

Compensation for Gross Negligence Committed by Judicial Police Officers under Palestinian Legislation

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Abstract

This study examines the establishment of effective legal mechanisms to protect the dignity and rights of individuals from violation or gross professional misconduct by judicial police officers, whether such violation is intentional or not. The primary objective is to lay the legal foundation for the tortious liability of judicial police officers, explore ways to ensure a fair compensation system to address material and moral damages, and achieve the necessary balance between the state's authority in law enforcement and the protection of individual freedoms and privacy.

This study adopts the descriptive-analytical methodology, achieved by first determining and describing the legal framework governing the function of the Judicial Police Officers. It then proceeds to analyze legislative texts, academic jurisprudence, and judicial precedents to ascertain the eligibility for compensation resulting from gross negligence. Furthermore, it leans toward utilizing a comparative approach in certain rulings with the objective of regulating the standards of personal error. The findings distinguish between two types of liability: the first is personal liability, for which judicial officers are personally responsible; the second is administrative liability, which the State bears based on the concept of "Service-related Fault".

The study concludes with practical recommendations aimed at enhancing preventive oversight of judicial police actions, extending beyond criminal liability to encompass civil and legal aspects. It also emphasizes the necessity of raising the level of legal competence among judicial police officers through awareness and training programs.

Keywords: *Compensation, Fault, Gross Negligence, Judicial Police Officers, Service-Related Fault.*

التعويض عن الخطأ الجسيم المرتكب من قبل مأموري الضبط القضائي في التشريع الفلسطيني

الملخص

تركز هذه الدراسة على وضع آليات قانونية فعالة لحماية كرامة الأفراد وحقوقهم من قبل مأموري الضبط القضائي، سواء كان هذا الانتهاك متعمداً أو سوء سلوك مهني جسيم. ويتمثل الهدف الرئيسي في إرساء الأساس القانوني للمسؤولية التصديرية لمأموري الضبط القضائي، واستكشاف سبل ضمان نظام تعويض عادل لمعالجة الضرر المادي والمعنوي، بما يحقق التوازن الضروري بين سلطة الدولة في إنفاذ القانون وحماية حرية الأفراد وخصوصيتهم. تعتمد هذه الدراسة المنهج الوصفي التحليلي، من خلال تحديد ووصف الإطار القانوني الذي يحكم عمل مأمور الضبط القضائي. ثم تحليل النصوص التشريعية، والآراء الأكاديمية، والأحكام القضائية لتحديد مدى استحقاق التعويض عن الإهمال الجسيم. كما وتميل إلى استخدام منهج المقارنة في بعض الأحكام بهدف ضبط معايير الخطأ الشخصي. وتميز النتائج بين نوعين من المسؤولية: الأول هو المسؤولية الشخصية، حيث يتحمل مأموري الضبط القضائي المسؤولية الشخصية. أما الثاني فهو المسؤولية الإدارية، التي تتحملها الدولة استناداً إلى مفهوم «الخطأ المرفقي».

وتختتم الدراسة بتوصيات عملية تهدف إلى تعزيز الرقابة الوقائية على أعمال الضبط، بحيث تتجاوز المسؤولية الجنائية لتشمل الجوانب المدنية. كما أكدت على ضرورة رفع مستوى الكفاءة القانونية لدى مأموري الضبط القضائي من خلال برامج تدريبية وتوعوية.

الكلمات المفتاحية: التعويض، الخطأ، الخطأ الجسيم، مأموري الضبط القضائي، الخطأ المرفقي.

Introduction

It is a well-established and fundamental principle that public authorities of all categories-particularly judicial police officers-are prohibited from engaging in acts that constitute a violation of public or individual rights and liberties. This prohibition derives from the fundamental nature and paramount importance of these rights in the lives of both individuals and society. International human rights declarations, conventions, constitutions, and national laws have accorded these rights significant importance. Contemporary legislation, including Palestinian and comparative laws, consistently emphasizes the sanctity of these rights and liberties, criminalizing acts that infringe upon them (Al-Mazouri, 2003, p. 203).

Despite the constitutional and legislative protection of individual rights and liberties, this protection faces certain complexities regarding the accountability of those who violate them. Legal doctrine generally agrees on the non-liability of public prosecutors and judicial police officers for errors committed in the performance of their duties, maintaining that they cannot be sued for compensation resulting from procedures taken against the accused. This principle is legally grounded in Article (61/1) of the Jordanian Penal Code No. 16 of 1960, applicable in the West Bank, which states: "A person shall not be held criminally liable for any act committed under the following circumstances: 1- In the execution of the law..." However, their immunity is not absolute but conditional. If they perform their regular duties without fraud or deceit, they are not held liable for errors related to their function. Conversely, if they engage in fraud, deceit, treachery, or a gross professional error, they may incur criminal or civil liability (Mustafa, 1976, p. 73). Therefore, if a judicial police officer commits a crime against the accused, the latter may pursue criminal prosecution and file a civil claim for compensation. However, no liability arises for simple errors committed in good faith (Abdel Baqi, 2015, p. 78).

Given the specialized nature of the duties performed by judicial police officers-which entail procedures and measures that may inflict material or moral harm on society or individuals-victims frequently find themselves unable to seek compensation. This stems from the difficulty of classifying most of their actions as "faults," as they are conducted for the purpose of public interest and the preservation of the primary role of judicial police agencies, namely maintaining security and public order within the legal framework. Nevertheless, certain acts and operations conducted by judicial police officers may occur and expose the perpetrator to claims for compensation (Al-Zarouni, 2015, p. 23). This is grounded in the provisions of Article (3) of the Civil Wrongs Ordinance No. 36 of 1944, currently applicable in Palestine, which stipulates: "...any person who suffers injury or damage by reason of a civil wrong committed in Palestine shall be entitled as against the

person committing or liable for such wrong to the remedies which the court has power to grant under this Ordinance...”

Since the right to compensation for personal faults committed by judicial police officers is now an established legal principle (Al-Shawarbi & Al-Danasouri, n.d., p. 225; Amin, 2018, p. 566), it is essential to examine the legal basis that determines liability when citizens' liberties are infringed. This liability applies to any action, including arrest and detention procedures, unless they have been conducted in accordance with correct and mandatory legal procedures.

Based on the foregoing, this research emphasizes the necessity of examining and developing the compensation system for judicial police errors. The fundamental objective of such development is ensuring the necessary balance between the tortfeasor and the injured party. Through this mechanism, the study seeks to provide comprehensive protection for society and its individuals against any transgression or negligence committed by judicial police officers. This must be accomplished while maintaining the principle of equilibrium, whereby the victim's right to compensation is guaranteed without undermining the status or authority of judicial police agencies, nor compromising the legal position of the officer during the performance of their duties.

Significance of the Study

The procedures conducted by judicial police officers possess a unique nature that makes them susceptible to causing material or moral harm to individuals. The legal challenge lies in the fact that injured parties often find themselves unable to directly seek compensation from these officers, due to difficulties in proving the element of “fault” in actions performed under the pretext of public interest and the maintenance of security. Nevertheless, it is established that certain practices by judicial police officers involve violations of individual rights and liberties and may be characterized by arbitrary conduct, ultimately resulting in actual and tangible losses for citizens.

The significance of this research stems from the necessity of defining the precise scope of obligations imposed on judicial police officers, and establishing an appropriate compensatory mechanism to ensure redress for injured parties. Justice demands the formulation of an effective system to compensate individuals for the adverse effects resulting from judicial policing practices. The central challenge consists of reconciling two competing interests: the societal interest in addressing damages arising from policing activities, and balancing this with the inherent rights and liberties enjoyed by individuals in their daily lives.

The Research Problem

Palestinian legislation operates within the legal frameworks governed by the doctrine of “immunity from liability” for the acts of judicial authorities, including judicial police officers. This principle is justified by multiple factors, primarily the need to ensure that these entities perform their duties without external pressure or apprehension of litigation. However, specific exceptions apply to this principle, principally personal liability lawsuits against the judiciary and the public prosecution. Despite the contemporary orientation of the Palestinian legislator—as manifested in Article (30/3) of the Amended Palestinian Basic Law of 2003, which recognizes the Palestinian Authority’s liability for compensation resulting from judicial errors—ambiguities persist regarding the extent of the State’s liability for all acts of the judicial branch, not merely judicial errors. These acts include procedures undertaken by the public prosecution and judicial police officers. This issue continues to be a subject of doctrinal and judicial debate, compounded by the absence of a specific law that clearly and precisely defines all aspects of civil liability for the actions of judicial police officers.

Research Questions

This study seeks to elucidate the legal challenge arising from the infringement of individual rights due to the actions of Judicial Police Officers in Palestine. This inquiry is structured around the tension between the doctrine of the non-liability of the judiciary on one hand, and the contemporary orientation of the Palestinian legislator, which recognizes the right of the aggrieved party to redress for judicial errors, on the other. Consequently, the research questions center on the following axes:

The main question is: What is the extent of civil liability arising from gross misconduct committed by Judicial Police Officers in Palestinian law, and to what extent are available mechanisms sufficient for compensating the aggrieved parties?

Subsidiary Questions:

- What is the legal and jurisprudential basis for State liability concerning the errors of Judicial Police Officers, and how is the distinction made between administrative error and gross personal fault?
- What are the substantive requirements for instituting a civil liability claim against a Judicial Police Officer, serving as protection for political rights and freedoms?
- What are the operational criteria for assessing compensation for damages resulting from the acts of judicial policing, particularly given the absence of specific legislation precisely regulating this liability?

Research Objectives

This research aims to establish mechanisms that ensure the protection of individual rights against harm to their dignity or integrity arising from abuse of power or gross negligence committed by judicial police officers. To accomplish this, the study seeks to establish the legal basis for the tortious liability of judicial police officers and the mechanisms for invoking it, to establish an equitable compensation system of redressing the damages arising from their actions. Such a system is essential for achieving the necessary balance between the interests of the injured party and the State's right to exercise its policing powers. The significance of this endeavor is underscored by the ongoing conflict between law enforcement practices-which may violate legally protected individual rights (such as the rights to honor, reputation, privacy, and property)-and the marked increase in arbitrary violations committed by these officers, necessitating robust protection for individuals.

Research Methodology

The study adopts a descriptive-analytical approach, complemented by the analysis of legislative texts and judicial rulings, to identify and describe the legal framework governing the function of the Judicial Police Officer. It further employs the comparative method, examining relevant rulings within the Egyptian and French legal systems, with the objective of regulating the standards for both "Administrative Fault" and "Personal Fault." This comparative approach is justified by the fact that French law serves as the primary reference for theories of administrative liability, while Egyptian law constitutes the closest historical and substantive reference for Palestinian legislation. This methodological combination seeks to clearly distinguish between the Personal Liability of the Officer-for which they are personally accountable in their private assets in cases of gross negligence-and the Liability of the State for service errors, thereby addressing the legislative gap present in Palestine.

Research Structure

Section I: The Foundations of Compensation for Gross Negligence Committed by Judicial Police Officers

- Subsection I: The Doctrinal and Legislative Stance.
- Subsection II: State Liability for Compensation regarding Gross Negligence Committed by Judicial Police Officers.

Section II: The Establishment of Civil Liability for Gross Negligence Committed by Judicial Police Officers

- Subsection I: Personal Fault and Gross Negligence as the Basis for the Civil Liability of Judicial Police Officers.
- Subsection II: Assessment of Compensation for the Civil Liability of Judicial Police Officers.

Section I: The Foundations of Compensation for Gross Negligence Committed by Judicial Police Officers

The rationale for the compensability of gross negligence committed by judicial police officers necessitates an examination of the legal basis of civil liability for their actions. Since the primary objective of judicial policing procedures is the pursuit of truth, any violation of individual liberties that is not justified within of that pursuit constitutes a violation. Consequently, such violations require compensation for the damages suffered by individuals as a result (Abu Samra, 2006, p. 327).

Legal liability generally arises towards the injured party and serves as a fundamental mechanism for obtaining compensation. Its provisions and types vary based on the basis upon which the claimant rests their suit. An injured party may elect to file a lawsuit directly against a specific individual, or may direct it against the judicial police officer in their official capacity. This variation in the basis of liability extends to its various forms; in some instances, liability is based on “proven fault” or “presumed negligence”, whereas in other cases, it relies on the “theory of risk” without requiring proof of a specific fault (Al-Zarouni, 2015, p. 161). Accordingly, this will be elucidated through two main subsections as follows:

Subsection I: The Doctrinal and Legislative Stance

Legal doctrine diverges regarding the permissibility of establishing civil liability for the actions of judicial police officers, with opinions divided between proponents and opponents. The prevailing view holds that if a judicial police officer commits a fault during the discharge of their official duties causing harm to others, it requires the invocation of tortious liability toward the injured party. This principle is particularly sound when the damage infringes upon an individual’s liberty or private life, which may, in certain instances, result in serious damages (Amin, 2018, p. 570).

Legal scholars debate the issue of compensation for detention by analogy with the issue of compensation for usurpation. The prevailing view maintains that both detention and usurpation share the common feature of obstructing, seizing, and depriving the benefit of a thing or a person. It is established that compensation for detention is mandatory

whenever the detainer has unlawfully detained the prisoner or otherwise, as the basis for compensation lies in the deprivation of benefit and the occurrence of harm upon detention, whether through direct action or indirect causation. This compensable act constitutes transgression, defined as actual infringement upon the protected rights or property of others. Transgression includes cases of exceeding authority, negligence, omission, and lack of precaution; thus encompassing both intent and fault. Accordingly, liability for compensation depends on the detention occurring through transgression, ensuring compensation covers all damages arising from detention whenever the act is committed in a transgressive manner (Hifzy, 2019, p. 4351; Al-Fawzan, 2008, p. 519).

The principle of immunity for members of the judicial police regarding damages caused to third parties-as a result of errors committed within of their judicial duties-became established. This principle extended to all activities associated with the judicial function, including the actions of judicial police officers. It was established as a general, absolute, and uncontestable rule, leaving injured parties with no legal right to seek judicial compensation. This principle is considered a doctrinal foundation rather than original legislative text decreeing non-liability; it remained in effect for an extended period, covering all related judicial acts (Amin, 2018, pp. 571–572).

Another doctrinal perspective has emerged asserting the absence of civil liability for the actions of judicial police officers. This view maintains that the acts of the judicial authority hold unique status as the protector of rights and liberties; therefore, such acts must be granted extensive guarantees to achieve justice. Furthermore, this perspective posits that since errors by judicial police officers are foreseeable and possible, it is impractical to establish civil liability for every error committed by an officer. Consequently, judicial police officers are considered to enjoy a form of immunity (Al- Jamili, 1996, p. 77).

Regarding the legislative position on compensation for gross negligence committed by judicial police officers, it is evident that abuse of authority may sometimes result in material or moral harm to an individual. This occurs due to serious negligence on the part of the judicial police, such as conducting searches in contravention of legal provisions or subjecting a suspect to torture to extract a confession. In these and comparable cases of gross negligence, the injured party is entitled to file a civil action against the individual responsible for the harm and compel them to provide compensation (Al-Mazouri, 2003, p. 227). It should be observed that the basis of liability in this context is unlawful act or tort liability, regulated by the Civil Wrongs Ordinance No. 36 of 1944 (and its amendments) currently applicable in Palestine.

However, if the error by judicial police officers is classified as a service fault -meaning the damage occurred when the officers were discharging their duties within the official scope without personal transgressions-then the State bears the consequences of such errors and provides compensation to injured parties. In this context, Article (253/) of the Decree-Law No. (23) of 2017 Concerning the Police stipulates: “The State bears the payment of any legal compensation for police personnel for damages caused to third parties in the discharge of official duties within the legal framework.”

Therefore, a judicial police officer is held civilly liable for personal fault if it constitutes gross negligence. In this context, Paragraph (4) of the aforementioned Article (25) stipulates: “No member of the police force is held civilly liable except for personal fault.” The basis for this liability is individual, as stipulated in Article (3) of the Civil Wrongs Ordinance No. (36) of 1944 (and its amendments), which states: “Subject to this Ordinance, any person who suffers injury or damage by reason of a civil wrong committed in Palestine is entitled to the remedies... from the person committing the wrong, or responsible for it.”

According to these provisions, establishing a judicial police officer’s personal liability for personal and serious negligence requires three fundamental elements: serious fault, damage, and causal link between the fault and damage. The majority of legal scholars (Al-Zarouni, 2015, p. 162) base civil liability on breach of a prior obligation and the nature of that obligation. The official acts performed by judicial police officers in exercising their duties constitute functional duty owed to the public service; nonetheless, exercising these official acts towards individuals is a right conferred by law.

Furthermore, it is established that the fault upon which civil liability is based is not limited to natural persons but extends to legal persons. Consequently, administrative judges do not apply civil fault theory to the acts of administrative authorities in their capacity as police activities. Instead, they distinguish between personal fault and service fault. Although the fault perpetrator is often an administrative officer, the fault may, in certain cases,, be attributed to the public service itself (Slimani, 2016, p. 105; Awabdi, 1987, p. 989).

While serious negligence is a prerequisite for establishing administrative liability for damages from administrative police functions, this requirement does not apply to other police activities that do not involve substantial difficulties or risks. The administrative judiciary has traditionally held a strict position regarding liability for administrative police acts, given the nature of activities undertaken by the police service and its critical role in maintaining public order in all its aspects. Furthermore, administrative courts have

ruled in numerous decisions that the liability of police authorities is only triggered when the fault reaches a level of seriousness proportionate to the scale of their assigned tasks. This has resulted in various judicial interpretations of the concept of serious negligence across different areas of administrative policing (Khalidun, 2017, p. 204).

Subsection II: Personal Fault and Gross Negligence as the Basis for the Civil Liability of Judicial Police Officers

Administrative law doctrine distinguishes between two types of fault: personal fault and service fault. If the fault serving as the basis for compensation lies in personal, the liability rests with the official individually, making them liable for compensation from their private funds. Conversely, if the fault is categorized as a service fault, the liability falls solely upon the State, which remains ultimately obligated to provide compensation (Al-Tamawi, 2003, p. 107).

The service fault attributed to the State differs from the fault advocated by proponents of civil law theory—namely, the liability of the master for the acts of the servant (vicarious liability). Here, the State is not held secondarily liable, but rather primarily liable in its capacity as the general administrator of public services. In other words, its fault is not presumed based on “poor selection” or “negligent supervision” of the employee’s actions—as held by civil law theorists. Instead, the mere mismanagement of the service, or its failure to function in a satisfactory manner, is sufficient to establish the concept of fault and, consequently, trigger the State’s direct liability (Mustafa, 1976, pp. 117118-).

As previously mentioned, a judicial police officer can be held accountable only through a personal fault predicated on fraud, deceit, or gross professional negligence. This is distinct from the service fault currently under discussion. The French judiciary conceived the distinction between “service fault” and “personal fault” to reconcile the aforementioned considerations. While fault remains the basis of liability, it may either be a personal fault, where the official bears the financial burden from their private funds, or a service fault, where the administration bears the financial burden from its own budget.

The differentiation between personal fault and administrative error constitutes the cornerstone for determining the liability of Judicial Police Officers, especially given the criteria established by legal scholarship and jurisprudence (notably in French and Egyptian systems). To effectively demarcate this distinction, several essential criteria are synthesized below:

- The Objective Criterion (Nature of the Obligation and Detachment): This criterion assesses the degree to which the act relates to the official function. If the error

can be deemed fundamentally detached, materially or morally, from the duties of the office-implicating the officer violated a general obligation incumbent upon all—the fault is considered personal. Conversely, if the act is intrinsically connected to the function, such that the officer violated a specific obligatory duty tied to the service, the fault is deemed administrative, attributable to the State apparatus (Al-Ali, n.d., p. 229). If the officer breaches a general obligation, the error is personal; if they breach an official duty linked to the service, the error is administrative (Al-Shatnawi, 2008, p. 169).

- The Personal Criterion (Motive and Intent): Adopted by French legal doctrine, this standard focuses on the “motives” or intent of the officer. If the Judicial Police Officer was driven by personal motivations, ill will, or an intent to harm others, the error is deemed personal and falls outside the scope of the administrative service. However, if the error occurred while the officer was genuinely striving to serve the public interest, the fault remains classified as administrative, even if an error was committed (Fodel, 2001, p. 462; Tolba, 1996, p. 341).
- The Gross Error Criterion (Degree of Deviation): This standard posits that personal fault is identified as “gross error,” involving flagrant negligence or neglect that a reasonably prudent official would not commit under the same circumstances. Egyptian administrative and civil courts have consistently held that gross error represents a fundamental deviation or violation—one that rises to the level of a punishable offense—such as refusing to execute a judicial release order. A gross error fundamentally undermines the integrity of the official act, thereby lifting the officer’s immunity and rendering them personally liable out of their private assets (Amro, 2015, p. 87; Egyptian Court of Cassation, Appeal No. 933, JY 49).

It is noteworthy that despite the relative validity of some criteria over others—particularly the detachable fault and purpose criteria—it remains difficult to adopt one exclusively. All these criteria have faced criticism, and none is deemed sufficient to be relied upon as a primary standard to the exclusion of others; a view shared by several scholars (Khaled, 2020, p. 296).

Furthermore, the Egyptian civil judiciary has established the principle regarding the liability of judicial police officers for personal faults. It has ruled that liability for judicial acts does not arise under the provisions of the Civil Code unless the error committed warrants compensation and occurred within the scope of their duties. However, if the act was committed during or by reason of their functions without constituting a personal fault—or if the conduct deviated from the norm, failing the “reasonable person” test (the

conduct of an ordinary person in the same field and under the same circumstances)—liability is not established unless such behavior results in harm to third parties (Egyptian Court of Cassation, Appeal No. 933, JY 49; Civil Cassation No. 2200, JY 2).

From this perspective, the standard for gross negligence is determined—as established by the judiciary—as that personal fault which reveals malicious intent, self-interest, or an intention to harm others. It may also involve a severe degree of negligence that reaches the threshold of a criminal offense punishable under the Penal Code. Furthermore, a fault is classified as personal when it is proven that the judicial police officer committed harmful acts or failed to exercise the reasonable diligence required of them, such that their conduct deviates from the customary and expected standards of a reasonable person under identical circumstances. Accordingly, the Supreme Administrative Court in Egypt has established clear criteria to distinguish between personal fault and service fault, governed by two fundamental benchmarks: the criterion of intent and the criterion of the gravity of the fault (Egyptian Administrative Justice Court, Appeal No. 542, JY 16).

Regarding the second criterion (gross negligence), determining its degree varies from one case to another depending on the surrounding circumstances. It is measured by the extent of the judicial police officer's deviation from the average level of competence expected of someone in a similar position performing tasks of a policing nature. Any breach of a fundamental procedure that affects the integrity of the officer's assigned duties is considered gross negligence (Egyptian Supreme Administrative Court, Case No. 1183, JY 11).

Consequently, if it is proven that the judicial police officer did not act in pursuit of the public interest but was driven by personal considerations or committed gross negligence, their conduct is deemed a personal fault, for which they are held liable in their private financial capacity according to the rules of civil liability for harmful acts (torts).

The assessment of these considerations is left to the judge's discretion, based on the specific circumstances of each case. A personal fault is defined as that for which a public official is held liable before ordinary courts, whether it is physically or morally severable from official duties, or so intrinsically linked to them that it nonetheless stands out from the ordinary course of affairs—given the legal obligations and professional standards imposed by the office.

From the foregoing, it is evident that there is no exhaustive or definitive definition of the personal fault that triggers the individual liability of a judicial police officer. Instead, the legislature and the judiciary have left its determination to the judge's discretion, guided by the particulars of each incident. In exercising this discretion, the judge is expected to

invoke the “Reasonable Person Standard” as a model of proper conduct. If the matter concerns professional conduct, the judicial police officer’s actions are measured against the behavior of an expert in the same field; otherwise, they are measured against the behavior of an ordinary person. This standard requires a degree of caution, attentiveness, and care expected of a prudent person, such that a fault is established whenever an act results in damage to the rights of others due to a breach of this obligation.

Section II: The Establishment of Civil Liability for Gross Negligence Committed by Judicial Police Officers

The objective of establishing civil liability for gross negligence committed by judicial police officers is to guarantee the right to compensation for damages inflicted upon injured parties-whether the harm results from actions directed at the individual subject to the legal procedures or from actions affecting others. The intent is to achieve balance and harmony in relations among individuals, as well as between the individual and society. Consequently, while ensuring that the errors of judicial police officers do not go uncompensated, it is equally necessary not to deprive these officers of the means that enable them to ascertain the legal truth, thereby ensuring they are not held liable when performing their official duties within legitimate bounds (Joudah, 2021, p. 122).

It is well-established that legal liability falls within the realm of law, aiming to regulate actions and impose, in a general sense, a legal obligation as a result of conduct or behavior that violates legal provisions, thereby necessitating a sanction against the person responsible for the damage. On this basis, we examine within this framework the mechanism for assessing compensation arising from the civil liability of judicial police officers, as well as the state’s liability to provide compensation for gross negligence committed by these officers, in light of the judicial precedents and applications issued by the Palestinian Judiciary, as follows:

Subsection I: Assessment of Compensation for the Civil Liability of Judicial Police Officers

In assessing compensation for the civil liability of a judicial police officer, several factors must be taken into consideration:

First: Seeking Expert Assistance in Assessing Compensation: To reach an equitable assessment of the compensation due for the damage, the judge must seek the assistance of a specialized expert possessing the competence and experience relevant to the nature of the matter being appraised. The judge should note that the opinion of experts is not legally

binding, nor do their statements or estimates restrict the judge's discretionary power. In the event of conflicting expert opinions regarding the assessment of compensation, the judge must adopt the estimate closest to achieving justice and correctness. To this end, the judge may consult the opinions of other experts who possess broader knowledge and deeper insight into the subject, whenever it appears that such a course is more likely to lead to a just and accurate result (Wahdan, 2010, p. 80).

Second: The Impact of Potential Damages: Civil legislation requires that for material damages to be compensable, there must be a breach of a financial interest of the injured party. Furthermore, the damage must be certain, meaning it has either already occurred or is inevitably bound to occur in the future. Potential or hypothetical damage that is not based on serious and certain grounds is insufficient to warrant compensation (Sha'la, 2003, p. 75).

Third: The Personality of the Injured Party: Individuals vary in their ability to invest the physical and mental capacities bestowed upon them. This variation depends on each individual's personal circumstances, social status, and the nature of their work or profession. Accordingly, when assessing damages, the specific personality of the injured party must be taken into account—whether its elements are derived from the established facts of the case or from rulings issued regarding them—in order to achieve justice in the assessment of compensation (Ibrahim, 2009, p. 93).

Compensation is assessed through several methods, the most prominent of which are:

First: Conventional (Agreed) Assessment: This method consists of an agreement between the judicial police officer responsible for the harm and the injured party (Duwaidar & Koman, 2001, p. 348).

Second: Judicial Assessment: This assessment is based on the judge's reasoning and legal opinion. This type is resorted to when there is no specific statutory or Sharia provision determining the amount of compensation. Consequently, the judge estimates the value of the indemnity, guided by various considerations such as expert assistance, the timing of the assessment, and the surrounding circumstances of the injured party—including their financial status, daily earnings, and social conditions (Al-Sanhuri, 1998, p. 1180).

Third: Realistic Assessment of Damage: Realistic assessment requires taking into account the specific condition and circumstances of the injured party and the extent to which they were affected by the harmful act, in application of the principle of full restitution. The compensation must be equivalent to the value of the damage sustained-

neither exceeding nor falling short of it. Furthermore, the amount of compensation is determined by the actual loss incurred and the lost profits, in addition to the entitlement to compensation for moral (non-pecuniary) damages and the loss of opportunity, provided their legal requirements are met (Al-Zarouni, 2015, p. 229).

The rule that a judge must observe when assessing compensation is to rely on the type and gravity of the damage, regardless of the type or degree of the fault committed. This is because the gravity of the fault is irrelevant in determining the amount of compensation; rather, it is considered when establishing whether liability exists in the first place, not when calculating the value of the due indemnity (Abu Al-Lail, 2011, p. 85).

Accordingly, the criterion is the gravity of the damage, not the gravity of the fault. Compensation must encompass all harm sustained by the injured party, including both the actual loss and lost profits (Al-Tamawi, 2003, p. 490).

Furthermore, the injured party must bear their share of liability in proportion to their own contributory negligence, and it is impermissible to combine two compensations for the same damage. The surrounding circumstances of the incident must be considered without regard to the subjective personal circumstances of the injured party. The trial judge is obligated to address and sufficiently specify all elements of the damage in their ruling; otherwise, the judgment is deemed deficient. The Egyptian Court of Cassation affirmed this principle, stating that while the assessment of the compensation amount is a matter of fact within the exclusive jurisdiction of the trial judge, the identification of the elements of damage that enter into the calculation is a matter of law subject to the supervision of the Court of Cassation. If a challenged judgment awards a lump sum for material and moral damages without detailing these elements, it is flawed by deficiency and must be overturned (Egyptian Court of Cassation, Civil Appeal No. 2401980/).

When a judge adheres to these principles in assessing compensation, it becomes possible to achieve full restitution, ensuring comprehensive redress for all damages. The fundamental rule is that compensation must be exactly commensurate with the harm sustained by the injured party-providing full redress without increase or decrease. The Egyptian Court of Cassation affirmed this principle, stating that the purpose of compensation is to redress the damage in an equivalent manner that neither exceeds its boundaries nor falls short of them. Accordingly, the judge is obligated to compensate the injured party for all elements of the damage sustained, encompassing both the actual loss and lost profits, in implementation of the principle of full compensation (Egyptian Court of Cassation, Appeal No. 258, JY 50).

Furthermore, when assessing compensation, the judiciary does not consider the degree of the fault's gravity as a factor for mitigating or aggravating the amount of indemnity. Legal doctrine rejects such an approach, as it would imply an unjustified favor toward the liable party at the expense of the victim, thereby depriving the latter of a portion of their rightful compensation without legal basis. This trend is particularly evident in the assessment of moral (non-pecuniary) damages, where the valuation must be predicated on the gravity of the damage itself, rather than the gravity of the fault committed (Dasuqi, 1995, p. 320).

Compensation may be neither in kind nor in monetary form; instead, it may take another form necessitated by the circumstances, particularly in cases of moral damage. Among the most prominent forms of such compensation is ordering the publication of the conviction in newspapers at the liable party's expense in cases of defamation (libel and slander) or infringements upon an author's moral rights. It may also involve compelling a newspaper that published false or harmful news to publish a retraction or correction on the same page where the original news appeared. This form of compensation may extend to certain cases of material damage, such as obligating the liable party to bear the costs of providing necessary tools or equipment for the injured party according to their needs, or paying the expenses for their stay and treatment in a specialized hospital or medical center for the duration of their life. However, this type of compensation must not be used as a pretext to compel the liable party to perform an act that conflicts with their personal liberty, such as forcing them to publish an article containing an apology or a plea for forgiveness from the injured party (Markus, 1987, p. 582).

Subsection II: State Liability for Compensation Regarding Gross Negligence Committed by Judicial Police Officers

The civil liability of a judicial police officer entails examining the extent to which the State can be held liable for compensating damages sustained by individuals as a result of the officer exceeding the limits of their delegated authority—particularly in the absence of specific legal provisions regulating such matters. Legal doctrine has diverged on this issue: one group denies the possibility of establishing State liability, whereas another group advocates for its validity as a mechanism to curb unlawful acts that may be committed by judicial police officers. This latter perspective bases its reasoning on considerations of equity, especially when the judicial police officer performs these acts in their capacity as a representative of a legal entity, namely the State (Al-Halabi, 1981, p. 284).

Additionally, establishing State liability contributes to preventing arbitrariness and curbing the abuse of power, while further strengthening the protection of individual rights and freedoms against the dominance and misconduct of judicial police officers. Moreover, affirming this liability facilitates the injured party's ability to obtain compensation, particularly in cases where it is difficult to seek redress directly from the officer—such as in instances of insolvency. This serves the requirements of justice, especially since the State subsequently retains the right of recourse against the perpetrator of the fault if it was committed in bad faith or was marred by negligence or gravity (Al-Hassoun, 1978, p. 127).

A judicial police officer who commits fraud, deceit, or an irremediable gross professional error may be held personally liable and required to compensate the injured party from their private assets, pursuant to a personal liability lawsuit as previously detailed in this study. However, our focus in this subsection is to discuss the aspects and foundations of another type of liability arising from judicial police actions: Administrative Liability. In this form of liability, the State bears the obligation to compensate the injured party for acts committed by judicial police officers. Notably, this liability is established when the plaintiff sustains damage from judicial policing activities in the absence of fraud, deceit, or irremediable gross professional error. This implies that administrative liability for judicial policing is predicated on service fault rather than personal fault. Yet, if we acknowledge the existence of this liability, does it rest on the basis of fault, or is it a strict liability (liability without fault) based solely on the occurrence of damage?

Regarding Palestinian law, we find that the Palestinian legislator still adheres to the principle of non-liability of executive authority members in their administrative capacity, limiting their liability to personal rather than administrative scope. This is with the exception of specific cases explicitly listed in the Palestinian Amended Basic Law of 2003, including:

- Compensation for the violation of the sanctity of homes: Article (17) of the Palestinian Basic Law stipulates that anyone who suffers damage resulting from an infringement upon the sanctity of their home is entitled to fair compensation guaranteed by the Palestinian National Authority.
- Compensation for assaults on personal freedoms and the sanctity of private life: Article (32) of the Palestinian Basic Law provides that any person harmed by an infringement upon personal freedoms, the sanctity of private life, or any other public rights and freedoms guaranteed by the Basic Law or the law, is entitled to fair compensation guaranteed by the Palestinian National Authority.

It is evident from these provisions that the legislator intended for administrative liability regarding judicial policing acts to be based on fault. The element of fault remains the cornerstone of administrative liability for administrative decisions; it is established when fault is present and negated in its absence. In this context, fault consists of issuing an unlawful administrative decision. Furthermore, fault is the cause of the obligation to compensate, as the concept of fault serves as the fundamental rule and original principle across all legal branches, including administrative law (Abu Al-Hawa, 2010, p. 61).

This is also the position of the Palestinian Administrative Judiciary. The Palestinian Administrative Court has established administrative liability based on fault rather than mere damage. The jurisprudence of this court is settled on the principle that the administration's liability for decisions issued in the management of public services is predicated on the presence of three elements-the most critical of which is the existence of fault on the part of the administration. If fault is negated, there is no liability and, consequently, no compensation. (Palestinian High Court of Justice, Decision No. 1332013/, Ramallah, September 23, 2013). Similarly, the rulings of the Palestinian Administrative Court have followed the same direction as the High Court of Justice regarding the necessity of fulfilling the elements of administrative liability: fault, damage, and a causal nexus. The Palestinian Administrative Judiciary has explicitly required the presence of fault as a prerequisite for establishing administrative liability (Palestinian Administrative Court, Judgment No. 2152022/).

By examining the provisions of Articles (17) and (32) of the Palestinian Basic Law, it is evident that the Palestinian legislator required the existence of an infringement upon the sanctity of homes, personal freedoms, or the sanctity of private life. By enumerating these cases exhaustively, the legislator underscored the necessity of fulfilling the element of fault. Some legal scholars justify basing the administrative liability for judicial policing acts on fault-rather than mere damage-by noting that these acts are carried out under the supervision of the Public Prosecution as a judicial body. Such work requires a degree of discretion and a "margin of appreciation" in performance, as it is inherently susceptible to error. Consequently, it would be unreasonable to hold the administration liable for every minor error committed by the judicial police, as this would create a state of apprehension among officers, leading them to be overly cautious or hesitant in fulfilling their duties and responsibilities.

However, we disagree with this perspective for two reasons. First, within the justice sector framework in Palestine, the Public Prosecution is plagued by three structural issues: the absence of genuine and effective oversight over its actions, a lack of perceived

impartiality and integrity, and the concentration of both investigative and prosecutorial powers within the same body. This combination effectively renders the Public Prosecution both an adversary and a judge in criminal proceedings. Without resolving these dilemmas, it is untenable to argue for narrowing the scope of administrative liability regarding the actions and errors of the Public Prosecution. Second, given that the Palestinian judiciary is relatively nascent in the field of compensatory jurisprudence, there is no harm in encouraging the filing and adjudication of such lawsuits. This would facilitate the establishment of robust judicial principles and attempt to rectify the delay of the Palestinian administrative judiciary in granting compensation for the acts of State agencies and institutions.

Subsection III: Compensation for Gross Negligence Committed by Judicial Police Officers in Light of Palestinian Judicial Precedents

At the level of Palestinian judicial applications, the legislator's adherence to the principle of non-liability for the executive authority-and the strictly limited exceptions thereto-has significantly impacted the judiciary, which has seldom awarded compensation for judicial policing acts. This represents a severe deficiency that the Palestinian legislator must rectify by promptly enacting provisions for administrative liability regarding such acts. Nevertheless, Palestinian courts have witnessed some administrative liability cases. A notable example is the lawsuit filed by University Professor Dr. Abd al-Sattar Qasim (Civil Case No. 101/2007) before the Ramallah Court of First Instance against: (1) The Director-General of Ramallah Police, and (2) The Attorney General, in their official capacities, claiming 30,000 Jordanian Dinars. The plaintiff was arrested at night on February 18, 2000, by General Security forces in Nablus and remained detained until the High Court of Justice ruled on July 11, 2000, that the arrest was illegal and ordered his release. However, the defendants failed to execute the ruling for over a month. The Court of First Instance awarded the plaintiff 8,000 Jordanian Dinars for moral damages. Upon appeal, the defendants challenged the ruling, citing a lack of legal basis for moral compensation and the absence of evidence for such damage. The Court of Appeal rejected this challenge, stating: "According to the provisions of the law, the Majallah al-Ahkam al-Adliyya (Civil Code) provides for the right to guarantee (compensate) for moral damage. Every infringement upon another's freedom, honor, dignity, reputation, social status, or financial credit renders the aggressor liable for compensation. It is well-established in doctrine and jurisprudence that moral damage may afflict one's honor and standing or their emotions and feelings. Such damage is frequent in tort liability as long as it is certain

and not hypothetical.” The court further affirmed that since the High Court of Justice (Ruling No. 18/2000) had already established that the arrest and continued detention were void and unlawful (conducted without any warrant), the plaintiff had successfully proven the element of fault, the moral damage sustained, and the causal link between them. (Palestinian Court of Appeal, Judgment No. 146/2012).

The Palestinian Court of Cassation, in its ruling on the same case, stated: “The assessment of damage and the determination of the commensurate indemnity are matters of fact within the exclusive jurisdiction of the trial judge, and are not subject to the supervision of the Court of Cassation, provided the judgment is based on a reasonable foundation. This is reflected in the Court of Appeal’s application of the law pursuant to Article (2) of the Civil Wrongs Ordinance No. 36 of 1944, which defines damage as death, loss, or injury to capital, deprivation of comfort, or harm to physical well-being, reputation, or any similar damage or loss. Any infringement upon the freedom of another renders the aggressor liable for indemnity. Damage may afflict honor, standing, or dignity—all of which fall under discretionary liability. Such damage is deemed certain rather than hypothetical, thereby warranting compensation” (Palestinian Court of Cassation, Judgment No. 529/2012).

Conclusion

The Palestinian legislator has taken a significant step forward by recognizing State liability for judicial errors within the Amended Basic Law. Nevertheless, it is imperative for the legislator to intervene promptly by enacting legislation that resolves the ambiguity surrounding the provisions of compensation under administrative liability for the acts of the judiciary, the Public Prosecution, and judicial police officers. Such legislation must fill the existing legislative vacuum, particularly regarding the legal procedures the injured party must follow to initiate an administrative liability lawsuit, the judicial body vested with jurisdiction to hear such claims, the conditions and assessment of compensation, and the nature and characteristics of the committee tasked with its determination.

Furthermore, although the constitutional legislator in Palestine requires fault as the basis for State liability regarding the acts of the judicial and executive branches, this should not preclude the administrative judge from adopting liability without fault (strict liability) in cases deemed appropriate. In line with their historical role in establishing solid legal principles and their characteristic judicial courage, the administrative judge is capable of filling this void until a definitive legal text is issued, driven by a philosophy aimed at safeguarding individual rights and freedoms.

Regarding the overall State liability for the acts of the judiciary, both jurisprudence and legislation have evolved from viewing State liability as an exception to the general rule of non-liability, to considering liability itself as the general rule-reflecting global developments in the field. Moreover, modern legal doctrine is increasingly advocating for the establishment of State liability for judicial acts even in the absence of fault.

Research Findings

- Regarding the legislative position on compensation for gross negligence: The basis of liability for gross errors committed by judicial police officers is founded on unlawful acts (tort liability), which is regulated by the Civil Wrongs Ordinance No. 36 of 1944 and its amendments, currently applicable in Palestine.
- Service Fault vs. State Liability: If the error committed by a judicial police officer is a service fault-meaning the damage occurred within the regular scope of their duties without personal excesses-the State bears the consequences of this error and is responsible for compensating the injured parties.
- Elements of Personal Liability: Establishing the personal liability of a judicial police officer for gross or personal negligence requires the fulfillment of three essential elements: gross fault, damage, and a causal nexus between the fault and damage.
- Functional Duty vs. Legal Right: The public functions performed by judicial police officers constitute a professional duty toward the public service to which they belong, even though the exercise of these functions towards individuals is a right granted to them by law.
- Personal Liability for Inexcusable Errors: A judicial police officer who commits fraud, deceit, or an irremediable gross professional error is personally liable and can be required to compensate the victim from their private assets through a personal liability lawsuit filed against them.
- Basis of Administrative Liability: The State is obligated to compensate victims for acts committed by judicial police officers when the damage occurs in the absence of fraud, deceit, or gross professional error. This confirms that administrative liability for judicial policing is predicated on service fault rather than personal fault.

Research Recommendations

- Enhancing Oversight and Preventive Measures: Strengthen oversight mechanisms regarding the actions of judicial police officers. This oversight should not be restricted to the criminal aspect alone or confined to the individual officer; rather,

it must extend to include harmful acts toward third parties that give rise to civil liability. This should be approached through a preventive strategy, achieved by organizing specialized seminars, training programs, and awareness lectures for all judicial police officers across various fields. These programs should focus on their civil obligations arising from acts that cause harm to others, ensuring they are fully aware of the legal consequences of their professional conduct.

- Mitigating the Absolute Obligation to Follow Superior Orders: Relax the rigidity of the judicial police officer's obligation to execute orders issued by their superiors. It should be stipulated that, in specific and exhaustively listed cases—particularly those where execution is likely to result in gross damage to third parties—such orders must be issued in writing. This ensures accountability and allows the subordinate to verify the legality of the action before implementation, thereby preventing irreversible harm.
- Establishing a Civil Liability Insurance System: It is essential to implement a civil liability insurance system for judicial police officers. Such a system would alleviate the financial burden of liability from their shoulders and provide them with a sense of security and reassurance while performing their duties. This is particularly important given that the advantages of this system—such as ensuring consistent compensation for victims and protecting officers from financial ruin—significantly outweigh its potential drawbacks.
- Establish specialized judicial chambers to adjudicate civil lawsuits arising from judicial policing acts. This would contribute to tightening oversight over the performance of judicial police officers on one hand, and streamlining the process for victims to obtain awarded compensation on the other. This efficiency is particularly enhanced if compensation is paid through insurance companies covering judicial policing errors—especially in scenarios where a state-mandated compulsory insurance system has not yet been adopted.

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