

Compensation for the violation of a person's right to civil name. (A comparative study)

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Abstract

The name is considered one of the characteristics of the personality, as it is what distinguishes a person from others, and it is unreasonable for a person to be without a name, as he will be confused with the rest of the people in the group. Therefore, Islamic Sharia and man-made laws decided that it is not permissible for any person to attack the name of another or impersonate it, and he gave the right The injured person has the right to demand the cessation of the attack on his name even if he is not harmed, and it has also given him the right to claim compensation from the aggressor for the material or moral damage he has suffered, because the name is one of the rights attached to the personality.

Key words: Civil name - personal right - compensation - material damage - moral damage.

Introduction

The issue of compensation for the violation of rights is related to the name as a personal right. The name here is the civil name, which is not easily distinguished from other personal rights. So it was important to conduct a legal study that determines compensation for that violation.

The importance of the research topic

The indication of a person's identity in society is linked to the name, and the attack on him/her or any of its elements constitutes prejudice to the owner. The name is the identification card of a person in terms of lineage, affinity, rights and obligations in accordance with the law. Any infringement of the name affects the name holder accordingly, so a compensation is legislated. This is to deter the violators and prevents them from infringing on the person's right to name.

Research Methodology

In this study, we rely on the comparative approach between Iraqi law and French law, with reference to Egyptian, Jordanian laws, and Islamic jurisprudence whenever possible, quoting Islamic jurisprudence.

The Study Plan:

The study is divided into two sections. The first includes the conditions for the compensation, which is divided into two parts, the first is the mistakes that need compensation and the second is the damage. The second deals with the type of compensation: non-monetary compensation, and monetary compensation. We will give a conclusion and summarize the most important results and recommendations.

The first section

Compensation concept

Compensation means the remedial means that is resorted to repair the damages arising from the infringement of the name. This means compensation is an effect of the establishment of civil liability where ruling it requires the availability of the elements of this responsibility of error, damage and causation. It can be claimed in front the judiciary as a means to redress the harm or mitigate its impact.

Compensation is either in kind or in return and is subject to certain considerations that control its estimation.

In accordance with the foregoing, this section will be divided into two branches. The first

clarifies the conditions for awarding compensation, and the second is the type of compensation.

First branch

Conditions for awarding compensation

The award compensation requires elements of tort liability such as error, damage and the causal relationship between them. There is a direct relationship between the error committed by the official 'the perpetrator of the act affecting the rights of the personality' and the damage incurred by the victim 'the one whose personality rights have been violated'. Therefore, the causal relationship in the field of personal rights is the existence of a direct relationship between the assault on these rights and the damage that results from them. In other words, the damage is a natural result of that assault, and this means that there is nothing new in the causal relationship with regard to personal rights. These rights are subject to general rules and therefore we will not study them, while the error and damage will be explained in the following two sections.

The first section: the error.

There is no one agreed definition of error in jurisprudence, as many trends appeared in this regard, none of which escaped criticism (Al-Shafi'i, 1961). Thus, error has two components: material, which is transgression, and moral, which is perception (Al-Layl, 1980).

The first element is the infringement of "personal rights". It is achieved as soon as a person exceeds the limits that he must abide by. It is not to unlawfully infringe on the rights of the person.

This is consistent with the fact that the rights of the person are absolute rights, that is, they are invoked before everyone else, whether intentional or unintentional. This is whether the act happened on purpose or because of negligence and ignorance.

In determining the infringement, an objective and abstract criterion is used by measuring the act that violates the rights of the personality with the behavior of the usual person. This person

represents the majority of people and looks at the usual behavior of his/her behavior and the behavior of the person to whom the act of violating those rights is attributed to be measured. If there is a deviation in his behavior, he has transgressed (Al-Sanhoury, 1998).

Infringement can be defined as harming others in themselves, their money, or any of their rights by committing an act that affects his personality or property (Al-Layl, 1980).

The second element, which is awareness (discrimination). The common agreement is the simple violation of the rights of the personality, then the error is realized, whether it is intentional or otherwise (1). Intentionality can only come from someone who is distinguished as a mistake, and the mistake cannot be attributed to the indiscriminate (Al-Hakim, Bakri, & Al-Bashir, 1980). Infringement of personal rights is considered real, whether it is issued by the distinguished or otherwise. This is consistent with the view of the Iraqi legislator, who established the tort responsibility for personal error on the basis of infringement only, regardless of perception (Al-Hakim et al., 1980).

Article (163) of the Egyptian Civil Code states that every mistake that causes harm to others obligates the one who committed it to compensate in the French and Egyptian laws: A general rule according, for the establishment of responsibility, requires the existence of the error and its material and moral elements (Moussa, 1983). As stated in Article (1382) of the French Civil Code, 'every act that results in harm obligates the one who caused it to repair this damage, and Article (163) of the Egyptian Civil Code stipulates that 'every mistake that causes harm to others obliges the one who committed it to compensate.'

The Iraqi Civil Code also is in conformity with what is stipulated in Article (204) of it that "every transgression that inflicts any harm on others requires compensation." The infringement in this article means the error in which there are both material and moral elements, i.e. transgression associated with perception and discrimination (Othman, 1988). If some (Muhanna, 1974) see that liability in Iraqi law is based on damage, as in Article (202),

(1) د. حسام الدين كامل الأهواني، الحق في احترام الحياة الخاصة، المصدر السابق، ص 439.

which was limited to the harmful act and the infliction of damage.

The issue of error in Islamic Sharia is governed by the rule of the direct guarantor, even if there is no transgression, and the culprit is not guaranteed except by infringement (Hussein, 1999). The direct one is the one who caused the harm by his action, without any other act separated between them (Idris, 1986). As for the culprit, s/he is the one who causes something to happen in something that leads to the prejudice of something else. The general rule in Islamic Sharia requires a mistake with its racism in causing damage, and it is not required for directness, because the last case is related to the act without a break, so it suffices to guarantee error availability requirement (Idris, 1986).

The above discussion makes it clear that the error as an element of tort liability within the scope of personal rights is based on the element of infringement only, regardless of the presence or absence of awareness. This can be justified by saying that the goal of compensation is reparation, not punishment.

Part two: damage.

Damage means the harm inflicted on a person as a result of violating the rights of personality or any legitimate right or interest, which requires compensation for that. The damage is divided into three types, which we present successively. Some divide harm into material and moral (Al-Sanhoury, 1998)

Material damage: 'it is the damage that is directed against a financial right' (Al-Thnoon, 1991). The material damage is required to prejudice the right or financial interest of the injured party (Al-Sanhoury, 1998). As if the personal rights of an individual were infringed. This directly reflected negatively on the financial situation. For example, the attack on the human body and in any way that would prejudice the person's ability to earn or incur the costs of treatment (Al-Fadl, 1995). The financial interest that has been violated is the ability to work and obtain money, as well as his interest in spending his money in various areas of his life, not to treat the damage that resulted from the harm to the body. Also, the violation of personal rights can also indirectly affect the financial situation of the person as if this person is a self-employed person such as doctors and lawyers, which depends mainly on the person's

reputation and professional consideration. If this consideration is compromised and the reputation is harmed, trust will weaken between him/her and his/her clients, which greatly affects his financial situation and the amount of income s/he earns.

Thus, violating the rights of the person may result in material damage, directly or indirectly, leading to a breach of the person's financial interests.

Moral damage: some think that (Madghmash, 1996) the moral damage is what affects a person in a right or a non-financial interest, which means that it is specifically related to personal rights, while others see (Al-Sanhoury, 1998). It also includes affects a person from simply violating a fixed right to him/her, and it seems that the last opinion is more appropriate to support, so it is natural for a person to be harmed by infringing on any of his rights, interests or emotions. The psychological harm that results from that cannot be ignored at all, which is defined as 'what befalls the body, honor, affection, or merely an assault on a right. Merely violating the psychological aspect of moral slander results in moral damage (Amer, 1779).

This is whether it results from an assault on a financial or non-financial right, or simply from an assault on a person's legitimate interest, given the importance of personal rights. Hardly any form of infringement of these rights is devoid of moral damage. In the elements of personalities, when estimating compensation for violating personal rights, consideration must be given to the moral damage that may outweigh the rest of the other damages. A certain amount as compensation for the plaintiff, even though the total amounts of compensation for moral damage exceeded the amount allocated for material compensation (Iraqi Court of Cassation Decision No. 33/M2/2001, which is not published). The issue of compensation for moral damage in comparative laws does not raise a difference with regard to its legal basis, as it is explicitly or implicitly stipulated (S. Al-Amiri, 1981). While a dispute arose regarding the text of the second paragraph of Article (205) of the Iraqi Civil Code, which states, 'it is permissible to pay compensation to spouses and those close to the family for the moral damage they suffer as a result of the death of the injured,' the Iraqi legislator did not specify the kinship relationship that binds the deceased to the relative. The latter

deserves compensation for the moral damage a result of the death of his relative, leaving the door open to dispute on the interpretation of this text, which results in different judicial rulings on similar issues. Also, this text gave the right to compensate relatives for the death of their relative only, and did not give them this right in cases of moral damage caused by a non-fatal injury to their relative (Al-Fadl, 1991). That is, that injury may result in compromising the integrity of the body and not the right to life.

Accordingly, it is necessary to amend item (2) of Article (205) of the Civil Code by specifying the degree of kinship that links the person entitled to compensation to the injured person, and not to limit compensation to cases of death of the injured. Yet, the inclusion of the compensation as well as cases of moral damage arises from compromising the integrity of the body of the relative. There is also a dispute about the legality of compensation for moral damage in Islamic law, which is a justification for saying that compensation for violating personal rights is permissible in Islamic law damages.

According to some (Al-Khafeef, 1971), the Muslim jurists did not care about moral damage and that the majority of jurists limited compensation to material and physical damage. Other forms of harm that do not miss money and do not have an apparent effect on the body get no compensation (Idris, 1986).

It seems that the second opinion is more worthy of support, as Al-Shafi'i established the principle of compensation for moral damage in the field of bodily harm that causes psychological pain that remains in the same victim (Al-Shafi'i, 1961). When other bodily wounds happen, they are healed and a trace remains, then there is a government of justice in it (Al-Kasani, 1982). The wound on the face and head, which was fused and left no trace, I sprayed with pain (Al-Marghinani). The above clearly shows that Islamic jurisprudence defines moral damage as harm that requires compensation.

Bodily harm: it is the harm or deficiency that affects the human body. Regardless of its form, body damage (A. A.-A. A. Al-Amiri & Al-Balisani, 2002) includes both material and moral damages resulting from compromising the integrity of the body (El-Din, 1982). The Iraqi legislator stipulates this type of harm in Article

(202) of the Civil Code, which states: 'every act harmful to the soul, such as killing, wounding, beating, or any other type of harm, is obligated to pay compensation from the one who caused the harm. There is no such law in Egypt.'

By referring to the provisions of Islamic Sharia, it becomes clear to us that the Muslim jurists agreed to compensate for these damages. The opinion was that: the complainant has to pay the doctor's fee and the price of the medicine because his action is the reason for committing to these expenses, as if the aggressor had taken from the victim's money and he is obligated to pay it (Al-Marghinani). Body damage consists of two components (Paragraph (1) Article (207) Clause (1) Article (1) Article (221) Article (221) Article (221) Article (221) Article (221), see: Ali Al-Khafeef, Article (221) Article (221) Article (221) Article (221), see: Ali Al-Khafeef, Provisions of Shariah,): The loss suffered by the aggrieved party is the expenses that he incurred to treat his injury and what he lost of earnings, represented in depriving him of the wage during his treatment period and missing the financial opportunities that he would have benefited from had it not been for his injury (El-Din, 1982). As for moral bodily harm, it is a self-contained element, but it takes many forms, the most important of which is physical pain, which is meant for those that arise as a result of directly affecting the human body, such as hitting or wounding him. Any part of the injured person's body in a way that disturbs the aesthetic balance of the human being whom God Almighty created for him, and there is also the harm of deprivation from the joys of life. This is the harm resulting from deprivation of all or some of the pleasures and joys of existence and a healthy human life, and the other form is the psychological pain caused as a result of The person's feeling of inferiority and the attendant fear for his future and the future of his family, as if s/he were the only provider for them (S. Al-Amiri, 1981).

It becomes clear that bodily harm expresses the physical and moral consequences arising from the assault on the integrity of the body. The direct result of that assault is the prejudice to the right to the integrity of the body, and this results in the aforementioned physical and moral consequences.

It is clear from the foregoing that damage is an essential pillar of tort liability and without it

there is no liability or compensation. It is the essence and basis of responsibility, but with regard to personal rights. some think that (2)The mere infringement of these rights necessarily entails the existence of harm, and the foregoing supports a trend in the French judiciary calling for a ruling for compensation for the mere erroneous infringement of personal rights, so it is not required that this infringement be harmful.(3) This trend is justified by saying that personal rights do not mean the right to compensation in the event of moral damage, but rather mean respect for human dignity. Civil protection for these rights will not be effective unless the person is entitled to compensation just because of the infringement of his personality rights without the need to prove the existence of the harm.

There must be damage from just touching it, and proving the existence of the damage only affects the amount of compensation.(4)

It seems that this opinion tends to assume that harm is achieved by simply violating the rights of the personality and places a simple presumption on this that the opposite can be proven.

The aggressor bears the rights of his personality, which increases the guarantees of protection of those rights, as the latter may be unable to prove the damage caused to his personality rights, which will miss him the opportunity to obtain compensation, in addition to that this opinion is consistent with the release characteristic of personality rights, according to which this can be invoked Rights before all and demand protection from mere infringement.

The second Section

Compensation types

After civil liability is established and the conditions for compensation are met, the judge, before issuing ruling, has more than one way to compensate for the damage. Choosing one over the other has a significant impact in determining

the purpose for which compensation was found. And an attempt to restore the situation to the way it was before the assault occurred, and this is compensation in kind. If this is not possible, compensation will be made for a consideration, which is either non-monetary compensation or monetary compensation. We will explain the in-kind compensation and then compensation in return for both types, respectively, in the following two paragraphs:

Section one: compensation in kind:

It is the complete repair of the damage by returning the injured person seeking compensation - to the same position he was in before the attack, regardless of the type of damages and injuries(Al-Fadl, 1991).

In the field of personal rights

In-kind compensation should not be a dual way of compensation, but rather the first way, followed by non-monetary compensation and then monetary compensation, in line with the importance of these rights and taking into account their non-financial nature.

The judge may resort to compensation in kind for violating personal rights according to the circumstances and at the request of the aggressor on the rights of his/her personality. Article (209) of an Iraqi civilian stipulates in its second paragraph that 'compensation is estimated in cash, provided that the court may, according to the circumstances and at the request of the aggrieved, order restoring the situation to its normal situation.'. Paragraph two corresponds to Article (171) of an Egyptian civilian. There is no legal impediment to this, although in reality the cases of his conception are very limited, as in the field of artificial organs and abnormal limbs, where the official is obligated to replace the damaged ones. To become as it was before it was violated. This can also be done with regard to some medical work, specifically plastic surgery operations, by repairing the deformities resulting from those operations(Al-Ani, 2002).

It is noteworthy that some(Al-Fadl, 1991) distinguishes between in-kind execution and in-

(²) د. حسام الدين كامل الأهواني، الحق في احترام الحياة الخاصة، المصدر السابق، ص437 وما بعدها، د. ابراهيم الدسوقي أبو الليل، المصدر السابق، ص218.

(³) قرار محكمة السنين الابتدائية 1966/3/18، نقلاً عن: د. حسام الدين كامل الأهواني، الحق في احترام الحياة الخاصة، المصدر السابق، ص439، هامش (147).

(⁴) د. حسام الدين كامل الأهواني، الحق في احترام الحياة الخاصة، المصدر السابق، ص440.

kind compensation on the basis that implementation in kind is the debtor's implementation of what s/he has committed in kind. The compensation in kind is the return of the injured person to the condition it was in before the occurrence of the damage, by removing it if that is possible. Execution in kind is not more than an original way to implement the obligation, especially the contractual one. As for compensation in kind, it is a penalty that results from the realization of responsibility and is one of the ways of compensation. Those who hold this view add that the Iraqi legislator has included some applications for compensation in kind for material and moral damages, including what is stated in Article (41) of the Civil Code, which is to stop the exposure (assault) to the right to the title, which is compensation in kind for moral damage.

Section Two: Compensation in return.

The compensation in kind is the most commensurate way of compensation with the rights of the person, and despite that, its application to the reality of the situation is difficult. It is difficult to erase the effects of violating these rights and restore the situation to its previous condition, so it remains only to resort to compensation in return, which is either non-monetary compensation or That it be monetary compensation, and this is what we will explain in the following two paragraphs:

1. Non-monetary compensation:

It is intended to order the court to perform a certain order as compensation (Paragraph (2) of Article (209) of an Iraqi civilian, corresponding to Paragraph (2) of Article (170) of an Egyptian civilian). This way of compensation is not through monetary compensation in which the official is obliged to pay a monetary amount to the injured person, nor is it with compensation in kind, which includes restoring the situation to the way it was before the damage was achieved, but rather it is the most appropriate thing required by circumstances or the interests of the injured in some cases (S. Al-Amiri, 1981) including prejudice to the rights of personality in general and the right to the integrity of the moral entity and specifically the right to honor in particular, which can never repair money for the damage suffered, but may consider offering money to some of those whose honor has been violated as another assault. What increases the

importance of this method of compensation in the field of personal rights is that one of the conditions for the compensable damage is that it has not been previously compensated .This means that monetary compensation misses the person whose personal rights have been violated the opportunity to obtain non-monetary compensation, and therefore the benefits provided by non-monetary compensation will not be sacrificed in return for obtaining monetary compensation, but that non-monetary compensation sometimes affects not only repairing the moral damage Rather, it exceeds it in order to repair the material damage as well, as if the honor and reputation of one of the professions that depend largely on the reputation of those who do it, such as medicine and law, were harmed. By publishing the plaintiff's conviction judgment or the latter's apology through one of the means of publication, he can restore even a small part of what was lost, which no amount of compensation, no matter how large, is unable to do.

The question may be raised about the difference between non-monetary compensation for violating the right to honor and the response and correction as a measure taken to protect this right? It seems that the right of reply and correction is a preventive measure to protect personal rights, which means that no harm is required for the possibility of resorting to it, while this is required for non-monetary compensation because it is one of the methods of compensation. It is an in-kind implementation of the obligation of all to respect the rights of the person, in addition to the possibility of responding and correcting without resorting to the judiciary unless the request for publishing the reply and correction is rejected or there is a dispute about the availability of legal conditions in response and correction.

As for the non-monetary compensation, the judge is the one who decides it as an effect of the establishment of the responsibility, and other than that, they converge greatly.

2. Monetary compensation:

It is a sum of money that the perpetrator of the harmful act is obliged to pay to the injured party, and it is the natural way to redress and repair the harm because money, in addition to being a means of exchange, is also a means of evaluating damages of any kind (S. Al-Amiri, 1981).

When compensation in kind is not possible and there is no way for non-monetary compensation, the judge must rule on monetary compensation see (Al-Sanhoury, 1998) which is the basis for compensation methods (Paragraph (2) Article (209) of an Iraqi civilian, corresponding to Paragraph (2), Article (170) of an Egyptian civilian). The judge can determine the method of payment according to what he deems fit, he may decide to pay it in one sentence and in the form of specific periodic installments of a certain number of periods, and the compensation can be income arranged for life or for a certain period according to the circumstances of the case and according to the requests of the plaintiff (Al-Sanhoury, 1998). The law permits the judge to oblige the official to submit a security guarantee that he will continue to pay(Paragraph (1) Article (209) is an Iraqi civilian, corresponding to Paragraph (1), Article (171), an Egyptian civilian) .

Monetary compensation does not conflict with the nature of personal rights, as they are non-financial rights that cannot be evaluated with money. To determine whether the right is financial or non-financial, it is necessary to look at the advantages that it grants to its owner, and in the field of personal rights, non-financial advantages represented in the use of these rights in a personal capacity and may not be waived or Disposal of it to others. As for financial compensation, it is not an advantage that characterizes personal rights, but it is an effect of civil liability for violating those rights.⁽⁵⁾

Conclusion

Our research was concerned with the study of civil compensation for the violation of a person's right to his civil name, which is one of the distinguishing characteristics of the human personality. In this research, we found several results:

1. Legislation has provided means for legal protection of the civil name, and one of the means is to compensate the owner of the right in it for any damage he may suffer as a result of assault by third parties.
2. Compensation for violating the right to the name shall be with material and moral damages

if the injured party is the one who is claiming compensation.

3. The family of the injured person may be compensated if the damage caused by the violation of the right to the name is material only.

Through our research, we found several results:

1. Due to the importance of the name and its social and legal necessity, those concerned in the field of civil status had to establish a special division in the Ministry of Health and the General Directorate of Nationality and Civil Status to be specialized in the issue of naming the newborn and the civil name in general.

- 2- Compensation for violating a person's right to his name must include compensation for the moral damage sustained, whether the compensation is paid to the victim or his family.

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