



ORIGINAL PAPER

The Provisions of Compensation in Iraqi Civil Law and the Position of Punitive Damages

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Abstract:

Compensation is a penalty determined by the law for the civil liability officer in each of them (contract and harm) for the benefit of the person who suffered the damage and cannot be determined before the error occurs but is left to the court to be determined according to the criteria that take into account the seriousness of the fault and behavior of the defendant. States, including Iraq and France, adopt the principle of full compensation, but developments on the economic side as well as the tendency of some courts to apply the idea of punitive damages as a means of deterrence and the method of punishment allow for the possibility of applying punitive damages in Iraqi laws and specifically in recent decisions of the courts in some Libel cases. This research attempts to shed light on the current situation of punitive damages in Iraqi law and its compatibility with the practices of other countries. The research relies on comparative methodology and analysis of legal texts.

Keywords: *punitive; compensation; tort; damage; civil*

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Introduction

Compensation is the money provided by public law courts for civil wrongs (Schembri, 2009: 48) The damages are compensatory in nature and are awarded to the claimant as compensation for the actual loss incurred as a result of the infringing activities of the defendant, such as assaulting the right to life and the right to integrity of the body, name or other. The appearance of the obligation on the shoulders of the actor is the payment of compensation and the source of illegal work. The agreed principle is that "any fault caused harm to others that is necessary for the person who committed the compensation. The civil liability is the obligation to compensate for the breach of a previous original obligation, and the original obligations arise from the contract and are called contractual liability, others are arising from the law The obligation to compensate for damage was based on the notion of punishment of the offender, and then turned into the idea of a reform function aimed at reparation. However, the emergence of the notion of punitive damages described as "semi-punitive" introduced a new concept of compensation, as it aims to punish the perpetrator of misconduct or fraud or recklessness that resulted in harm to others, and at the same time to deter others from committing the same act in the future through the imposition of financial compensation is unexpected. Although compensation in general works to redress the penal law is not part of its priorities. The Iraqi civil law is based on the principle of full compensation. It contains detailed provisions for compensation, but its position on punitive damages is unclear. It does not take them openly. In both cases, the judicial application is probably its decisive opinion in the matter.

In this paper I try to address the provisions of compensation dealt with in the Iraqi civil law, and try to determine the extent of convergence or intersection between those provisions and the idea of punitive damages.

The concept of compensation

Compensation is financial compensation is granted to a person who has suffered injury in order to replace the loss resulting from the injury mentioned, such as compensation of workers. Wages paid to the employee, fees, salaries or allowances in general. An amount is paid from the landowner to compensate for the damages incurred as a result of the seizure when its territory is taken by the government. In other words, the compensation is intended to compensate the harm caused to the victim, and in this concept it differs from the criminal penalty which is intended to punish the offender for his act and to deter others from committing the same act. The difference is that the compensation is as much as the damage, Estimated as much as the culprit's fault and degree of seriousness. Compensation is a sum of money awarded by a court as compensation for a tort or a breach of contract. Compensation is the normal effect of liability for damage to others, whether this liability is contractual or injurious. However, it is noted that the Iraqi Civil Code did not provide a comprehensive definition of compensation because Iraqi law was influenced by Islamic jurisprudence and used the term "guarantee" to express the idea of compensation. In accordance with Iraqi civil law, any person whose right is unlawfully used must be guaranteed in the following cases: (A) If the purpose of such use is to harm only third parties; (B) if the interests to which this use is intended are insignificant so as not to be entirely commensurate with the harm caused to others; (C) The interests to which this use is intended are unlawful (ICC: 1951:7). In the sense that compensation is the natural consequence of civil liability, where the injured person seeks compensation for the

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damage to him, compensation for the damage must be complete (Schwarzkopf, McNamara, 2001: 4).

Forms of compensation in Iraqi civil law

The Iraqi civil law includes various forms of compensation, and each form has its reasons and method as follows:

Substantive compensation

The theory of substantive compensation considers damage only, so that it is capable of being far removed from the related items and other elements, whether it relates to personal elements that are attributable to the victim or to the wrongdoer. It does not consider the fault of the official in terms of gravity and does not pay attention to his personal circumstances nor to his financial position, It also does not take into account the circumstances related to the injured, such as his health status and social and financial status and others (Story, 2010: 20). The substantive compensation estimate is consistent and unchanged from one person to another for the same injury. In other words, substantive compensation is estimated as one estimate for all persons in the same injury without distinction between a person, a small person, a man or a woman. The Iraqi civil law has taken substantive compensation In accordance with article 202 states that "any act of self-harm, such as killing, wounding, beatings or any other type of victimization, shall be liable to compensation for the most recent injury". Substantive compensation is found in the system of security in Islamic jurisprudence, whether it concerns the protection of self-harm or the guarantee of the destruction of money. It was also stipulated in Jordanian Law (JCC, 1976:274), and (ECC, 1948: 161). In our opinion, substantive compensation is compensation far from reality, although it achieves equality in dealing with the damage, but does not achieve justice from the eyes of the injured person. Also, the objective compensation, despite his interest in error as an important element in determining the responsible compensation, but does not care about the gravity of the error, aspires to justice through reparation for the injured person, so that substantive compensation can be described as a picture without colors.

Realistic compensation

In contrast to substantive compensation, realistic compensation is primarily concerned with the personal circumstances of the victim, because the damage varies from one person to another depending on the specific circumstances of each of them despite the congruence of the harmful act. The damage caused by the same act is not necessarily the same in all the different cases. The realistic estimate of compensation is based on what actually happened in the place of the act causing the compensation, in addition to the need to take into account the personal circumstances of the victim. The judge must stand on his health and physical condition, his financial and social status and his various sources of income. On the incident of missing chances of gain was hoped by the affected, compare these elements before and after the act. It is the personal circumstances surrounding the injured person that are taken into consideration and the judge is based on determining the amount of compensation. These circumstances are variable and not necessarily identical. For example, the health conditions of the affected person may significantly affect whether the victim has diabetes, another person is healthy, and the financial conditions have an effect too. The rich person is not like the poor person who may have lost his livelihood because of that damage, note that the Iraqi Civil Code provides for realistic compensation in Article 205, and Egyptian Civil Code in Article 170. It is noted that the only criterion

adopted here is the personal circumstances of the victim, and in no way the personal circumstances of the person responsible for the damage, it is not worth being rich or poor or any other circumstances.

Full compensation

"All damages and nothing but harm" is the well-known formula in which French law creates the principle of civil liability: the well-known principle of reparation for integrated harm. The basic principle that controls the assessment of damage is the principle of "full compensation" or the principle of "equivalence between damage and compensation". This means that the judge must take into account the true value of all the resulting damage, and may not grant an amount exceeding this amount. This principle of equivalence applies regardless of the cause of the claim on which the liability is based (Picard, Bermann, 2008: 260). That the jurisprudence and the French judiciary have an important role in the development of general rules and principles in the assessment of compensation for damage, especially the principle of equivalence between compensation and damage, whether within the scope of liability or contractual tort, and under the terms of article 1149 of the French Civil Code (FCC: 1804), which states that "(a) the damages owed to the creditor include, in general, the loss and loss of the loss". In the area of tort liability, despite the lack of a text, the view is stable on the work of the principle by deriving from the provisions of article 1382 a French civilian who commits the wrongdoer to compensation for the damage caused. The determination of the scope of the principle of full compensation for damage and its limits depends on the type of damage done, whether it is financial, moral or physical harm. It is not difficult to do so, since the damage was financial. It is sufficient to take into consideration the elements of compensation for loss and loss. And the extent of its scope, but if the damage is physical or moral, the judge will have difficulty in determining the elements of compensation, and this difficulty is not only technical, but it comes from the fact that these damage affects the most expensive aspect of human life is his body and feeling.

Consequences of the application of the principle of full compensation:

The first result we will face is the lack of any possibility of applying punitive damages because the principle of full compensation prevents you from completely, because full compensation is limited only to restore the situation to where it was before the injury without increase or decrease and does not include punishment or deterrence. The issue is to erase what happened as if nothing was done, while punitive damages are reparations, punishment and deterrence, punishing the perpetrator, and deterring others from committing the same act in the future. The second conclusion is that the compensation depends on the reality, but realistic compensation away from the estimates that do not take into account the fact that the injury suffered by the injured, so it is not desirable to be compensated at one rate despite the different damages to different people, especially if the damage is variable. It is fair that the courts or the law are based on fixed schedules that determine the amount of compensation that the injured person deserves. The third result is that the injured person is not entitled to compensation for more than the damage caused to him. The judge does not take the financial situation of the parties into account in assessing compensation for the purpose of granting compensation in excess of the extent of the damage. In order to provide him with a reason for hardening with him and to give the injured person an amount of compensation in excess of the fact of the damage actually occurring, where the damage was poor or he had a single obligation to

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compensate the injured person for appropriate damage and nothing else. The full compensation shall be deemed to include all damage to the injured person, noting that there are a number of specific restrictions on the principle of full reparation, in particular the rule prohibiting double recovery and perhaps the rule of inadmissibility unless the opponent requests it or more. Relate more to the citation of responsibility than to the determination of value in relation to the principle.

The power of the court to assess compensation:

When the judge before him is satisfied that the civil liability conditions are available and that elements of liability are established in accordance with the general rule of civil liability and include, firstly, unacceptable or unlawful conduct by the plaintiff, secondly the damage and thirdly, the causal link between the damage and the illegal act (Bucan Gutta, 2014: 207), he will decide the appropriate compensation for the injured person. The judge has the absolute power to determine the manner in which compensation is made. The judge determines the appropriate method for estimating compensation. The law gives the court full power to determine the method of compensation. In case of compensation by agreement, if the amount of compensation has not been determined initially, the amount of compensation shall be determined by the court. Some may believe that the phrase "the amount of compensation is determined by the court" gives the court broad discretion without any limitation in estimating compensation. However, this trend is not entirely correct. This is because the court does not have absolute powers to estimate the compensation. The estimate includes the plaintiff's claim of loss and loss of profits due to the loss of the right to him or due to the delay in the fulfillment of that right provided that all this is a natural result of the liability of the defendant. Moreover, if the court finds that the defendant did not commit fraud or serious error. The court, although it is the one who will estimate the compensation, but it will be in the case. The finest binding that the compensation amount does not exceed the expected time of injury (Briggs, 2016: 6). Iraqi Civil Code Article 170, paragraph 1 of which provides for the idea of compensation by agreement, "the contractors may determine in advance the value of compensation provided for in the contract by subsequent agreement", noting that the contractual compensation is not receivable if the debtor proves that the creditor did not cause any damage, Compensation by agreement The creditor may not claim more than this value unless it is proved that the debtor has committed fraud or a serious mistake. The Egyptian Civil Code No. 131 of 1948 stipulates the same content in article 223. In our estimation, the idea of compensation by agreement closes the door in the face of the application of punitive damages for two reasons: First, compensation by agreement is incompatible with the basis of the idea of punitive damages and with the functions that are aimed at achieving the punishment of the wrongdoer and deter others. The second reason we imagine that a person wishes to punish himself from during the adoption of sanctions has no limits.

The absolute power of the Court to assess compensation:

The law gives the court absolute power to estimate compensation without any limitation, including penal restrictions. Unlike compensatory damages, punitive damages cannot be compensated as a matter of right. The amount of compensation for punitive damages is left to the discretion of the jury and is determined by consideration of the nature of the defendant's misconduct, the nature and extent of the plaintiff's injury, and the defendant's wealth (Cotchett, Molumphy, 1998). The court decides on civil liability and the amount of compensation without being bound by the rules of criminal liability or

the judgment, Article 206 of paragraph 2 of the Iraqi Civil Code provides that "the court shall determine the civil liability and the amount of compensation without being bound by the rules of criminal liability or the sentence issued by the court of delicts". However, the law described the court as a road map to be used to estimate the compensation, which is full compensation (Article 207). This is not a restriction on the court insofar as it is a guide to the Court's failure to estimate the compensation. The result is that the court can estimate the compensation it deems fit within the limits of the injured attachment of damage and loss of profits provided that this is a natural result of the illegal act. The law may indicate that the court may not be able to determine the amount of compensation sufficiently, and once again intervene to assist the court by giving it the right to retain the right to demand the review of the assessment within a reasonable period of time (art. 207, Para. 2). The law also granted the court the authority to choose the appropriate method of compensation and authorized the court to award compensation in the form of premiums or salary income, article 209 of the Iraqi Civil Code stipulates in paragraph 1 that "the Court shall determine the manner of compensation in accordance with the circumstances and the compensation shall be deemed to be a fine or a salary". This provision also provides for Kuwaiti Civil Code (KCC, 1980: 252). Although the law made the compensation in cash, it again granted the court broad authority to order the reinstatement of the case or to rule on a certain measure or to return the case, all as compensation. The law also granted the court the possibility of returning from the compensation it decides to reduce Or to refrain from the judgment of compensation when the victim has participated in his mistake in the events of necessity increased or impaired the status of the debtor, And this is stated by Article 210 of the Iraqi Civil Code which stipulates that "the court may reduce the amount of compensation or not to grant compensation if the injured person has participated in his fault in causing the damage or increased it or has not been the center of the debtor". This provision is stipulated in the Civil Transactions Law of the United Arab Emirates (CTLUAE: 1985).

Restricted power of the court to estimate compensation

Although the law gave the court broad discretion in estimating compensation, in some cases the law also limited that authority. In fair compensation, for example, the law required the court to take into consideration the compensation status of the litigants, Such as the personal circumstances of the injured party, his health and physical condition, his financial and social status, and his various sources of income (Brodog, McClellan, Anderson, 2004: 609). He must also take into consideration the potential loss of the chances of success that the injured party hoped for, comparing these elements before and after the act, and that was stated the Iraqi Civil Code contains article 191, paragraph 3, of this provision by stating that "in determining fair compensation for damage, the court must take into account the status of liabilities". The same provision was included in the Algerian Civil Code (ACCD: 1975:125).The second restriction, although the law has decided to estimate the compensation in cash, and although it authorized the court to order the return of the case to where it was, but the law at the same time restricted it to be at the request of the victim, note that the Iraqi Civil Code provides for this in article 209 paragraph 2 by saying, "the compensation is estimated in cash as the court may, depending on the circumstances and at the request of the aggrieved, order the return of the case to what it was or ... also the same provision in Article 171 of the Egyptian Civil Code. The third limitation is that the assessment of compensation determined by the court is subject to the control of the Court of Cassation. In this regard, the Iraqi Court of Cassation issued many

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decisions that the compensation is commensurate with the actual damage. If that compensation is excessive, the Court of Cassation may reduce it, This is a view Court of Cassation decision (ICCD: 1974), and also if the Court of Cassation finds that the compensation is small and disproportionate to the gravity of the damage, it has the right to decide to overturn that decision.

Characteristics of compensation and comparison with the characteristics of punitive damages

In general, the characteristics, or functions of compensation are deterrence and reform.

Compensation as a Means of Deterrence

It is clear that deterrence involves two things at the same time: it is deterrence and punishment for the wrongdoing person, the person responsible for the damage, which is to deter others from committing that act in the future. This is intended to deter or punish the person responsible for the damage, noting that the latter never comes alone, in the sense that punitive damages cannot be judged unless the court decides to award compensation, and vice versa. We believe that the function of deterrence in punitive damages is more powerful and influential and effectiveness, which is totally unpredictable what compensation in its general form, the function of deterrence is limited by the principle of full compensation. There is a consensus among legal scholars that deterrence, along with punishment, is the goal of punitive damages. Deterrence is, moreover, a well-defined objective enough that deterrence is not the only objective served by punitive damages, "and that attention was only through economic deterrence, but deterrence is nonetheless a very important justification for punitive damages (Sharkey, 2003: 364). In the scope of punitive damages, deterrence is seen as the main function of punitive damages: from this point of view, punishment is not a function of punitive damages per se but rather a means to an end: deterrent, the supposed deterrent effect of punitive damages is one of the reasons why civil treatment has been replaced Interesting in continental Europe (Meurkens, 2014: 160).

Compensation as a means of repair

The general purpose of compensation is to redress the damage and restore the situation to the extent that it existed prior to the injury. The basic function of the modern damage law is to compensate the injured person for the actual loss suffered. This function is usually achieved by awarding financial compensation, where compensation is not compensated and compensation may be the rule while in-kind compensation is the exception. In addition to financial compensation, judicial and other reasonable remedies may be sought, depending on the legal system available, however, most cases of compensation relate to monetary compensation. The compensation is intended to reach a situation of just compensation. The result of the fair compensation is that it is not permissible to combine compensation. This is not the case with punitive damages. They are compensation that does not aim at restoring the situation to the extent that it was before the damage. It is a severe punitive compensation. This is sometimes called "quasi-criminal. Punitive damages are, in a real sense "quasi-criminal, "standing half-way between the civil and the criminal law (Zipursky, 2005: 170).

They are "awarded" as "damages" to a plaintiff against a defendant in a private lawsuit (Owen, 1994: 365). The most important feature of punitive damages is that they

are very large and unpredictable sums of money, and cannot be predicted by the parties to the case. The Iraqi Civil Code does not allow punitive damages for the existence of the principle of full compensation, but the recent period has witnessed a development not at the level of law, which provides parties against defendants, especially in the case of defamation and libel suits. The amount of compensation sought by a person in a libel suit was estimated at five hundred thousand US dollars, this lawsuit was filed by a deputy in the Iraqi parliament against another deputy in the parliament, and the cause of the lawsuit is the defendant's attorney accusing the prosecutor of plotting against the arrival of a person to the prime minister's position, and has requested in a petition the amount mentioned above. The claim is registered at 577847 on 28/10/2014.

The modern functions of punitive compensation

At the beginning of the twentieth century, punitive damages were used to protect consumers from unfair and oppressive trade practices. In this sense, punitive damages would prevent large productive companies, for example, from committing future misconduct by declaring such behavior unacceptable. This point is contrary to compensatory a damage which aims only to bring the victims back to the situation they were in before they were hurt. Punitive damages are designed to punish those who threaten health and safety deliberately. Punitive damages also relieve pressure on the criminal justice system (Gottlieb, 2011: 5), a remedy that turns to filling enforcement gaps that arise because of the inadequacy of criminal law in every historical era. The most obvious function is "compensation" Punishment is that it acts as a protective device for society from any illegal acts that may be committed by producers particularly in the field of trade. There are other additional functions of punitive damages, which are modern functions that have developed with increasing recourse to them. In addition, they are compensations in the strict sense. They also work in relation to lawyers' fees. When the court decides compensation for the winning party, it decides that compensation without regard to legal fees. The amount of compensation implicitly includes the fees of lawyers, and in this sense, the compensation will not be as complete as some might imagine. In the case of the assessment of punitive damages, they include in their accounts attorney's fees (GCCP, 2006:91). Second, punitive damages can be used to help if there is a difficulty in measuring or estimating the amount of compensation. This function of punitive damage can be easily identified and followed up in cases where compensation for pain and suffering is estimated. Such compensation, due to pain and suffering, is limited or unavailable. In this sense, punitive damages serve two purposes at the same time: on the one hand, it is working to punish the wrongful act committed by the defendant, and on the other hand focused on the plaintiff who suffered the pain, pain and suffering and these cannot be estimated because they differ from person to person and did to do, but according to the estimate of traditional compensation did not match the amount of pain and suffering suffered by the injured party, but punitive damages addressed the issue preferred. The third and final function in which punitive damages can be used for compensatory purposes is sometimes when it is difficult to prove actual damage. It occurs in cases related to intellectual acts, such as infringement of intellectual property and monopoly cases. Punitive damages can be used to eliminate the difficulties we face in determining the amount of actual losses (Behr, 2003: 125).

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Conclusion

Iraqi law dealt with compensation as a penalty for civil liability. This compensation may be determined in the contract, which is called "compensation by agreement" and may be a provision of the law. In the absence of such cases, it is the court's discretion. The court shall evaluate the compensation to the principle of full compensation, which aims to restore the damage, the victim for the loss he suffered and for the lost earnings. Any act of self-harm, such as killing, wounding, beatings or any other type of victimization, is liable for damages. The right to compensation in addition to physical damage also includes moral damage, which includes any infringement of liberty, honor, reputation or social status. It is also found that the law does not draw red lines to prevent the court from taking them, but the judicial request has not yet determined the possibility of providing punitive damages in cases where the damage is caused by fraud or recklessness or illegal action.

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