

The Powers of the Administrative Judge in Assessing Compensation for Administrative Liability: Between Expansion and Restriction

Las facultades del juez administrativo para determinar la indemnización por responsabilidad administrativa: entre la ampliación y la restricción

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Abstract

This system of compensation is put in place with the sole intention of safeguarding the injured party; hence, the injured party should be guaranteed proper protection through provision of all necessary measures. This right may fail to be fulfilled because of one reason or another such as inability on the part of the liable party to compensate the injured party due to financial problems. Therefore, the liability must be carefully evaluated with regard to the interests of the injured party. Administrative judge possesses vast discretionary powers in the estimation of compensation payable because of damage caused by acts or conduct of public facilities and services, either because of the administrative fault or irrespective of any such fault on the part of public facilities. In cases where administrative liability rests on administrative acts being unlawful, French administrative case law tries to extend powers of administrative judge in estimating compensation in respect of two courses of actions: either after instituting proceedings for annulment of such act or independently of such annulment. As for the competence of the administrative judge in questions of state liability for lawful actions, that is, in cases of administrative liability without fault, such competencies are more comprehensive. Yet, the use of such power is not unlimited, on the contrary, it is limited by law.

key words: Administrative judge; Administrative Liability; estimating compensation; damage; types of compensation;

Resumen

Este sistema de indemnización se establece con el único propósito de proteger a la parte perjudicada; por consiguiente, debe garantizarse su adecuada protección mediante la adopción de todas las medidas necesarias. Sin embargo, este derecho puede no hacerse efectivo por diversas razones, como la imposibilidad de la parte responsable de indemnizar a la víctima debido a dificultades económicas. Por ello, la responsabilidad debe evaluarse cuidadosamente, atendiendo a los intereses de la parte perjudicada.

El juez administrativo dispone de amplias facultades discrecionales para determinar la indemnización correspondiente a los daños ocasionados por los actos o la actuación de los servicios públicos, tanto en los supuestos de responsabilidad por falta administrativa como en aquellos en los que dicha responsabilidad existe sin que concurra falta alguna. Cuando la responsabilidad administrativa se fundamenta en la ilegalidad de los actos administrativos, la jurisprudencia administrativa francesa tiende a ampliar las facultades del juez para determinar la indemnización por dos vías: tras la interposición de un recurso de anulación del acto o con independencia de dicho recurso.

En cuanto a las facultades del juez administrativo en materia de responsabilidad del Estado por actuaciones lícitas, es decir, en los supuestos de responsabilidad administrativa sin falta, estas son más amplias. No obstante, su ejercicio no es ilimitado, sino que está sujeto a los límites establecidos por la ley.

Palabras clave: juez administrativo; responsabilidad administrativa; determinación de la indemnización; daño; tipos de indemnización.

Introduction:

In any case that comes before him for hearing, the administrative judge faces the challenging and complicated task of either having a legal text concerning the case before him, or not having an unambiguous legal text covering the subject matter at all.

The administrative judge jurisprudence can make a substantial contribution to the development of administrative law in looking for proper ways of settling disputes involving the administration as one of the parties, mainly because of the lack of an integrated legal text dealing with the subjects of administrative law.

The administrative judge has ample room in dealing with legal texts. Through the cloak of his power of interpretation, he tries to interpret the tacit intention of the legislator which lies behind such laws. He has the liberty to define and adapt any legal text in accordance with general principles of law and also to narrow down its application to uphold the general principles of law.

This freedom is also manifested in the extensive and quasi-absolute discretionary power exercised by the administrative judge when dealing with compensation for the damage caused by the acts of the administration. This is because the object is to compensate for such damage directly and fairly, keeping in mind that the issue of compensation is basically a question of fact. Compensation forms the core effect that follows the damage suffered by an individual due to the acts and conduct of the administration, which is covered in different facets of administrative liability.

In any case, one who has suffered damage must file an action against the administration on the ground of administrative liability to get his rights compensated for. It is in this respect that the administrative judge exercises a wide power in terms of the nature, method, and extent of compensation (First Topic). However, this power is not absolute; it comes with limitations and constraints that the judge has to abide by, even in the process of exercising his judicial powers (Second Topic).

The first topic: Powers of the Administrative Judge with Full Jurisdiction in the Estimation of Compensation

The administrative judge has considerable freedom and discretion in carrying out his powers of estimating compensation. He makes a determination of the value and amount of compensation to be paid, having taken into consideration all documents tendered to him by the injured party. Should there be insufficient proof, he can exercise his discretion in making an award of compensation in equity in lump sum. This pertains to cases where

the injury caused is of material damage. On the other hand, in cases involving moral damage, the estimation thereof is made in equity and symbolically¹.

The freedom of the judge is reflected, on the other hand, in his recognition of the claim made by the victim regarding provision of compensation before deciding on how much money should be awarded. In like manner, concerning the mode of performance, the judge can exercise complete discretion to allow the responsible party to provide compensation either in one lump sum, instalment payments, or even in annuities (First requirement), depending on how compensation will be estimated (Second requirement).

First requirement: Types of Compensation

Compensation is defined as the form of remedy that a person who was aggrieved seeks through the process of bringing a suit for administrative liability. Different types of compensation arise out of different types of cases as well as different types of damages. The types of compensation include specific compensation and pecuniary compensation, full compensation, and provisional compensation (First section, Second section, and Third section respectively).

First section: Specific Compensation and Pecuniary Compensation

According to Article 132/2² of the Civil Code, the procedure of estimating compensation should be as follows: **“Compensation should be estimated in monetary amount; however, in accordance with the circumstances and at the request of the injured person, the judge may provide for restoring the situation to what it was before, or grant, in the form of compensation, particular assistance related to the illegal act.”**

It follows from the text of this article that, whereas the legislator made pecuniary compensation the basic source, he also provided that any other form of compensation, notably specific compensation, would be allowed whenever it is applicable.

Nonetheless, although the principle is applied in cases of civil law, it shows slight variance in administrative law. Where there is administrative law, specific compensation is never allowed, although practical, but replaced by pecuniary compensation. There are various reasons for this type³.

On a practical basis, the implementation of the principle of specific compensation could serve to harm the public interest since an administrative act that was aimed at the public interest would eventually be reversed or even destroyed in favor of serving a private

¹ Rachid Kheloufi, Administrative Liability Law, Office des Publications Universitaires, 2001, p. 141.

² Ordinance No. 75-58 dated 26 September 1975, containing the Civil Code, Official Gazette No. 58 of 1975, as amended and supplemented.

³ Sulaiman Mohamed al-Tamaoui, Compensation Judiciary and Methods of Appeal against Judgments, Book II, Dar Al-Fikr Al-Arabi, Cairo, 1986, p. 483.

interest. It could eventually impair the work of the administration. Moreover, although specific compensation could solve the problem of future damages, it fails to do so in relation to past harm⁴.

As far as the **legal rationale** behind the rule, this involves the status of the judge in relation to the administration. As per the traditional rule, the administrative autonomy from the judicial power meant that it was inconsistent with the powers given to the judge to issue an injunction against the administration. However, in exceptional cases where the fault of the administration reaches the stage of material trespass, the administrative court does not confine its jurisdiction to the award of compensation. Instead, it can order execution in the form of eviction, demolition, or abstention from interference.

Second section: Full Compensation

The basic principle underlying compensation is that it should be complete and comprehensive, involving compensation for damages and interest according to the extent and continuity of the injury suffered. This compensation can only be claimed on the day when the grounds of administrative liability become met. Nevertheless, the basic rule regarding compensation for damage is to be applied conditionally, especially if resorting to expert evaluation is required in estimating the extent of the material and financial damages caused to the party.

In relation to moral damage, this is an issue left to the discretion of the judge who might decide that an injury done to honour or prestige should only be compensated symbolically or in any other way that might exceed its obvious value. The same case exists regarding injury due to body pain that cannot be estimated with accuracy.

One of the examples for the application of the principle of full compensation of damages through Algerian administrative jurisdiction includes the judgment made on the case between the Municipality of Touggourt and the Heirs of (B.M.)⁵ on February 10, 2004. The judge decided that the sum of money granted as compensation for the damage done to the house as a consequence of defects within the water pipes was not exorbitant and, therefore, was a reasonable compensation for the damage.

Third section: Provisional Compensation, Interest on Default, and Coercive Fines

The judge may also order provisional compensation pending the outcome of the compensation claim, at the request of the aggrieved party. Interest arising out of the administration's failure to pay its obligation, which can either be default interest payable to the creditor, or interest which is payable to compensate the aggrieved party because of

⁴ Fathi Fikri, *State Liability for Its Non-Contractual Acts*, Dar Al-Nahda Al-Arabiya, 1995, p. 345.

⁵ Algerian Council of State, Third Chamber, Decision No. 112 dated 10/02/2004, case: Municipality of Touggourt v. the Heirs of (B.M.), unpublished decision.

an abnormal delay in the payment of the judgment amount due, may also be granted by the judge.

This was confirmed in Decision No. 16106 issued by the Administrative Chamber of the erstwhile Supreme Court dated 06/01/1979, in the case of the Heirs of Gilles Eugène v. Minister of Primary and Secondary Education and Judicial Agent of the Treasury⁶, where it was found that there had been no effective discharge of the debt claimant until the debt had been paid because of maneuvering and undue delays made by the administration. There had also been circumstances suffered by the claimants that could not be overlooked and therefore were entitled to default interest⁷.

Compensation should completely make up for the damages suffered and takes the shape of monetary compensation in the national currency. This may either be in the form of an annuity or capital compensation. The discretion of the judge in determining the way compensation can be given is wide and depends on the situation of each particular case. Consequently, the compensation can take any of the following forms – compensation by instalments, annuity compensation, or life pensions.

Following years of Algerian case law⁸ that made clear that there was no possibility of the administrative judge using coercive fines unless specifically authorized by a legal provision, it became possible to use coercion through the application of Articles 980 and 981 of the Code of Civil and Administrative Procedures. These articles allowed the imposition of coercion if the judge ordered enforcement proceedings within the set period or where compliance with the court order required the administration to make a new administrative decision within the stipulated period.

From the decision issued by the Council of State on 27/07/2010, it appears that the failure of the administration to enforce a final judgment bearing *res judicata* effect gives the winning party the right to approach the relevant judicial body and ask for the imposition of a coercive fine⁹.

While the Algerian legislature has indeed enacted legislative provisions governing coercive fines in relation to administrative matters, these provisions have only made such coercive fines a relative security for the enforcement of judgments and decisions. In other words, the Algerian legislator has not imposed on the administrative judge the duty of imposing a coercive fine in case the administration fails to enforce the judicial decision as

⁶ Algerian Supreme Court, Administrative Chamber, Decision No. 16106 dated 06/01/1979, case: Heirs of Gilles Eugène v. the Minister of Primary Education and the Judicial Agent, unpublished decision.

⁷ Safia Hamiche, "Compensable Damage in Administrative Liability," Magister's Thesis in Law, Administration and Finance Branch, Faculty of Law, University of Algiers Benyoucef Benkhedda, Algeria, 2012, p. 90.

⁸ Algerian Council of State, Fifth Chamber, Decision No. 014989 dated 08/04/2003, case: (K.M.) v. Ministry of National Education, Council of State Review, Algeria, No. 03, 2003, pp. 177–181, at p. 177.

⁹ Algerian Council of State, Decision dated 27/07/2010, Council of State Review, Algeria, 2010, pp. 110–111.

stipulated under Article 980 of the Algerian Code of Civil and Administrative Procedure. This can be evidenced from the text of the article which clearly provides that the administrative judge can impose such a coercive fine, as the verb “can” implies discretion¹⁰.

It must be remembered that the power enjoyed by the judge in this regard lies in his ability to choose an appropriate manner of payment for compensation, depending on the type of damage suffered, and within the limits of demands made by the claimant. In essence, liability is meant to bring back the balance upset due to damage and reinstate the damaged party to the same state he would have been in if the act of damage had never taken place, at the expense of the person liable¹¹.

Second requirement: The Criteria of Estimation of Compensation

According to Article 182 of the Civil Code, when no compensation was established by agreement between parties, or by law, the compensation must be determined by the judge. Compensation is the loss suffered by the creditor and the profit he was deprived of. This implies that there exist three criteria according to which compensation will be estimated; namely: the contractual criterion (First section); the legislative criterion (Second section); and finally, the judicial criterion (Third section).

First section: The Contractual Criterion for Determining Compensation

The basis of compensating liabilities could come from an agreement made by the contracting parties, especially in contractual law. In contractual law, the parties to a contract may set in advance what will be their respective compensation in the event that one of them fails to comply with their contractual duties. This kind of agreement is limited only to the area of contractual liability and not tort liability. The agreement is a penalty clause. It can either be formed during or after making the contract as stated in Article 183 of the Civil Code.

Contracting parties have the right to insert a penalty clause into the contract, which cannot be increased by the judge in any way; however, if the debtor can prove that the clause is exaggerated or the obligation was partly fulfilled, the judge can lower the amount. The clause may even be cancelled in case the debtor succeeds in proving that no damages were caused to the creditor. There is only one instance when the amount of compensation can be raised by the creditor, and that is if the damage is higher than what

¹⁰ Malika Mahali, “The New Powers of the Administrative Judge,” Magister’s Thesis in Law, Administrative Litigation Law Branch, Faculty of Law and Political Science, Tizi Ouzou, Algeria, 2017, p. 102.

¹¹ Rania Nasser, “Judicial Assessment of Compensation,” *Abhath Journal*, Algeria, No. 3, 2016, pp. 128–145, at p. 137.

was provided for in the contract, and such higher damage was caused due to fraud or malice on the part of the debtor¹².

Second section: The Legislative Criterion for the Estimation of Compensation

As has been noted, the law itself can be the source for the estimation of compensation in cases relating to labour legislation where compensation for injury is a specified amount. As in the first case, the penalty clause is the source of the compensation to be paid to the creditor for non-performance of the contract. On the other hand, the law is the source of the interest that needs to be paid to the creditor in case of an overdue debt. Interest shall not be charged on a debt until it becomes a monetary debt, has a fixed amount due at maturity, and a claim made by the creditor.

In other words, whatever the source of a debt, whether it be a contract, wrongdoing, unjust enrichment, or the law itself, what matters is that the debt is a monetary one and is payable¹³.

Third section: The Judicial Criterion for the Estimation of Compensation

When the facts and circumstances creating the liability are established and when compensation for the damage suffered is claimed, the sole competence rests with the trial judge to estimate the compensation owed by the debtor to the injured party, as well as the manner in which the compensation should be awarded in respect of the repair of material and/or moral damage. In fact, the compensation will only be estimated where there exists no prior determination of the amount by virtue of the terms of the contract or by the law itself. In the case where the law stipulates principles regarding the estimation of compensation, the judge is expected to act accordingly when fixing the compensation in accordance with the degree of injury sustained by the victim without exceeding or reducing the amount of loss or profit suffered by the latter, whether under civil liability or administrative liability.

This being the case, given that the criteria for estimating damages are the elements of damages to be estimated, the damage referred to herein would be direct damage; it is the basis for liability in this case. The adopted rule for the estimation of compensation in this case is that the disturbed equilibrium should be restored so that no damage goes without compensation and no gain exceeds the actual value of the damage suffered¹⁴.

¹² Mohamed Hassnine, Summary of the Theory of Obligations, National Book Institution, 1983, p. 286.

¹³ Mohamed Hamed, The Process of Assessing Compensation in Liability under Civil and Administrative Law, Magister's Thesis in Law, Contracts and Liability Branch, Faculty of Law, University of Algiers Benyoucef Benkhedda, Algeria, 2007, p. 62.

¹⁴ Ahmed Shawqi Mohamed Abdel Rahman, The Extent of Compensation for Changes in Damage Affecting the Body and Property of the Injured Party in Contractual and Tort Liability, Mansha'at Al-Ma'arif, Alexandria, Egypt, 1999–2000, p. 14.

The second topic: Limits on the Powers of the Administrative Judge in the Estimation of Compensation

Despite the wide discretionary powers bestowed upon the administrative judge regarding compensation estimation, these powers have some limitations. First, there are several elements that have to be taken into consideration by the judge in his ruling of compensation award. It is because compensation estimation can be defined as a technical judicial process during which the judge decides on compensation estimation while analyzing the dispute submitted before him. In this connection, the judge cannot ignore the established rules of agreement and legislation or go beyond the parties' claims (First requirement). Additionally, the judge should take into account all the conditions and elements of compensation estimation; the first of which is the timing of compensation estimation (Second requirement).

First requirement: Compliance with Agreement, Legislation, and Parties' Claims

Sometimes when adjudicating the dispute before him and estimating the amount of compensation, the judge cannot exceed his jurisdiction in certain cases. That is, if an amount of compensation has been determined by an agreement between the parties or through legislative provisions, the judge is bound by the terms of the agreement or the legislation (First section), and must likewise respect and not exceed the claims submitted by the parties concerning compensation (Second section).

First section: Lack of Contravention to the Agreement/Legislation

Source of Compensation Estimation may be an earlier agreement made by the contracting parties regarding the amount of compensation to pay when one party fails to fulfil its duties. This kind of provision does not commonly occur in tort liabilities. The agreed compensation is a penalty clause; thus, the parties may agree on the said clause, and there will be no room for the judge to raise the amount agreed upon. However, the judge may decrease it depending on the debtor showing that the penalty clause is too high or if he was able to partly fulfil his obligations.

Law can also serve as a source of estimation of the judge on compensation. One example of this is when the legislator intervenes on determining the compensation that the judge should award those who have incurred physical injuries as a result of road accidents caused by both public and private transportation per Ordinance No. 74/15¹⁵.

¹⁵ Ordinance No. 74-15 dated 30 January 1975 relating to compulsory motor vehicle insurance and the system of compensation for damages, Official Gazette No. 15 dated 19 February 1975, as amended by Law No. 88/31 dated 19 July 1988, Official Gazette No. 29 dated 20 July 1988.

The amount of compensation is determined based on the beneficiary's status and earnings and cannot exceed the maximum amount stated.

Second section: Compliance with the Claims Raised by the Parties

The judge is duty-bound to decide all valid claims that have been brought to his attention. Non-compliance is judicial misconduct in cases whereby the judge fails to deliver a ruling regarding a particular party's claim, grants a remedy that the parties have never raised, and awards more than what the party requested for. Such instances may lead to an appeal against the verdict.

The reason why compliance with the claims brought by the parties becomes necessary can be logically explained by pointing out the fact that the claimant pays judicial costs relative to the level of the claims raised after filing the case. In addition, the claimants' claims reflect their will and therefore must be respected by the judge¹⁶.

In addition, however, the claimant or the latter's legal representative can modify or even increase his/her claims during the process of the trial as a consequence of either the rise in prices or the emergence of some unpredictable situation that requires an increase in the claimed compensation. This kind of application may also be filed even when the issue at hand is pending before the appellate court. Consequently, the plaintiff can make a claim for increased compensation even when the matter is being considered on appeal because of increased prices.

The conclusion that can be drawn from the above is that the claims of both sides limit the powers of the judge to estimate damages. Indeed, he cannot exceed the limits of the claims specified in the statement of claim or counterclaim; if this happens, then it can result in an appealable judgment.

Second requirement: Respect for the Elements Governing the Estimation of Compensation

The compensation that might be granted by the court may be pecuniary, meaning that the damage is made good by the payment of an amount of money, or specific, involving putting the state of affairs back to what it was before the damage occurred. As far as the calculation and estimation of compensation are concerned, the process may either be carried out according to provisions or agreements, or left to the administrative judge's discretion, and he is supposed to consider some elements. These elements include respect for the principles governing the estimation of compensation (First section), and

¹⁶ Mohamed Damana, "Modern Legislative and Judicial Standards for Fair Compensation," *Al-Ijtihad Journal for Legal and Economic Studies*, Tamanrasset University Centre, Algeria, Vol. 1, No. 1, 2012, pp. 96–112, at p. 101.

compliance with the rule governing the date on which damages should be estimated (Second section).

First section: Respect for the Principles Governing the Estimation of Compensation

In deciding a case for compensation, the judge is required to comply with certain principles governing the estimation of compensation. Such principles are as follows:

1- It is necessary that compensation is made for all damages¹⁷: Compensation should be complete and comprehensive and it should include both the actual loss suffered by the injured party and the profits lost by him. Therefore, it is both material and moral damages¹⁸ suffered by the injured party.

2- Compensation cannot be greater than what the injured party has claimed¹⁹: In making his decision, the judge should confine himself to the claims made by the claimant. This means that when the claimant claims compensation for his material losses only, the judge cannot give him compensation for the moral damages he has suffered. This is what Yves Chartier held²⁰.

3- The estimation of compensation must depend on the share of the administration's liability for the damage caused: Where there has been an equal participation by the injured party and third parties together with the administration in the damage caused, compensation should depend on their respective shares therein²¹.

4- It should also be noted that any benefit derived by the aggrieved party from the administrative action giving rise to the damage should be considered: As in this instance, the judge shall subtract this benefit from the compensation due because only the real damage suffered shall entitle the aggrieved party to compensation.

5- The estimation of compensation should be carried out at the time of judgment rather than the time of the occurrence of the damage: This is because an order for compensation is not constitutive but declaratory of a right. As such, the judgment considers all damages done to the claimant from the time the damage was inflicted to the time when judgment is made.

It should be remembered that the main purpose of compensation is to repair the damage. Since the value of the damage forms a critical element in the estimation of compensation²², it is crucial to establish the time to consider in order to establish compensation, particularly as a considerable period of time may elapse between the

¹⁷ Fathi Fikri, *op.cit.*, p. 348.

¹⁸ Chartier YVES, *La réparation du préjudice, Connaissance du droit*, Dalloz, France, 1996, p. 35.

¹⁹ Jaber Jad Nasser, *The Simplified Theory of State Liability for Its Non-Contractual Acts (Compensation Judiciary)*, Dar Al-Nahda Al-Arabiya, 2012, p. 248.

²⁰ Chartier YVES, *op. cit.*, p. 49.

²¹ Majed Ragheb Al-Helou, *The Principle of Legality: Compensation Judiciary*, Dar Al-Matbouat Al-Jamiya, Alexandria, 1995, p. 513.

²² Ahmed Mahmoud Goma, *Compensation Disputes in the Field of Public Law*, Mansha'at Al-Ma'arif, Alexandria, 2005, p. 590.

occurrence of the damage and the issuance of the administrative or judicial decision awarding compensation²³.

6- Recognition of the principle of full compensation: Generally, full compensation should mean total compensation of the entire damage incurred. Full compensation can thus be regarded as one of the most basic requirements of equity and justice.

7- Taking into account the personal circumstances of the injured party in estimating compensation: It means taking into consideration the personal circumstances of the injured party, such as his physical, medical, and family state, as well as the extent of the damage done to him, the effect of which on his life and source of livelihood, and his financial condition²⁴. Compensation shall be based on the severity of the damage and not the severity of the fault.

8- The prohibition of the cumulative estimation of the amount of compensation.

Second section: Respect for the Principle Governing the Date of Compensation of the Damage

While the ordinary courts adhered to the principle of compensation being awarded by reference to the date of the judgment, the French Council of State applied the principle that the amount of compensation ought to be estimated by reference to the date of occurrence of the damage, whether the latter be a damage suffered by persons or to property²⁵. Such a right was justified in the sense that the claim to compensation arises from the first day the damaging event occurs.

In turn, the estimation of compensation had to be related to that date. But from 1947, the Council of State of France altered its stand and differentiated between cases of damages affected people and cases of damage to property²⁶ in determining the applicable rule for compensation. While doing so, it considered that most cases of compensation took several years to settle, during which considerable changes in the economy would take place, thus making the concept of full compensation irrelevant when applied to damages affected people based on the date of damage²⁷.

1- Date for Estimating the Compensation with Regard to the Damages of the Property

²³ Youssef Saadallah Al-Khouri, *General Administrative Law*, Vol. 2, 2nd ed., n.p., 1998, p. 171.

²⁴ Said El-Sayed Ali, *Compensation for Acts of Administrative Powers (A Comparative Study)*, Dar Abu Al-Magd Printing Press, Giza, 2011–2012, p. 353.

²⁵ French Council of State (C.E.), 13/06/1928, *Société industrielle et agricole de la somme*, *Recueil des décisions du Conseil d'Etat*, Rec Lebon, Paris, 1928, pp. 751–752.

²⁶ Sulaiman Mohamed al-Tamaoui, *Administrative Judiciary*, Book II, Dar Al-Fikr Al-Arabi, Cairo, 1996, p. 494.

²⁷ Ramzi Taha Al-Shaer, *Compensation Judiciary (State Liability for Its Non-Contractual Acts)*, Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 934.

As far as damages of the property are concerned, the French Council of State persisted in applying the rule that compensation will be fixed as of the date when the damage took place, so long as it was practicable for the damaged property to be repaired on that date but the owner negligently failed to carry out the repairs²⁸.

Where some factor made it impossible to restore the property to its initial condition when the damaging action took place, the court shall defer the date of compensation estimation until such an obstacle disappears and the party suffering from damages can conduct restoration actions.

Some jurists have raised objections regarding this theory because, in their opinion, in order to defer the decision of estimating compensation to a future date after damage occurs, one should prove the impracticability of making the repair at that very point, while it should be noted that the injured person was only the victim of some unlawful activities performed by the administration. This is unreasonable, considering the fact that it is not logical for damage to be considered the source of an obligation for its victim. Furthermore, it should be noted that the injured person cannot be asked to make repairs in advance without condemning his/her tortfeasor²⁹.

Additionally, the differentiation between property and personal damages, along with the treatment of both kinds of damages separately in the jurisprudence of the French Council of State, is not sufficiently justified. The criterion upon which compensation should be estimated should be equally applied to both kinds of damages, which is, that compensation should be proportionate to the damage³⁰.

2- Date for the Estimation of Compensation in Case of Personal Damages

From 1947 onward, the jurisprudence of the French Council of State has adopted, in case of personal damage, an approach distinct from the old principle whereby damage was to be estimated on the basis of its materialization date. It thus held that the date of the administrative decision or judgment is to be used to estimate the amount of the compensation rather than the date on which the damage was sustained³¹. Thus, the judge is required to consider all elements bearing on the estimation of the compensation up to the time of such date to make sure that the victim gets fully compensated for his damage.

As a result of the estimation of the damage at the date of the judgment, and determination of the compensation on such a date, any rise in the price level occurring in the period

²⁸ French Council of State (C.E.), 17/03/1950, *Sieur Basset*, Recueil des décisions du Conseil d'Etat, Rec Lebon, Paris, 1950, p. 173.

²⁹ René CHAPUS, *Droit Administratif General*, Tome 2, 14e édition, Delta, Monchrestien, Paris, 2000, p. 1263.

³⁰ Ramzi Taha Al-Shaer, *op. cit.*, p. 936.

³¹ French Council of State (C.E.), Assemblée, 21/03/1947, *Dame veuve AUBRY et Veuve LEFEVRE*, Recueil des décisions du Conseil d'Etat, Rec Lebon, Paris, 1947, p. 123.

after the date of the damage and before the judgment means that the responsibility for such rises is not borne by the victim, but by the perpetrator of such damage.

However, the Council specifically excluded from the scope of application of this principle situations where the issuing of the compensation order was delayed owing to the extraordinary delay of the injured person in the initiation of the compensation claim without any proper justification. According to the case law of the Council, in such a situation, the date of compensation would be estimated according to the date when the compensation decision should have been made assuming the absence of such a delay caused by the injured person because the latter cannot obtain any advantage out of the former's own delay³².

Moreover, following the principle of full compensation, the Council of State of France introduced the custom of the periodic adjustment of instalments to the injured party each time the compensation is paid periodically. It appears to be a remarkable innovation in the jurisprudence of the Council.

In relation to the Algerian administrative judiciary, it is important to note that the issue of the date for estimating compensation was clearly dealt with in the decision made by the Administrative Chamber of the former Supreme Court, made on 02/01/1988, and which indicates that the date of filing the statement of claim before the court will be the starting point for calculating compensation for the injured party.

It is also crucial to take into account the context within which the case arises. In situations where it is not practical to do this when issuing the judgment, the judge may reserve the right for the injured party to make another claim in future in case there is an increase in the damage, thus giving him the right to seek further compensation in future as indicated in the decision made by the Supreme Court on 07/11/1984.³³

Conclusion

Compensation is one of the key topics in civil as well as administrative liability because of its high practical importance. It is the final goal, which will be achieved after the liability issue has been examined and established. It is also a means that the victim of harm would like to get in order to compensate for his losses.

In such a way, questions associated with the topic of compensation have nothing in common with liability as regards both legal basis as well as philosophy of law since the former can appear only at a later stage after all conditions for liability have been met.

³² French Council of State (C.E.), Section, 10/02/1950, Dame veuve Lafourcade, Recueil des décisions du Conseil d'Etat, Rec Lebon, Paris, 1950, pp. 104–105.

³³ Algerian Supreme Court, Decision No. 34000 dated 07/11/1984, case: (T.R.) v. (Z.D.), Algeria, unpublished decision.

A claim for compensation is a personal lawsuit, initiated and submitted by people, who have legal interest in the matter in question, to the relevant court, with the aim of getting adequate compensation for their damage caused by the harmful activities of the administration.

The claim for compensation may be viewed as one of the most important and widespread administrative actions in relation to the legal protection of individuals from damaging activities of administrative bodies. The fact is that the claim for compensation is one of the most commonly used administrative actions because it is a personal and subjective action being included in the group of administrative actions on the adjudication of rights. At the same time, the protection of interests through this action is only possible provided that certain conditions, established in legislation and in judicial practice, are fulfilled.

It is noteworthy that this action takes an important place in classification of administrative actions based on different criteria of classification. As a result, according to the logic and grounds of the traditional classification, which depends on the degree of powers of a judge in administrative actions.

Therefore, the administrative judge wields very wide discretion in estimating compensation in terms of type and quantity in relation to the prevailing conditions, which form an essential element in the estimation of compensation. As far as this element is concerned, the administrative judge makes use of his discretion; however, such discretion is not an unlimited one but limited by certain conditions.

In view of this, it can be said that there are several conditions under which the estimation of compensation is done by the administrative judge. It can be stated that the estimation of compensation is a technical judicial exercise that is conducted by the judge in his attempt to examine the case presented before him. Under such conditions, the judge cannot contravene the legal provisions set forth in either agreement or legislation, nor can he exceed the limits set forth by the claimants. In addition, it is also important for the judge to be aware of those conditions and elements, particularly those regarding the date for estimation of compensation.

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