LEGAL RESTRICTIONS ON THE JUDGE'S AUTHORITY TO ASSESS COMPENSATION FOR THE SUPPOSED DAMAGE IN CIVIL LIABILITY

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ABSTRACT

Objective: This study aims to define the legal limitations on a judge's authority to estimate damages compensation. It explores instances where the judge's discretionary power is constrained and cases where individuals determine compensation. The objective is to demonstrate that justice requires the judge to reduce compensation in certain circumstances, indicating the judge's discretion is not absolute.

Theoretical framework: Judges possess the authority to estimate compensation in the absence of specific legal provisions or agreements, but their freedom is restricted when there is an agreement or legal text. This principle emphasizes that judges cannot exercise their will and authority without considering these limitations.

Method: The research utilizes a qualitative methodology involving legal analysis and examination of relevant legal texts and precedents. It examines cases where the judge's authority to estimate compensation is limited and analyzes the underlying principles of justice.

Results and conclusion: Judges have the power to estimate compensation, but their freedom is constrained in the presence of an agreement or legal text. This principle emphasizes the need for judges to consider these limitations when exercising their discretion.

Implications of the research: The findings have implications for legal practice, emphasizing the importance of judges being aware of the limitations on their authority in estimating compensation. It underscores the significance of fairness and justice in determining compensation in legal proceedings.

Originality/value: This research examines the legal restrictions on a judge's authority to estimate compensation, providing valuable insights into proper compensation estimation and guiding judges to ensure fairness in their decisions.

Keywords: Compensation, Judge, Discretionary Power, Supposed Damage.

RESUMO

Objetivo: Este estudo tem como objetivo definir as limitações legais à autoridade do juiz para estimar a indenização por danos. Ele explora os casos em que o poder discricionário do juiz é limitado e os casos em que os indivíduos determinam a indenização. O objetivo é demonstrar que a justiça exige que o juiz reduza a indenização em determinadas circunstâncias, indicando que o poder discricionário do juiz não é absoluto.

Estrutura teórica: Os juízes possuem autoridade para estimar a indenização na ausência de disposições legais ou acordos específicos, mas sua liberdade é restrita quando há um acordo ou texto legal. Esse princípio enfatiza que os juízes não podem exercer sua vontade e autoridade sem considerar essas limitações.

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Legal Restrictions on the Judge's Authority to Assess Compensation for the Supposed Damage in Civil Liability

Método: A pesquisa utiliza uma metodologia qualitativa que envolve análise jurídica e exame de textos jurídicos e precedentes relevantes. Ela examina casos em que a autoridade do juiz para estimar a indenização é limitada e analisa os princípios subjacentes da justiça.

Resultados e conclusões: Os juízes têm o poder de estimar a indenização, mas sua liberdade é limitada na presença de um acordo ou texto legal. Esse princípio enfatiza a necessidade de os juízes considerarem essas limitações ao exercerem seu poder discricionário.

Implicações da pesquisa: Os resultados têm implicações para a prática jurídica, enfatizando a importância de os juízes estarem cientes das limitações de sua autoridade ao estimar a indenização. Isso ressalta a importância da imparcialidade e da justiça na determinação da indenização em processos judiciais.

Originalidade/valor: Esta pesquisa examina as restrições legais sobre a autoridade de um juiz para estimar a indenização, fornecendo insights valiosos sobre a estimativa adequada da indenização e orientando os juízes a garantir a justiça em suas decisões.

Palavras-chave: Indenização, Juiz, Poder Discricionário, Dano Presumido.

1 INTRODUCTION

The subject judge having wide authority in estimating compensation for damages that affect a person, whether in the contractual or tort field, given that the issue of estimating compensation is considered one of the issues of reality that are not subject to the supervision of higher courts, and therefore the principle is that the judge has the right to estimate compensation in its nature and extent, and this is the principle, but the process of estimating compensation is subject to many controls that the judge must take into account to reach the amount due for compensation for the injured person. The judge’s authority to estimate compensation ranges between absolute and restrictive (1). The existence of a legal text that obliges the judge to pay compensation in advance, or in the event that the fault is shared between the parties on the amount of compensation, or in the absence of a legal text that obliges the judge to pay a predetermined compensation, or if the error is not In common, the judge's discretion is absolute. This research aims to clarify and demonstrate the limits of a judge's authority in estimating compensation and the underlying basis on which this authority is exercised. It aims to shed light on the factors influencing the judge's decision-making process when determining compensation amounts and the legal boundaries within which they must operate. Understanding these limits and restrictions is crucial to ensure fair and accurate compensation for individuals involved in legal disputes. By exploring the judge's role in estimating compensation, this research seeks to contribute to a deeper comprehension of the principles and guidelines governing this aspect of judicial decision-making.

2 THEORETICAL FRAMEWORK

The theoretical framework encompasses several key aspects related to the judge's authority in estimating compensation, the distinction between civil and criminal liability lawsuits, and the position of Egyptian and French civil laws. Additionally, it explores limitations on the judge's authority, exceptions to their discretion, and the impact of specific legal provisions. The following paragraphs consolidate and elaborate on these elements. The
most notable feature that sets civil liability lawsuits apart from criminal liability lawsuits is that the civil judiciary does not operate automatically. It is a judiciary that relies on filing a lawsuit, and the lawsuit's scope is determined by the claims made in the petition. The judge is bound by the claims presented and cannot deviate from them, as his judgment is subject to appeal (1). This means that any ruling exceeding the amount of compensation requested by the parties or differing from their demands would constitute a fundamental error (2). However, when the parties agree on a specific amount of compensation, the judge's authority is limited to ruling in favor of the agreed-upon compensation without any increase or decrease. The judge cannot unilaterally modify the agreed amount. Nevertheless, Iraqi civil law allows for exceptional cases where the court can decrease the compensation if it is excessively high or if the original obligation has been partially fulfilled. Likewise, the court can increase the compensation in exceptional cases when the agreed amount falls short of the actual damage suffered, especially if the breach resulted from fraud or a grave error committed by the debtor (3). This authorization is derived from Article 170/2/3 of the Iraqi Civil Code (4). In Egyptian civil law, the judge is also empowered to reduce the agreed compensation if the debtor proves that it is exaggerated or that the original obligation has been partially fulfilled. Similarly, the judge can increase the compensation if the creditor demonstrates that the debtor engaged in fraud or committed a grave mistake that resulted in damages exceeding the agreed amount. Agreements that circumvent the law, such as trivial penalty clauses that exempt the debtor from tort liability, are considered void (5). French civil law also allows the judge to decrease or increase the value of penalty clauses, as indicated in Article 1252 (3).

It is important to note that the judge's authority to amend the agreed compensation, whether through increase or decrease, is contingent upon a request from one of the contracting parties. The judge cannot unilaterally modify the compensation amount (3). Another limitation on the judge's authority arises when a legal provision prescribes the amount of compensation in advance. In such cases, the judge lacks discretionary power and must adhere to the predetermined compensation stated in the law. For example, Article 171 of the Iraqi Civil Code determines the interest rates that debtors must pay to creditors in cases of delayed fulfillment of obligations. The judge cannot alter these predetermined interest rates (6) (7).

In combating usury, Iraqi civil law prohibits compound interest, except in certain cases specified by commercial rules and customs. In cases where the debtor's actions or grave mistakes cause damage exceeding the interest due, the judge can increase the interest as complementary compensation. Similarly, in situations where the total interest received by the creditor exceeds the capital, the judge may allow such excess only if it aligns with commercial customs and does not violate the law's intent. The legislator authorized the judge to increase the interest beyond the legally prescribed amount in specific circumstances (3). The judge's discretionary power in estimating compensation is also affected by the Revolutionary Leadership Council's Decision No. 1198 of 1977, as amended. This decision establishes the compensation amount the contractor must pay to the obligee in cases of breach of the obligation to transfer real estate ownership. This predetermined amount restricts the judge and cannot rule for a lesser or greater sum, as the text explicitly specifies the compensation due to the obligee (8). In cases of joint fault, where both the defendant and the victim independently contribute to causing the damage, the defendant's responsibility is mitigated to the extent of their error. The judge must consider this joint fault and consider it when estimating compensation. According to Article 210 of the Iraqi Civil Code, the judge may reduce or not award compensation if the injured person participated in causing the damage or exacerbated the debtor's situation (4). The Iraqi Court of Cassation has emphasized that the defendant's participation in the error leading to the damage necessitates a proportional reduction in the compensation awarded (11). The Egyptian judiciary has also supported this principle in its decisions (12). In cases involving the infringement of personal rights, the defendant’s behavior is a relevant factor to consider when...
estimating compensation(13). If the victim contributed to the assault through their behavior, the compensation might be reduced, considering that their resulting harm is less severe than those who strive to preserve their privacy (12).

Therefore, it is evident that the judge's discretionary power in estimating compensation is subject to various limitations and restrictions. These include adhering to the claims made in the lawsuit, respecting agreed-upon amounts without modification unless in exceptional cases, following legal provisions determining compensation, combatting usury, and considering joint fault and the parties’ behavior.

3 METHODOLOGY

The research employed an analytical approach, which involved the examination of pertinent legal texts and their relevance to the research topic. Additionally, a selection of judicial decisions was included to provide further insight into the subject matter.

The research addresses the following questions that constitute the research problem:
1. What is the scope of authority granted to judges and individuals in estimating compensation?
2. What are the limitations and restrictions imposed on this authority?
3. Is it legally permissible for a judge to intervene and modify the agreed-upon amount of compensation between the involved parties, either by increasing or decreasing it?

4 RESULTS AND DISCUSSION

In the context of civil liability lawsuits, a significant distinction from criminal liability lawsuits arises. The civil judiciary does not move automatically but requires a petition determining the lawsuit’s scope. The judge's role is to adjudicate based on the content of the petition, and deviating from it may result in the judgment being subject to appeal. Therefore, any ruling that exceeds the amount of compensation requested by the parties or differs from what was demanded in terms of compensation would constitute a fundamental error on the judge's part, as the judge's authority is limited to the petition.

However, when the parties agree on a specific amount of compensation, the judge's authority is restricted to a ruling by the agreed-upon amount, without the power to increase or decrease it. The Iraqi civil law grants the court the exceptional ability to decrease the agreed compensation if it is deemed excessive or if the original obligation has been partially fulfilled. Similarly, the court is authorized to increase the compensation in exceptional cases where the agreed compensation is inadequate compared to the actual damage incurred. These exceptional circumstances include instances where the breach of the contractual obligation resulted from fraud or a gross error committed by the debtor, and the damage, surpasses the agreed compensation. Such provisions are outlined in Article 170/2/3 of the Iraqi Civil Code.

Contrasting with Iraqi law, Egyptian Civil Law also allows the judge to decrease the agreed compensation if it is found to be exaggerated or if the original obligation has been partially fulfilled. Conversely, the judge is empowered to increase the compensation if the creditor can prove that the debtor committed fraud or a grave mistake, leading to damage that exceeds the agreed compensation. Furthermore, any agreement that employs a trivial penalty clause to circumvent the law is deemed void (14).

Similarly, French civil law provides the judge with authority to decrease or increase the value of the penalty clause, as evident from Article 1252. In cases where the law grants the judge the power to amend the agreed compensation, such amendments can only be made upon request from one of the contracting parties. The judge has no autonomy to increase or decrease the compensation unilaterally.
Another limitation on the judge's authority in estimating compensation arises when a legal provision explicitly determines the amount of compensation owed. In such cases, the judge's discretionary power is non-existent, as they are bound by the predetermined amount stipulated in the law. An example of such a provision is Article 171 of the Iraqi Civil Code, which outlines the amount of interest the debtor is obligated to pay to the creditor in cases of delayed fulfillment of an obligation.

However, there are circumstances in which the Iraqi legislator permits the judge to reduce or rule out interest payments to combat usury. For instance, if the creditor intentionally prolongs the dispute, the court may reduce or disregard the interest for the period of unjustifiable delay. Compound interest, which involves adding unpaid interest to the principal sum and charging additional legal or agreed-upon benefits, is prohibited by Iraqi civil law. Exceptions to this prohibition include cases where commercial rules and customs allow for increased interest in the capital or situations involving multiple transactions that do not circumvent legal regulations.

Moreover, the judge’s authority is limited when estimating compensation in relation to the Revolutionary Leadership Council's decision No. 1198 of 1977, as amended. This decision specifies the compensation the contractor must pay the obligee in cases of breaching the obligation to transfer real estate ownership. In such cases, the judge is bound by the predetermined amount and cannot rule for a lesser or greater sum, as the text explicitly defines the compensation owed to the pledgee.

Considering all these factors, it becomes evident that the judge's discretionary power in estimating compensation is limited when an agreement between the parties or a legal provision determines the amount owed. In exceptional cases, the judge may have the authority to decrease or increase the compensation, but this power is subject to specific circumstances and must align with the principles of justice and fairness. The positions of the Iraqi and Egyptian civil laws share similarities in granting the judge discretion in reducing or increasing compensation in certain circumstances, while French civil law requires a party's request for such adjustments.

5 CONCLUSION

After the study of this subject, we conclude that:
1. It became clear that the Iraqi legislator granted the judge absolute freedom in estimating compensation without the legal text or the parties’ agreement.
2. It turns out that individuals are free to agree on the amount of compensation due in case of a breach of obligation.
3. It was found that the judge’s authority is restricted when estimating compensation for the supposed damage if there is an agreement between the parties on the amount of compensation or the existence of a legal text determining the amount of compensation in advance. This is in exceptional cases.
4. It was found that if the harmed party was involved in causing the damage, the judge may reduce the amount of compensation or not rule it out in the first place.

REFERENCE

Legal Restrictions on the Judge's Authority to Assess Compensation for the Supposed Damage in Civil Liability


Iraqi Civil Law No. 40 of 1951


See its decision No. 9, 81, 1982, on 9, 26, 1982, published in a collection of Ahkaam al-Adliya, the third issue, the thirteenth year, 1982.

The Egyptian Civil Code No. 131 of 1948