THE BASIS OF ESTIMATING COMPENSATION FOR DAMAGES CAUSED BY ILLEGAL DECISIONS, ACCORDING TO THE JUDICIARY OF THE JORDANIAN ADMINISTRATIVE COURT

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Abstract -
The jurisdiction of the Jordanian Administrative Court, according to the Administrative Judiciary act, is limited to considering requests for compensation for damages caused as a result of illegal decisions, if the request is submitted as a consequence to the annulment lawsuit.
The study concluded that the Jordanian Administrative Judiciary adopted the same bases for estimating compensation established in the field of tortious liability. Besides, the administrative judiciary does not compensate particularly for all illegal decisions if the decision issued had defects in form, procedures, or jurisdiction provided thatthe defect was not major and did not affect the subject of the decision.

Keywords - The Jordanian Administrative Court, Illegal Decisions, Compensation

INTRODUCTION

There are three pillars of responsibility for public administration to be responsible for its illegal decision: a mistake on the part of the administration, harm to the victim, and a causal relationship between the mistake and the harm[1].

The harm that may be inflicted on the affected person from the illegal decision is either a moral or physical damage. So, the Compensation is determined for the two types of damage. It is, in principle, to be an amount of money which means that the public administration is excluded from the in- kind compensation2.

Referring to the provisions of the Jordanian Civil Code, we find that the law has laid down the legal provisions related to estimating compensation for damage to others and set the general rule under the text of Article (266).The question arises here is "what is the position of the Jordanian administrative judiciary from the basis of compensation approved by Article (266) of the Civil Code for estimating compensation for damage caused to others as a result of its illegal decisions?".

This is the main problem that we will try to solve and answer in this research paper.

1. The Bases of Compensation

The Jordanian legislator did not specify in the Administrative Judiciary act the basis for estimating compensation for damages caused from illegal administrative decisions, which means that the administrative judge is obliged to return to the basis for estimating compensation laid down in the Civil Code.
Referring to the provisions of the article (267) which states: "The guarantee is estimated in all cases to the extent of the damage incurred and the lost profits, provided that this is a natural result of the harmful act,".
What can be concluded is that there are two bases for estimating compensation: namely,

1. The damage incurred.
2. The lost profits.

We will conclude that there are two bases for estimating compensation that is:

1. The damage incurred.
2. The lost profits.

Referring to some provisions of the Jordanian Administrative Court, we can find out that it approves the same bases mentioned above for estimating compensation for damages arising from illegal decisions. Therefore, the Administrative Court ruled that "the minister must request the Town Planning Commission to pay the people fair compensation for the expenses and losses3, and it ruled that "the right to compensation is estimated on the basis of physical damage and loss of profits as a result of reduced ability to work due to injury.4"
It is useful to note that the administrative judiciary takes into consideration the nature of the defect in the administrative decision to estimate compensation for damage, so that the amount of compensation

[1]Sultan, anwar, the obligation sources in the Jordanian civil act, Dar Al Thaqafa for Publishing and Distribution, amman, 2005, p328.
[2]Al-edwan, ghazi, harm caused by the fault of the administration and the compensation for it, a comparative study between Jordan and Egypt, unpublished master thesis, faculty of law, Middle East university, Jordan, p1.
[3]Administrative court, judgment No (155-2019),31-12-2019.
[4] Administrative court,(Formerly the Supreme Court of Justice) , judgment No 2014/172

increases whenever the decision is canceled for an objective defect, but that amount decreases if the cancellation of the decision was for a formal defect5.
Accordingly, we conclude that the provisions laid down in the Civil Code for estimating compensation for damage are the same as those taken by the administrative judge6.

2. **The Jurisdiction of the Administrative Judiciary to Consider Requests for Compensation for Illegal Decisions**

The Administrative Court, according to Article (5\b) of the Jordanian Administrative Judiciary Law, has the jurisdiction to consider requests for compensation for damages resulting from illegal decisions, if such requests are submitted as a follow-up to the annulment lawsuit. Therefore, the requests for compensation that are submitted independently are not within the jurisdiction of the administrative judiciary. This position, by the Jordanian legislator, is undoubtedly criticized, because the administrative judiciary is best able to estimate compensation for the damages arising from the illegal canceled decision.
The administrative court is competent to consider requests for compensation that are filed pursuant to the lawsuit for cancellation. Still, It does not rule on compensation if the defect in the administrative decision is related to the form and procedures or jurisdiction and was not a major defect. From our side, we agree with this.

CONCLUSION

In this paper, the bases for estimating compensation for damages caused by illegal decisions according to judiciary of the Jordanian Administrative Court are discussed, and the following conclusions have been come up with:
In this paper, we discussed the bases for estimating compensation for damages caused by illegal decisions according to judiciary of the Jordanian Administrative Court, where we reached the following conclusions:

1. The bases for estimating compensation established in the field of tortious liability do not differ from those for estimating compensation for administrative fault, where compensation is determined by: the damage incurred and the lost profits.
2. The administrative judiciary does not compensate for all illegal decisions, particularly if the decision was issued defective in form, procedures, or jurisdiction, provided that the defect is not major and does not affect the subject of the decision.

[5]Shatnawi, ali, The Public Administration's Responsibility for Its Harmful Actions, First Edition, 2008, Dar Wael for Publishing and Distribution, p. 307.
[6] Al-amawi,mohmmad, Compensation for physical harm, dar al-thaqafah for Publishing and Distribution , p. 90.

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[4] Al-amawi,mohmmad, Compensation for physical harm, dar al-thaqafah for Publishing and Distribution.

- **Legislations**

[5] Jordanian Administrative Judiciary Law.
[6] Jordanian civil law.

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