



RESEARCH ARTICLE

Compensation For Unlawful Detention in Saudi and Jordanian Legislation- Comparative Analysis Study

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ARTICLE INFO	ABSTRACT
Received: Oct 29, 2024 Accepted: Dec 28, 2024	The study Investigate compensation for unlawful detention in Saudi and Jordanian legislation, Clarifying the legal basis for the injured party's right to compensation and the judgment issued for compensation in Saudi and Jordanian legislation.
Keywords Compensation For Pretrial Detention Material and Moral Damage Pretrial Detention Arbitrary Detention Unjustified Detention	The paper `highlights the position of Islamic legislation, in addition to the position of the Saudi and Jordanian constitutions and the legal texts on which the injured party and the judge rely in claiming and ruling on compensation for unlawful imprisonment, while clarifying aspects of legislative deficiency and providing recommendations according to what is stated in comparative laws, which provides a solid basis for understanding the research context.
*Corresponding Author: Khalil.Saeed@Nbu.edu.sa	The methodology followed in this research includes the use of the comparative and analytical approach, both inductive and deductive to study the topic in Saudi and Jordanian legislations in addition to the descriptive and applied approach through exposure to judicial precedents. Data were collected through notes and explanations on the topic in legislation, jurisprudence and judicial rulings, among other things. The results obtained revealed [synthesize the main results of the research]. In the discussion section, these results are contextualized in light of the theoretical framework, highlighting the implications and relationships identified. Possible discrepancies and limitations of the study are also considered in this section. Discussed, insights are provided on how the results can be applied or influence practices in the field of compensation claims for wrongful imprisonment. These implications could include cases within the scope of application of Saudi and Jordanian legislation. This study contributes to the literature by shedding light on the subject of compensation claims for material and moral damages resulting from wrongful imprisonment in a comparative study that represents the originality of the research, whether through an innovative approach or new legislative recommendations or by stating practical flaws in the legislative vacuum or ambiguity of legal texts. The importance and value of this research is evident through what the results can affect the field of comparative legal studies or the professional practice of lawyers or legal researchers.

INTRODUCTION

The responsibility of members of the Public Prosecution and judges arises for the acts of their jobs if they harm people, even if they do not constitute a crime. Most legislations have recognized their personal responsibility through a lawsuit, but the principle of the state's responsibility for the acts of the judiciary is to compensate those who have suffered harm as a result of extending their imprisonment or detention beyond the prescribed period, which is stipulated in international legislation (Abu Al-Ainain, 2010, pp. 6-8), and many countries have adopted it (Al-Wahidi, 2018, pp. 25-39). The view of countries has differed in determining this responsibility and the extent of imposing compensation. We will examine the position of the Saudi legislator in comparison with the position of the Jordanian legislator by studying the legal basis for the right to compensation for unlawful detention, then ruling on compensation for unlawful detention. The article came to answer a key question concerning the legal basis for the right to compensation for unlawful detention and the components of the compensation. The cornerstone of this analytical study and its sensitive legal motive is the urgent need for the injured person in light of Jordanian law, which still does not recognize the right of the injured person to be compensated by the state for his imprisonment without legitimate justification. On the other hand, there is a need to develop Saudi legal texts in this context to set the controls for this compensation. The social goal is to restore his reputation and respect among his family and society, and the economic goal is to compensate him for the lost earnings and losses incurred by him, further more to compensate the harm of the unjustified detainee for the harm to his reputation, esteem, and pain, the restriction of his freedom, and his absence in unlawful imprisonment.

As a result, this paper seeks to open the door for the legal researcher to study other aspects of the subject, which are outside the scope of this study, such as personal compensation for the injured person from the one who caused the damage. This comparative analytical study also aims to present a practical, applied proposal that can be used to amend the legislation under investigation.

THEORETICAL FRAMEWORK

The main pillars of the theoretical framework in this study is the principle of legality which is, "neither a crime nor a punishment except by text". adjudication globally. Pursuant to the aforementioned principle, the individual shall not be held criminally responsible unless the conduct concerned, at the time of its occurrence, constitutes a crime within the jurisdiction of the Court, and in accordance with national or international law. Hence, the judge's authority is restricted since he is prevented from criminalizing actions as he wishes, or deciding the applicable punishment as he sees fit, restricts criminalization and punishment solely to the written law, also meaning that no penalties can be imposed, unless this condition is fulfilled.

Within the legislation, this principle has clear and specific punitive provisions, drafted with minimal ambiguity, since the purpose is not to entrap or prey upon those concerned, but rather to make the deviant "... and anyone who has suffered harm - as a result of his malicious accusation, or as a result of extending his imprisonment or detention beyond the prescribed period - has the right to request compensation before the court to which the original lawsuit was filed", and it stipulates: - The act must be carried out according to the material theory (bearing the consequences): which imposes responsibility on the harm, not on the error, and accordingly, every act that results in harm is the responsibility of its perpetrator, whether he was at fault or not, and according to this theory, it is sufficient for the person's responsibility (natural or moral) to be established that there is a link between the harm and the actions he committed, even if he did not commit a mistake, and accordingly, the person who committed the act cannot deny responsibility by denying the mistake, but even if he proves the external cause, the responsibility is established, as long as his activity is what led to the occurrence of the harm, he is responsible for compensating him. Where the word (harm) came indefinite, not definite, devoid of any specific description, and the absolute is absolute

unless there is something that restricts it.

The study comparatively analyzed models of prior research, identifying voids, contradictions, and consensuses in the literature that are crucial for the focus of the work being developed. Mayad (2010) dealt with the right to claim compensation for damages from the accused who was acquitted by the court of subject matter and who spent a period of time in administrative detention and then pretrial detention according to Moroccan legislation and judiciary, international conventions and comparative French law, in contrast to this study which analyses the subject of compensation for pretrial detention in Saudi law compared to comparative Jordanian law. Al-Fahl (1998) studied compensation for unjustified detention in Islamic law compared to Syrian law and some legislations such as Egyptian, Turkish, French and Belgian laws, while the researcher devoted this paper to studying the subject in Saudi and Jordanian laws. Abu Zaitoun (2015) in his research presented Compensation for Detention within the scope of Jordanian law compared to French, Egyptian and Algerian laws, while the research focused on Saudi law compared to Jordanian law in a thorough analytic study

METHODOLOGY

The methodology of an article outlines the procedures employed to conduct the research, including the type of study, sample selection, data collection and analysis methods, ethical considerations, and limitations of the study. Its detailed and transparent description is essential to guarantee the replicability and reliability of the results, in addition to providing a solid basis for the interpretation and generalization of the findings.

In this research, we use the comparative and analytical approach, both inductive and deductive, in addition to the descriptive and applied approach through exposure to judicial precedents.

RESULTS AND DISCUSSIONS

The study showed that the compensation for unlawful detention necessitates a legal basis for the right to it. The analytical comparative approach proved that the source of the right to compensation for unlawful detention in Saudi legislation consists of Islamic law, the Saudi constitution and the Criminal Procedures Law in addition to the judicial precedents. Furthermore, the Source of the right to compensation for unlawful detention in Jordanian legislation formed of International legislation, the Crime Prevention Law and The Jordanian administrative judiciary law as well as the judicial precedents. The article analyzed the Award of compensation for unlawful detention as a milestone in the study. Revealing that Compensation for unlawful detention in Saudi legislation cover both (natural or moral) to be established that there is a link between the harm and the actions, according to the material theory (bearing the consequences). In the contrary to the Jordanian Code of Criminal Procedure, which approved moral compensation stipulates that the ruling issued acquitting the accused be suspended and published in the Official Gazette in two local newspapers if necessary and at the expense of the state. Judicial precedents added an implementation aspect to the analytical study.

The legal basis for the right to compensation for unlawful detention

The source of the right to compensation for unlawful detention in Saudi legislation

The first source of Saudi legislation is Islamic law, which has paid great attention to what preserves human dignity and protects his freedom. The jurisprudential rules have clarified the two principles: "No harm and no harm shall be inflicted" and it has been decided that harm shall be removed, which is what Saudi Arabia has adopted and established through its legislation that guarantees to the human being in general, and to the accused in particular, a set of rights and guarantees that preserve his dignity and humanity, starting with the Saudi constitution, including Article 26 of the state's protection of human rights, Article 36 of the inadmissibility of detaining or imprisoning anyone

except in accordance with the provisions of the law, and its text in Article 38: "..No crime or punishment shall be imposed except on the basis of a legal text or a statutory text..", including Article 3 of the Criminal Procedures Law: "No criminal penalty may be imposed on any person, except after his conviction of a matter prohibited by law or a statutory text has been proven after a trial conducted in accordance with the legal requirement." Including the decision of the Supreme Judicial Council (Circular No. 1205/T dated 11/5/1439 AH issued based on the Royal Decree (No. 56485 dated 11/5/1439 AH) which requires proof of conviction by the criminal description of the act requiring punishment before imposing the criminal penalty. As justice requires, and in view of the dire material, social and psychological effects of imprisonment on the plaintiff, as it deprives him of his freedom and affects his reputation, dignity, affection, reputation, honor and money, therefore the person harmed by imprisonment as a result of extending the period of his imprisonment or detention beyond the prescribed period has the right to seek compensation for the material and moral harm he has suffered. The decision to ratify the case from the Criminal Court in Jeddah from the Court of Appeal: No. 34213902, dated: 15/5/1434 AH, and its subject is the claim for compensation for the harm of unjust imprisonment, and it ruled that compensation for the decisions of the administrative body is the responsibility of the administrative courts, and that the criminal court has no jurisdiction and dismissed the lawsuit, and in it the plaintiff claimed that he was imprisoned for three months by the Bureau of Investigation and Public Prosecution (Public Prosecution) due to a case of accusation of participating in the sale of narcotic pills, and then a ruling was issued to disregard the lawsuit of the Public Prosecutor, and he was harmed by that as stated in his lawsuit, and therefore he requested compensation from the Bureau of Investigation and Public Prosecution for that period that he spent in prison, and in the reasoning it indicated that because the Criminal Procedures Law stipulated in Articles 128 and 129 the jurisdiction of the criminal courts and did not mention compensation for the harm resulting from imprisonment, and because the defendant is an administrative body and compensation for the decisions of the administrative body is the responsibility of the administrative courts, the court ruled to disregard the plaintiff's lawsuit because the lawsuit is outside the scope of Its jurisdiction, and the plaintiff objected to the ruling - so the Court of Appeal decided to approve the ruling. Note that the plaintiff had previously filed a lawsuit with the Board of Grievances in Jeddah and the Administrative Court ruled that it had no jurisdiction to hear the lawsuit. In commenting on the ruling, the researcher believes that the reason for this paradox was that the current Criminal Procedures Law included the text stipulated for compensation for unlawful imprisonment. It is necessary to point out that the Saudi legislator settled the issue of the legal classification of the detention decisions issued by the Public Prosecution considering that they are subject to the judicial authority and not to the Ministry of Interior considering them administrative decisions, as Article 1 of the Public Prosecution Law amended by Royal Decree No. 56 dated 10/24/1409 stipulated that the Public Prosecution is part of the judicial authority and enjoys complete independence and is organizationally linked to the King and no one has the right to interfere in its work - and therefore the appeal of its decision and thus the request for compensation is subject to the text of Article 215 of the Criminal Procedures Law, which states: ".. and anyone who has suffered harm - as a result of his malicious accusation, or as a result of extending the period of his imprisonment or detention beyond the prescribed period - has the right to request compensation before the court to which the original lawsuit was filed.

Source of the right to compensation for unlawful detention in Jordanian legislation

International legislation is considered part of the legal system of the state, and Jordan has joined agreements that stipulate the right of the injured party to fair compensation for unlawful imprisonment (victim of arrest, unlawful detention), including: the International Covenant on Civil and Political Rights in its fourteenth article, which Jordan ratified in 1975, and similarly, Jordan ratified in 2004 the Arab Charter on Human Rights, which stipulated the same right in its ninth article, and Article 85 of the Rome Statute of the International Criminal Court in force in 2002 stipulated the

enforceable right of every person who was a victim of unlawful arrest or detention to obtain compensation, and Article 9 of the Jordanian Constitution stipulated that no one may be arrested, detained or imprisoned except in accordance with the provisions of the law, but the researcher sees the latter lacking an explicit text on establishing the right to compensation for unlawful imprisonment in comparison with the Egyptian Constitution of 1971, Article 57 of which stipulated that the state shall guarantee fair compensation for anyone who has been subjected to an assault on personal freedom, similar to the similar text in the Constitution The Turkish law of 1961, contained in Article 35, includes the obligation of the state to compensate the individual for unlawful detention, for material and moral damage, and the same applies to Article 47 of the Algerian Constitution (Fahl, 1998, p. 5). The Jordanian administrative judiciary has recognized the right of the individual against whom a detention decision was issued by the administrative governor, such as the governor and the competent administrative administrator, to compensation if it is proven that the detention decision was issued in violation of the provisions of the Crime Prevention Law No. 7 of 1954, provided that the detention decision is subject to appeal before the Supreme Administrative Court (Abu Zaytoun, 2015, p. 9).

Award of compensation for unlawful detention

Compensation for unlawful detention in Saudi legislation

Compensation for imprisonment according to the provisions of Article (215) of the Criminal Procedures Law issued by Royal Decree No. (M/2) dated 22/1/1435, which states: “.. and anyone who has suffered harm - as a result of his malicious accusation, or as a result of extending his imprisonment or detention beyond the prescribed period - has the right to request compensation before the court to which the original lawsuit was filed”, and it stipulates: The act must be carried out according to the material theory (bearing the consequences): which imposes responsibility on the harm, not on the error, and accordingly, every act that results in harm is the responsibility of its perpetrator, whether he was at fault or not, and according to this theory, it is sufficient for the person’s responsibility (natural or moral) to be established that there is a link between the harm and the actions he committed, even if he did not commit a mistake, and accordingly, the person who committed the act cannot deny responsibility by denying the mistake, but even if he proves the external cause, the responsibility is established, as long as his activity is what led to the occurrence of the harm, he is responsible for compensating him. Where the word (harm) came indefinite, not definite, devoid of any specific description, and the absolute is absolute unless there is something that restricts it (Al-Baali, p. 551) (Al-Jawfan, p. 2)

The actual reality and established truth is that the plaintiff was not released and his imprisonment or detention continued for a period of eleven months, which is a long period, which was supported by the decision of the Court of Appeal in this case that: “What was ruled on the defendants in terms of imprisonment is a lot, especially the plaintiff...” and that the result of the final ruling issued by the esteemed court ruled to imprison him for a period of eight months only, which indicates that the plaintiff spent three months in prison away from his family, relatives and work without justification.

Material damage

The material damage incurred by the plaintiff is the damage represented by his being deprived of the ability to carry out his work from which he earns a living, and the damage that befell his family whom he supports, such as his wife, children and mother, due to his absence from work, and his failure to exploit his property and his trade, which is the way he earns and makes a living, and the damage befell them because he is their provider, and the damage befell them directly due to his imprisonment, and we cite a judicial precedent represented by the ruling of Saudi criminal case No. 39153828 dated 4/3/1439 AH, which is proven by the facts of the case: proven in its minutes of the amount of the plaintiff’s daily income, which he lost as a result of his continued imprisonment for

three months, which exceeds what was ruled as a discretionary punishment as a result of the final judgment, and this material loss includes that: The plaintiff has been working in the field of installment sales for more than ten years, and that his total monthly income as a salary is ten thousand riyals in addition to what he earns from installment sales, which exceeds thirty thousand riyals per month, and that he was concluding more than Ten contracts per month..". The defendant stated in the judgment instrument: "As for what is related to the accused, it became clear through reviewing the Financial Investigations Unit report on the total amounts deposited in his accounts during the study period, and what became clear from the monthly transaction rate, and since this evidence was presented by the defendant, and constituted the suspicions on the basis of which the plaintiff was punished with imprisonment, despite the fact that the plaintiff was not convicted as a result of the final judgment of the esteemed court, it is a requirement of justice to take into account in estimating the plaintiff's monthly income what was previously presented by the defendant, and that the latter (the defendant) should not be accepted to challenge evidence that it had previously adhered to before the judiciary against the plaintiff in accordance with the legal rule: (Whoever seeks to overturn what was done on his part, his efforts shall be rejected). The meaning of this rule is: (If a person works to overturn what he has done and what was done on his part by his own choice and consent, then his overturning and renegeing shall not be taken into consideration, and the condition is that it be before a disputing opponent). In the commentary, the researcher believes that the court is not bound by any degree of seriousness of the damage incurred in accepting the lawsuit, as the text is absolute, and the amount of compensation is subject to the discretion of the competent court.

Moral damages

The lawsuit filed to claim compensation for imprisonment includes a request from the defendant to compensate for the damages he has suffered, including moral damages represented by social damages due to his distance from his family and supervision of their upbringing and the low level of their academic achievement, and his deprivation of the opportunity for job promotion due to the extension of his imprisonment period, which affects his annual reports, and psychological damages due to the psychological impact of imprisonment on the prisoner, which has been settled by the rulings of criminal and administrative courts. This lawsuit was initiated for consolation and to mitigate the damage to the injured person according to its jurisdiction to consider the lawsuit for compensation for imprisonment (as a result of extending the period of imprisonment of the injured person or his detention for more than the prescribed period), in accordance with the provisions of Islamic law, including: The Saudi Administrative Court (Board of Grievances) ruled in Judgment No. 42/D/F/4 for the year 1426 and upheld by Judgment No. 12/T/1 for the year 1427 AH that: "...Islamic law has taken into account the aspect that affects a person's reputation or causes him moral damage, and He did not suffer any material harm... In addition to the moral harm that the plaintiff suffered during his imprisonment and the loss of contact with his family... the department is striving to compensate for the harm that befell the plaintiff. The Court also issued Judgment No. 82/I/1433/7/2, upheld by Appeal Judgment No. 1/1902 of 1433 AH, which decided that: "... harm in Islamic jurisprudence is multiple and diverse,... and it may be moral due to the damage to his reputation among his relatives, his community, and his peers at work, and more than one type of harm may be combined with it, with differences and distinctions... Islamic Sharia, as a source of legislation, has indicated the permissibility of compensation for moral harm, and the judgment ended with the plaintiff being compensated with an amount of one hundred thousand riyals for the moral harm he suffered. The Court also ruled in Judgment No. 63/D/I/4 of 1427, upheld by Appeal Judgment 431/T/6 of 1427 AH: "As for the moral harm that befell the plaintiff, it is represented in his being deprived of his freedom and the care of his family, and the accompanying psychological pain and feeling of humiliation and contempt in the eyes of others, and these are harms, even if they are limited to the moral and ethical aspect of his person and not... It has a material basis, but that does not prevent the department from estimating the compensation that compels it and removes its effect

from itself,” and the ruling ended with compensating the plaintiff for moral and psychological damage. Similarly, the ruling of the Board of Grievances No. 251/D/I/Q for the year 1428, upheld by the ruling of Appeal No. 687/S/8 for the year 1430 AH, decided: “Compensation for the injured party is not always based on financial compensation if there is no material damage, then compensation may be by inflicting pain on the other party who caused the damage..”, then inflicting pain on the defendant is by financial compensation for moral damage. The organizer in the Criminal Procedures System has obligated a ruling to compensate for moral and material damage in every ruling issued with a non-conviction in the cases decided by Article 207 thereof. A circular was also issued by the President of the Board of Grievances directing the heads and members of the administrative departments in the Board to require compensation for moral damage.

The ruling on compensation for unlawful detention in Jordanian legislation

The Jordanian legislator has drawn attention to material compensation and moral compensation by the private plaintiff in Articles 871 and 891 of the Jordanian Code of Criminal Procedure, as Article 871 requires the private plaintiff to compensate the defendant, provided that the latter requests it, and that it becomes clear to the court that the act does not constitute a crime or that the suspect is innocent, and that the lawsuit was filed against him maliciously. As for Article 891, which deals with the subject of moral compensation, it stipulates that the ruling issued acquitting the accused be suspended and published in the Official Gazette in two local newspapers if necessary and at the expense of the state. (Al-Sharif, 2003, p. 595)

Thus, the Jordanian legislator has agreed with the opinion of the previous French legislator in invoking the principle of the state’s non-responsibility for its judicial actions in harmony with the principles of the conclusiveness of judicial rulings and the force of the matter to be carried out under pretexts such as not burdening the general budget and the solidarity of individuals in bearing these burdens in order to achieve the public interest (Mayad, 2010, p. 12). It is worth noting that the jurisdiction to consider claims for compensation for damages arising from administrative decisions is disputed by the jurisdiction between the ordinary judiciary and the administrative judiciary, and that the plaintiff has the choice to resort to one of the two judiciaries. If he resorts to one of them, he is prevented from resorting to the other, which is what the Jordanian Court of Cassation ruled in Case No. 8008/1188 published in the Jordanian Bar Association Magazine in 8001 on page 8588 (Abou Zeitoun, 2015, p. 21). Among the Jordanian judicial precedents regarding compensation for unlawful imprisonment is what the Jordanian Administrative Court ruled in its decision No. 858/98, dated 81/80/8998,) published in the Bar Association Magazine, p. 8799) to compensate some individuals who were administratively detained because the court estimated that their detention decision had prevented them from working because they were a driver, a farmer and another was a high school student. We recommend that the Jordanian legislator adopt and approve compensation for unlawful imprisonment in the Criminal Procedure Code, according to the following proposal:

Rules for determining compensation;

- a) A final ruling to prevent the trial, or acquittal, and does not include placement in a hospital or sanatorium due to mental or psychological disorder
- b) The presence of harm regardless of its degree of severity (material and moral), and the plaintiff is not required to prove the harm.
- c) Filing a compensation claim within a specific period after the issuance of the ruling (6 months, for example)
- d) The jurisdiction to decide on the compensation claim is for the court that issued the ruling or an independent committee formed for this purpose, provided that it issues its decision publicly and the reason, and the decision can be appealed before the highest court.
- e) The state’s right to recourse against the person who caused the damage.
- f) Transfer of the right to claim compensation to the heirs.

RESEARCH IMPLICATIONS

The results of the comparison at this analytical study are influential at multiple levels, ranging from Implementation of the The Saudi legislator's legal characterization of the arrest decisions issued by the Public Prosecution as belonging to the judicial authority and not as administrative decisions, the appeal of its decision and thus the request for compensation are subject to the court to which the original lawsuit was filed.

The The results indicate that Jordanian legislator adopted the principle of the state's non-liability for its judicial actions. Compensation for damages arising from administrative decisions is disputed by jurisdiction between the ordinary judiciary and the administrative judiciary.

CONCLUSION

Evident through the study and what has been reached from the results concludes that the Saudi legislator needs to amend the law by explicitly stating the degree of severity of the damage required, and the type of damage subject to compensation. Findings of the study showed that the Jordanian legislator failed to adequately adopt the state's responsibility for its judicial actions, and approve compensation for unlawful imprisonment in the Code of Criminal Procedure. It is represented in the human rights doctrine and Jordan has joined agreements that stipulate the right of the injured party to fair compensation for unlawful imprisonment. In consequence amendments have to be established in Jordan by the Jordanian legislator to adopt and approve the proposed compensation rules.

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