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The legal regime of punitive damages
In Iraqi and comparative law.
A comparative study

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Summary in English:

classified among the top estimated applications of tort law, punitive damages have had a history of controversiality and debate. Punitive damages are extra damages granted further to regular damages following a defendant's reckless, malicious, or deceitful conduct; they are particularly intended to penalize the criminal or to provide an instance to the other members of the community. The role of punitive damages is to correct damaging behaviours, thus discouraging faulty acts. Punitive damages have a long history. Despite the fact that the punitive damages concept has recently derived from the English judiciary, the essential importance it has gained in other legal systems is not to be doubted. This "essential importance" may be attributed to many key factors, including the special legislation or amendments recently issued in Iraq and France that impliedly adopted punitive damages awards. Also, legal problems have been generated by the introduction of punitive damages awards, such as their constitutionality and the criteria for assessing them. Punitive damages, like many legal theories, face differences in their analysis or in the identification of their functions. Also, there are two opposing schools: one group opposed to punitive damages, and one defending their importance. Each one is supported by certain arguments. In addressing the scope of their functions, some have tried to narrow those functions and limit their job to punishment and deterrence, while others have sought to expand the desired goals, including the addition of other targets such as regular compensation and a social justice and payback purpose. The recent researches highlight the fact that punitive damages create a concept with many misty overlaps with other concepts having similar functions at other times. For example, some have suggested the term smart money to describe the concept, which has been seen as an end for a malicious and cunning defendant. However, many who have been interested in examining this theory have explored the

discrimination and differences between compensation and punitive damages, and alternatively between the same concept and terms approaching it, of which the most important is aggravated damages.

The goal of punitive damages is double, resulting in both compensation and prevention, as a way for “paying off” the accuser’s prejudice. Nevertheless, in the case when the criminal demonstrated outrageous behavior, he can be granted extra punitive damages besides the initial compensative damages. In this situation, the value of the punitive damage is usually above the amount requested for the harm created.

If punitive damages are an exceptional regime, it is only natural that international documents try to protect the individual from being unfairly exposed or to be cruel, excessive or inhuman. Sometimes, in civil cases, on top of compensating damages, punitive damages are granted by these courts.

As this study examines the position of the law and the judiciary towards punitive damages in Iraq and Romania, it can be stated that both countries agree with the principle of full compensation, a principle which some believe is the barrier preventing the application of punitive damages. Judging Romania in the context of the European legal system, the latter is still hesitant in his position on punitive damages, but the study will try to emphasize that punitive damages may exist and are dealt with in various legislation, even if not explicitly stated. In Iraq, where the legal system is created in line with the French legislature, the latter opposes the US legal system that allows for punitive damages, French law - still applies the principle of full compensation, which does not include any idea of punishment or fault, and that punishment and fault are the basis on which the moral damages are based.

This study attempts to analyze the legal legislation in Iraq and Romania, as a comparative study between the two countries, to focus on the status of punitive damages in such legislation by determining the availability of elements of such compensation, especially the element of punishment on which such compensation

is based, on the grounds that the punishment is of a criminal nature and that its natural place is the provisions of the criminal code. This study also attempts to compare the similarities in some provisions of the laws - whether the civil law itself - or those laws that deal with specific cases such as laws relating to consumer protection, the environment or the responsibility of the product and compare them with punitive damages.

This study was divided into three chapters: Chapter (1) discusses the theory and functionalities behind punitive damages within the general law landscape, by studying the idea of punitive damages and their distinctive characteristics. Then examine the function of punitive damages in the area of legal liability.

Chapter 2 then discusses the scope of application for punitive damages and will focus on Cases of collective damage, as well as the state of imbalance between the injured party and the fault.

While chapter (3) discusses the legal problems of the penal compensation awards, It will discuss the punitive damages identification as well as applicability in different other legal systems (that do not recognize such damages).

exemplary damages or punitive damages might occur as an extra punishment on top of the compensatory damages in case of a particular behavior characterized by malice, vindication, or oppressiveness. The meaning of punitive damages is different from the customary sense of the word; rather, we can call punitive damages the ones excluded from the category of compensating damages. They do not compensate an injured party for the "damages" that they have incurred. Punitive damages are "fines" or "penalties" that are imposed in addition to full compensations to penalize or set an instance when a jury is persuaded that the defendant's conduct has fallen below certain standards.

In fact, both the punitive damages and the criminal law function on an sole principle, i.e. "retribution and deterrence. Punitive damages are granted when the criminal's conduct could be characterized by recklessness, malice, or

oppressiveness. The defendant's recklessness shows total disregard to another human being's safe or rightful condition, or puts to risk or even violates another human being's rights. The defendant's malice is a state characterized by hatred, or conduct with an aim to injure another human being. Oppressiveness appears when the criminal causes injuries, or breaches human rights in a harsh or severe manner, for instance through authority abuse, or by an unrightful benefit from another being's vulnerability.

The award of compensatory damages is made to restore the "loss the plaintiff has suffered by reason of the defendant's wrongful conduct. Despite the somehow unclear reasons supporting the concept of punitive damage, what is certain is that they are meant to serve the functions of penalizing and preventing. At the confluence between the two types of damages, a certain doubt arises on the compensating motivation of punitive damages, one explanation being that modern exemplary damages could equal a type of "quasi-criminal" "private fines" with a purpose to penalize and prevent particular wrongdoings. From a historical perspective, consistent exemplary damages were considered as violating the "Fourteenth Amendment's Due Process Clause" as well as the "Eighth Amendment's prohibition on excessive fines". However, the Court has rejected the notion that large punitive damage awards can violate the former provision, in the sense that the Eighth Amendment is inapplicable to cases in which "the government neither has prosecuted the action nor has any right to receive a share of the damages awarded. Alternatively, according to the court, the "Due Process clause" might place certain constitutional restraints to large punitive damage grantings. After initially assessing the punitive damages validity based on "general concerns of reasonableness," the modern Court now applies a more detailed, multi-factor framework in reviewing punitive damages. However, the fundamental underlying principle—that substantially exaggerated punitive damages or imposed without adequate procedural protections violate Due

Process—has consistently formed the foundation of the Court’s constitutional analysis. Although the Court has been ambiguous as to whether punitive damages limits exist as a result of due process, it was clarified by the Court that even though the states have “broad discretion ... with respect to the imposition of ... punitive damages,” the “Due Process Clause” bans considerably disproportionate punitive damages or imposed without adequate measurement .

We will not face any problem when the legal relationship is national in all its elements. It is the national law that will judge the claims arising from that relationship. We will not face any problem if there is an international agreement, bilateral or collective, the real problem that we face when a court issues a decision that includes a punitive damage award clause.

Recognising this decision and its implementation in another country does not recognize punitive damages for many reasons, either because the idea of punitive damages is a strange idea, or because the provisions of compensation depend on the principle of full reparation based on the idea of reparation in restoring the situation to the extent possible by compensating the plaintiff for his loss and lost earnings.

Most state laws provide for a set of conditions for accepting recognition or enforcing a court order Foreign, and often similar conditions between countries, but the most important of these conditions are the requirement of reciprocity and the requirement not to violate the foreign judicial rule of the state public policy of. Reciprocity as a principle is related to principal sovereignty - the general norm in international law.

Public policy as a concept is linked to the social order protection prevailing in the State. Some States imply that punitive damages are damages which prove to be contrary to the social order and therefore refuse to recognize them for fear of conflict with the State public policy.

The other controversial question is the issue of recognition of arbitrator's power in such awards containing punitive damages as well as the arbitrator's validity in attributing such compensation awards.

The different court positions as well as the opinions of jurists argue whether punitive damages are to be awarded by the arbitrator or, contrarily, the arbitrator may not grant such compensation.

Conclusion

Punitive damages are designed primarily to achieve two important purposes: punishment and deterrence. They aim to penalize the person under accusation for misbehavior or for trying to unlawfully take benefit of someone acting in good faith, and to prevent the wrongdoer first from committing an identical act and to deter other people from trying to repeat the wrongful deed. However, compensation also relates to the fundamentals of punitive damages, especially in countries that have granted compensation to the plaintiff rather than establishing a fine which goes directly to the state treasury. It is possible to award compensation without the approval of punitive damages, but courts are not likely to decide to award punitive damages without also awarding compensation. Punitive damages have an exceptional nature and are not predictable. They are described as "quasi-criminal", while assessment for such damages is subject to a variety of factors that should guide the court in the estimation of adequate compensation, including both the defendant's and the applicant's behaviour. Such factors have an impact largely on the decision of the court regarding "punitive damages", particularly considering the error rate on the amount to be awarded.

Punitive damages are still a debatable subject for researchers, judges and writers because of the many issues that have become increasingly evident in the application of punitive damages. Because international law always tries to distance itself from applying any exception to existing legislation, in order to

protect the individual from being subjected to any violation, or personal rights breach, and the “full compensation principle” adopted according to the “international law” prevents that application. As for the relationship between punitive damages and the constitution, it takes more than one face. The constitutional amendments to the US Constitution have been an arena for interpretation, as some see it closing the door with punitive damages and others imposing restrictions on the application of these compensations. In determining the scope of application of such compensation, there is a clear need to determine the standard of conduct required for such compensation as well as the criterion of proof, and to clarify if and how punitive damages apply in case of breach of contract, especially when such breach is deliberate, reckless and apathetic. The responsibility of the producer and the responsibility for environmental damage are to be discussed in cases of environmental punitive damage claims. These are two ways that extend to the affected party and show the element of greed, recklessness and cheating of the ugliest image without deterrent. Punitive damages were a deterrent, repression and severe punishment for these cases.

Recognition of a foreign judicial provision involving the granting of punitive damages and enforcement within a State through a decision of the courts of that State is an uncontested matter. This issue is subject to many different factors and criteria. The most important of these criteria is the legal system adopted by the state to be approved to enforce those compensations in terms of being a state that adopts the system of public law or private law. There is also a dispute over the validity of the arbitrators in granting punitive damages, which underlines that the parties’ will enforces recourse to arbitration and one cannot imagine that someone wants to punish himself. Although many countries do not explicitly declare their acceptance of punitive damages, they have many judicial practices and laws that implicitly include reparations as a private penalty under different terms, such as threatening fines, penal clauses, and copyright infringements in “intellectual property” cases.

In conclusion, the following points can be summarized:

- 1 - Punitive damages are the product of the English judiciary, but quickly and strongly passed by the American judiciary, until we found through the judicial rulings that all states recognize the granting of punitive damages, with some differences in the types of suits, but not others. In violation of the contract, for example, at a time when a state such as Arizona is blocking it, a state like Idaho allows punitive damages in breach of contract cases.
2. Also, most civil laws rely on the principle of the magnitude of the error in estimating compensation, which means that compensation is not constant in all cases, but changes up and down with the wrong committed by the defendant, which is clear evidence that the penal function of civil liability exists although not explicitly stated.
- 3.. Many countries, especially those adopting the civil law system, are still concerned about the punitive damage concept. The punishment function limits criminal liability away from civil liability. This situation needs to be re-evaluated. The fine is also found in most civil laws, and the fine is a financial penalty that is similar to punitive damages.
4. The arguments rejecting punitive damages relating to their unconstitutionality, especially in the double penalty clause, are objections that deserve attention and study. The person cannot be subject to punishment in his own body and money at the same time, especially as punishment such as unpredictable punitive damages, as an excessive fine. Noting that, with the exception of the Constitution of Malawi, no other Constitution dealt with reparations.
- 5 - Despite the existence of a team that rejects punitive damages, we cannot deny the role of such compensation in the punishment and deterrence necessary, especially in cases of collective damage such as environmental damage and the responsibility of producers and consumer protection, which restored confidence and trust of individuals and protected them from deception and fraud and also environmental protection.

6. It is time to give up the principle of full reparation, especially in Iraq, because it is a negative principle rather than a positive principle. More precisely, the principle of full reparation is no longer truly complete. This principle only reinstates the situation. This point is far from reality, because the plaintiff has been subjected to a lot of psychological or moral damage and loss of time, effort and pain that cannot be fully compensated by the coverage principle.
7. The dispute over an arbitrator's right to grant punitive damages or not is a dispute that requires final radical solutions and reinforces confidence in the ability of arbitrators to make decisions that can be applied and respected. We propose here that international arbitration centers should adopt a unified text of acceptance or rejection, so that the parties are aware of such compensation.
8. The foreign court decisions acknowledgement and applicaion, including punitive damages before the courts of another State whose legal system prevents such compensation or, at least, is not explicitly stated, is an important issue, especially as it relates to the rights of individuals. It is therefore now necessary for international bodies to take action to bring the views of States closer together to allow the recognition and enforcement of decisions of foreign courts with punitive damages.
- 9 - Iraq and Romania are countries that did not explicitly provide for punitive damages, and the analysis of many of the legislations in these two countries have concluded that there are some paragraphs that come close to the idea of punitive damages implicitly in each case of such legislation, while the judiciary is still reluctant the recognition of explicit punitive damages.
10. We propose that the Civil Code be amended, whether in Iraq or Romania, by allowing punitive damages to be taken as a general rule, especially in violations of the public interest and interest of the group, and that punitive damages shall be allocated to those affected as a form of reform, enforcing trust and confidence in society.