the incidents in which this judgment has been decided and its separation was necessary<sup>16</sup>.

The civil, penal, and even administrative judges may find it difficult to distinguish between the two errors in the medical field, as the errors overlap, so it is not possible to distinguish between a simple and a non-simple error, so the prosecution must make sure of the error in order to be able to move the public lawsuit, as well as the civil and administrative judge, so it is necessary to seek the help of with medical experience before directing responsibility<sup>17</sup>.

## 2- The disciplinary responsibility of the doctor.

The doctor bears disciplinary responsibility in addition to penal responsibility, as the responsibility may be for the doctor who works in public health facilities, where the disciplinary authorities can discipline the doctors subject to them because of the mistakes they commit on the occasion of their work and outside it, in accordance with what was stipulated in the Public Service Law<sup>18</sup>.

The doctor in the public hospital should abide by all laws and regulations, and if it happens that he deviates from that obligation, his disciplinary responsibility shall be incurred. Regardless of whether the facility or the patient is damaged, the hospital is a public facility and the doctor is an employee of it, and the rules of the public office apply to it<sup>19</sup>.

In addition to the disciplinary responsibility that falls on the doctor, this can entail civil and penal responsibility, a civil responsibility whose subject matter is compensation for the damage caused to the victim, which is the responsibility of the hospital because of the dependency relationship between the doctor and the hospital, and the latter's responsibility for the mistakes of his employees, as well as the penal responsibility if the error is related to the nature Criminal, in addition to the possibility of disciplinary accountability even if his innocence is proven criminally and civilly<sup>20</sup>.

Professional errors are classified into four categories through Articles 177 to 181 of the Basic Law of the Public Service. Especially Article 178 referred to the first-degree error and includes the employee's violation of the rules of discipline related to the good conduct of public interests.

Articles 179 and 180 also dealt with errors of the second and third degree, which include breaching and prejudicing various professional duties and non-compliance with orders and instructions, in addition to what was stated in Article 180, which stipulates a mistake of the third degree and is considered criminal, which is the disclosure of professional secrets. If he is not punished because of the criminal error, he will be punished. Disciplinary, this is in addition to errors of the fourth degree in accordance with Article 181, and offset by penalties that pertain to each type of professional errors that are signed by the equal-member committee<sup>21</sup>.

Also the Algerian legislator referred to disciplining the doctor in the event of committing errors through the Code of Medical Ethics, in particular Article 221, which stipulates: "The practice of disciplinary action does not constitute an obstacle to:

- For civil and criminal lawsuits.
- For disciplinary action, carried out by the body or institution to which the accused may belong. It is not possible to combine penalties of the same nature and for the same fault<sup>22</sup>.

It is clear through this article, that if the act of the doctor was an act that resulted in a crime in addition to the disciplinary offence, each of them is independent from the other due to the difference in the legal nature and the special authority that undertakes the imposition of punishment, as the initiation of a lawsuit does not cause the suspension of the other, and the disciplinary or criminal procedures do not depend on the judgments that the other will issue<sup>23</sup>.

### Section II: Compensating the hospital for damages.

All public facilities' delivery must comply with service standards and be transparent to gain the recipients' trust<sup>24</sup>, This is why the hospital remains liable for damages caused by its medical and administrative staff due to prejudicial actions affecting the health of patients<sup>25</sup>, As a result of negligence in performing their duties, proven or assumed errors require compensation according to the general provisions of civil law, especially Article 124. However, this is dependent on the extent of the damage and the extent of the error, all of which are determined by the judge within the scope of their discretionary responsibility.

#### A) Types of compensation for damages.

Compensation for damages is obligatory under legal text, but it varies in reality, from in-kind to cash, according to what is required by the situation of the injured person and what the judge rules.

### **1- In-kind compensation.**

In-kind compensation involves restoring the situation to what it was before the occurrence of the damaging act and removing the resulting damage. It is considered the best method of guarantee. It is requested by the creditor, and the judge has the right to rule on it whenever possible<sup>26</sup>, This is indicated by Article 132 of the Civil Code : "The judge shall determine the method of compensation according to the circumstances." It is correct for the compensation to be in installments, and it is also correct for it to be a steady income<sup>27</sup>.

However, in-kind compensation is applied more in contractual responsibility, while tort responsibility is not an appropriate field for its application, especially in the medical field. The judge has the authority to estimate the compensation and its form, and he is restricted by a set of controls that must be observed. If the hospital is ordered to repair the damage suffered by the patient and it is impossible to implement that due to a lack of equipment, then the judgment is made in cash compensation equivalent to treatment in another hospital<sup>28</sup>.

### **2- Compensation in return**

In the majority of cases, the injured party obtains compensation for the damage in monetary form, but in other cases, they may obtain compensation in a non-monetary form, according to the following details:

#### **2-1 Monetary compensation.**

In the medical field, it is often difficult to restore the situation to its original state after damage has occurred. Therefore, it is more appropriate for judges to resort to compensation, as this approach simplifies the process in terms of evaluation and assessment. Compensation provides a practical and fair remedy by addressing the damage suffered through monetary awards, covering aspects such as medical expenses, lost wages, and pain and suffering.

Monetary compensation is the most widely applied remedy in the medical field, especially in cases of tort. In such instances, the judge estimates an amount of money to redress both the material and moral damages suffered by the injured party. This financial compensation aims to cover medical expenses, lost income, pain and suffering, and any long-term impact on the individual's quality of life, offering a practical and effective means of addressing the damage and providing relief to the affected individuals<sup>29</sup>.

According to the discretionary authority of the judge, compensation can be provided in one lump sum, in the form of installments, or as a lifetime salary if deemed appropriate. This flexibility is indicated in Article 132 of the Civil Code : "The judge determines the method of compensation in installments, or it is correct that it be in salary..." This allows the judge to tailor the compensation method to the specific circumstances of the case, ensuring that the awarded remedy effectively addresses the needs of the injured party.

Therefore, the judge may order the doctor or the hospital to compensate the injured person by paying installments within a certain period, until recovery during the treatment period. The payments can be weekly, monthly, or in the form of a specific number of installments. The person responsible for the damage is obligated to pay the last of these installments, ensuring that the injured party receives continuous support throughout their recovery<sup>30</sup>.

In the case of making the compensation a regular income, it is provided as a lifetime income in situations of total or partial disability. For example, if a doctor's mistake leads to the amputation of a patient's leg, resulting in disability and an inability to earn, this causes significant financial damage. The judge can order the responsible party to provide income for the injured person throughout their life, ensuring financial support. This income continues for the lifetime of the injured party and ceases only upon their death<sup>31</sup>.

#### **2-2 Non-monetary compensation.**

The judge may sometimes rule for a non-monetary consideration, although this method is less common in judicial practice. Nonetheless, the judge can decide on such a remedy either at the request of the litigants or on their own initiative, depending on the circumstances of the case. Non-monetary considerations can include actions such as ordering the responsible party to provide

specific services, perform certain tasks, or make other amends that address the damage suffered by the injured party in a way that money cannot<sup>32</sup>, This type of compensation can be ordered in cases related to the honor and reputation of the injured person, as well as in cases involving the disclosure of secrets and invasion of privacy. For example, the judge can order a public apology in newspapers or other media to restore the injured party's reputation. The purpose of such non-monetary compensation is to rehabilitate the injured person, which may be more valuable to them than any monetary amount. This form of compensation aims to address the non-material aspects of the damage and provide a sense of justice and restoration to the affected individual<sup>33</sup>.

#### **B) Provisions for estimating compensation in the medical field.**

Based on civil law, when a patient files a lawsuit against a doctor, much of the case typically revolves around claims for compensation. If it's proven that the doctor committed a violation or acted unlawfully—such as through medical malpractice—the patient may sue to seek financial compensation for the damage caused. This compensation aims to address various aspects of damage incurred, including medical expenses, lost wages, and any enduring effects on the patient's health and well-being. Thus, the legal framework allows patients to seek redress through civil litigation when they believe medical professionals have acted negligently or unlawfully<sup>34</sup>.

When the damage suffered by the patient is realized, the judge intervenes to order compensation appropriate to the extent of the damage in accordance with general rules, particularly as outlined in the civil law within the scope of tort responsibility, and considerations can be determined in estimating the compensation by determining the responsibility if it is joint between the doctor and the health facility, this responsibility can fall into several categories: joint responsibility between the doctor and the health facility, personal error of the doctor alone, or the absence of the doctor's error which will be explained as follows:

##### **1- The union of responsibility between the doctor and the health facility.**

Judges play a crucial role in balancing the rights and responsibilities of healthcare providers, institutions, and the injured party. Their decisions aim to uphold principles of fairness and accountability, ensuring that those who have been damaged receive just compensation. Additionally, judges work to implement measures that prevent similar incidents from occurring in the future, thereby safeguarding the integrity of healthcare practices and patient safety.

While the administration may bear some responsibility for ensuring compensation, it is typically within reasonable and justifiable limits. This is done to prevent misuse of public funds and to encourage prudent management within public institutions<sup>35</sup>.

Based on the assessment, the judge decides on the proportionate share of responsibility for the damage between the doctor and the hospital. This ensures that each party bears financial responsibility according to their role and contribution to the incident. The judge then allocates the final compensation obligation between the administration and the employee based on the severity or the actions attributed to both parties. Consequently, the injured person has the option to seek compensation from either the administration or the employee. The administrative judge may determine the respective shares of each party in the compensation amount as estimated by them<sup>36</sup>.

After paying the compensation amount, the party who has made the payment (whether the doctor or the hospital) can then seek reimbursement from the other party. This process is known as subrogation, where one party steps into the shoes of the injured party to recover the amount paid.

##### **2-The personal error of the doctor.**

The doctor has many roles, including the requirement to provide clear information to the patient in a language that is easily understood. This enables the patient to make decisions regarding medical actions without pressure from any party. If the patient agrees to undergo medical treatment after receiving explanations, the patient or their family typically signs a medical consent form prepared by the hospital<sup>37</sup>, and this is clearly articulated in Article 23 of the Health Law, which stipulates : "Every person must be informed about his health condition, the treatment it requires, and the dangers to which he is exposed."

If the error was committed by the doctor outside the cases stipulated in Article 136 of the Civil Code, where a doctor is found personally liable for medical malpractice or negligence, the injured person (patient) has the legal right to seek full compensation directly from the doctor. Additionally, depending on the circumstances and the laws applicable in the jurisdiction, the patient may also have the option to seek compensation from the hospital where the malpractice occurred<sup>38</sup>. According to the dependency relationship that binds the doctor to the hospital administration, if the hospital pays the entire amount of compensation to the patient, it can seek reimbursement from the doctor for the full amount paid if it is determined that the mistake was personal or if the doctor committed a serious error, even if it occurred during the performance of their duties. This is in accordance with Article 137 of the Civil Code, which stipulates: “The superior has the right to seek reimbursement from his subordinate in case he committed a serious mistake.”

### **3- The case of elbow error.**

The hospital bears responsibility for compensating the patient for damages caused by its employees, in accordance with the principles of superior responsibility for the actions of their subordinates<sup>39</sup>. For example, the doctor is not responsible for their damaging actions if they are due to the performance of their professional duties in implementation of the organizational rules within the hospital<sup>40</sup>, according to Article 129 of the Algerian Civil Code, it is stipulated: “Public servants and agents shall not be personally responsible for their actions that have damaged others if they have carried them out in implementation of orders issued to them by a superior when obedience to these orders is obligatory for them.”

The injured party may also file a claim directly against the subordinate, such as a doctor, according to the rules of civil responsibility, particularly concerning personal actions. This legal action would typically proceed before the ordinary judiciary.

The doctor's payment of compensation does not necessarily mean he cannot seek reimbursement from the hospital, especially if he can demonstrate that his error was ordinary and falls within the scope of errors that anyone in similar circumstances could commit. In such cases, the doctor retains the right to seek recourse from the hospital and recover any compensation paid<sup>41</sup>.

### **Section III: The Administrative Responsibility of the Hospital.**

The responsibility of the hospital extends beyond the civil domain to include administrative aspects. As a public institution serving the public interest, the hospital is subject to regulations governing public administration. This means that penalties may apply if the hospital breaches its obligations or if mistakes are committed by its administrative staff. These aspects are typically examined and addressed according to administrative law principles and procedures, which will be detailed as follows :

#### **A) Penalties for administrative violations.**

The legal responsibility of the hospital may encompass various violations, such as breaches of hygiene rules and failures to comply with provisions related to compulsory civil responsibility insurance. Penalties for these violations can result in the following consequences :

##### **1- In the field of violating the provisions of the Health Law and the Waste Treatment Law :**

It can result in the following consequences :

##### **1-1 : warning.**

The warning is issued by the competent administrative authority, such as the municipality, department, or state, to alert the hospital about the violation committed. It specifies the level of risk associated with the violation and outlines the potential severity of the penalty that the hospital may face if it fails to comply<sup>42</sup>.

##### **1-2 : Removing the violation.**

An increasing number of studies are focusing on environmental responsibility in hospital care, particularly in areas such as waste management<sup>43</sup>. This is why the Algerian legislator emphasizes the importance of rectifying violations through the proper implementation of obligations. For instance, if a hospital disposes of waste in a manner that does not conform to the

law, Article 23 of Law 01-19 mandates that the hospital must rectify this by ensuring proper treatment of the waste, even if legal action is necessary.

If there is neglect, improper deposition, or treatment of waste that violates legal provisions, and after issuing a warning to the violator, the judiciary may order the removal of the waste at the violator's expense. The administrative authority instructs the responsible party to rectify the situation at the expense of the hospital that committed the violation, thereby ensuring that the situation is restored to compliance with the law<sup>44</sup>.

## **2- In the field of violating the provisions of the Insurance Law.**

Some details related to the necessity of subscribing to the insurance contract, and the resulting financial fine for failing to do so, can be outlined as follows :

### **2-1- Subscribing to the insurance contract.**

The payment of the administrative financial fine imposed on health institutions for violating the obligation to carry out compulsory insurance on civil responsibility does not exempt the institution from subscribing to the insurance contract. This is stipulated in Article 199 of Ordinance 95-07 regarding insurance<sup>45</sup>.

### **2- 2-Administrative penalty.**

The law related to insurance stipulates the necessity of insurance for health institutions, as outlined in Articles 167 and 169 of Ordinance 95-07. It also specifies penalties for non-compliance with the insurance obligation, ranging from 5,000 to 100,000 DA. It's important to note that paying this fine does not exempt the institution from fulfilling its insurance subscription obligations. The fine must be collected similarly to direct taxes paid to the public treasury. These penalties are strictly administrative and do not involve criminal prosecution<sup>46</sup>.

## **B) Implementation of Administrative Judicial Decisions.**

The implementation of judicial decisions is regarded as essential for upholding truth and protecting rights. Therefore, their enforcement can be carried out either optionally or mandatorily, depending on the following criteria :

### **1- Optional execution against public hospitals.**

Regarding the enforcement of judgments against public hospitals, Article 600 of the Code of Civil and Administrative Procedures<sup>47</sup> specifies that judgments are not enforceable unless they are stamped with executive form. Judgments against public hospitals are the responsibility of their directors.

When the hospital administration voluntarily complies with a judicial ruling issued against it, issues do not arise. However, the hospital's responsibility and the increasing number of visitors necessitate insurance for medical and paramedical users, as per Article 167 of Ordinance 95-07. Here are some details related to this requirement :

### **1- 1-The role of hospital civil responsibility insurance :**

Among the facilitators for the victim to obtain compensation is the option for the injured party to file a direct lawsuit. This allows the victim to directly benefit without needing to navigate the hospital's financial disclosure process. This privilege ensures that the victim is not crowded out by other creditors, thereby avoiding potential defenses that the insurer might raise against the insured<sup>48</sup>.

### **1-2- The intersection of insurance and civil responsibility :**

The insurance system does not eliminate the compensatory role of civil responsibility ; rather, it facilitates compensation by paying damages in exchange for premiums. The insurer may seek recourse against the third party responsible for the damage based on the responsibility claim. Additionally, if the injured party receives partial compensation from the insurance company, they can pursue the remaining compensation through a civil responsibility lawsuit. This ensures that the injured party has avenues to seek full compensation for their losses<sup>49</sup>.

### **2- Forced execution against public hospitals.**

Seizure of public money can disrupt the functioning of public services because these funds are allocated to provide services to the public. While administrative privileges exist, individuals'

rights must not be overlooked when implementing judicial decisions against public hospitals. This can be addressed as follows :

**2-1- Deduction from the public treasury :**

If a judicial decision obligates a hospital to pay compensation to an injured person and the hospital refuses to comply, the legislator has provided a recourse through Law 91-02, as confirmed by Article 986 of the Code of Civil and Administrative Procedures. According to this provision, the affected individual can approach the regionally competent treasurer. They must submit a file containing a written petition, an executive copy of the judgment, and evidence demonstrating that the hospital has refused to make payment for a period exceeding two months, as documented in the minutes of refusal to implement<sup>50</sup>.

According to Article 8 of Law 91-02, the treasurer is mandated to pay the monetary amount adjudicated by the judiciary within a period not exceeding three months. If the hospital refuses to implement the judicial decision, the treasurer will disburse the amount to the claimant or their representative based on the submitted file. After this deadline, if the hospital still does not comply, the amount will be deducted from the hospital's budget as stipulated by the law.

**2-2- Penal punishment for non-implementation of the judicial ruling :**

If an employee obstructs the implementation of judicial decisions issued against public utilities, they may face criminal penalties under the Penal Code. Specifically, Article 138 bis provides for imprisonment ranging from six months to three years, along with a fine ranging from 5,000 DZD to 50,000 DZD. Additionally, Article 467 bis 1 increases the fine for misdemeanors and violations to 100,000 DZD. These provisions aim to ensure compliance with judicial rulings and uphold the integrity of legal processes within public institutions.

**2-3- Threatening penalty :**

In the Code of Civil and Administrative Procedures, specifically Articles 980 to 985, a threatening fine is mentioned whereby the judicial authority can impose this penalty and specify its effective date. It's important to note that this fine is separate from any compensation owed for damages. If there is partial or total non-compliance with the judicial decision, the administrative judicial authority will assess and enforce the threatening fine. They have the discretion to reduce, cancel, or allocate part of it to the plaintiff if it exceeds the value of the compensation. Any amount not paid to the plaintiff would be directed to the public treasury. Importantly, the implementation of the threatening fine does not negate the compensation owed due to partial or total non-compliance with judicial decisions, as outlined in Articles 982 and 983 of the Code of Civil and Administrative Procedures.

**Section IV: Alternative mechanisms of compensation for damages.**

Talking about compensation does not preclude exploring alternative methods for collecting and addressing damages suffered by injured patients. Insurance has proven to be an effective tool in covering compensation amounts for patient injuries, facilitated through contracts between insurers and insured parties. However, the effectiveness of this approach depends on achieving desired objectives and ensuring compliance with obligations to maintain insurance coverage in both public and private hospital institutions.

**A) The importance of insurance.**

An insurance contract serves as a mechanism to provide the sums entitled to the injured person. However, the effectiveness of this mechanism depends on the legislator's determination of its obligations and whether it covers all sums requested by the injured party or determined by the judiciary in case of disputes over the amount.

**1- The extent of mandatory insurance.**

Working with insurance is a matter of choice and depends on the decisions of the insured and their willingness to protect their assets. However, for certain professions, ensuring civil responsibility through insurance is essential to ensure correctness and accountability. This is why mandatory insurance for medical activities exists, ensuring coverage for civil responsibility of healthcare professionals<sup>51</sup>.

The Algerian legislator has addressed the concept of insurance for the civil responsibility of doctors within the framework of insurance law, particularly in Article 167. This article stipulates : "All civil health institutions must ensure that all members of the medical, paramedical, and pharmaceutical professions practicing independently subscribe to insurance covering their professional civil liability towards their patients and others."

It is noted that while Article 167 specifically mandates compulsory insurance for medical practitioners in the private sector, the legislator has extended this requirement within the realm of health law. Article 296 now generalizes the introduction of compulsory insurance across both public and private health sectors. It states: "Public and private health structures and institutions, as well as all health professionals who practice independently, must subscribe to insurance covering their civil and professional responsibility towards their patients and third parties."

It is evident from this article that the legislator has addressed the gap in insurance law by extending the concept of insurance to include the public sector. Moreover, the legislator has introduced penalties for non-compliance with insurance requirements, which include a financial penalty ranging from 5,000 DZD to 100,000 DZD, as stipulated in Article 184, paragraph one of the Insurance Law.

## **2- The role of insurance in the medical field.**

The role of insurance in medical responsibility serves a dual purpose. Firstly, it acts as protection for the healthcare provider, shielding them from potential financial losses due to claims of negligence or malpractice. Secondly, it serves as a guarantee for the injured person, ensuring that they have recourse to compensation for damages caused by medical care.

Whether compulsory or optional, insurance in the medical field primarily aims to provide a middle ground that benefits both parties involved. It seeks to meet the needs of doctors by offering protection against liabilities, while also addressing the interests of patients by ensuring there is a mechanism in place for compensation in case of damage<sup>52</sup>.

Compulsory insurance incentivizes hospital institutions to adopt modern devices, machines, and advanced technologies. This adoption enhances medical care for patients by ensuring that healthcare facilities have access to state-of-the-art equipment and technology. As a result, compulsory insurance plays a crucial role in driving advancements in healthcare delivery and improving patient outcomes<sup>53</sup>.

Insurance serves as a means to mitigate risks by providing compensation to patients who suffer damage. Its role is crucial in facilitating access to compensation for those injured. However, the reality often shows that the insurance coverage received by the injured person may not fully reflect the extent of their damages. This discrepancy arises because insurance contracts typically set limits on the maximum amount payable, which may be lower than the amounts awarded by courts as compensation for damages. As a result, the compensation received from insurance may not fully meet the financial needs of the injured person in relation to the damage suffered<sup>54</sup>.

Insurance also offers protection for public hospital institutions against lawsuits arising from errors or negligence committed by their staff. In cases of civil responsibility, the financial burden is attributed to the damages suffered by the victim. Insurance helps mitigate this burden by providing coverage for legal liabilities and compensation costs, thereby safeguarding the financial stability of public hospitals in such situations.

## **B) The impact of insurance.**

After completing the insurance contract, the insurance agencies must undertake compensation for the damages included in the contract within certain limits. This prompts discussion of the extent of the interdependence between civil responsibility and insurance, and the adequacy and effectiveness of insurance as a system for redressing these damages.

### **1-Integration between civil responsibility and insurance.**

The insurance system does not necessarily lead to the dispensation of civil and administrative responsibility in compensation, because it leads to the payment of compensation in exchange for premiums<sup>55</sup>, which helps to reduce the inability of its system to compensate victims of risks and

medical errors. Insurance contributes to the distribution of risks and medical errors by providing a collective means of compensation between consumers and insurers.

The insurance system differs from responsibility in terms of the compensation system, as it allows both the responsible party and the injured party to benefit from it. However, from a practical point of view, insurance affects the basis of civil responsibility, as it aims to modify the distribution of risks<sup>56</sup>.

The insurance system brought about a change in the principles of civil responsibility that were based on fault, making it less capable of achieving the safety individuals seek. As the idea of fault diminished in priority, the concept of responsibility based on risk gained prominence. Insurance significantly impacted this shift by introducing new factors and giving civil responsibility a social dimension. The search for fault loses its practical value when insurance operates within the scope of personal responsibility<sup>57</sup>.

The importance of the responsibility insurance system has contributed to the expansion of objective responsibility. This highlights the significance of insurance in covering the responsibility of doctors, their dependents, and associated entities. This expansion has reinforced the pursuit of adopting insurance to achieve greater protection, establishing a logical relationship : the greater the scope of insurance, the broader the scope of civil responsibility<sup>58</sup>.

## **2- The effectiveness of the insurance.**

The insurance system has received criticism, particularly concerning the reciprocal relationship between it and civil responsibility. Medical responsibility insurance was rejected due to the prevailing belief that medical risk cannot be subject to insurance, despite the fact that the conditions of the insured risk may be fulfilled in it<sup>59</sup>.

The objection was also focused on insurance for some medical products, because it leads to injustice due to the idea of joint collective causation. This arises from applying the responsibility of producers to compensate those who are in the same position as the injured, even if the product was not used<sup>60</sup>.

However, it is clear that the medical risk fulfills the terms of insurability, as it is not certain to occur, does not depend on the will of the parties to the contract, and is legitimate and not contrary to public order and public morals<sup>61</sup>.

The financial coverage provided by the insurance company does not provide complete protection for the doctor, as his actions can still result in criminal responsibility. While insurance can cover some aspects, it typically does not include intentional errors committed by the insured nor penalties imposed under criminal law<sup>62</sup>.

Criticism has also focused on how premiums are determined for insurance commitments. The increase in insurance premiums acts as a barrier across all medical risks. These challenges are addressed by considering the legal nature of health institutions, the insured being a legal entity, the specialization of the doctor, their experience, the percentage and severity of medical risks involved, to determine the appropriate premiums<sup>63</sup>.

However, despite these objections, the insurance system has become a necessary reality due to the rise in disease causes and occurrences of medical errors in many cases. This underscores the necessity of enacting laws in this regard, especially to address those who evade paying premiums by not adhering to insurance requirements.

## **Conclusion.**

The role of the hospital remains pivotal in providing medical care in all its forms to individuals. However, its effectiveness may be compromised by errors made by its medical staff, including doctors, paramedics, administrators, and others associated with it. Therefore, the Algerian legislator has identified several legal texts that need updating, particularly concerning financial penalties and inconsistencies in acknowledging medical errors. These issues, along with insufficient penalties that fail to adequately compensate victims, contribute to challenges in seeking redress for damages. The lack of clarity and rigor in legal texts in handling various cases is discouraging, contrasting with comparative legal systems known for their robustness in addressing violations

affecting individual health. There is also a need to activate the insurance system, which currently falls short of meeting victims' expectations due to fraud and inadequate compensation amounts that often fail to cover even minimal damages, and the most important results and results can be obtained. Suggestions according to the following :

**First : The most important results.**

The most important results can be summarized as follows :

- 1- Reality has proven that hospitals bear legal responsibility for issues that may arise from facility faults, personal errors of employees operating under its authority, or a combination of both. However, the challenge lies in the evidence needed by the judiciary to establish liability and subsequently decide on legal penalties. Individuals, particularly doctors, can be held accountable, but legal action against them remains challenging, especially since their primary obligation is to provide care.
- 2- The Algerian legislator has stipulated that compensation falls within the general legal framework and is the responsibility of the hospital for any errors and resulting damages, according to their severity. The judge must consider the conditions necessary to protect the patient's rights, while also avoiding placing full legal liability on the individual responsible for the damage, especially if it is proven that the patient contributed to worsening their condition. The hospital retains the right to seek recourse from the employee operating within its framework if it is determined that the error falls outside the scope of the hospital's responsibility.
- 3- The Algerian legislator has been diligent in regulating the administrative responsibility of hospitals as public facilities. This administrative responsibility falls under the jurisdiction of administrative courts, particularly concerning violations that impact public order and public health. Such violations include illegal waste disposal and failure to maintain insurance coverage, which are regarded as threats to public safety. Therefore, state intervention is necessary to enforce the law and safeguard the lives of individuals.
- 4- Algerian legislation mandates insurance as a compulsory system for both public and private hospital institutions. Its purpose is to legally protect patients against various forms of damage. However, despite these measures, violations can still occur, for which the law imposes multiple penalties. These penalties may require periodic review and reconsideration.

**Second : The most important suggestions.**

- 1- It would be better to amend and strengthen the legislative text regarding the cases of negligence that are observed daily in Algerian hospitals, which often involve fraud and collusion among various parties concerned. Although the state has allocated a large budget to the health sector, individuals still suffer from behaviors that exploit legal protection and hinder the implementation of the duties assigned to them. Therefore, the concept of presumed negligence must be emphasized, especially in cases that lead to the patient's death or total disability. The Penal Code should be more stringent and explicit to facilitate judicial procedures against such violations, as the current penalties are considered insufficient due to the flexibility of the text and the challenges in proving negligence. This could be done by increasing the penalty imposed in Articles 182 and 288 of the Penal Code to reach a minimum of one million Algerian dinars per person, in addition to imprisonment for a period of no less than 10 years if the charge is proven.
- 2- Because of the deception by some doctors, it would be better for the Algerian legislator to address this issue with penal laws that prevent them from working in private clinics while keeping their jobs in public hospitals. This practice has negatively affected their performance and led to efforts to direct patients to the private sector. There must be explicit legal provisions criminalizing such acts, and punishing them with imprisonment, heavy fines, and long-term suspension from medical practice. This can be achieved by amending Article 221 of the Code of Medical Ethics, making it a felony with a stricter application of the punishment.
- 3- The high cost of medical treatment places a heavy burden on the lower social and economic classes, which justifies state intervention to address these practices according to the constitutional principle of free treatment. This can be achieved by setting a cap on the prices of

medical examinations, especially operations conducted by private clinics, and subjecting them to oversight by including this within the scope of Article 13 of the Health Law.

- 4- There is an urgent need for the Public Prosecution to intervene, initiate public lawsuits, and exercise direct oversight over the medical profession. Priority can be given to addressing complaints of violations more rigorously and holding those responsible for negligence accountable by enacting specialized legislation that applies to all stakeholders in the healthcare sector, rather than relying on general and ineffective measures. Such legislation should emphasize specific penalties tailored for healthcare, distinct from those stipulated in the Penal Code. This approach would enhance the protection of hospitals and increase the penalties for individuals found guilty of assaulting hospital facilities or staff. This can be achieved by stipulating that they be original parties in lawsuits involving the health sector, by including this in Article 1 of Health Law 18-11.
- 5- There is a pressing need to enhance the insurance system to ensure comprehensive coverage of various damages as mandated by law and stipulated in insurance contracts. This is especially critical given the widespread negligence and fraud within insurance companies across all sectors. Furthermore, expanding social security coverage for a wide range of diseases, which individuals often cannot afford amid the increasing complexity and diversity of health issues, underscores the urgent need to amend various insurance laws to protect public health. This can be achieved by specifying aspects of health insurance in Ordinance 95-07 and revising the Social Security Law to align with the increasing causes of illness and update the compensations covered.

**Bibliography:**

**A- Legislative texts.**

- 1- Law 01-19, of december12, 2001, related to waste management, control and removal, Official jornal, People's Democratic Republic of Algeria, No 77, of december 15, 2001.
- 2- Law 08-09, of february 25, 2008, containing the Civil and Administrative Procedures Law, amended and supplemented, Official jornal, People's Democratic Republic of Algeria, No 21, of April 23, 2008.
- 3- Law 18-11, of July 2<sup>nd</sup>, 2008, containing the Health, Official jornal, People's Democratic Republic of Algeria, No 46, of July 29, 2018.
- 4- Ordinance 66-156 of June 8, 1966, containing the Penal Code, amended and supplemented, Official jornal, People's Democratic Republic of Algeria, No 49, of June 11, 1966.
- 5- Ordinance 75-58, of september 26, 1975, which includes the civil law, amended and supplemented, Official jornal, People's Democratic Republic of Algeria, No 78, of september 30, 1975.
- 6- Ordinance 95-07, of january 25, 1995, related to insurance, amended and supplemented, Official jornal, People's Democratic Republic of Algeria, No 13, of march 7, 1995.
- 7- Ordinance 06-03 of july 15, 2006, the General Basic Law of Public Service, amended and supplemented, Official jornal, People's Democratic Republic of Algeria, No 46, of july 16, 2006.
- 8- Executive Decree 92-276, of june 06, 1992, which includes the Code of Medical Ethics, Official jornal, People's Democratic Republic of Algeria, No 52, of july 08, 1992.

**B- Books:**

- 1-Abdelaziz Al-Lasasmeh, tortious civil responsability, damaging act, its basis and conditions, Dar Al-Thaqafa, Amman, 2022.
- 2-Ali Ali Suleiman, The General Theory of Obligation, Sources of Obligation in Algerian Civil Law, 7th Edition, University Publications Office, Ben Aknoun, Algeria, 2007.
- 3-Ali Khattar chantawi, Public Administration Responsibility for Its Damaging Actions, Wael Publishing House, Amman, 2008.
- 4-Amel Bakouch, Towards Objective Responsibility for Medical Consequences, "A Study in Algerian and Comparative Law", New University House, Alexandria, Egypt, 2011.

- 5-Anas Mohammed Maher Abdel Ghaffar Salama, Civil Responsibility in the Medical Field, A Comparative Study between Law and Islamic Sharia, a dissertation for obtaining a PhD in Law, Faculty of Law, Tanta University, Egypt, 2009.
- 6-Azzeddine Qamarawi, The Concept of Compensation Resulting from Cases of Medical Responsibility in Algeria, Algerian Judicial Encyclopedia, Encyclopedia of Legal Thought, "Medical Responsibility", Dar Al-Hilal Media Services, Algeria.
- 7-Jaber Jad Nassar, The simple in the State's Responsibility for its Contractual Actions - Judgment of Compensation - Dar Al-Nahda Al-Arabia, Cairo, Egypt, 2012.
- 8-Majid Ragheb Al-Helou, Environmental Protection Law in the Light of Sharia, New University Publishing House, Alexandria, Egypt, 2004.
- 9-Massoud Chihoub, General Principles of Administrative Disputes - Bodies and Procedures - University Press, Edition 5, Part 1, Algeria, 2009.
- 10-Mohammed Fathallah al-Nachar, The Right to Civil Compensation between Islamic Jurisprudence and Civil Law, New University House, Alexandria, Egypt.
- 11-Mohammed Hussein Mansour, Medical Responsibility, University Thought House, Alexandria, Egypt, 2006.
- 12-Mohammed Maher Abou Al-Eynein, The Comprehensive Encyclopedia of Administrative Judiciary, Compensation for the Actions of Public Authorities, The National Center for Legal Publications, 3rd edition, Cairo, Egypt, 2007.
- 13-Reda Abdel Halim Abdel Majeed Abdel Bari, Medical responsibility for the error in diagnosing fetal deformities and genetic diseases, a comparative study with French law, Dar Al-Nahda Al-Arabia, Cairo, Egypt, 2003.
- 14-Said Moqaddam, Theory of Compensation for Moral Damage in Civil Responsibility, National Book Foundation, Algeria.
- 15-Samir Dannoun, Personal and Attachment Error in Civil and Administrative Law, A Comparative Study of the Modern Book Foundation, Lebanon, 2009.

**C – Theses:**

- 1-Abdelhadi Ben Zita, Rules of Responsibility in Modern Medical Works, Comparative Study between Algerian Law and French Law, PhD thesis, Private Law (Contracts and Responsibility), Faculty of Law, University of Algiers 1 Ben Youssef Ben Khadda, Algeria, 2010-2014.
- 2-Cherif Bahmaoui, Compensation for Damages Resulting from Treatment Risks (Comparative Study), PhD Thesis in Private Law, Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, 2012-2013.
- 3-Farida Amiri, Hospitals' Responsibility for Medical Errors, a thesis for a PhD in Science, specialization : Law, Faculty of Law and Political Science, Mouloud Mamari University, Tizi Ouzou, 2021.
- 4-Jawad Mansouri, Directions of Medical Civil Responsibility, a comparative study, a memorandum for obtaining a magister's degree in medical law, Faculty of Law and Political Science, Abi Bakr Belkaid University, Tlemcen, 2016-2017.
- 5-Khaled Yaqoubi, Administrative Responsibility for Hospital Public Institutions in Algeria, Memorandum for Obtaining a magister's Degree in the Framework of the Doctoral School of State and Public Institutions, Faculty of Law, University of Algiers 1, Algeria, 2016-2017.
- 6-Rafika Aissani, The Responsibility of Doctors in Public Facilities, a thesis submitted for a PhD in Public Law, Faculty of Law and Political Science, Abou Bakr Belkaid University, Tlemcen, 2015-2016.
- 7-Samira Hussein Muheisen, The Civil Responsibility of the Hospital Administration for the Medical Error of its Employees (Comparative Study), Thesis for a PhD in Law, Faculty of Law, Helwan University, Egypt, 2015.

8- Suleiman Haj Azzam, Administrative Responsibility for Public Hospitals, a dissertation submitted to obtain a Doctorate of Science degree in Law, majoring in Administrative Law, Faculty of Law and Political Science, Mohamed Kheidar University, Biskra, 2010/2011.

**D - Newspaper articles:**

1-Ali Othmani, Medical error as a basis for hospital administrative liability in Algeria, Al Turath Journal, Zayan Achour University, Djelfa, Volume 4, Issue 3, March 2014.

2-Asma Hariz, Kahla Ghali, Legal Conditioning of the Doctor's Professional Error, A Comparative Study, Journal of Legal Studies, vol 7, N 1, Yahia Fares University of Medea, 2021.

3-Baderddine Merghni Hizoum, Mohamed Elbachir hamouda, Legal Basis for Determining the Medical Damage between the Responsibility of a Doctor and a General Hospital, social and human sciences review, vol 21, N 1, , University of Batna1, 2020

4-Driss Bakhouia, The hospital's liability as a legal entity for the errors of its doctors, Journal of Human Rights Studies, Dr. Moulay El Taher University, Saida, Volume Two, Issue Two, December 2015.

5- Eka adrianto iskandar, Doctors And Hospitals : A Legal Perspective On Accountability, Uumilc 2017 9 th uum international legal conference, The European Proceedings of Social & Behavioural Sciences, UK, 2018.

6-Endra Tri Prabowo, Zudan Arief Fakrulloh, Evita Isretno Israhadi, Legal Study on Hospital Responsibilities in Providing Health Services, Advances in Economics, Business and Management Research, volume 140, Faculty of Law University 17 Agustus 1945 Semarang, Indonesia, 2020.

7-Hanna Kallino, Mari Kangasniemi, Martin Johnson, Environmental responsibility in hospital care: Findings from a qualitative study, Journal of Hospital Administration, vol 7 N ° 4 , Sciedu Press, canada, september 2018.

8- Jeen su lim, John, H heinrichs, Khulud al-ali, Alamzeb Amir, The role of hospital service quality in developing the satisfaction of the patients and hospital performance, Management Science Letters journal, vol 8, licensee Growing Science, Canada, 2018.

9-Marghani Hayzoum Badr El-Din ; Hammouda Muhammad Al-Bashir, Legal Basis for Determining Medical Damage between the Doctor's Responsibility and the General Hospital's Responsibility, Journal of Social and Human Sciences, Haj Lakhdar University, Batna, Volume 21, Issue 1, June 2020.

10-Martin Mckee, Judith Healy, The role of the hospital in a changing environment, Bulletin of the World Health Organization, vol 6, N° 78, World Health Organization, 2000.

11-Meriem Batoul Fodil, fadila Djenouhat, The faulty administrative responsibility within the public hospitals international law and development review, vol 8, N 2, Abdelhamid Ben Badis University, Mostaganem, 2020, p 58.

12- Zudan Arief Fakrulloh, Lubna, Legal Review Of Hospital Responsibility For Medical Actions Carried Out By Doctors, journal of indonisian social science, vol 4, N° 12 , Universitas Airlangga, Indonesia, December 2023.

---

<sup>1</sup> Martin Mckee, Judith Healy, The role of the hospital in a changing environment, Bulletin of the World Health Organization, vol 6, N° 78, World Health Organization, 2000, p 806.

<sup>2</sup> Law 18-11, of July 2<sup>nd</sup>, 2008, containing the health, Official jornal, People's Democratic Republic of Algeria, No 46, of July 29, 2018, p 6.

<sup>3</sup> Jeen su lim, John, H heinrichs, Khulud al-ali, Alamzeb Amir, The role of hospital service quality in developing the satisfaction of the patients and hospital performance, Management Science Letters journal, vol 8, licensee Growing Science, Canada, 2018, p 1355.

<sup>4</sup> Mohammed Maher Abou Al-Eynein, The Comprehensive Encyclopedia of Administrative Judiciary, Compensation for the Actions of Public Authorities, The National Center for Legal Publications, 3rd edition, Cairo, 2007, p 207.

<sup>5</sup> Anas Mohammed Maher Abdel Ghaffar Salama, Civil Responsibility in the Medical Field, A Comparative Study between Law and Islamic Sharia, a dissertation for obtaining a PhD in Law, Faculty of Law, Tanta University, Egypt, 2009, p 240.

<sup>6</sup> Samira Hussein Muheisen, The Civil Responsibility of the Hospital Administration for the Medical Error of its Employees (Comparative Study), Thesis for a PhD in Law, Faculty of Law, Helwan University, Egypt, 2015, p 117.

- <sup>7</sup> Jaber Jad Nassar, *The simple in the State's Responsibility for its Contractual Actions - Judgment of Compensation - Dar Al-Nahda Al-Arabia*, Cairo, Egypt, 2012, p. 237.
- <sup>8</sup> Farida Amiri, *Hospitals' Responsibility for Medical Errors*, a thesis for a PhD in Science, specialization : Law, Faculty of Law and Political Science, Mouloud Mamari University, Tizi Ouzou, 2021, p. 78.
- <sup>9</sup> Mohammed Maher Abou Al-Eynein, *op.cit*, p 237.
- <sup>10</sup> Farida Amiri, *op.cit*, p 82.
- <sup>11</sup> Zudan Arief Fakrulloh, Lubna, *Legal Review Of Hospital Responsibility For Medical Actions Carried Out By Doctors*, journal of indonisian social science, vol 4, N° 12 , Universitas Airlangga, Indonesia, December 2023, p 1238.
- <sup>12</sup> Ordinance 66-156 of June 8, 1966, containing the Penal Code, amended and supplemented, Official journal, People's Democratic Republic of Algeria, No 49, of June 11, 1966, p 733.
- <sup>13</sup> Asma Hariz, Kahla Ghali, *Legal Conditioning of the Doctor's Professional Error, A Comparative Study*, Journal of Legal Studies, vol 7, N 1, Yahia Fares University of Medea, 2021, p 249.
- <sup>14</sup> Zudan Arief Fakrulloh, Lubna, *op.cit*, p 1241.
- <sup>15</sup> Rafika Aissani, *The Responsibility of Doctors in Public Facilities*, a thesis submitted for a PhD in Public Law, Faculty of Law and Political Science, Abou Bakr Belkaid University, Tlemcen, 2015-2016, p115-116.
- <sup>16</sup> Farida Amiri, *op.cit*, p 95.
- <sup>17</sup> Baderddine Merghni Hizoum, Mohamed Elbachir hamouda, *Legal Basis for Determining the Medical Damage between the Responsibility of a Doctor and a General Hospital*, International Law And Development Review, vol 21, N 1, University of Batna1, 2020, p 324.
- <sup>18</sup> Mohammed Hussein Mansour, *Medical Responsibility*, University Thought House, Alexandria, Egypt, 2006, p. 14.
- <sup>19</sup> Meriem Batoul Fodil, Fadila Djenouhat, *The faulty administrative responsibility within the public hospitals*, International Law and Development Review, vol 8, N 2, Abdelhamid Ben Badis University, Mostaganem, 2020, p 58.
- <sup>20</sup> Farida Amiri, *op.cit*, p 97.
- <sup>21</sup> Ordinance 06-03 of July 15, 2006, the General Basic Law of Public Service, amended and supplemented, Official journal, People's Democratic Republic of Algeria, No 46, of July 16, 2006, p 17.
- <sup>22</sup> Executive Decree 92-276, of June 06, 1992, which includes the Code of Medical Ethics, Official journal, People's Democratic Republic of Algeria, No 52, of July 08, 1992, p 1436.
- <sup>23</sup> Rafika Aissani, *op.cit*, p 150.
- <sup>24</sup> Zudan Arief Fakrulloh, Lubna, *op.cit*, p 1242.
- <sup>25</sup> Baderddine Merghni Hizoum, *op.cit*, p 324.
- <sup>26</sup> Ali Ali Suleiman, *The General Theory of Obligation, Sources of Obligation in Algerian Civil Law*, 7th Edition, University Publications Office, Ben Aknoun, Algeria, 2007, p 150.
- <sup>27</sup> Ordinance 75-58, of September 26, 1975, which includes the civil law, amended and supplemented, Official journal, People's Democratic Republic of Algeria, No 78, of September 30, 1975, p 997.
- <sup>28</sup> Farida Amiri, *op.cit*, p 267.
- <sup>29</sup> Abdelaziz Al-Lasasmeh, *tortious civil responsibility, Damaging act, its basis and conditions*, Dar Al-Thaqafa, Amman, 2022, p 193.
- <sup>30</sup> Farida Amiri, *op.cit*, p 268.
- <sup>31</sup> Rafika Aissani, *op.cit*, p 268.
- <sup>32</sup> Farida Amiri, *op.cit*, p 269.
- <sup>33</sup> Mohammed Fathallah al-Nachar, *The Right to Civil Compensation between Islamic Jurisprudence and Civil Law*, New University House, Alexandria, p 292.
- <sup>34</sup> Endra Tri Prabowo, Zudan Arief Fakrulloh, Evita Isretno Israhadi, *Legal Study on Hospital Responsibilities in Providing Health Services*, Advances in Economics, Business and Management Research, volume 140, Faculty of Law University 17 Agustus 1945 Semarang, Indonesia, 2020, p 258.
- <sup>35</sup> Ali Khattar Chantawi, *Public Administration Responsibility for Its Damaging Actions*, Wael Publishing House, Amman, 2008, p 308.
- <sup>36</sup> Samir Dannoun, *Personal and Attachment Error in Civil and Administrative Law, A Comparative Study of the Modern Book Foundation*, Lebanon, 2009, p 273.
- <sup>37</sup> Eka Adrianto Iskandar, *Doctors And Hospitals : A Legal Perspective On Accountability*, Uumilc 2017 9 th UUM international legal conference, The European Proceedings of Social & Behavioural Sciences, UK, 2018, p 631.
- <sup>38</sup> Ali Othmani, *Medical error as a basis for hospital administrative liability in Algeria*, Al Turath Journal, Zayan Achour University, Djelfa, Volume 4, Issue 3, March 2014., p 175.
- <sup>39</sup> Driss Bakhouia, *The hospital's liability as a legal entity for the errors of its doctors*, Journal of Human Rights Studies, Dr. Moulay El Taher University, Saida, Volume Two, Issue Two, December 2015, p 140.
- <sup>40</sup> Khaled Yaquoubi, *Administrative Responsibility for Hospital Public Institutions in Algeria*, Memorandum for Obtaining a magister's Degree in the Framework of the Doctoral School of State and Public Institutions, Faculty of Law, University of Algiers 1, Algeria, 2016-2017, p 112.

- <sup>41</sup> Azzeddine Qamarawi, The Concept of Compensation Resulting from Cases of Medical Responsibility in Algeria, Algerian Judicial Encyclopedia, Encyclopedia of Legal Thought, "Medical Responsibility", Dar Al-Hilal Media Services, Algeria, p. 64.
- <sup>42</sup> Majid Ragheb Al-Helou, Environmental Protection Law in the Light of Sharia, New University Publishing House, Alexandria, Egypt, 2004, p 149.
- <sup>43</sup> Hanna Kallino, Mari Kangasniemi, Martin Johnson, Environmental responsibility in hospital care: Findings from a qualitative study, Journal of Hospital Administration, vol 7 N ° 4 , Sciedu Press, canada, september 2018, p 57.
- <sup>44</sup> Reda Abdel Halim Abdel Majeed Abdel Bari, Medical responsibility for the error in diagnosing fetal deformities and genetic diseases, a comparative study with French law, Dar Al-Nahda Al-Arabia, Cairo, Egypt, 2003, p. 210.
- <sup>45</sup> Ordinance 95-07, of january 25, 1995, related to insurance, amended and supplemented, Official journal, People's Democratic Republic of Algeria, No 13, of march 7, 1995, p 27.
- <sup>46</sup> Suleiman Haj Azzam, Administrative Responsibility for Public Hospitals, a dissertation submitted to obtain a Doctorate of Science degree in Law, majoring in Administrative Law, Faculty of Law and Political Science, Mohamed Kheidar University, Biskra, 2010/2011, p 229.
- <sup>47</sup> Law 09-08, of february 25, 2008, containing the Civil and Administrative Procedures Law, amended and supplemented, Official journal, People's Democratic Republic of Algeria, No 21, of April 23, 2008, p 51.
- <sup>48</sup> Said Moqaddam, Theory of Compensation for Moral Damage in Civil Responsibility, National Book Foundation, Algeria, p 62.
- <sup>49</sup> Suleiman Haj Azzam, op.cit, p 435.
- <sup>50</sup> Massoud Chihoub, General Principles of Administrative Disputes - Bodies and Procedures - University Press, Edition 5, Part 1, Algeria, 2009, p 396.
- <sup>51</sup> Abdelhadi Ben Zita, Rules of Responsibility in Modern Medical Works, Comparative Study between Algerian Law and French Law, PhD thesis, Private Law (Contracts and Responsibility), Faculty of Law, University of Algiers 1 Ben Youssef Ben Khadda, Algeria, 2010-2014, p 187 .
- <sup>52</sup> Jawad Mansouri, Directions of Medical Civil Responsibility, a comparative study, a memorandum for obtaining a magister's degree in medical law, Faculty of Law and Political Science, Abi Bakr Belkaid University, Tlemcen, 2016-2017, p 115.
- <sup>53</sup> Farida amiri, op.cit, p 293.
- <sup>54</sup> Khaled Yaqoubi, op.cit, p 133.
- <sup>55</sup> Suleiman Haj Azzam, op.cit, p 435.
- <sup>56</sup> Farida Amiri, op.cit, p 295.
- <sup>57</sup> Cherif Bahmaoui, Compensation for Damages Resulting from Treatment Risks (Comparative Study), PhD Thesis in Private Law, Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, 2012-2013, p 300.
- <sup>58</sup> Amel Bakouch, Towards Objective Responsibility for Medical Consequences, "A Study in Algerian and Comparative Law", New University House, Alexandria, Egypt, 2011, p 335.
- <sup>59</sup> Farida Amiri, op.cit, p 296.
- <sup>60</sup> Abdelhadi Ben Zita, op.cit, p 302.
- <sup>61</sup> Amel Bakouch, op.cit, p 335.
- <sup>62</sup> Amel Bakouch, ibid, p 336.
- <sup>63</sup> Cherif Bahmaoui, op.cit, p 298.