

Compensation for moral damages to the victim of judicial error in criminal matters

Dr. Benyoucef Fatima zohra, Lecturer A Professor, Faculty of Law and Political Science – University of 20 August 1955, Skikda

fz.Benyoucef@univ-skikda.dz / fatimat7865@yahoo.fr

Submission Date: 02 Mar 2025 Approval Date: 08 May 2025 Release Date: 10 Oct 2025

Abstract:

Compensation for moral damages resulting from judicial error in criminal matters is a right for anyone harmed by injustice or an unfair conviction. This compensation aims to redress the psychological and moral harm inflicted on a person's reputation and dignity as a result of the error. The state bears responsibility for this harm, given that the judiciary is one of its institutions. Compensation is granted after the error is proven through specific legal procedures, and it serves as a means to achieve justice and enhance citizens' trust in the judicial system.

Keywords:

Criminal matter- Judicial error- Compensation - Moral damage - Victim

Introduction:

The principle of compensation for harm is one of the most important legal principles aimed at achieving justice and redressing the harm inflicted on individuals as a result of unlawful acts. Within the framework of criminal law, some individuals may suffer serious harm as a result of judicial errors, such as unjustified conviction or wrongful imprisonment. This harm is not limited to material aspects only, but extends to include the moral aspect, which affects a person's honor, dignity, and reputation in society. Moral harm is often more severe than material harm because it leaves deep psychological and social scars that are difficult to erase with the passage of time. Hence, the necessity arose to compensate the victim for the moral harm they suffered, considering that justice is only achieved by restoring the dignity of the wronged party. The state usually bears responsibility for the judicial error because it is the authority responsible for issuing and enforcing judgments. This compensation is considered a means of protecting human rights and ensuring the integrity of the judiciary. It also reflects the development of modern legal thought towards establishing the principles of justice and equity, and it strengthens citizens' confidence in the judicial system as the last resort for achieving justice. Therefore, the central question of our research revolves around the following: **To what extent can the victim's right to compensation for moral damages resulting from judicial error in criminal matters be guaranteed? And what are the legal foundations that ensure the realization of this right, while reconciling the principle of state responsibility for judicial errors with the principle of judicial independence?**

-To answer this question, we divided the research into two main sections. The first section addressed the concepts of judicial error and moral damages, while the second section focused on the nature of compensation for moral damages. We employed both descriptive and deductive methodologies, as they are best suited to this type of topic.

First Axis: The Concept of Judicial Error and Moral Damage

We will first address the concept of judicial error, and then the concept of moral damage.

First: The Concept of Judicial Error Entitled to Compensation

The Algerian legislator did not define judicial error, but rather established the cases that constitute judicial error, beginning with the case where an acquittal is issued based on a request for review. This was later expanded, based on the concept of judicial action, to include the case of unjustified pretrial detention.

A - The Narrow Concept of Judicial Error:

The narrow concept of judicial error is linked to the narrow concept of judicial authority, which is primarily related to the issuing authority. Therefore, according to this concept, judicial error applies to final and conclusive judgments, excluding decisions issued prior to these judgments, even if they are of a judicial nature.

The word "judgment" (in Arabic, "hukm") means judgment, and its plural is "ahkam." Its root meaning is prohibition. For example, one might say, "I judged him to do such and such," meaning "I prohibited him." The term "judgment" is also used to describe a judge who prevents injustice.¹

The word "judgment" (hukm) is derived from the root "hakam," meaning to judge or decide. It comes from wisdom, which necessitates the establishment of something. Its characteristics include firmness, agreement, decisiveness, resolution, careful consideration, and sound judgment.²

Al-Azhari said: "Judgment is the judgment with justice." If "judgment" means "decree," then in this sense it means the separation and judgment between people. It is said, "The judge judged between the disputants," meaning he made a final decision between them.³

In Islamic jurisprudence, however, scholars have not agreed on a single technical definition of "judgment." Their definitions all revolve around one meaning: the resolution of disputes according to Islamic law, by way of obligation, by revealing the ruling of Islamic law on the matter.

Therefore, the essence of a judgment is the pronouncement of a legal ruling issued by a judge in the form of a decision that resolves the dispute. Thus, a judgment can be defined as a ruling that definitively and obligatorily decides guilt or innocence in a crime punishable by Islamic law with a fixed penalty (hadd) or discretionary punishment (ta'zir), within the jurisdiction of the court or body that issued the ruling.⁴

While Islamic jurisprudence adopts a narrow definition of the term "crime," referring to offenses against the person or limbs, such as murder, wounding, injury, and fracture, criminal law scholars adopt the broader linguistic meaning of "crime," encompassing all crimes. Accordingly, they define a criminal judgment as a ruling that applies the rules of the penal code or its supplementary laws to the act attributed to the accused, resulting in acquittal or conviction.

The prevailing view in legal scholarship defines a criminal judgment as: a decision issued by the court in a case brought before it according to the law, resolving either the merits of the case or a matter that must be settled before a final ruling on the merits. Thus, we find that judicial error, in its narrow sense, is fundamentally linked to the narrow sense of criminal judgments, which is limited to the judgment itself and does not extend to decisions or orders issued by the investigating judge.⁵

Furthermore, we cannot invoke judicial error or assert its existence as long as there is avenue or means to rectify it. This can be achieved through challenging the criminal judgment via ordinary appeal procedures such as opposition and appeal, and extraordinary procedures such as cassation. For example, the presence of a defendant convicted in absentia at the trial sessions in a felony case nullifies the judgment and returns the case to its state prior to the judgment. An opposition appeal can overturn the judgment, allowing the judiciary to intervene and correct errors in fact and law. Similarly, an appeal, by its very nature, returns the case to its state prior to the judgment, enabling the judiciary to rectify the judgment in all its aspects, whether related to fact, law, or simply a flawed judgment.

Consequently, judicial error, within this framework, only arises in the context of a final criminal judgment that has acquired the force of res judicata and convicts the accused of a felony or misdemeanor, which is subject to appeal by way of a request for review according to the cases stipulated by the legislator, specifically Article 693 of the Code of Criminal Procedure No. 25-14 dated August 3, 2025.

In this regard, most legal scholars have defined judicial error as a discrepancy between the factual truth declared by the judgment and the truth that the judgment should have declared.⁶

Their reasoning is that while the truth declared in a criminal case brought before the court may reflect a precise understanding of the facts and the correct interpretation of the law, it may be incomplete, exaggerated, or erroneous, failing to represent the actual truth that should have been declared. Therefore, if, after the

issuance of a final judgment that has acquired the force of res judicata and exhausted all ordinary and extraordinary avenues of appeal, such as cassation, it is established that this truth was not attained despite a precise understanding of the facts of the case, regardless of the reasons, then the judgment is flawed by judicial error.⁷

It should be noted that judicial error only arises in cases of wrongful conviction. Wrongful acquittals, even those issued by a final judgment, are generally tolerated by most legal systems, despite leading to the escape of a criminal and fostering public disillusionment with the efficiency of the judicial system. However, they remain less harmful than wrongful convictions, which condemn the innocent to a punishment prescribed by law for criminals and directly impact their lives, freedom, and honor. Therefore, wrongful convictions are not limited to mere disappointment, as is the case with wrongful acquittals, but extend to creating a state of perpetual anxiety among the public, negatively affecting the deterrent role of criminal law. This deterrent effect is only achieved when punishment is correctly inflicted on the perpetrator, not unjustly on the innocent.

1. While the narrow concept of judicial error was raised based on a narrow concept of judgment, adopting a broad concept of judgment allows us to include orders issued by the investigating judge that are judicial in nature, particularly orders for provisional detention, given that the accused's right to compensation is only established in this case, provided that the investigation concludes with an order of no grounds for prosecution.

The case concluded with a final verdict acquitting the defendant.

Consequently, the broader concept of judicial error will be invoked in this matter.

B- The Broad Concept of Judicial Error:

Initially, judicial error was associated with a criminal conviction that was subsequently overturned by a retrial and resulted in an acquittal. Its scope has since broadened to include unjustified pretrial detention. Perhaps the strongest evidence for considering the latter a judicial error in the broad sense is found in Recommendation 17 of the Sixth International Congress on Penal Law held in Rome in 1953, which stipulated that: "The State must compensate a person held in pretrial detention in the event of a manifest judicial error if the circumstances indicate that the detention has become arbitrary..." This view was also endorsed

at the seminars held in Baguio, Philippines, and Santiaque, Chile, as well as by the United Nations Human Rights Committee in its 17th and 18th sessions. Furthermore, Articles 149, 149-1, and 150 of the French Code of Criminal Procedure clearly demonstrate the State's tendency to expand its responsibility and, consequently, broaden the scope of judicial error to focus specifically on judicial actions taken by the judiciary during the two most crucial stages of the judicial process. The criminal case consists of two stages: investigation and judgment.

Second: The Concept of Moral Damage

While material damage is defined as an attack on movable or immovable property, or an attack on a person causing bodily harm, it takes various forms, including the destruction of property, deprivation of income, or inability to work.

Some define it as harm inflicted on a person's body, property, or any of the rights that contribute to the valuation of their wealth.

Moral damage, on the other hand, is harm that does not affect a person's property but rather their honor, reputation, emotions, or social standing.⁸

As defined by the scholar Al-Sanhuri, it is harm that does not affect the person but rather a non-financial interest. He attributed it to specific circumstances, primarily:

- Moral harm affecting the body: Wounds or damage to the body, the resulting pain, and subsequent disfigurement of the face, limbs, or body in general, constitute both material and moral harm if they result in financial expenditure on treatment or a decrease in the ability to earn a living. They are considered purely moral harm if they do not result in such expenditures.
- Moral harm affecting honor, reputation, and dignity: Slander, defamation, violating one's honor, harming one's reputation through false accusations and incitement, and assaulting one's dignity all cause moral harm because they damage the victim's reputation and harm their honor and standing among people.⁹
- Moral harm suffered by a person simply from the infringement of an established right.¹⁰

-There are also those who defined it as causing harm to the person of others, not to their money, where their dignity is affected, their feelings are hurt, their honor

is tarnished, they are accused of something related to their religion, their reputation is damaged, or other such harms are called today moral harms.¹¹

The second axis: The nature of compensation for moral damages

In this axis, we will examine the emergence of the concept of compensation for moral damages, as well as the conditions and foundations for compensating a victim of judicial error in criminal matters. The following points will be addressed:

First - The principle of compensation for moral damages:

The concept of compensation for moral damages has been around for a long time. Roman law established compensation for moral damages in numerous cases, leading to the adoption of its traditions by old French law. Old French law followed Roman solutions in the areas of tort and contractual liability without distinction. However, early French legal scholars permitted compensation for moral damages only in the context of tort liability, not contractual liability.¹²

The issue of compensation for moral damages has been a point of contention between legal scholars and the judiciary regarding whether it can be compensated monetarily. ?

The first view objected to compensation for moral damages, considering them intangible and therefore not monetarily quantifiable. This makes it impossible to balance compensation and damages, as is generally required by the rules of civil liability. Savigny, in his rejection of the concept of moral liability, also excluded rights related to human faculties—that is, rights inherent to the individual, particularly those concerning respect for human dignity, personhood, and various aspects of freedom—from the scope of private law. Consequently, in his view, these rights do not enjoy legal protection. As for those provisions that are afforded some protection by certain laws, they constitute only an exception to the principle.¹³

Furthermore, some legal scholars have invoked the concept of morality to argue against the permissibility of compensating moral damages with money. Among these scholars are Professors Tournai, Massin, Savate, Ribar, Baudry-Lacantre, and Bard, who believe that for an injured party to accept compensation for moral damages as payment for their suffering is degrading. Indeed, it contradicts high moral principles for a person to reduce their honor, reputation, and emotions to

the level of material property, thus allowing themselves to be enriched by another's infringement upon them.¹⁴

Similarly, how can an heir who materially benefits from the pain suffered by the deceased accept compensation for the insult inflicted upon their ancestor before their death?

The purpose of compensation is to redress the harm. While this is conceivable in the case of compensation for material damages, the situation differs with regard to compensation for moral damages. The harm in question does not, in itself, constitute a financial loss, and therefore cannot be remedied with money. A monetary sum cannot erase the pain or compensate for the violated honor. It cannot be said that someone whose feelings have been assaulted finds solace in the compensation they receive, as there is absolutely no way to buy back dignity or pain.

Furthermore, proponents of this view argue that compensation for harm can only be assessed arbitrarily. Even if we were to concede, for the sake of argument, that money can repair moral damages, the judge would still face the practical impossibility of determining the amount of compensation based on the actual harm suffered, given that moral damages cannot be valued in monetary terms.

We also find that some legal scholars have drafted Article 1382 of the French Civil Code, which is limited to compensation for material damages and excludes moral damages. All these arguments have, in turn, been met with criticism, the most important of which are:

- The assertion of balancing compensation and damages does not necessitate equality between them. A perfect mathematical equivalence between compensation and damages is impossible, even in the case of material damages. Assessment is always approximate in both material and moral damages.
- Limiting protection to financial assets while excluding moral assets is contrary to justice and morality. What is the point of recognizing a right without providing it with legal protection? Restricting protection to material things while excluding moral ones is unjust to the individual.

Furthermore, morality, in its ideal sense, requires preserving human dignity from any aggression, whether material or moral. This makes demanding monetary compensation for moral damages a moral imperative.

- Likewise, the injured party's filing of a compensation claim does not mean that the dispute becomes a matter of material interests for them. Rather, it is a matter of dignity, honor, and respect for their moral existence, an affirmation of their personality, and a condemnation of the aggression they suffered.

Compensation for moral damage does not erase the effects of the pain incurred, but rather it is a means of alleviating the pain suffered by the injured party. This is confirmed by both Marty and Renaud, who say that if we do not compensate for the moral pain, we can at least offer an alternative in monetary form. This procedure, despite its flaws, remains better than nothing.

Therefore, compensation for moral damage does not represent at all the price or value of the honor, freedom, and emotions that were violated. Rather, granting compensation, as Professor Mazo says, is a means of consoling the injured party, satisfying him, alleviating his pain, and comforting him, nothing more.

These criticisms refute all the justifications upon which absolute negative theories are based, theories that completely deny the right to compensation for moral damages. This has led legal scholars to abandon this view and adopt other theories, particularly the mixed theory, whose proponents, such as Menal and Essmann, argue that compensation for moral damages is only permissible in certain cases.

Some acknowledge moral damages but reject the principle of monetary compensation for them unless the material damages outweigh the moral damages.

The jurists Aubry and Roux, however, proposed that compensation for moral damages is permissible independently of material damages, provided that the damages result from a criminal offense.¹⁵

Others have taken a more objective approach, focusing on the nature of the damage itself, such as Mangin, Trebu, Tien, and Labord. They categorized moral damages into different groups, such that compensation is granted only when the social aspect of the moral character is affected, excluding the emotional aspect.¹⁶ Since the first aspect is often linked to material harm, diminishing a person's standing frequently leads to material damage, such as forcing them to relinquish a position they hold or aspire to in the future, thereby harming their children's future, their business, or their industry.

These mixed theories, despite their brevity regarding compensation for moral damages, are in reality merely a disguised and misleading presentation of the

negative theory that rejects compensation for moral damages. This is because they limit such compensation to certain cases and link it to material damages, which contradicts laws that stipulate monetary compensation for moral damages. Furthermore, they conflate criminal and civil liability.

Moral damages may exist independently of material damages, and even if they coexist, they are not necessarily intertwined. Moral interests are like material interests, and therefore require their protection and preservation independently of material damages. The prevailing opinion is that compensation for moral damages is permissible. Proponents of the principle of compensation for moral damages do not raise any fundamental difficulty in establishing the right to compensation for them. The term "compensation" cannot be restricted to a narrow concept limited to restoring something to its original state, i.e., to the condition it was in before the damage occurred. Such a narrow definition would exclude many material damages from the scope of compensation.

The true meaning of the term "compensation," according to Professor Delmas, is the provision of an alternative. Since money is considered the best alternative, compensation should therefore be monetary.¹⁷

Similarly, Professor Tribes believes that compensation for moral damages should not be rejected on the grounds that the injured party cannot obtain the optimal compensation sought by law. Rather, the victim of moral damages should not be deprived of the benefit of a judgment issued in their favor. Furthermore, the claim that fairly and adequately assessing moral damages is difficult is not an impediment to compensation. Having some form of compensation, even if imperfect, is better than nothing, as it provides the injured party with some measure of satisfaction or consolation. Assessing moral damages is not impossible. The judge can utilize certain circumstances to aid in the assessment process, such as the social status and financial position of the injured party, and other factors, to arrive at the necessary amount that can provide the injured party with some satisfaction through this compensation, even if it is modest. Professor Avialard states that the general principle in legal interpretation dictates that we should not make distinctions where the law itself does not. Based on this, Professor Lacoste argues that Articles 1382 and 1383 of the French Civil Code do not constitute an obstacle to compensating for moral damages. On the contrary, they reinforce the principle of compensation by obligating courts to award it, not merely granting them the right to do so.¹⁸

Therefore, the right to compensation for moral damages is not only established for the accused who is acquitted, but also for some of their relatives when a judicial error causes them moral harm.

This is the position of the Algerian legislator, who explicitly stipulated in Article 694 of the Code of Criminal Procedure: "The convicted person who is acquitted under this chapter, or their beneficiaries, shall be granted compensation for the material and moral damages caused by the conviction." Furthermore, the wording of Article 124 of the Code of Criminal Procedure is general, which precludes the claim that compensation for moral damages is impossible.

Even if compensation for moral damages were considered arbitrary, as those who reject such compensation argue, it would at least represent a form of consolation. Therefore, in this case, it does not aim to enrich one person at the expense of another, but rather serves merely as a means to affirm the injured party's right to compensation for the harm suffered due to the actions of another. Thus, we conclude that compensation for moral damages has become a certain and accepted matter among the majority of jurisprudence and the judiciary, which has made the claim of the injured party for moral damages judicially acceptable, and many countries have even codified it through their positive legislation.

Second – Compensation for Moral Damages:

For this compensation to be granted, the conditions related to the moral damages themselves must be met, the most important of which are:

1- The damage must be actual:

meaning the damage must be certain, i.e., it has already occurred or will inevitably occur in the future. If the damage is merely potential, compensation is not permissible.

Actual damage is damage that has already occurred and whose elements have been defined, such as assaulting the victim through defamation, slander, insult, harm to their reputation, or deprivation of their freedom. Future damage is damage whose cause has already occurred but whose effects are delayed in the future; that is, it has not yet occurred but is certain to occur in the future. In reality, applying this characteristic – actual or certain damage – to moral damages presents considerable difficulty, as it is extremely challenging to verify the presence of this characteristic in moral damages. This is because the damage inflicted on a person

cannot be standardized for all individuals or measured against a single model. People do not behave in the same way, and their reactions and modes of being affected vary and are diverse.¹⁹

2. It must be direct:

meaning there must be a causal relationship between the harm and the harmful act. The party seeking compensation for moral damages must provide evidence of the causal link between the harm suffered and the fault committed by the responsible party. In the context of this study, the party seeking compensation for moral damages must prove that the latter resulted from unjustified pretrial detention or a prior conviction.

3. The moral damage must be personal:

meaning it must affect the claimant personally. Therefore, the right to claim compensation for moral damages is limited to the person who suffered the moral harm.

4. The moral damage must infringe upon a legitimate moral interest:

meaning it must not violate public order or public morals.

5. It must not have been previously compensated.

Third: The Foundations of Compensation for Moral Damages

While compensation for moral damages has become a well-established principle in jurisprudence, legal practice, and even legislation, regarding the injured party's right to compensation when its conditions are met, the prevailing opinion in France, which is almost unanimous, equates material and moral damages. However, the question remains regarding the nature of compensation for moral damages: is it considered a form of specific punishment or redress based on the concept of satisfaction?

Understanding the basis of a claim for compensation for moral damages helps resolve several issues, most notably: identifying those entitled to compensation, the conditions for initiating the claim, and when the right to compensation arises.

Among the most prominent theories proposed in this regard are the theories of specific punishment and satisfaction.

1- The Theory of Specific Punishment:

Proponents of this theory acknowledge the permissibility of compensation for moral damages. However, they do not consider compensation a means of appeasing the injured party, but rather a specific punishment imposed on the guilty party. The judge cannot delve into the depths of the injured party's psyche to ascertain the extent of their emotional pain resulting from the official's error. Consequently, the judge finds no alternative but to assess the injured party's personal feelings toward the official and the severity of the alleged error, rather than simply examining the extent of the damage.

Here, the injured party does not seek compensation in the literal sense for the harm suffered, as no amount of money, however large, can erase their pain and psychological anguish. Therefore, in their view, the injured party does not seek compensation but rather punishment.

The punishment here takes the form of compensation, which, from the perspective of both the judge and the injured party, is measured solely by the standard of error. Thus, they do not consider compensation a means of appeasing the injured party, but rather a specific punishment imposed on the guilty party²⁰. Among the most important criticisms leveled against this theory are:

- Punishment presupposes intent, i.e., fault. However, it is generally accepted that compensation for moral damages also applies in cases of liability not based on fault. In such cases, the concept of punishment is not acceptable as a justification for compensating for moral damages. Furthermore, civil law permits compensation for moral damages as genuine redress when a legitimate moral interest protected by law is violated, not as a punishment whose determination depends on the severity of the fault.²¹
- Compensation differs significantly from punishment, as the latter aims to deter and discipline the offender, while the purpose of compensation is to redress the harm.

The judiciary always strives for full compensation, whereas punishment cannot achieve this, leading to the unjust enrichment or impoverishment of the injured party.²²

Even if the judiciary cannot determine full compensation, it attempts to determine a suitable and fair amount sufficient to redress the harm.

Moderation in compensation is the modern trend in civil liability towards the injured party, where compensation is measured based on the harm suffered, not on fault.²³

As a result of these criticisms, it becomes clear that special punishment is incompatible with the compensatory nature of civil law. Moreover, it is based on a desire for revenge, reverting to primitive systems that conflate **compensation** and punishment. This has led to the adoption of an alternative theory based on the concept of redress.

2- The Theory of Satisfaction:

A strong legal trend has emerged that views compensation for moral damages as genuine compensation, fulfilling its reparative function in redressing the harm. Compensation, in general, does not always aim to restore the situation to its previous state, but rather often seeks to provide the injured party with satisfaction equivalent to what they lost. The awarded sum brings the injured party a sense of satisfaction, resulting in some solace and comfort.²⁴

Proponents of this trend also argue that the difficulty in assessing moral damages should not preclude awarding genuine compensation. The judge can overcome this difficulty through a degree of discretion, which they deem appropriate for each individual case. Appropriate compensation here is that which is close to reality, representing the modern approach to compensation theory. It is impossible to assess compensation that is equal to the degree of harm, a fact acknowledged by moderate legal scholars and sought by justice to maintain the balance that has been disrupted.

Therefore, granting the injured party compensation for moral damages as appropriate as possible would eliminate the notion that a true balance between harm and compensation is impossible. It would also bring peace of mind to the injured party and satisfy them, based on the judge's assessment, which is not bound by the plaintiffs' demands but rather by what the judge deems appropriate to the circumstances and facts of the case.

Although this theory attempts to elevate fair compensation to full compensation, some legal scholars argue that such compensation cannot be complete due to its nature, while others maintain that full compensation always lies in granting the injured party the possibility of obtaining satisfaction equivalent to what they lost. Most legal opinions favored the theory of compensation as an affirmation of the injured party's right to compensation for moral damages. This is the position of

the Algerian judiciary, which was influenced by this theory. Evidence of this is found in a ruling issued by the Supreme Judicial Council on November 6, 1976, which stated that compensation is at the discretion of judges, who assess it according to what they deem appropriate to alleviate distress.²⁵

This ruling is clear evidence of the adoption of the theory of compensation for moral damages.

Thus, we find that the Algerian judiciary awards compensation for moral damages, and judicial practice has not raised any doubt in this regard. However, despite its relative newness, the Algerian Civil Code does not contain an explicit provision stipulating the principle of compensation for moral damages. While Article 124 of the Civil Code is general and does not differentiate between material and moral damages, as previously explained, and since the principle of legal interpretation dictates adherence to the text, this distinction cannot be raised.

However, Article 182 of the Algerian Civil Code suggests otherwise, as it states: “If the compensation is not specified in the contract or in the law, the judge shall determine it. The compensation shall include the creditor’s losses and lost profits...” It is clear from the wording of this article that the legislator addresses compensation for material damages only, excluding moral damages, since the losses and lost profits mentioned by the Algerian legislator constitute elements of material damages.

Given the Algerian legislator’s silence on this matter, interpretations of the legal texts have diverged regarding whether or not they implicitly include compensation for moral damages.

Despite the call and trend in modern legislation to incorporate this principle, as seen in the new Egyptian Civil Code, the Algerian legislator has not followed suit. Instead, it remains influenced by the old French Civil Code, which did not address this issue at the time.²⁶

However, what is noticeable about the position of the Algerian legislator is that it is contradictory. On the one hand, it remained silent on this issue in the Civil Code as the general law, while it decided to compensate for moral damages in non-civil codes with explicit texts, such as Article 08 of the Labor Code of 1978, which explicitly states that the law shall guarantee the protection of the worker, during the exercise of his work or the performance of his duties, from all forms of insult, slander, threat, pressure or attempts to incite and subordinate him, and it

shall also guarantee compensation for the material and moral damages that befall the worker.

Article 3/4 of Order No. 69-73 of September 16, 1969, also stipulates compensation for moral damages, stating: "A civil liability claim is admissible for all forms of damage, whether material, physical, or moral, provided they arise from the facts that are the subject of the criminal proceedings."²⁷

Therefore, initiating a civil claim requires its connection to the criminal proceedings; that is, the compensation sought must be for personal harm suffered by the victim and must be a consequence of the criminal act.

Furthermore, Article 694 of the Code of Criminal Procedure explicitly stipulates that a convicted person acquitted upon request for review, or their beneficiaries, is entitled to compensation for the material and moral damages caused by the conviction. Therefore, it was clear to the Algerian legislator to align with modern legislation that explicitly stipulates compensation for moral damages, in accordance with the principles of justice. This is especially true given the established judiciary's recognition of compensation for various types of moral damages, as well as the trend among modern legislation to adopt this principle, which has been enshrined in the texts of the majority of legal scholars.

Conclusion

In conclusion, this research demonstrates that compensation for moral damages suffered by victims of judicial error in criminal matters represents one of the most important guarantees of justice and the protection of human rights. It has been shown that judicial error, although rare, can lead to severe psychological and social harm, affecting an individual's honor and reputation. The study also revealed that the state's responsibility in this area is based on the principle of social solidarity, considering that the judiciary is part of its apparatus. Furthermore, the research indicates that compensation aims not only to redress the harm but also to restore citizens' trust in the justice system.

One of the most important results is that modern legislation has become more aware of the need to compensate the morally harmed. However, practical application still faces procedural and evidentiary difficulties.

Therefore, we recommend the need to expand the scope of compensation to include all types of moral damages, simplify the procedures for claiming it, and

enhance the training of judges in the field of human rights to ensure that such mistakes are not repeated and to achieve more equitable and humane justice.

Footnotes:

¹Ahmed Attia: The Islamic Dictionary, Egyptian Renaissance Library, Volume 2, 1966, p. 124.

² Lisan al-Arab by Ibn Manzur, Dar al-Maaref edition, entry for "judgment," no publication date, Part 2, p. 952.

³ Mahmoud Ibrahim Muhammad Morsi: The Reversal of Criminal Judgments and Their Consequences in Islamic Jurisprudence and Criminal Law, University Press, Alexandria, 2006 edition, p. 7.

⁴ Ibid., p. 88.

⁵ Ibid., p. 10.

⁶ Zaki Abu Amer: The Flaws of Error in Criminal Judgments: A Jurisprudential and Practical Attempt to Establish a General Theory; Presumed Error and Appeal by Objection; Potential Error and Appeal by Cassation; Error in Law and Appeal by Cassation; Error in Fact and Appeal for Reconsideration, New University Press, Alexandria, 2011, p. 9.

⁷ Ibid., p. 8.

⁸ Lama Amer Mahmoud: Compensation for Wrongful Arrest (A Comparative Study), Journal of the College of Basic Education, University of Babylon, College of Law, Issue 17, September 2014, p. 526.

⁹ Abdul Razzaq Ahmed Al-Sanhuri: The Intermediate Treatise on the Explanation of Civil Law, Volume Two, The Theory of Obligation in General, Sources of Obligation, Third New Edition, Al-Halabi Legal Publications, Beirut, Lebanon, p. 981.

¹⁰ Ibid., p. 982.

¹¹ Muhammad Fawzi Fayd Allah: The Theory of Guarantee in Islamic Jurisprudence, Dar Al-Turath Library, Kuwait, First Edition, 1983, p. 92.

¹² Muqaddam Saeed: The Theory of Compensation for Moral Damage in Civil Liability, National Book Foundation, Algeria, p. 60.

¹³ Ibid., p. 73.

¹⁴ Muhammad al-Sayyid al-Sayyid al-Dasouqi: Compensation for Moral Damages Related to Human Life and Safety: A Comparative Study Between Islamic Jurisprudence and Comparative Law, Dar al-Jami'a al-Jadida, Alexandria, 2007, p. 40; Muqaddam Sa'id, op. cit., p. 68.

¹⁵ AUBRY ET REU: DROIT CIVIL, FRANÇAIS, TOME 6, N. 445, 1951, pp. (345, 348)

¹⁶ The social aspect of moral liability, according to their view, includes any attack on honor, while the emotional aspect lies in the pain felt, such as the pain following the death of a loved one.

¹⁷ Muqaddam Sa'id: op. cit., p. 78.

¹⁸ The term "harm," as used by those who reject the compensation, encompasses both financial and moral damages, according to Professor Tribes. This is evidenced by the fact that Article

1382 of the Civil Code is general; it does not explicitly mention moral damages, nor does it explicitly reject compensation for them. Therefore, there is nothing preventing a broad interpretation of the text to include both types of damages.

¹⁹ Fawaz Saleh: Compensation for Moral Damages Resulting from a Crime: A Comparative Study, Damascus University Journal of Economic and Legal Sciences, Volume 22, Issue 2, 2006, p. 282.

²⁰ Special penalties are a type of fine granted to the injured party according to private law and determined based on the offender's fault. They have a punitive character, and it is noteworthy that these fines, in most cases, exceed the extent of the damages because they are predetermined according to the classification of each crime. This is done to prevent the phenomenon of private revenge or retaliation. (Taken from Muqaddam Saeed, op. cit., p. 89).

²¹ JEAN-LOUIS (B), la responsabilité civile, 4th ed., 1994, pp. 190-191.

²² - The fact that compensation within the framework of the theory of specific penalties is proportionate to the fault of the responsible party renders it either insufficient or excessive. It is insufficient if we are dealing with serious harm caused by a minor fault, and excessive if the fault is serious and the harm is minor. In the latter case, the injured party benefits from their own harm, resulting in unlawful enrichment, which contradicts the principle of justice that aims for appropriate, fair, and sufficient compensation to redress the harm.

²³ Ibrahim Sayed Ahmed: Moral Damage: Jurisprudence and Judiciary, 2007, Alexandria, p. 26.

²⁴ GARDER (D): l'évaluation du préjudice corporel, 1994, p. 162

²⁵ The ruling issued by the Supreme Judicial Council on November 6, 1976, stated that "moral damage, in the view of the Supreme Council, is the feeling of pain. This cannot be valued in monetary terms, but rather is compensated by the judiciary as they see fit to console the victim, provided that it does not lead to illicit enrichment. Therefore, the Supreme Council considered the sum of 5,000 Algerian dinars awarded by the lower court judges as an assessment of the moral damage suffered by the appellant's mother to be an acceptable amount, neither excessive nor deficient." (Taken from Muqaddam Said: The aforementioned reference, p. 147).

²⁶ The old French Civil Code did not address this issue at the time because it was influenced by the jurists Potier and Dumas, who limited the scope of compensation for damages to torts, excluding contractual damages. This was due to their ignorance of Roman law, which did not make such a distinction. Roman law permitted compensation for moral damages in both cases, leading to numerous conflicting opinions on the matter. It should be noted that Roman law viewed compensation as a form of appeasement, offering solace and relief to the injured party, rather than as a punishment imposed on the responsible party. (Taken from Muqaddam Saeed, previous reference, p. 192)

²⁷ This article corresponds to Article 1/2 of the French Code of Criminal Procedure. The French legislator at the time was influenced by the theory of the jurists Aubry and Roux, which limited compensation to moral damages combined with material damages resulting from the crime. In other words, a civil claim was only admissible if it was connected to a criminal case.