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Limits of liability and compensation between medical facilities and personal error

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Abstract
This research explores the boundaries of responsibility and compensation in medical errors, distinguishing between errors resulting from public medical facilities and the personal errors of individuals within them. The research analyzes how laws, especially in France and Iraq, deal with the responsibility of government hospitals and their employees for damages inflicted upon patients, noting that administrative responsibility is often based on fault, but its application varies under diverse circumstances. In public hospitals, the relationship between the patient and the doctor is often indirect, which makes the hospital administration the primary responsible party for errors that occur, given that the patient deals with the facility as a whole. The research addresses two main types of compensation:

- **Judicial Compensation**: Determined by the courts and can be monetary (either as a lump sum or in installments) or non-monetary (such as specific actions taken to compensate for the damage).
- **Contractual Compensation**: A pre-agreed amount stated in the contract, to be paid in the event of a breach of contractual obligations.

The research concludes that proving and denying medical responsibility is complex and requires careful legal scrutiny. It emphasizes the need for clear legislative frameworks that guarantee comprehensive and fair compensation for victims while also safeguarding public funds. The study recommends that compensation be assessed at the time of the judicial ruling in order to accurately reflect the actual extent of the damage incurred and to ensure justice.

Keywords: Medical errors, administrative responsibility, judicial compensation, public hospitals, legal frameworks

1. Introduction

First: Research Topic

Most scholars in both civil and administrative law hold that the basis of the administration's liability for damage, as a form of liability for the actions of others, is error. This error is also a necessary condition for its establishment, but they differ on how to attribute error to the administration. Jurisprudence and civil law hold that the legislator based this liability on presumed fault. However, this view has been subject to numerous criticisms, prompting some jurists to define the basis of the principal's liability according to different theories. Furthermore, the expansion of administrative activity and its intervention in many areas has led to an increase and multiplication of damages to persons and property. Therefore, the concept of administrative liability emerged through the legislator and the judiciary, with the aim of redressing these damages through compensation.

Second: The importance of the research: The right to bodily integrity is one of the fundamental pillars of the existence and survival of both the individual and society. It is not an absolute right for the individual, nor for society itself. It is a right essential to the preservation of their existence.

Third: The research problem

The legal nature of the responsibility of public hospital administration is subject only to the rules of negligent liability. When a person deals with a public hospital, he is dealing with a legal entity whose special circumstances prevent him from freely choosing his doctor, unlike an ordinary person, who is regulated by laws, directives, and other matters. If patients who deal with a doctor working in a public hospital do not deal with him in his personal capacity, but rather as a doctor or employee of these hospitals, based on the fact that the relationship

between patient and doctor in public hospitals is an indirect relationship that exists only through the Ministry of Public Health, this allows for a direct relationship between patients and the general administration of the hospital. Therefore, medical liability is based on Physician error takes various forms. Professional error differs from ordinary error in contract and negligent liability. This problem gives rise to the following questions:

1. What are the limits of a hospital facility's liability?
2. What is judicial and contractual compensation for damages?

Fourth: Research Methodology

The research relied on an analytical, comparative, and inductive approach. In the comparative approach, legislation was presented within the framework of the legal system prevailing in Iraq, as it follows the Latin legal system, with some differences in details imposed by environmental conditions. Regarding the inductive approach, I attempted to extrapolate the solutions provided by legislative texts, judicial rulings, and some jurisprudential opinions regarding some of the research topics. As for the analytical approach, I delved into the details of the research topic.

Fifth: Research Plan

The research was divided into two sections: The first: Liability between the utility and personal error. The second section: Judicial and contractual compensation for damages. The details are as follows

Section One

Liability between the Service and Personal Error

In fact, administrative law in France established the concept of administrative authority liability primarily based on personal error and service error, adopting them as the basis for liability in administrative law. The administration cannot escape this liability unless it establishes evidence that the error was on the part of the injured party or proves force majeure beyond the control of the administrative authority. In the event of a denial, it must prove this ( ). The administrative judiciary considered personal error to be the error attributed to employees, and thus their sole responsibility for the damages resulting from this error is established. As for the facility error or service error, it is the objective error and not a personal error attributed directly to the facility, given that this facility is the one that committed the error, regardless of the employee who committed it. The assumption, then, is that it is the facility itself that carried out an incorrect activity that violates the law, such that responsibility is determined before the administrative judiciary and compensation is paid from public funds ( ). Accordingly, the request was divided into the following two sections:

Requirement One: The rule for distinguishing between personal error and fault of the facility in French law.

Requirement Two: The rule for distinguishing between personal error and fault of the facility in Iraqi law.

First Requirement

The Rule of Distinction between Personal and Facility Error in French Law

Medical error can be defined as "a physician's neglect of the duties imposed on him by generally accepted medical laws and rules." The physician's liability for this error depends on whether his relationship with the patient is contractual or non-contractual. This is what we usually see in government hospitals, where a doctor provides his services free of charge. As for a private physician, he opens his clinic to patients after announcing his specialty and education on the medical board and charges a specific fee.

Therefore, when a patient enters the doctor's clinic, expresses his consent, accepts the cost of the examination, and agrees to receive treatment or A surgical intervention that is consistent with the physician's obligations creates a contractual relationship between the two parties, called a medical contract, especially if the contract is determined to be valid and not subject to the effects of any defects, thus producing all its legal effects.

Liability, in its general sense, refers to the state of a person who has committed an act that warrants culpability ( ). According to this definition, liability means responsibility or accountability. Some have defined liability as the obligation of a person to compensate for the harm they have caused to another person ( ).

In France, although doctors in public hospitals are classified as public workers for most injuries, the government typically assumes the fault of its employees. Under this regulation, doctors are no longer liable, but they also do not benefit from it at all. This rule was not long ago, but the French Supreme Court was attempting to hold public hospital doctors accountable for their errors, applying to them the same rule it applied to those in free service ( ). Public sector doctors were subject to the provisions of civil liability, while the position of the French Council of State was in stark contrast to that of the French courts until the Court of Disputes' decision of March 25, 1957. This decision determined the jurisdiction and limited the adjudication of cases of error attributed to public hospital doctors in administrative courts, and designated these courts as having jurisdiction to adjudicate claims for compensation resulting from medical errors in a public hospital, according to the Court of Disputes' decision of July 11. 1962, by which jurisdiction was withdrawn from the civil court.

The Second Requirement

The Rule of Distinction between Personal and Facility Error in Iraqi Law

The rights and duties of doctors and patients are determined by the instructions regulating the activities of public health institutions, i.e., those managed by the hospital administration in a public (government) hospital. The relationship between the doctor and patient is that of a person authorized to perform public service under the law.

This means that there is no contract between a doctor in a public hospital and the patient who benefits from his services. Therefore, the doctor cannot be held liable for harm caused to the patient due to a doctor's error, except on the basis of negligent liability. In this case, it cannot be said that the patient chose the doctor to treat him in order to conclude a contract between them. Since the patient does not choose the doctor, there is no room in the contractual liability section to discuss the liability of doctors in public hospitals.

In Iraq, legislators did not distinguish between individual errors and corporate errors, but they established the liability of the state and other legal entities on the basis that superiors are responsible for the actions of subordinates to protect their interests. The Iraqi legislator completely ignores the employee

and makes him equally responsible for all damages he commits in the performance of his job duties if the damage arises from an offense committed by them ( ). He also gave the administration the right to seek recourse from the employee for the compensation he paid ( ). The Iraqi Ministry of Health also decided to punish Dr. (R. S.) for his medical negligence and negligence in performing a prostate surgery on patient (N. H.). A laparoscopic examination performed on the patient later revealed that there were foreign bodies in the bladder. A subsequent surgical procedure revealed that they were pieces of gauze left inside the bladder by Dr. (R. S.) during the operation. The Ministry's admission of negligence is sufficient evidence to establish civil liability in accordance with Article (219/1) of the Iraqi Civil Code, which states that "the government, municipalities, and other institutions that provide a public service, as well as any person who exploits an industrial or commercial institution, are responsible for damage caused by their employees if the damage results from an act committed by them while performing their services." As for determining whether there is a legal nature to the medical liability stipulated in the medical contract, there are also several outcomes in terms of compensation, proof of liability, and reasons for exemption, which prove that they are restricted by the provisions of the law ( ). Some laws ( ) also consider an agreement to exempt from negligent liability void, given that the rules of this liability are a matter of public order. However, an agreement to exempt from contractual liability is permissible unless the exemption is agreed upon in the event that the debtor personally commits fraud or gross error. The Iraqi legislator also adopted the principle of stipulating the administration's responsibility for the activities of its employees within the legal rules pertaining to responsibility for the actions of others. It is noted that the Iraqi legislator included the expression "the action of another" in Article (211) and did not use the phrase "the error of another" used by other Arab legislations, which raised a question in jurisprudence: Does the action of another have to be wrong in order to lead to the prevention of liability, whether civil or administrative? The answer to this is affirmative. However, most Iraqi and Egyptian jurisprudence has established the necessity of the presence of error in the action of another in order for it to be a foreign cause exempting from liability ( ). It would have been more appropriate for the Iraqi legislator to use the phrase "another's fault" instead of "another's act," in order to prevent juristic interpretations in this regard. What reinforces our argument is that the jurisprudence in Iraq and Egypt has not agreed on a unified position regarding the previously mentioned conditions required for an act by another ( ). Article (219) mentioned above stipulates that the harm referred to here is the moral harm resulting from the harm suffered by these employees. However, Iraqi jurisprudence differs on the meaning of this term (negligence liability) in reference to the material error (the moral element) or whether it refers to the material element, as is clear from the context referred to above ( ). Regarding the position of the Iraqi judiciary, we note that Article 219 addresses the administration's liability for material acts, for which the ordinary judiciary has general jurisdiction over disputes arising therefrom. In some of its decisions, it is sufficient for the administration to be held liable if the element of transgression is present, without requiring the presence of discernment or awareness. It is worth noting that transgression or deviation in behavior occurs, whether through a positive or negative act, which takes the form of abstention or omission of what the law requires. We support the view that Article 219 of the Iraqi Civil Code refers to this in an absolute manner and applies to it completely. Therefore, there is no need to define transgression as a positive rather than a negative act.

Section Two
Judicial and Contractual Compensation for Harm

The basic principle of compensation is that it should be monetary ( ). As for non-monetary compensation, it has been a source of controversy, especially with regard to its approval in the Iraqi Civil Code. Article (209) stipulates monetary and non-monetary compensation. In reality, under normal circumstances, workers' compensation may come in the form of legal compensation. This is far from what we are dealing with, as it may come in the form of judicial or contractual compensation based on Article 169/1 of the current Iraqi Civil Code, which states the following: ((If the compensation is not specified in the contract or by a provision in the law, the court is the one who estimates it)), the general rule stipulates in Ordinary and administrative judiciary: If the administrative dispute revolves around purely personal rights, the judge is bound by the injured party's requests and may not rule on anything the injured party did not request ( ), otherwise his ruling would be subject to appeal ( ). Accordingly, the discussion is divided into the following two sections:

The first section: Judicial compensation for damages.
The second section: Contractual compensation for damages.

The first requirement
Judicial compensation for damages

In general, the judge seeks to estimate appropriate compensation, relying on experts. Since this compensation takes the form of monetary compensation, and may sometimes take the form of non-monetary compensation, it is worth noting these two forms of compensation, one after the other, below:

A. Monetary compensation

Monetary compensation is the most common method for redressing damages. In addition to being a medium of exchange, money is also an effective means of evaluation. Most civil legislation has made monetary compensation the basis for redressing damages ( ). It is considered easier to implement, not because it is closer to justice ( ). Monetary compensation may take the form of a lump sum, an installment payment, or an annuity for a specific period or for the life of the injured party. Total compensation is Its amount is determined by a specific sum and is paid to the injured party in one lump sum. As for the installment compensation, its amount is determined in the form of installments whose duration and number are determined, and that amount is not known until after the last installment is paid. It is different from compensation in the form of an income arranged for the life of the injured party, which is paid in the form of installments, but the number is not known in advance, except that the income is paid as long as the injured party is alive and does not cease except with his death ( ). Monetary compensation can be in the form of a lump sum paid in one lump sum or in installments, i.e. in the form of installments or a lifetime annuity ( ). The choice of one of these forms is at the discretion of the court. If the court rules on compensation in the form of installments or a salary, the court may require

the doctor and the hospital administration to pay personal or in-kind insurance as a guarantee. Otherwise, the court orders him to pay the compensation installments in one lump sum ( ). Article 209/2 of the Iraqi Civil Code stipulates that "compensation is estimated in cash, and the court may, depending on the circumstances and upon the request of the injured party, order the restoration of the situation to what it was, or rule to perform a specific matter or return the equivalent in fungible things, by way of compensation." That is, the principle is that compensation is cash in both contractual and tortious liabilities, as money is a means of exchange as well as a means of evaluation, and since damage (material and moral) can be evaluated in cash, the judge has broad authority to estimate cash compensation and how to pay it to the injured party (patient).

B. Non-monetary compensation

Non-monetary compensation, which primarily includes judgments and compensations to implement specific matters, is not in-kind or financial compensation, as it may be compensation for damages. The most appropriate compensation, depending on the circumstances, is a special type of compensation, and resorting to it determines the type of damage incurred. The aforementioned meaning is embodied in Article 209/2 of the Iraqi Civil Code, which states: "Compensation in cash shall be estimated, provided that the court may, depending on the circumstances and upon the request of the injured party, order the restoration of the situation to its previous state, or rule to perform a specific matter, or return the equivalent in the case of fungible items, as compensation." Non-monetary compensation is manifested in the performance of certain tasks in the judgment, such as publishing the judgment or an apology in the newspaper, upon the request of the injured party. There is controversy in current Iraqi civil law, which focuses primarily on non-monetary compensation. This controversy has no real impact on life, but in practice, it is applied universally and consistently. As is clear, the law does not specify the damages that require compensation for direct or certain damages suffered by victims. Therefore, any form of compensation, whether in kind, monetary, or non-monetary, is assessed based on the amount of direct damage resulting from the error, whether this damage is material or moral, expected or accidental, and whether it is present or future, as long as it is achievable. This was previously explained when we mentioned the conditions for psychological damage that must be compensated. The judge resorts to compensation in return to cover the harm that befell the patient or his family members as a result of the doctor's error. In the event that compensation in kind is not possible, compensation in return is usually monetary compensation. Compensation in return may be non-monetary compensation, such as the court ordering the performance of a specific matter by way of compensation, such as publishing an apology from the person performing the medical work in a newspaper ( ), broadcasting it through other media such as radio or television, or hanging a picture of him in a prominent place in the workplace or on a bulletin board in a public place ( ), or the hospital administration undertaking to treat the patient at its expense or to provide him with gifts in kind that please him ( ). Accordingly, the judiciary has the authority to determine the elements and means of identifying the extent of harm and classifying it as recognized or verified harm. Therefore, determining the occurrence and extent of harm can rightfully be considered a matter of fact, provided there are reasonable grounds for doing so ( ).

In order to determine the truth and subsequently achieve fair compensation, the Iraqi legislator has authorized courts, in the event that they are unable to make a decision on the subject of the lawsuit, to seek the assistance of specialists in some cases to provide clarification on technical matters related to the lawsuit with the aim of reaching a fair and accurate ruling ( ). These experts then carry out their work, even in the absence of the parties, under the supervision of the court, unless the nature of the work requires them to do so alone ( ).

The experts then prepare a signed report or report on the task they were assigned, detailing all the technical and scientific matters on which their opinion was requested, as well as the results they reached ( ), including the elements of moral damage and the appropriate compensation. This report is then submitted to the court, which retains the final say as the highest expert in assessing the experts' opinions. It may use this as a basis for its ruling ( ) if it finds that this report is based on objective grounds. It may, either on its own initiative or at the request of the parties, decide to invite the experts to attend the court session if it deems their report incomplete for its purpose or if it deems it necessary to seek clarification from them on certain necessary matters. To decide the case ( ), it also has the right not to take it into account in its ruling, provided that it mentions the reasons that led it to not take the experts' opinion into account in whole or in part ( ).

However, despite the legislators' rulings in this area, determining this damage and referring to the legal components that must be taken into account when assessing compensation. If the court decides to award a specific amount of compensation without specifying the elements constituting the damage on which this compensation is based, the ruling is grounds for annulment, as the court may have included it in the compensation assessment and the plaintiff did not qualify for compensation. These elements of the case, or the elements, do not require compensation for the plaintiff.

This is considered the judge's task to determine the element of damage, but this is a matter of interpreting the law. However, this is the type of interpretation that the legal text imposes on it. However, merely mentioning the damage and describing it as certain does not help the judge easily and simply ascertain this damage. There is no doubt that the judge played a role in this effort and hard work, which can affect its validity. An error in determining the elements of damage assessment arises from this. Hence, the need arises to seek the assistance of an expert in damage assessment and compensation, as we say, because this helps the judge in technical cases and in achieving justice, especially in the field of moral damages. One of the manifestations of the judge's discretion in adjudicating civil cases is the appointment of technical or scientific experts to make a decision in the case based on their opinions. The above is referred to in Article 133 of the Iraqi Evidence Law No. 107 of 1979, which states: "If the subject matter of the case requires the assistance of experts, the court shall instruct the parties to agree on one or more experts, provided that their number is an odd number, including those whose names appear on the list of experts or those whose names are not on the list of experts. If the parties fail to agree on a specific expert, the court shall appoint the expert".

However, if the subject matter of the case does not require the assistance of experts, there is no legal obligation for the judge to seek their assistance, which means that the court has absolute authority in this regard. Rather, the judge, by virtue

of his discretionary power, has the right to choose the appropriate method of compensation in the manner he deems appropriate, without being obligated to seek the assistance of an expert in all cases if he does not see a need for such assistance ( ). If the judge decides to seek the assistance of experts, he is not legally obligated to take into account what is stated in the expert report, nor is he obligated to respond to the opponents' requests to replace the experts as long as the judge is convinced by the report submitted by them. The above meaning was included in a decision of the Court of Cassation, which stated: ((The court of subject matter shall not be blamed for not responding to the opponent's request to replace the experts as long as it is convinced by their expertise, given its discretionary power)) ( ). Despite advances in the medical field, compensation in kind for bodily injury remains limited to specific cases and based on the type of injury suffered by the victim. Furthermore, although compensation in kind is an appropriate remedy for the damage incurred, it may not undo what occurred between the time of the damage and the claim. During this period, in addition to the damage that naturally occurs, other damages may have occurred. It appears that compensation in kind will not fully address these damages. Therefore, it can be said that two methods of compensation can be combined into one. In addition to compensation in kind, monetary compensation is the primary method. The victim has received full compensation rights, but part of this compensation is through monetary compensation. Compensation in kind is another monetary component, which often occurs when the damage is worse than it was when it occurred. However, due to the difficulty of compensation in kind in the field of medical liability, and the impossibility of obtaining compensation in kind in the case of non-fatal bodily injury ( ), such as the amputation of a swollen limb that was poisoned by the medical experiment that the doctor conducted inside the hospital, especially since the artificial limb cannot perform the same functions as the natural limb ( ), therefore, it is most likely that compensation is in return, especially in the form of cash, except that all damage, even moral damage, can be assessed with cash.

The Second Requirement

Contractual Compensation for Damage

After we have finished explaining judicial compensation, we will move on to discuss contractual compensation, which means that the two parties agree on a pre-estimate of the compensation amount. If one party fails to fulfill their obligations, they must pay a specific amount stipulated in the contract, which is called the liquidated damages clause. This is a contractual liability. For example: A doctor agrees with a patient to perform a therapeutic or surgical procedure for the patient, and then the doctor fails to fulfill his obligations, such as delaying surgery. Medical working hours are of great importance, so if the patient is harmed as a result of this delay, and the contract includes the compensation amount stipulated here, the patient is entitled to compensation, and the judge decides to pay compensation for the harm incurred by the patient. However, sometimes The amount of compensation stipulated in the contract is exaggerated, as Article 170/2 of the Iraqi Civil Code states the following: ((The agreed-upon compensation shall not be due if the debtor proves that the creditor did not suffer any harm, and it may be reduced if the debtor proves that the estimate was excessive or that the original obligation was partially implemented, and any agreement that violates the provisions of this paragraph shall be null and void)), and its equivalent is Article (244) of the Egyptian Civil Code. The amount of compensation may be specified in the contract or in another agreement after the contract, but the condition is that the agreement be made before the occurrence of the damage. If this is not the case, i.e., if it was not made before the occurrence of the damage, then the agreement here is considered a settlement contract subject to the provisions of Article (698) of the Iraqi Civil Code, which states that "Settlement is a contract that resolves the dispute and ends the dispute by mutual consent." According to the text of Article (170/1) of the Iraqi Civil Code, what is common in the agreed-upon compensation is specifying the amount that the contractor will pay for breach of the contract. Its most important features may be as follows: Subsequent obligations do not arise and are not subject to its provisions unless the original obligation is not fulfilled and the estimates are incorrect. However, the parties agreed on the damages before they occur, and there is no way to accurately judge the amount. The damages inflicted on the patient can therefore be repaired by the judge by mitigating them, but he does not have the right to increase them unless there is fraud or gross error on the part of the parties. Article (170/3) of our Civil Code states that ((If the damage exceeds the agreed-upon compensation amount, the creditor may not demand more than this amount unless he proves that the debtor committed fraud or gross error)) and this corresponds to Article (225) of the Egyptian Civil Code. Since the basis for assessing compensation is judicial, meaning that the judiciary undertakes to assess it as a body designated for that purpose, which is the just and appropriate way to achieve justice, the legal and contractual determination of the amount of compensation is a departure from that basis. Therefore, the legal texts regulating the provisions of contractual and legal compensation are described as exceptional texts that should not be expanded in their interpretation and application as long as they represent a departure from the general rules that require compensation to be judicial.

Conclusion

In light of the research presented in the study entitled "The Limits of Liability and Compensation between Medical Facilities and Their Assistants," the topic of the burden of proof and denial of medical liability is of utmost importance. It is one of the most complex topics, raising numerous legal and practical problems, especially given the significant developments in various medical fields, accompanied by increased attention to the patient's right to physical integrity and self-determination, taking into account their circumstances. The burden of proof differs in professional errors from that in ordinary errors. To this end, a number of conclusions and proposals were reached, the most important of which are

Results

1. The state is responsible for compensation for errors committed by those performing work in public medical facilities.
2. The judiciary has the authority to assess the elements and means of detecting the extent of the damage and placing it in the category of recognized or verified damage. Therefore, the issue of determining the occurrence and extent of the damage can rightly be considered a matter of fact as long as there are reasonable grounds for doing

so. The court of first instance is independent of the supervision of the Court of Cassation. 3) Administrative jurisprudence in France adopts the concept of the presumption of fault or presumptive error (Présomption de faute), as did the jurisprudence of the French Court of Cassation - Civil Chamber - on May 21, 1996, in the Bonnini case. This concept was also adopted in the matter of the obligation to inform the patient in a public hospital facility and obtain their prior consent before performing any risky procedure. This obligation falls upon the physician, in accordance with Articles 7 and 42 of the French Code of Medical Ethics. This obligation is mitigated in cases of emergency or urgent need, or in the event that the patient refuses to be informed, or in the event that notification is impossible.

Proposals

1. We suggest to our esteemed legislator the necessity of issuing legislation that adheres to the rule of assessing damages at the time of judgment. This is consistent with the objective of civil liability and the principle of full compensation for damages, on the one hand, and with the position of most civil legislation, on the other hand, which makes the time of judgment the basis for determining the amount of compensation for variable damages.
2. There is no doubt that it is legally correct to determine compensation on the date of the judgment. We support this and call on our ordinary and administrative judicial circuits to consider all factors that occurred between the time of the damages and the dates of the judgment, while also taking into account the aforementioned exceptions, in order to protect public funds as much as possible, as the public administration needs them to manage productive projects dedicated to the public good.

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