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MORAL DAMAGE COMPENSATION TO THE LEGAL PERSONS

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Abstract

The moral damage and the legal person seem to be a two concepts cannot be combined legally, however the court house never hesitated whether in Egypt or France at many old and modern Judicial regulations to combine between the two terms specially at France. All that because the legal person became an active factor in legal life. Also, this damage (the moral damage) is considered and confirmed by the court house. It means, the moral damage is reliable by the court house side and increasingly. Then, at many regulations in the French court house and the European court of human rights , the moral damage of the legal persons was appeared. From this point, many questions were risen , some of these questions are related with the endorsement, and does such endorsement is real for this damage of legal persons or it is only a philosophical attempt by the court house? Does this damage stands on legal base? These questions has formed the body of this study to be answered.

Key words: Legal person, Natural person, moral damage, court house, Jurisprudence, compensation.

1- Essence of Research

The moral damage has extended and exceeded the traditional limits that determined by the legislator to new Judicial fields which require the moral entity protection of the natural or legal person. This kind of extension has resulted new images of moral damage that affect the normal or the material individual. This issue has motivated me to study this subject in one side, and we found the moral damage at the present time one of the dangerous damages against the individual and the group from the other side. It is remarkable that any kind of trespass includes the moral damage such as the financial damage (Material) which ends to a moral damage even the compensation sources is money, the moral damage is existed in most assaulting images.

2- The Research Importance

The main issues that reflect the importance of studying this subject is the emergence of moral damage new applications in economic clusters entities, group of individuals or money groups that have a great role at the present time. All that motivated me and put them in my consideration, and they didn't establish or enter the positive law, in addition to less effects regarding the legal Jurisprudence. However, the moral damage theory is less remarkable in the light of comparative civil codification, Jurisprudence and the court house . As we noticed, there are many issues need to explained legally and Jurisprudential, and that fit with the legal persons.

3- The Research problems

Although, the moral damage has a great concern at the present time, but it seems unclear thought regarding the moral damage for legal persons and the possibility of compensation or not, that makes it as instable thought. The instability increased due to the legislated texts publicity for moral damage compensation and combining it with compensation for normal person. Regarding the comparative legislations when we discuss to the compensation of moral damage, it never differentiate between the normal and legal person, all that

motivated Judges to an independent opinion to the possibility of moral damage compensation or not.

4- The Research Methodology

The comparative analysis study will be followed in this paper, and the comparison will be between the French Legislator , Iraqi Legislator and the Egyptian legislator regarding the Court Judges and the Jurisprudents. This paper is divided into two sections; the first one entitled "The legislation and Jurisprudence attitude of the extent of Moral damage compensation to the legal persons" that is divided into two demands: the first one is "The Jurisprudence attitude from the legal person compensation for the moral damage", and the second demand entitled " Applications of moral damage images to the legal persons" which can be divided into two demands: the first one is "The damages of the moral rights to the legal person", while the second demand entitled "Damaging the personal rights to the legal person". Whereas the conclusion includes the main results and suggestions concluded from this paper.

5- The legislation and Jurisprudence attitude to the possibility of moral damage compensation to the legal person.

The Jurisprudent opinions are different. The discussion was risen for the possibility of moral damage compensation to the legal person. Since past, no one imagines that both terms will come together " the moral damage and the legal person", but the modern Judicial applications confirmed that (1). This matter made some French Jurisprudents (2) to search the possibility of moral compensation to the legal person, and also searching on a specific foundation to rely on, and justifying the reason of compensation for moral damage. Consider the mentioned above, this section will be divided into two demands: the first one discusses the Jurisprudence attitude from the moral compensation to the moral persons. In the second demand, we discuss the legislator attitude from the moral damage of the legal person.

5-1-1 The first demand: The Jurisprudence attitude

The stable opinion of Jurisprudence includes all the Researchers , Authors and courts decisions, and will include also the Jurisprudence attitude and the Judicature as explained hereunder:

⁽¹⁾-Bulletin des arrêts de la Cour de cassation, N69:JCPG 1999.IV, 2768; Juris – Data n.1999-001675.

⁽¹⁾-Wester-Ouisse, Veronique, Personnes Morales, Le préjudice moral des personnes morales, J.C.P.e d., G., 2003, p 1190.

First: The Jurisprudence Attitude

6-The French Jurisprudence

The dominant opinion of the French Jurisprudence ⁽¹⁾ says "The moral damage is existed for legal persons and that have to be compensated". There is another opinion says ⁽²⁾ "Extension is forbidden in the cases of moral damage for legal persons". Regarding that, we will discuss the compensation thought for the moral damage to the legal persons and the restricted trend also.

7-The qualified opinion⁽³⁾

This kind of opinion never refused the compensation principle of legal person for the moral damage, by it will be accepted in a certain ways. This kind of opinion focuses on two bases: the first one is identifying the moral damage generally, and the second one is the harm range that affect on the legal persons.

7-1 The first basis: The moral damage definition

The opinion says that the Judicial decisions were not clear enough toward the necessity of moral damage compensation to the legal persons, and these decisions had decided the moral damages existence without confirming nor referring to its nature ⁽⁴⁾.

⁽¹⁾ -G. Memeteau, La réparation du Préjudice d'affection ou: Lapierrphilosophale, Gaz, Pal, 1978, p 400

-Viney,G., et Gourdain,P.,Traite de droitcivil, Les Conditions de La responsabilite, L.G.J,3 edition, 2006, no.260.

- Pradel, X., LeprejudicedansLedroitcivil de la Responsibility, L.G.D.J. 2004, NO. 223.

⁽²⁾-V.Wester-Ouisse, OP. Cit. No1.

⁽³⁾-Ibidem. InInformatieblad.

⁽⁴⁾-V.Wester-Ouisse, OP. Cit. No.3.

The moral damage regarding this opinion point of view is the damage that affect the person at emotions ⁽¹⁾, and according to that we have to confirm the moral and material damage existence. So, according to this definition, the material damage can feel and feels.

7-2The second Basis:The moral damage description to the legal persons

This opinion can describe the moral image in three points:

1-The damage that affect the legal person during his regular activity at his institute and caused the moral damages ⁽²⁾.

2-The moral damages that affect the legal person as a result of his reputation and material assault. Regarding this opinion, the French courts accept the compensation of the damage, so many judicial decision were issued in that concern, specially at the commercial transactions. That what was confirmed by the commercial department to the French court of cassation and its decision was the legal person has the right of compensation for the moral damage ⁽³⁾.

3-The moral damages that affect feelings and sensation, and the person should be able to feel and sensitivity, then it assumes the psychological endurance and feeling pain.

Regarding this opinion, the moral damage acceptance of the legal person stands on the wide exception of the moral damage idea, and the excessive description of the legal person. This will be clear and obvious through the above three points analysis. Whereas the first and the second points of the

⁽¹⁾ -V.Wester-Ouisse, OP. Cit. No.6.

⁽¹⁾-V.Wester-Ouisse, OP. Cit. No.3ets.

⁽¹⁾- V.Wester-Ouisse, OP. Cit. No.3. -

Moral damages that affect the legal persons are in real money damages and not moral damages ⁽¹⁾. The third point which is represented by damages and affect the emotions and sensation, and these image cannot be accepted unless achieving one of the hereunder hypothesis:

The first Hypothesis: The legal person is really suffering from psychological affection in his feelings and Emotions, and this is not acceptable.

The second Hypothesis: The damage befalls the natural persons that constitute the legal person and his feelings , and the compensation will be awarded based on that injury. The legal person may be affected with damage with reversion ⁽²⁾. The moral damage compensation through reversion method shouldn't be out of the family. The acceptance of claims increase for the moral damage compensation that befalls the legal persons may lead to the self-thought cessation and character loss during the confrontation of subjective damage. So, the release of the moral damage's concept to the legal persons not to be extended at the moral damage concept to the legal persons by stable multi legal principles, and the moral damage to the legal persons must be limited in certain cases ⁽³⁾.

8- The extended opinion ⁽⁴⁾:

This opinion criticizes the traditional Jurisprudence that believed that the legal persons are unable to feel pain and sensation, and regarding that it is not able to claim for compensation for the moral damage ⁽¹⁾.

⁽¹⁾- V.Wester-Ouisse, OP. Cit. No.6 -

⁽²⁾-Ibidem. Informatieblad

⁽³⁾-G.Memeteau, op. CIT, P.400.

⁽⁴⁾- Simonart, V., La personnalite moral en droitprive compare, Bruxelles, Bruylant, 1995, NO. 212

- Pradel. Op. cit. NO.223.

Regarding this opinion, the traditional Jurisprudence is characterized with generalization which is not acceptable, because we didn't negate the validity of sayings, because the legal person cannot be affected in his feelings nor his body due to the lack of feelings. But, there are material damages no one can ignore it such as the affection on his reputation or consideration or the one that may affect on his personal rights. In this case, the legal person has the right to demand compensation for the moral damage ⁽²⁾.

Wicker says that the confession of legal person independence call for non-financial rights confession that confirm and includes independence . The general formation of the article text 1328 (French civil) allows the legal persons to require compensation for the damages whether they were moral or material damages ⁽³⁾. Non-financial rights protection based on the responsibility call is not limited only to the natural persons, the legal person are also included in non-financial right protection based on the responsibility call, and it has the right to protect itself, reputation , its consideration and its right to live through protecting its secrets ⁽⁴⁾.

As Kayser says, the Jurisprudence conflicts ended with the confession of legal personality of material persons as something real in this contemporary world. But it is a different personality than the legal personality to the natural persons, and can confirm to the legal persons

(1)-Al-Barawi, Hussain, H. The material and moral persons compensation for the material damage (Applied study to the points of modern damage). First edition, Al-Nahdha press house. 2009,p 129.

⁽¹⁾-Simonart,op.cit. No. 272 etc.

⁽¹⁾-Wicker, G., *Personne Morale*, DallozEncyclopedieDalozcivil, Paris, 1998.

⁽¹⁾-Viney, G., et Gouedain, P. *Traitededroit civil, les Conditions de la responsabilite*.L.G.D.j,3 edition, 2006.no.260

A similar right of personal rights that can be confirmed to the natural persons. It is remarkable, that there are rights related to the natural

person existence ⁽¹⁾. Kayser ends his words of some human rights confirmation to the legal persons and give them the right to call for compensation for the moral damage in case of assaulting these rights ⁽²⁾. The sociality importance of the legal personality lead to confession of some legal personality rights that can be confirmed to the natural person. The main goal of that is to confirm the legal personality independence and its distinctively. In order to achieve the goal above, the confirmation of these rights must be made. The legal integration that includes with protection can be achieved through honor and consideration protection, and this can be embodied at the legal persons. Whereas the elements that confirm personality distinguishing and individuality can be represented in protecting home and the name, and this is available at the legal persons ⁽³⁾. However, the legal person's nature doesn't allow him to admit some of personal rights such as the right in respecting the private life, but there are personality rights can be confirmed to the legal person such as the right in proving his innocence ⁽⁴⁾. This kind of opinion ends to a result " The legal person has the right to call for compensation for the legal damage.

9- The Egyptian Jurisprudence

the attitude of the Egyptian Jurisprudence is different that its French counterpart in the possibility of legal persons compensation for the moral damage. The Egyptian Jurisprudence discussed this issue differently and affected by the Egyptian legislator as in the article 52 civil status law ⁽⁵⁾

⁽¹⁾ -P.Kayser, *les droits de La Personnalite, aspects theoriques et pratiques*, Rev. trim. droit. civil., 1971, p. 489 ets.

⁽²⁾ -P.Kayser. op. cit. p. 490 ets.

⁽³⁾ -P.Kayser. op. cit. p. 332 ets.

⁽⁴⁾ -P.Kayser. op. cit. p. 334 ets.

⁽⁵⁾ -The Egyptian civil status Act as amended No:131 in 1948, and this article matches the article 47 of Iraqi civil status Act.

To divide the legal persons into general legal persons and private legal

persons, regarding that the Egyptian Jurisprudence had divided into three opinions:

9-1 The First opinion ⁽¹⁾

It determined the right of calling for compensation for the moral damage to the private legal persons, and it didn't admit to the general legal persons. This opinion considered the general legal person have the general means of power that enable them to rise the claim against the one assaulted them. So, they don't need for civil claim to call for compensation regarding the moral damage affection ⁽²⁾.

9-2 The second Opinion ⁽³⁾:

This opinion admits to the public law person to call for compensation due to the moral damage. This trend sees the public law persons have the right to call for compensation due to the moral damage, if the action was by mistake and resulted from the Government or institute damage. In other phrase, each legal person has the right of compensation due to the damage in wealth or honor or reputation, even the damage was by mistake. This opinion allows compensation for moral damage to the legal persons without concerning whether they are belong to public or private law persons. So, the compensation is allowed to the legal persons (Public and private). This kind of trend depends on its opinion regarding many reasons:

(1)- Marqss, Sulaiman. Civil responsibility codification at the Arab countries. First division. Public regulation. Arabic institute for Researches and studies. 1971, p 149.

(2)- Marqss, Sulaiman. Al-Wafi in civil law interpretation. Commitment, the misfeasance and civil responsibility. First volume, fifth edition. 1992, p 157.

(3)- Maree, Mustafa. The civil responsibility in Egyptian law. Second edition. Abdullah Wahab Book store. Item 319.

(4)- Ibid.

1-The compensation relies on many specific and agreed conditions such as: mistake, damage and cause relationship without considering

the damage reasons type (Public or Private law persons) ⁽¹⁾ .

2-There are many forms of moral damage that can affect all the community members as in environmental damage ⁽²⁾, and sometimes the individuals neglect to rise a compensation claim toward such kinds of damage unless affected them directly and personally. Hence, the Government has to commit with its obligations to protect people's wealth and rise claims for compensation for the moral damage resulted from the environmental damage ⁽³⁾ .

3-The increase of Government interference at the economic activity and subjected to the private law regulations, which has the right to call for compensation due to the moral damage, otherwise it will be in a different position regarding those it dealing with.

4-Regarding the French Jurisprudence, the legal person whenever got affected with moral damage, he has the right to call for compensation with the same rights among the persons of public law and the persons of private law ⁽⁴⁾ .

10- Iraqi Jurisprudence

In fact, the Iraq Jurisprudents never concern the compensation of moral damage to the legal persons, but their role was limited to present the civil Act texts which are related to the compensation of moral damage in general. But at the same time, they never reject the compensation of moral damage to the legal person. According to the correspondent between Iraqi and Egyptian legislators regarding the regulations of the legal person, there is no problem to agree with the Egyptian Jurisprudence of the possibility to compensate the legal person due to the moral damage.

(1)- Al-Barawi,Hussain,Hasa. Natireal and legal person compensation for the moral damage. P109.

(2)-Simonart, OP. cit, 272

(3)- Al-Barawi,Hussain,Hasan. Natireal and legal person compensation for the moral damage. P109.

(4)-Simonart, OP. cit, N. 272

11-Court House Attitude

Confession of what is true on ground, the Judicial confession was made toward the legal person to call for compensation for the moral damage regarding the high-frequency of the French Judicial regulations and some of Egyptian Judicial regulations. We can notice

that the Egyptian court house attitude stepped forward in some of his regulations in rejecting the principle of not compensate the moral damage to the legal person. But its decision was late opposite to the French court house attitude, that go along with all economic development and became aware of the responsibility issues that compounded quickly.

The Iraqi court house still underdeveloped than the Egyptian and French court house. The Iraqi court house in more than one occasion assured of not to compensate the moral damage to the legal person. The Cassation court made a decision 1650 in 21-12-2012 of not compensate the moral damage to the legal person (The call for compensation only by the natural persons than legal persons)⁽¹⁾.

We can see that the court wasn't right in taking such decision for compensating the moral damage as a general base to the natural persons than the legal persons. Whereas the second article of Iraqi civil law confirm the equality between the natural persons and legal persons in all rights. The exception is that the legal person has no rights as the natural person regarding the limits issued by the law, and when the moral damage is not limit to a specific form but to many forms that have been assaulted by others.

(1)- The Federal Cassation court decision No:1650 in 21-12-2012.Unpublished.

The presented question is that right to the legal person is the same to the natural person? Then the answer was determined about the maturation range to the legal person to be compensated for the moral damage. The article 205 of Iraqi civil law stipulated the rights for the person who was assaulted and some of these rights confirmed to the side of the legal person such as the right, reputation and harm at the financial position. There is no doubt, that the legal person has the right

to keep his reputation and financial position from every assaulting occurred by others, because mostly it is combined with material damage or coupled with it. The English Jurisprudence called on this type the name of Exemplary damages ⁽¹⁾. The company that its reputation deviated or posting a false information about it, its financial position will be affected with company dealers and in its shares, and it will face a great material and moral damage ⁽²⁾.

The federal cassation court in its decision No:2/General committee in 2019, which refers to terminate the trial Judgment from the trial court of Al-Karkh No: 2753/B/2018 in 14-11-2018, that force the defendant to pay the claimant, and one million dinars paid to the claimant (Kind of satisfaction) ⁽³⁾. This kind of attitude by the federal cassation court is the right thing to return to the court house and Jurisprudence at the country, that its rules are close to the Iraqi courts. It is remarkable, that the court house and the Jurisprudence are completely agreed on the moral damage that affect the legal person.

(1)- Jibran, Najem, Yousuf. The general theory of stipulators, resources of stipulators, the law and guilt and suspicion of guilt. Ewaidat publications. Beirut, Paris. First edition. 1978, p624, paragraph 451.

(2)- Amir, Hussain. Misfeasance and civil responsibility. First edition. Maser house press. 1956,p410. Paragraph 425.

(3)- The verdict of the federal Cassation court No:2/ General committee in 26-03-2019. Unpublished.

Regarding this subject, YousufJibran (The first president of the cassation court in Lebanon) says " the right to call for moral and legal damage compensation belong to the legal and natural persons such as the state and the Municipalities and excreta ...) ⁽¹⁾. Hussain Amir (The previous consultant at the Egyptian court of Appeal) says " The legal person defense is not limited to the material affection only or what it affects on the public interest that represented by his wealth, but he has a legal responsibility toward these institutes such as the influence of their reputation, and calling for compensation to correct the moral

damage, such as accusing one of the institutes branch of stealing without any right. The vocational Unions, companies, and associations have a legal character to call for compensation because of the legal damage that influenced its consideration ⁽³⁾.

12- The second demand

The attitude of legislations toward the legal person compensation than the moral damage. Hereunder, we are going to discuss the attitudes of the French, Iraqi and Egyptian legislators :

12-1 The attitude of the French Legislator

the civil French texts didn't include a clear text confirm the individuals

⁽¹⁾ -Wicker, op. cit.no.65

⁽¹⁾ -Wicker, op. cit.no.65

⁽³⁾-The text of this article is correspondent to the article 53 from the civil Egyptian law.

⁽⁴⁾- Al-Sharqawi, Jameel. Lessons at the law origins . Theory Right. Al-Nahdha Al-Arabyah press house. 1966, p 186.

Right to call for compensation for the moral damage ⁽¹⁾. The legislator decided in the nonfeasance responsibility as in the article No:1382 " Any act by human against others with damage, the compensation must be made and confirm the mistake" .

Article 1382:” Tout fait quelconque de Lhomme qui cause a autrui un dommage, oblige celui par la fauteduquelilest arrive, a le reparer”.

We can notice, that the legislator releded this article. And from the other side, he didn't determine the nature of the damaged person whether he is natural or legal person. And from the other side, he didn't determine the type of this damage, whether it is moral or material. So, the general formulation that came by the French legislator for this article allowed to the legal persons to depend on this article

concerning the material and moral damages ⁽²⁾.

12-2-The attitude of the Egyptian and Iraqi Legislators

it is clear of the article text No:48 of Iraqi civil Act " That the legal person has all the financial and non-financial rights ⁽³⁾, and no exception only to the rights that associated to natural person such as the family rights, the right of the husband to his wife and the father's right to his sons, and these rights concerned the natural person"⁽⁴⁾. Concerning the other rights, the legal has the right to call for compensation in case of assaulting confirmation whether the assault resulted a moral or material damage. The formation of the article 48 Iraqi civil and the article of 53 Egyptian civil to reject the confession to the legal person to call for

⁽¹⁾ -Wicker, op. cit.no.65

⁽²⁾ -Wicker, op. cit.no.65

⁽³⁾- The text of this article is correspondent to the article 53 from the civil Egyptian law.

⁽⁴⁾-Al-Sharqawi, Jameel. Lessons at the law origins . Theory Right. Al-Nahdha Al-Arabyah press house. 1966, p 186.

The compensation to the moral damage ⁽¹⁾. In addition, the Iraqi legislator text at the first paragraph of the article 205 Iraqi civil act ⁽²⁾ in the possibility of moral damage compensation, doesn't differentiate between the natural and the legal person, but it came with general wording or codification, and both can be compensated, the legal and the natural person ⁽³⁾.

13-The second section

The applications of the moral damage forms to the legal persons

At the first section, everything was clear for the legal persons maturation for the moral damage. Regarding to this study, the researcher has found out the possibility of compensation for those persons because of the moral damage. In this section, the researcher has tried to focus on some applications to the different forms of moral damage that affect the legal persons. So, this section is divided into two demands:

13-1 The first demand: The damages of the Intellectual rights to the legal person.

13-2 The second demand: The damages that affect the personality right of the legal person.

13-3 The third demand : The damages of the Intellectual rights to the legal person.

First, the researcher would like to present a question about how the legal person can gain the feature of having his rights, and these rights are the result of brain and mental recognition, and then how he is able to defend on these rights to the author's rights? Also, the researcher would like to

(1)- Al-Barawi,Hussain,Hasan. Ibid. p 140 .

(2)-This article is similar to the article 1/222 of the Egyptian civil law that stipulate: 1-It includes also the compensation of moral damage)

(3)-Keerah, Hasan. The origins of law. Second edition.the place of publication is unknown. 1958,p 913.

(4)- Ali, Kadhim, Jaber. The feedback damage and compensation at the nonfeasance period. Al-Thaqafah house for publication and distribution. 1998, p96.

to present another question of how the legal person can practice the author's powers and how can the he practice these rights if has the author's feature? Some legislations had been decided, and the Jurisprudent opinions were different inside the one legislation for considering the legal person as an author, then his right of being an author through the following:

14-In Jurisprudence

The Jurisprudent argument was risen about the possibility of the legal person to be an author based on the creativity principle, is he incapable than the natural person, because he is the only one who is bale of the moral creativity or this will be extended to the legal person? Regarding this vision, the Jurisprudents opinion divided into two trend:

14-1 The first trend: Opposition opinion

This trend sees the invention is the standard of the author's emotion and psychological impression, and not to be presented by the natural

person because he is the only one who has the intellect, the soul and the ability of production and expression ⁽²⁾. Then, the legal person is not able to have the author's feature and the moral rights of the author. Some of them agreed with that trend ⁽³⁾"that financial right to the author is temporary can be removed after 50 years since the author death, while the legal person has no certain life, and his financial right cannot be removed, and this is against the legal texts". The supporters of this trend regarding the

(1)-Keerah, Hasan. Abrief introduction of Law. Al-Taref Institute. First edition.1960.p601.

(2)- Shanab, Labeeb, Mohammed.Principles of law.Al-Nahdha Al-Arabyah house.1980.p208.

(3)- Al-Sanhaoori, Abdul-Razzaq. The mediator in explaining the civil law, Proprietary rights, 8th part. Al-Nahdha Al-Arabyah house.1981.p326.

(4)- Al-Sanhaoori, Abdul-Razzaq.Ibid. p326.

(5)- Wasil, Mohammed. The binding rights of the moral person. A special research, Louzan. Swizweland.

The author's description to a specific person is his real participation in creating new intellect, and this kind of participation cannot be imagined only from the side of the natural person. He is the only person that has an intellectual production ⁽⁴⁾. This Psychological concept is available only at the natural person, because he is the one who has an image to talk about in all the personal and psychological aspects, and this is not available at the legal person. The legal person has a legal thought out of humanitarian nature.

14-1 The second trend: Supporting opinion

This trend sees that modern laws had confirmed the legal person honesty, holding the author's feature and rights regarding the collective division that can organize its invention by spreading them under his management ⁽⁴⁾. So, the legal person was given the moral right. Others tried to present the evidence that the legal person has the soul and activity, and he is able to create a specific intellectual and moral

activity. Most of the companies work is to publish the literary and scientific categories, that have the author's feature and literary right. And also, they have the right to make justification and amendment on the literary work out of those who really participated in creating this work, even in case of death or termination ⁽¹⁾.

(1)- Abu Al-Seood, Ramadan. The mediator in the civil law interpretation. An introduction to the law. Theory right. Al-Jameayah press house. The year is not mentioned. P361.

(2)- Al-Baseer, Farooq. The economic concept toward the author's right. Al-Nahdha Al-Arabyah press house. Cairo. 2004. P84.

(3)-View at the Egyptian Jurisprudence.

(4)- ALainBerenboom, Le nouveau droit d auteur et les droitvoisins, Larcier, 1997, p.133 ets.

(5)-AL-Jeser, Nadeem, Mohammed. Legal personality at the legal companies. PhD. Thesis, University of Lebanon college of Rights, political and administrative sciences. Beirut. 1983. P188, paragraph 172.

(6)-French Jurisprudence.

(7)-Al-Jeser, Nadeem, Mohammed. Ibid. p186.

In addition, the goal of these modern legislations is to admit the author's right, not because of his ability for creation and creativity but to find the solution in collective works that directed and managed by the legal person, and it is hard to split each participant author aside. And the confession by the modern laws to the legal person cannot be confirmed without the collective classifier existence ⁽²⁾. The researcher remarked that the supporter view is correspondent to the modern laws, that aim to permit the legal person the author's feature, and it can also work with literary and scientific researches groups that awarded the legal personality. In such groups and collectives, the individuals efforts will be managed and supervised by the legal person, tangled and undistinguished, and it is hard to determine the contribution and the participation of each individual separately and accurately. Even the

works issued from those person may belong to a long years of work, stored by Electronic devices at the great companies, and the works cannot be described during issuance. It is the result of collective work belong to the group ⁽³⁾.

15-In Legislation

Most of legislations ⁽⁴⁾ for scientific considerations admitted the possibility to prepare the legal person the owner of the right, while the

(1)- Ibid. p190 and next pages.

(2) -<http://www.startimes/f.aspx?t=18561260>.

(3) -ALainBerenboom., op. cit. p.135.

(4)-The legislations are:

-Canadian Author protection law No:85-660 issued in 03-07-to the articles 10 and 11.

-American Author protection law No:553-95 issued in 19-01-1976 to the articl2 201.

-Syrian Author protection law No: 12 issued in 2001 to the articl2 31.

While, the French legislator came up with an exception regarding the article (L-113-2) , (L.113-5) of property protection law issued by the Act Number (92-597) in 01-07-1992 that concern the collective classifier. The article (L.113) classify the collective classifier is a property of the natural and legal person that publish the classifier in his name and under his management . After this exception, with giving a scientific reasons that confirm the economic interests protection of the supervisors and guidance, without preventing the real authors to exercise their rights in private contribution through using their contributions separately, that this kind of separation can be made without any damage to the classifier in general.

Regarding the French legislator, the Iraqi legislator admitted the copyright feature to the legal person in article 27 of copyright

protection law No:3 for the year 1971 as amended, and the text stipulated that " The collective classifier is the classifier that contributes in its status a group of persons regarding their will with natural and legal direction, and it is hard to separate the work of all contributors and distinguished from others and the natural and legal person that managed and guided the classifier as an author, and it has the right in copyright assignment ⁽¹⁾.

-The law of Iraqi copyright protection No:3 for the year 1973 in article 27.

(1)-This article is correspondent to article 4/138 of the Egyptian intellectual property No:82 for the year 2002 that stipulate "The collective classifier that made by more than one author through natural person administration or by legal person and be responsible to publish his name under his management, and the work of authors combined to achieve the general goal with the possibility of distinguishing each author aside".

We can remarks, that the definition introduced by the Iraqi legislator was narrow, whereas the text is that determine the collective classifier refers to the authors work must be combined to achieve the general goal, that meant by the legal person, and it is hard to separate the work of contributors and be distinguished, but even it is not necessary to be different.

The classifier director is characterized with these rights whether he was legal or natural person as an association or a company or a legal person ⁽¹⁾. In the light of that, the authors at the collective classifier can be contacted by the natural person or the legal person that supervise on the classifier and not through communication between them. So, the legal person who administrated the invention of this classifier and organized it, and he is only has the right of copyright and protect it.

This viewpoint was considered by some legislators the first step in copyright of the legal person, because the general base that controlled

by the law says the confession of the copyright is related to the general principle of natural persons, and admitted the work to the legal person, however that is consider out of the main rules, that confirm the priority of copyright by the natural person , because he did the invention and creation.

Regarding that, the legal person may have the same capacity that awarded to the natural person on his classifier due to having the copyright that confirmed by the legislator.

(1)-Mamoon, Abdul-Rasheed. Researches in the copyright. Al-Nahdah Al-Arabyah press House. University of Cairo press house and University book. 1987.p124.

16- Damages of the personality of the legal person

The assaulting against the personal rights is one of the moral damages form, which affect the person and confirming that by the identification document of the person. These rights can be characterized as they inhering to the legal personality and obliged some different legislations ⁽¹⁾, and used as protection of these rights. Two kinds of personal rights will be explained, which can be exposed to assault and resulted a moral damage such as: the damage of honor, consideration and the name damage.

16-1 The damage of honor and consideration

The right in honor and reputation has two different meanings depending the different aspect toward the honor and reputation. There are the objective and persona aspect. The right in honor and consideration depends on the objective creed, and each of them represents the position occupied by the person whether his moral or natural person at the community, and the right to deal with that person that fit with this status. Regarding to the person social position, respect

and trust are given ⁽²⁾, and the right of honor and consideration based on the persona creed means " The sense of dignity and emotions that he deserves respect and

(1)- The Acts includes:

-Article 50 of the Egyptian civil law.

-Article 9 of the French civil law.

-Article 204 of the Iraqi civil law.

(2)-Yaqoot, Naji, Mohammed. The thought of right in reputation. Al-Maeref Institute. First edition. 1985, p18.

-Hujazzi, Abdul-Hay. Memories at theory right. Al-Kitab Al-Araby press house. 1957, p32, footnote 4.

The differentiation between these two creeds has a private importance. The Jurisprudence⁽¹⁾ sees that the differencing among these cases can be seen when the person estimation is not matching his social position with the estimation of this social position regarding the others point of view. The value at the protect object is different regarding the difference of the two trends. The personal trend means the protection of claimant's feelings and his internal emotion of dignity and honor to avoid the psychological pain and injure feelings.

The objective trend means the protection of legal person conscience that is supported from the people's respecting due to his position inside the group, which is related to his credit that resulted from his behavior. In other words, the protection of the person's value that is represented in the good relationships with community members that he lived in ⁽³⁾. While, the civil protection to the right in honor and consideration is represented in damage compensation resulted from assaults and abuses, and with no doubt, these damages are called moral damages, and it will be compensated regarding that. This form is the most forms of moral damages that affect the legal person. The Jurisprudence argument was

(1)-Hasni, Mahmood, Najeeb. Penalty code interpretation. Private section. Al-Nahdah Al-Arabyah press house. 1986. Paragraph 826.

(2)- Yaqoot, Naji, Mohammed. Ibid. p19.

(3)- Yaqoot, Naji, Mohammed. Ibid. p496.

(4)- Yaqoot, Naji, Mohammed. Ibid. p19.

Risen about the extent of the legal person having the right in reputation ⁽¹⁾, some jurisprudents see " the legal person whatever his type is has no right to own the reputation due to the physical and self independence that the natural person have, which is a consequent of the natural person that owns the virtues, sins and any individual responsibility , while they are not existed at the legal person.

The other side of Jurisprudence ⁽²⁾ sees " that the legal person in all his types is good to protect his reputation which is considered an independent entity of individuals and this is drawn from having his legal personality, and he has to commit of his subsidiaries rights such as the right in honor, consideration or the right in reparation which accompanied to the natural person ". The other side, we remark the confession of that right to the legal person which is right and made according to the Jurisprudence decision related to the legal person nature, and in fact it has to protect its existence, moral entity and social entity the admit its validity to be the right's owner and integrated from the personal side of reputation.

The researcher has came up to a result, that the legal personality is a legal truth, and admitting all the consequences that resulted from this personality and not to interfere with legal person nature, and the main of

(1) -G.Viney et P. Jourdain., op.cit.n.,259.

(2)-Al-Sanhoori, Abdul-Razaaq. The mediator. Ibid. p921.

(3) -Mestre,J., La protection, Independante du droit de reponse, des personnes physiques et des personnesmoralescontre I literation de leurpersonnalite aux yeux du public, J. C. P, 1974, P 2623.

-Hujazi, Abdul-Hay. Theory right memories. Ibid. p542.

-Hasani.Ibid. p 45.

-Yaqoot, Naji , Mohammed. Ibid. p45.

Of these effects to admit the legal person and the right to call for compensation in case of assaulting on his honor and consideration.

16-2 Name of damages

The name is a personalitydistinguished mark and the appearance of his independent entity, and it is the separation from social life and career life and any other distinguished characters ⁽¹⁾. Some Jurisprudents ⁽²⁾ including the assault against name as one of the moral damage forms that affect the legal and natural person. The name has many types; there are names are connected to the natural person and some names are related with natural and legal persons. The types of names are: the name, surname, nickname, alias name and the commercial name. It must be noted to the determined name of the legal persons. The legal person like the natural person needs to be distinguished at the society, and the mean of distinguishing is the name. The legal persons have more area in selecting their names freely than the natural persons ⁽³⁾.

No matter the name was commercial like the commercial companies or civil name like the associations that their target is not profit, and whether the legal person belongs to the public or private law, the natural person have the right to own these names like the natural person. And in case of assaulting, the legal person has the right through his representative to

(1)- Keerah, Hasan. The brief of Introduction. Ibid. p549.

(2) -G Viney et P. Jourdain. Op. cit. no. 259.

(3) -G Viney et P. Jourdain. Op. cit. no. 262.

Call for compensation whether the damage was material or moral, and the legal person has the right to protect himself ⁽¹⁾. The assault or abuse against the legal person can be occurred in case of usurp the name, it means the person that uses others name without legal document. The law gave the legal persons the right to protect themselves from usurping their names whether they were legal or natural persons ⁽²⁾.

The legal person in case of usurping his name, he has the right to stop that assaulting against his name and calling for compensation for the damage he affected with as a result of the assault. At the Judicial applications, the legal person can protect his name and prevent others from using it to avoid ambiguity to others ⁽³⁾.

(1)- Yaqoot, Naji, Mohammed. The thought of right in reputation. Ibid. p49.

(2) -Cass. Civil. 15mars, 1988, Dalloz.1988, P.549.

(3) -Cass.Civil. 8 novembir., 1988. JCP, 1988, ed.,G. 11,21301, note.Brichet.

Conclusion

At the end of this paper, the researcher has came up with many results and suggestions:

First: Results

1-The Jurisprudence Consensus of status law confirm the compensation for the moral damage, and the court house must embedding the compensation principle for moral compensation at most of its regulations. In addition, the French court house expanded in some of its regulations with the many forms of moral damage.

2-The Iraqi legislator restricted with the article 205 civil law to compensate the moral damage in two restricts: the first one is the right transfer in compensating the moral damage in case of the damaged death, and the compensation must be paid for the moral damage regarding the agreement between the damaged and the causative. The second restrict is to determine those who deserve compensation for the moral damage in case of the injured death (specially the husbands and close relatives at the family).

3-Accepting the moral damage thought to the legal person. The legal person now has the right to call for compensation from any damage without separation between the collective and individual damage, and whether this kind of damage is materially or morally. And the individual damage will possess the collective damage, which is called (the collective damage).

4-After Jurisprudence discussions in the light of compensation principle for the moral damage to the legal person, the result was the existence of moral damage compensation to the legal persons based on the French Jurisprudence Consensus, while the Iraqi and Egyptian Jurisprudence opinion were different however they are rare in this issue, that confirm of the mandatory in compensation the legal persons for the moral damage.

5-Most of the modern legislation confirm the legal person of the copyright with all rights specially the moral ability and defending these rights and protecting them in case of assaulting to protect the collective businesses (Collective classifier), which are directed by the legal person.

6-The non-financial rights are not limited to the natural persons. The confession of independence and legal personality to the legal persons require to admit the non-financial rights that guarantee and confirm its independence such as; the right in reputation or right in honor and consideration and the right in name.

7-The French court house stabilized the compensation principle of the moral damage to the legal persons through its regulations succession at its departments and the regulations of the European Court of human rights, that decide whether the moral damage is existed or not followed by the compensation to the legal persons. While the Iraqi court house be late specially the court of cassation, however the great similarity in laws with the French court house for compensating the moral damage.

8-The inadequacy of legal basis that organize the civil responsibility at the Iraqi legislation, and even the legal basis of the intellectual property in the copyright law No: 3 for the year 1971 that guarantee the legal persons protection legally and defending their rights against anyone who tries to cause a moral damage resulted from assaulting.

Second: suggestions

1-Demanding the Iraqi legislator to amend the article 205 civil, that confirm the legal person compensation for the moral damage, and the Iraqi court house must not be opposite to compensate the moral damage of legal person as we mentioned above.

2-Demanding the Iraqi legislator to insert the collective administration system to the copyright at the law of copyright, and adopting the texts that organize its work. The Iraqi legislator has to commit with the legal requirements that was included at TRIPS Agreement. The benefit of authors and the next door authors rights require to establish a collective administrative organization to help them in protecting and defending their rights.

3-Demanding the Iraqi legislator to a legislative amending includes the civil protection in the right of reputation or the right in honor and

consideration just like the civil protection in protecting the name as stated in the Iraqi civil law No:40 for the year 1951.

References

- 1- Al-Sharqawi, Jameel. Lessons at the law origins . Theory Right. Al-Nahdha Al-Arabyah press house. 1966, p 186.
- 2-Al-Barawi, Hussain, H. The material and moral persons compensation for the material damage (Applied study to the points of modern damage). First edition, Al-Nahdha press house. 2009,p 129.
- 3- Marqss, Sulaiman. Civil responsibility codification at the Arab countries. First division. Public regulation. Arabic institute for Researches and studies. 1971, p 149.
- 4- Marqss, Sulaiman. Al-Wafi in civil law interpretation. Commitment, the misfeasance and civil responsibility. First volume, fifth edition. 1992, p 157.
- 5- Maree, Mustafa. The civil responsibility in Egyptian law. Second edition. Abdullah Wahab Book store. Item 319.
- 6 - Jibrán, Najem, Yousuf. The general theory of stipulators, resources of stipulators, the law and guilt and suspicion of guilt. Ewaidat publications. Beirut, Paris. First edition. 1978, p624, paragraph 451.
- 7 - Amir, Hussain. Misfeasance and civil responsibility. First edition. Maser house press. 1956,p410. Paragraph 425.
- 8-Keerah, Hasan. The origins of law. Second edition.the place of publication is unknown. 1958,p 913.
- 9 - Ali, Kadhim, Jaber. The feedback damage and compensation at the nonfeasance period. Al-Thaqafah house for publication and distribution. 1998, p96.
- 10 -Keerah, Hasan. Abrief introduction of Law. Al-Taref Institute. First edition.1960.p601.
- 11 - Shanab, Labeeb, Mohammed. Principles of law.Al-Nahdha Al-Arabyah house.1980.p208.
- 12 - Al-Sanhaoori, Abdul-Razzaq. The mediator in explaining the civil law, Proprietary rights, 8th part. Al-Nahdha Al-Arabyah house.1981.p326.
- 13 - Wasil, Mohammed. The binding rights of the moral person. A

special research, Louzan. Swizweland.

14 - Abu Al-Seood, Ramadan. The mediator in the civil law interpretation. An introduction to the law. Theory right. Al-Jameayah press house. The year is not mentioned. P361.

15- Al-Baseer, Farooq. The economic concept toward the author's right. Al-Nahdha Al-Arabyah press house. Cairo. 2004. P84.

16- ALainBerenboom, Le nouveau droit d auteur et les droitvoisins, Larcier, 1997, p.133 ets.

(5)-AL-Jeser, Nadeem, Mohammed. Legal personality at the legal companies. PhD. Thesis, University of Lebanon college of Rights, political and administrative sciences. Beirut. 1983. P188, paragraph 172.

17 -Mamoon, Abdul-Rasheed. Researches in the copyright. Al-Nahdah Al-Arabyah press House. University of Cairo press house and University book. 1987.p124.

18 -Hujazzi, Abdul-Hay. Memories at theory right. Al-Kitab Al-Araby press house. 1957,p32, footnote 4.

19 -Hasni, Mahmood, Najeeb. Penalty code interpretation. Private section. Al-Nahdah Al-Arabyah press house. 1986. Paragraph 826.

2-Laws References

1-Iraqi civil law No:40 for the year 1951.

2-Egyptian civil law No:131 for the year 1948.

3-Canadian Copyright protection law No:85-660 issued in 03-07-1985.

4-American Copyright protection Law No: 553-95 issued in 19-10-1976.

5-Intellectual property protection law No:82 for the year 2002.

6-Syrian Copyright protection law No:12 for the year 2001.

7-Iraqi Copyright protection law No:13 for the year 1971.

3-Websites References

- 1- <http://www.startimes/f.aspx?t=18561260>.

4-Court House Decisions

1-Federal Cassation court decision No:1650 in 21-12-2012.
Unpublished.

2-Federal Cassation court decision No:2/ General committee in 26-03-2019. Unpublished.

3-Cass. Civil. 15mars, 1988, Dalloz.1988, P.549.

4-Cass. Civil. 8 novembr., 1988. JCP, 1988, ed.,G. 11,21301, note.Brichet.

5-Bulletin des areest de La cour de cassation, N69:JCP G 1999.IV, 2768; Jurris – Data n.1999-001675.

5-French Resources

1. Wester-Ouisse, Veronique, Personnes Morales, Le prejudice moral des personnesmorales,J.C.P.e d., G., 2003.
2. G. Memeteau, La reparation du Prejudice d affection ou: Lapierrephilosophale, Gaz, Pal, 1978.
3. Viney,G., et Gourdain,P.,Traite de droit civil, Les Conditions de La responsabilite, L.G.J,3 edition, 2006.
4. Pradel, X., Le prejudice dans Le droit civil de la Responsibility, L.G.D.J. 2004.
5. Simonart, V., La personnalite moral en droitprive compare, Bruxelles, Bruylant, 1995.
6. Wicker, G., Personne Morale, DallozEncyclopedieDaloz civil, Paris, 1998.
7. Viney, G., et Gouedain, P. Traite de droit civil, les Conditions de la responsabilite.L.G.D.j,3 edition, 2006.
8. P.Kayser, les droits de La Personnalite, aspects theoriques et pratiques, Rev. trim. droit . civil., 1971.
9. ALainBerenboom,Le nouveau droit d auteur et les droitvoisins, Larcier, 1997.
10. Mestre,J., La protection, Independante du droit de reponse, des personnes physiques et des personnesmoralescontre I literation de leurpersonnalite aux yeux du public, J. C. P, 1974.