



COMPENSATION FOR DAMAGES CAUSED BY AUTOMATIC CONTRACTS

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Article history:	Abstract:
Received: May 30 th 2022 Accepted: June 30 th 2022 Published: August 4 th 2022	In this research we have treated compensation as an effect of contractual liability that arises when breaching obligations arising from automatic contracts in terms of definition and forms as compensation in kind or monetary and methods of estimating it as judicial, contractual or legal compensation.
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INTRODUCTION

The contract is one of the most important sources of commitment in daily dealings, and there is no doubt that the contract occupies an undeniable prominent position in the stability of different transactions in all societies, it is a tool of guarantee and security, and it is also the most commonly used tool among individuals, through which most transactions and legal conduct are carried out from the work, agency, purchase and exchange of goods, services and other behaviors, and in automatic contracts that are stored in an electronic template may be such as traditional contracts sales or leases Compensation is what is committed to paying the injured in contracts carried out and carried out through electronic machines and platforms.

FIRST REQUIREMENT: TYPES OF COMPENSATION

Before the types of compensation are to be defined, compensation must be defined because (the right established to the creditor as a result of a city breach of its obligation, which may take the form of cash, or any satisfaction equivalent to the benefit to which the creditor will receive, if the breach of obligation does not occur on the part of the debtor)(1)

We note from the definition above, that he did not focus on a certain method of compensation but left ample room for the judge to choose the appropriate methods of compensation for reparation, which are appropriate to the situation before him, especially in light of the technical and technological development and this is true of automatic contracts that are considered the last stages of this development, either its types, either in kind or compensation in return, and this is what we will show in turn

Branch one: In-Kind Compensation

In-kind compensation is defined as "the provision to restore the situation to what it was before the official made the mistake that led to the harmful act (2)

We note that in-kind compensation is the best and best way to compensate where possible because it achieves the main objective of the existence of compensation, which is to restore the situation to what it was before the harmful act existed, and by reference to the provisions of the Iraqi Civil Code and article (2/209), which stipulates that (compensation in cash is estimated to be permissible by the court depending on the circumstances and at the request of the victim to order the return of the case to what it was.....).

But the question arises here if the damage is caused by automatic contracts in their various forms, whether they are automatic in the process of execution and execution (via machines or through electronic platforms), or only automatic implementation, can in-kind compensation be applied?

The answer is that in-kind compensation may be less common as compensation because the nature of the breach makes the granting of compensation sufficient, but in some cases, the award of damages in automatic contracts may not result in reparation, forcing the other party to perform a particular order under the contract, for example, Alice has promised under the automatic contract to transfer a token to Bob, which represents the ownership of a unique asset (i.e. rarely), when the transfer of the code to Bob fails, for one reason or another, Bob is likely to seek a court order in which Alice specifically fulfills her obligation under the contract to transfer the token to Bob (as in the case of the traditional contract to sell a particular piece of art), Bob's argument is that awarding



damages would not be appropriate for him, nor could Bob use damages compensation to obtain a sufficient alternative because the art piece is completely unique, in which case the court can specifically order Alice to perform her obligations from By forcing it to publish a new automatic contract on electronic platforms that corrects the defective performance of the old automatic contract, in which case the compensation is not appropriate when compared to the damages to the other party as a result of the breach of contract, (3)

We note from the stated that, after the execution of the contract, the correction will have the effect of exempting this party from its responsibility to perform in accordance with those conditions, in order to reverse its effects as desired by the creditor.

Branch two: Compensation for

Compensation in return, which is both cash when it is in the form of payment of a certain amount of money, and may be non-cash by performing a particular order for the benefit of the injured, which we will enact in turn 1. non-monetary compensation (4) which is often the performance of a particular order as compensation, as a special type, i.e., cannot be considered in kind compensation or monetary compensation, yet may be more appropriate for what circumstances require in some images,⁵ which is outside the scope of our research.

Monetary compensation

Monetary compensation is defined as (the money that the debtor is obliged to pay to the creditor because it has not executed the contract), and the debtor is obliged to compensate the creditor for the non-execution of the contract, as is the money that the debtor is obliged to pay to the third party by his fault. It is not possible or exhausting for the debtor,⁷ and monetary compensation is common for easy assessment of damages in cash (8)

We note that automatic contracts, whether through electronic platforms or through automated devices, monetary compensation is predominantly because in-kind compensation is due to the fact that it has great difficulties, as this requires the court to request the correction of the encrypted contract, but the parties or one of them may not wish to correct, in which case the court does not remain in court except to order monetary compensation.

SECOND REQUIREMENT / METHODS OF ESTIMATING COMPENSATION

To estimate compensation in automatic contracts are several types, either in general through the general theory of obligation, or it is particularly through the new systems, and this is what we will see in turn.

First branch: Estimating compensation in general

The assessment of compensation does not come out in accordance with the general theory of the obligation for judicial compensation, which is the origin, and the agreement compensation, or legal compensation, and according to automatic contracts of different types, it is different, the agreement compensation is the origin, because the contract (encrypted) is law (9) between the parties to the automatic contract, and this is what we will deal with in turn

First: Agreement Compensation

That the agreement compensation, which amounts to an agreement between the contractors in advance to estimate the compensation in automatic contracts through the encrypted agreement between the parties in order not to leave the order of appreciation of this compensation to the judge, each of them shall determine it themselves, which is very much falling into working life, as there is no contract without this penal requirement, through which (agreement compensation) the contracting parties determine the amount of compensation in advance, and before the breach of the execution of the contract occurs, Or refrain from such implementation.¹⁰ This is stipulated in article 170 of the Iraqi Civil Code that (1. Contractors may determine in advance the amount of compensation provided for in the contract in a subsequent agreement and in this case take into account the provisions of 16 8, 256, 257 and 258, 2. Agreement compensation is not due if the debtor proves that the creditor has not suffered any damage and may be reduced if the debtor proves that the estimate was gross or that the original obligation was carried out in part Any agreement that violates the provisions of this paragraph, 3- But if the damage exceeds the value of the agreement compensation, the creditor may claim more than this value unless it is established that the debtor has committed fraud or a serious mistake, and it is this type of compensation that is the origin of the compensation in automatic contracts that are through electronic platforms by automating the tasks related to compensation while providing confidence, as through the compensation agreement between the parties, this is confirmed in advance. The subscriber will receive the compensation programmed in the automatic contract, and also assures the service provider that the customer will pay the subscription fee, and through those trusted platforms the data cannot be changed, and therefore this can help both sides simplify the payment of compensation between them (11)

Second: Judicial Compensation

Judicial compensation is the decision of the judiciary of the person who has suffered or was threatened with the damage, which means that compensation is subject to the judge's diligence, and is therefore free provided that the judgement is



established, the original of which is that the compensation shall be fully compensated, which means that the value of compensation shall be combined with the fact of the damage, but not exceed its true value, otherwise the damage will be compensated twice.(12) By reference to article (1/169) of the Iraqi Civil Code, it stipulates (if the compensation is not estimated in the contract or by a provision of law), the court shall stipulate that the compensation is not estimated in the contract or by a provision of law(13). It is the judge who appreciates it, including the loss of the creditor and the loss he has lost, provided that it is a natural result of failure or delay in the obligation, i.e., compensation has two elements: the first is the loss of the creditor, and the second is the loss of the creditor and the other is the gain he has missed (14).

The role of judicial compensation (15) in automatic contracts is low in obtainable compared to the traditional contract, as the performance of the latter usually depends directly on human beings, which leads to the implementation of one of the parties' obligations in a defective manner or refuses to implement them at all, in return, automatic contracts in which contractual obligations are implemented by the code of the encrypted computer through electronic platforms, without the need for human intervention in their implementation, and for this reason, the performance of automatic contracts is often said to be "guaranteed", and here it is necessary to The distinction between automatic contracts is implemented through the code code automating the implementation of contractual obligations registered in a natural language, and automatic contracts of execution and execution, where contractual obligations are concluded and implemented through the code code, i.e. automatic contracts can take various forms, but the most common form is an automatic contract, as the obligations of the parties are determined by the terms of the natural language contract, and then programmed through electronic platforms, which are a mechanism used by the parties to implement Those obligations, and if the automatic contract through the code fails to execute, or defectively fulfills the obligations of one of the parties, the performance specified here is compensation, even if the compensation is insufficient, the court will only order another if the creditor requests it, for example, if the contract is a contract to provide personal services through electronic platforms, and implementation is physically or legally impossible, or if the execution requires severe hardship for the debtor. The court awarded compensation (16), for example, to assume that (A) and (B) each decided to enter into an automatic contract of conclusion and execution, under which (B)agreed to pay (A), for certain goods, and the contract between them was programmed through those electronic platforms so that (A) (as a seller of goods)

committed to loading the goods on a ship nominated by (B) (as a buyer of goods). One of the terms of the contract is that (B) must name the appropriate ship for loading by a certain date, and once (A) receives notification of the vessel assigned to the loading, (A) will load the goods on the ship, and when the platforms are provided with the process of loading the goods, the automatic contract will be executed by automatically transferring the purchase price to (A) however, B (which violates the contract) may not send a notice of the ship's readiness to load and therefore (A) Unable to load the goods for sale, in this case, A may argue that (B) breach of contract is a breach of pre-agreed terms, which entitles (A) to claim the term compensation, the breach of contract deprives (A) largely of the full benefit of the contract, and here the court to rule on plaintiff (A) As if the contract had been executed, i.e. what it would have been (A) if the contract had been executed between them, and therefore the court considered the breach of one of the terms of the contract (17)

Third: Legal Compensation

The law may provide for the assessment of a certain amount of money as compensation to the creditor for the damage it causes as a result of the debtor's breach of its obligation, and the only case of this legal determination of the amount of compensation is whether the subject of the obligation is an amount of money at the time of the obligation, and the compensation assessed by law in this case is the amount of interest to be paid for the period in which the debtor is late in fulfilling(18). This is stipulated in article (171) of the Iraqi Civil Code, which stipulates that (if the obligation is subject to the obligation), A sum of money, which was known at the time of the obligation's emergence and the debtor's delay in fulfilling it, was obliged to pay the creditor, in compensation for the delay, legal interest of four per cent in civil matters and five per cent in commercial matters, and these benefits apply from the date of the judicial claim to it if the agreement or commercial custom does not specify another date for its validity, all of which, unless the law provides for others, and the above mentioned that the application of this to automatic contracts applies in two cases:

1. Contracts are automatic execution only

The loan is traditionally contracted between the parties, i.e., previously certified data can be shared between authorized stakeholders in real time, after which the contract is programmed to automate the interest payments process on the amount specified in the loan, resulting in faster and more efficient completion of the loan process at a lower cost and lower risk to the counterparty (19).

2. Automatic contracts for execution and execution



All automatic contracts can be made through authorized electronic platforms (such as private online platforms), because in financial institutions, privacy, security, compliance with laws and oversight mean that public electronic platforms are unlikely to be suitable for many financial services applications, so contracts are made through private electronic platforms with a limited number of identifiable participants (e.g. lenders, regulators and agents), for legal and practical considerations (20). The amount of compensation is determined in advance(21), Therefore, these interests are based on two types: the compensatory interest, which is due for the debtor's use of an amount of money that the debtor owes and the contract is the source of the contract, for example the interest the lender requires to the borrower at the time of the contract, and is called compensatory because it amounts to compensation to the lender for how long the money will be in the borrower's possession, and the second: Delayed interest, which is due when you delay the implementation of a commitment replaced by an amount of money whatever its source, i.e. those interest due for an amount of money due to its due date, and the debtor's delay in fulfilling it, the interest added to you as a result of its late payment of the debt is called delayed interest (22)

Branch two: Estimating compensation in accordance with special regulations

Methods of estimating compensation in accordance with the general theory, although they absorb automatic contracts on the one hand, but on the other hand, these methods are not the only ones that may not be upright in some cases, which called for the search for new systems in order to provide protection for the injured from receiving compensation for the damage they suffered at no high cost and this is called automatic compensation, which is meant (compensation leading to the injured or inherited once the accident causing the damage occurs without the need for(23). We note that automatic contracts are not a particular contract through electronic platforms, but may be either sales contracts, leases, insurance contracts, and the latter of the most important types of contracts that are made through these electronic platforms, so it is necessary to indicate the types of automatic compensation, which are either through insurance or insurance funds, and this is what we will show in turn.

First: Insurance (24)

Insurance as one of the types of automatic compensation, through which most victims of accidents prefer to resort to the insurance system instead of the system of liability for error, because the injured person is not left without compensation because the incident occurred without mistake from anyone, or because it is difficult to prove the error on the part of the perpetrator,

and therefore this type of insurance will not achieve the protection of the injured unless it is forced from the state, every time the scope of insurance expands the scope of insurance the judiciary automatically tends to expand The wrong responsibility, which is not able to withstand alone if the insurance does not stand next to it(25), is therefore stated as the guarantor of the amount of compensation in the event of damage.

The concept of automatic compensation in automatic contracts lags behind the concept of insurance above, because electronic platforms are the guarantor to meet the amount of insurance in the event of damage, as the insurance mechanism has undergone significant changes in accordance with the current insurance regulations, by automating all stages of insurance contracts in terms of conclusion and implementation, thus allowing insured and insurance companies to complete all those stages through those decentralized platforms as an automated third party, making operations more reliable and faster, in Peer-to-peer form, i.e. without the control of a central organization, and the premiums paid by each insured constitute capital used to pay compensation in the event of a particular event by programming the events of insurance contracts, for example the possibility of insurance for agricultural production against bad weather, and insurance to cover flight delays or cancellations on the basis of automatic contracts, allowing users to recover funds automatically in the event of flight cancellation by collecting data through the "Flightstats.com" website and sending it directly To the insurance companies, Axa (26) has also directly linked the automatic contract to air traffic databases via the blockchain platform, i.e. once a flight delay of more than two hours is recorded, compensation is paid automatically, through Fizzy, which is a new generation in travel insurance that was intended to provide passengers with compensation for flight delays based on third-party flight delay data (Oracle), and as in the case of flight delays, the passenger does not have to prove it or provide any evidence of delay.

This is because Fizzy is responsible for constantly checking flights and detecting delays thanks to data collected and feeding platforms, and then the allowance is automatically paid to the customer's bank account, and then Axe no longer makes decisions, because electronic platforms that decide to compensate automatically or not by providing them with data on flight delays, which enhances the customer's confidence in insurance companies, when buying a plane ticket, regardless of the airline, can Going to the platform to get late flight insurance, 15 days before departure, and after the validity of the ticket is verified, a premium is paid less than 10 euros, depending on the risk of delay of this flight and the level of compensation, after which Fizzy processes all access to the data level, because this



automatic contract connects to the databases of the international airline "Flightstats", and when a delay of more than two hours is found, automatic and immediate compensation is transferred i.e. compensation is guaranteed, because the compensation is guaranteed, because The contract prohibited the corresponding amounts on the accounts of both the insurance company and the insured(27).

Payment is also made through electronic portfolios through which assets can be transferred faster because cryptocurrencies are transferred directly from one portfolio address to another without intermittent steps, so transactions based, for example, on blockchain, are faster than traditional bank transfers, especially in the case of offshoring assets (28).

Second: Guarantee funds

As a result of the failure of the rules of civil liability to ensure compensation for bodily harm, the injured person has not in any case benefited from fair and equitable compensation for the damage caused to him, particularly in cases where the damage is serious or when the person responsible for the damage is unknown or insolvent, or as a result of force majeure or sudden accident ... Etc., which led to the thought of finding alternatives to address the shortcomings of civil liability, by resorting to the adoption of the system of compensation funds for the benefit of the affected, and therefore found it necessary for the intervention of the state or the public treasury to compensate those who do not have a solution to which they can refer(29).

It is stated that it cannot be applied to the subject of our research, as it has already been said that the platforms are the guarantee for the performance of the amount of compensation when the predetermined conditions are met, and that the foreign reason in accordance with the rules of streptococcal liability interrupts the causal relationship between error and damage.

CONCLUSION

Automatic contracts are new contracts that have emerged as a result of the progress and development that has occurred in all areas of life, including the field of electronic transactions in general and encrypted transactions in particular, as one of the automated contracts that take place through electronic platforms or automated devices, which is the penalty compensation achieved for the realization of the elements of contract responsibility of error and damage and causal relationship between them, in which the encrypted agreement compensation between the parties is the origin of it in order to stay away from centralization by being contracts made from contracts of During virtual space, electronic platforms (blockchain

and ethereum), far from the interference of the judiciary, which is mentioned above and the importance of this type of contract we recommend the Iraqi legislator to adopt articles in the general theory of obligations to accommodate this type of contract or by amending the law on transactions and electronic signature.

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