

Mechanisms for Assessing Compensation for the Specificity or Particular Nature of Aesthetic Damage in Light of the Rules of Tort Liability

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Abstract. Aesthetic damage is considered one of the most important elements of physical damage when estimating compensation for it, as it affects the aesthetic and apparent aspects of the human body, leading to an imbalance in the aesthetic balance of the human being according to the image in which God created him. This damage is more serious when it leads to the injured person losing his function, and compensation for aesthetic damage is an agreed-upon matter. However, there is a difference among jurists regarding the method of compensating for aesthetic damage. Some believe that it should not be viewed as an element independent of physical injury because it is mixed with permanent partial disability and is considered one of its elements. There are also those who view aesthetic damage as material damage that necessarily follows partial permanent disability.

1. INTRODUCTION

Beauty is considered one of the most important social values among humans, as it expresses a person's external appearance. Because of the great importance and value of this appearance, people have begun to care about it and fear losing it. Therefore, a person is not satisfied with his natural beauty only, but seeks to beautify some parts of his face and body that distort his appearance.

It is noted that this type of operation has begun to become popular in Algeria, where the rate of men's interest in this type of operation is 20%, while women's rate is 80%, and the most important beauty centers are located in Oran, Algiers, and Constantine¹.

The aim of the study: It is necessary to determine the damages and risks resulting from the poor performance of this type of operation, especially since the patient seeks to achieve a result from it and it is the responsibility of the doctor to provide great care, as the purpose is purely aesthetic, so the damage represents a basic pillar in plastic surgery and its proof is considered a necessary condition for its performance, so the jurists say that there is no responsibility or compensation if the pillar of damage is absent. That is, it is not sufficient for this responsibility to be due to a mistake made by the official, but rather this act must result in harm to others.

Therefore, there are those who view aesthetic damage as material damage that necessarily results in permanent partial disability². Some view it as necessary to accompany burns and serious wounds in the human body in order to be compensated for. Some view it as moral damage that leaves a profound impact on the soul.

Through this approach, the following problem emerges:

Where does the specificity of damage lie in plastic surgery? Is this damage material or moral damage? How can it be distinguished from other physical damages?

Accordingly, this intervention was divided according to the following plan:

The first axis: determining what is meant by aesthetic damage

First: Definition of aesthetic damage

Second: Legal adaptation of aesthetic damage

Third: Distinguishing aesthetic damage from other physical damage

The second axis: Advantages of aesthetic damage

First: Compensation for aesthetic damage

Second: Distinguishing aesthetic damage from other liability damages

The first axis: determining what is meant by aesthetic damage

Aesthetic damage is considered one of the most important elements of physical damage when estimating compensation for it, as it affects the aesthetic and apparent aspects of the human body. Accordingly, the purpose of the damage and its legal classification will be addressed, as well as its distinction from other physical damages, according to the following elements.

First: Definition of aesthetic damage. Aesthetic damage is any change in the natural appearance of the human body, whether as a result of a fracture, wound, burn, disability, surgery, or the mutilation or loss of an organ. This damage is not limited to changes that affect exposed parts of the body, but extends to all parts and organs, even those that are only revealed at certain

¹ - voir le site ; <https://tajmeeli.com/>

² - Rais Muhammad, Civil Responsibility of Doctors in Plastic Surgery Operations, Journal of the Sidi Bel Abbes Lawyers Organization, year 3, issue 4, year 2005, p. 9.

times, such as when sleeping, for example.³

Some define aesthetic damage as damage that affects the aesthetic and apparent aspect of the human body, such as the distortion or loss of one of its organs, in a way that disrupts the aesthetic balance of the human being according to the image in which God created him⁴. Some call it damage resulting from mutilation, which is the damage that affects the beauty of the injured person's body⁵.

Others define it as the severe effect left by an injury in a prominent place on the body, disrupting the natural harmony in its position, and with it the manifestations of beauty change⁶.

Aesthetic damage is also defined as "damage that befalls the beauty of the body and its natural appearance that God created. This damage arises from distortion after injury, such as distortion of one of the body's organs or the effects of wounds or burns on the outer surface of the body, whether the distortion has affected the visible or invisible organs⁷.

Therefore, aesthetic damage can be defined as the change in the natural appearance of the injured person's body that God created, whether the deformity is in the exposed or uncovered parts of the body.

It is worth noting that proving the damage according to the general rules falls on the plaintiff according to Article 323 of the Algerian Civil Code⁸, and therefore the burden of proving the damage falls on the patient. The occurrence or non-occurrence of material damage is a material incident and not a legal act, as the damage and its amount may be proven by all means of proof, and it is an objective matter in which the judge has no oversight. As for proving the occurrence of moral damage, the judge's discretionary authority remains absolute because it cannot be physically examined. In cases where the physician is obligated to provide care, which is the basic principle, the patient must prove the damage he has suffered, because the absence of damage negates civil liability once and for all. However, proof of damage lies in exceptional cases where the physician or surgeon is obligated to achieve a result, such as if the surgeon agreed with his client to achieve a goal, then the absence of a result in itself is damage. Here, it is sufficient for the client to prove that the result was not achieved for the physician to be responsible.

Second: Legal adaptation of aesthetic damage.

Some believe that the disfigurement caused by the injury to the victim's body is either material damage, such as affecting the victim's job as a broadcaster, model, or flight attendant, or if it results in a financial loss for the victim such as medical expenses. It may also be moral damage that did not cause the victim any financial loss, such as disfigurement that affects the victim in a place that is not visible to people and does not affect his ability to work⁹.

Others believe that distortion is a form of moral harm, on the basis that this harm leaves a deep impact on the soul of the affected person, causing him pain for what happened to him, and his pain may intensify until it weighs heavily on him, and psychological complexes interfere with it¹⁰.

Others believe that this harm tends to be moral harm, because the injured person's emotional reaction to this harm is what overcomes it, as the rate of feeling psychological pain resulting from this harm varies from one person to another, and this feeling is responsible for the appearance of this harm and its compensation¹¹.

Many legal scholars classify aesthetic damage as moral damage related to material damage, because this damage may often lead to the injured party being prevented from performing his work. It differs from literary damage devoid of any material damage, such as the psychological pain that befalls parents in their emotions due to the loss of their child¹².

As for Islamic jurisprudence, it is considered that aesthetic damage is tangible, material damage that can be evaluated and assessed. Some jurists also consider that material damage is any tangible, tangible harm that befalls the body of the injured party. Physical damage, including aesthetic damage, is tangible, tangible harm that can be measured and compensated for¹³.

It should be noted that the damage in plastic surgery must be real and permanent, meaning that the damage is immediate and has actually occurred, so it is not probable. However, this does not mean that the damage that requires compensation is the one that actually occurred. Rather, compensation is permissible for future damage, meaning that it did not occur immediately, but it is real in the future, such as damage occurring to the person as a result of the surgeon's mistake, but its results did not appear until after a period of time. This type of damage is considered, in the case of realized damage, to entail liability and compensation, as the judge can estimate compensation for the damage that may result in the future as the effects of the original damage, according to Article 131 of the Algerian Civil Code, which allows the injured party to demand, within a certain period, a new consideration of the compensation estimate in the event that it is not possible for the judge to estimate it finally¹⁴.

In addition, it is necessary to distinguish here between two types of aesthetic damage. There is damage that affects the good features of the injured person as an ordinary person, and the aesthetic damage that is reflected in the profession of the injured person, as is the case for artists and some professions that require a decent appearance, and this is in view of what the medical act leaves in his future and psychological state. Also, the moral damage differs from one person to another, as the young man is not like the elderly and the girl is not like the boy. The matter is estimated in light of the effects that disability or deformity has on the condition of the affected person¹⁵.

The Algerian legislator explicitly stipulated compensation for moral damage in Article 182 bis of the Code.M.A: Moral damage must also be like material damage, and it must be certain and affect the rights of the injured party¹⁶.

As for the Algerian legislator's position on plastic surgery in the first place, there is no legal text regulating it, due to the absence of a legal framework for practicing this specialty within the country, and Algerian courts have not known cases related to plastic

³ - Taha Abdel Mawla, Compensation for Physical Damage, House of Legal Books, Alexandria, 2002, p. 22.

⁴ - Abdul Rahman Ahmed Shawqi Muhammad, The extent of compensation for the change in damage to the body and money of the injured party, Manshiyat al-Maaref, Alexandria, 2000, p. 60.

⁵ - Taha Abdel Mawla, op. cit., p. 25.

⁶ - Abd al-Rahman Ahmad Shawqi Muhammad, op. cit., p. 61.

⁷ - Hegazy Abdel Fattah Bayoumi, Medical Responsibility between Jurisprudence and the Judiciary, Dar Al-Fikr Al-Jami'i, Alexandria, 2008, p. 70.

⁸ - Law No. 05-10 of June 20, 2005 amending and supplementing Order No. 75-58 of Ramadan 20, 1395 corresponding to September 26, 1975 containing the Civil Code, Official Gazette No. 44 dated June 26, 2005.

⁹ - Hijazi Abdel Fattah Bayoumi, op. cit., p. 72.

¹⁰ - Al-Shawarby Abdel Hamid, Civil Liability in Light of Jurisprudence and Judiciary, Fifth Edition, Maaref Facility, Alexandria, 2000, p. 40.

¹¹ - Al-Maaytah Mansour Omar, Civil and Criminal Liability in Medical Errors, Riyadh, 2004, p. 70.

¹² - Ibid., p. 71.

¹³ - Al-Shawarby Abdel Hamid, previous reference, p. 41.

¹⁴ - Al-Fadl Munther, Medical Responsibility in Plastic Surgery: A Comparative Study, Second Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2000, p. 120.

¹⁵ - Mounir Hanna Riad, Civil Responsibility of Doctors and Surgeons in Light of French and Egyptian Judiciary and Jurisprudence, Dar Al-Fikr Al-Jami'i, Alexandria, 2008, p. 80.

¹⁶ - Al-Fadl Munther, op. cit., p. 121.

surgery.

However, the Jordanian Court of Cassation has settled on considering aesthetic damage as moral damage that affects the social status of the injured party, as it stated in one of its decisions, "If the injured party suffers a distortion that would affect his social status, he has the right to compensation for this moral damage¹⁷."

Other decisions stated that "physical injuries may cause the injured person, in addition to material damages, moral damages, such as the physical pain that the injured person feels in his body and the psychological pain that he suffers as a result of the disfigurement caused by the injury¹⁸."

We also find some laws classifying aesthetic damage as material damage. Emirati law calls physical damage "self-damage." In Emirati law, this damage is an element of material damage and is compensated for individually, regardless of its financial or moral consequential effects¹⁹.

Therefore, aesthetic damage is material damage represented by the distortion of the body and the change in its natural appearance. This distortion can be perceived by the senses, measured, and its amount explained. Also, the distortion that affects the body of the injured party may result in loss or loss of earnings, which may lead to the loss of the injured party's work due to the distortion that has befallen him.

Third: Distinguishing aesthetic damage from other physical damage

In this element, we will discuss distinguishing beauty damage from other physical damage, according to the following points.

1- Distinguishing aesthetic damage from permanent partial disability.

Some believe that disfigurement should not be viewed as an element independent of physical injury because it is mixed with permanent partial disability and is considered one of its elements, especially when this damage has significant financial consequences, such as a flight attendant losing her job due to the disfigurement of her face. Here, this damage can be compensated for by compensating for the material damage represented by the loss of work and income resulting from it as a result of permanent partial disability, as it is one of its elements²⁰.

Although this view considers aesthetic damage to be an element of permanent partial disability, it distinguishes between them and considers them to be two damages that are completely independent of each other.

Permanent disability involves a reduction in the natural share of health available to the affected person, which disrupts one of the organic functions that he performed before the injury, leading to a weakness in the performance of the self-activity of one of the body's systems. It also reduces the integration of the body. Here, partial permanent disability is similar to aesthetic damage in that both reduce the integration of the body and reduce the natural share of health available to the affected person. But aesthetic damage does not require that one of the body's organic functions be disrupted²¹.

Disability is generally based on the inability or lack of ability to work and also includes the helpless person's need to help others to care for him and carry out his daily life. As for aesthetic damage, it is not included in the inability or lack of work, and the person who has been disfigured often does not need anyone to help and care for him in carrying out his daily life²².

Disability leads to the complete or partial loss of function of one of the body's organs, permanently or temporarily. Disability may affect the body's external organs such as the limbs and senses, or it may affect the internal organs such as the lungs, kidneys, etc. As for mutilation, it is not necessary for the deformed organ to lose its function. Also, mutilation only occurs in the external organs of the body, not the internal ones, as it involves a change in the external appearance of the human body²³.

Permanent disability is represented by a lack of the injured person's ability to work or by a permanent disruption of this ability. It is a lack of physical, psychological, or mental capacity that accompanies the injured person throughout his life. As for mutilation, it does not fall within the psychological, sensory, or mental capacity of the injured person, but rather is limited only to the physical and aesthetic aspect, and it is also not required to disrupt the injured person's abilities²⁴.

In addition, permanent disability means that the injured person's health condition will not improve in the future, such that his condition has become stable and stable despite the use of all medical means to treat him. As for aesthetic damage, it has now become a mistake to say that the injured person's condition will not improve in the future and that his condition has become stable and stable. This is because the great development in modern plastic surgery has given doctors the opportunity to repair deformities even long after the injury²⁵.

When French jurisprudence and judiciary classified aesthetic damage as literary damage of an objective nature, they considered that compensation for it must be completely independent, especially from compensation for partial permanent disability²⁶.

Therefore, aesthetic damage is a completely independent damage, and is not mixed with permanent partial disability. This is confirmed by the researchers' statement that "beauty in itself has a value that must be calculated and compensated for its loss or deficiency. If the occurrence of the violation disrupts a person's physical harmony and thus distorts his beauty in the apparent form, then the injured party has the right to compensate for the distortion in itself."

2- Distinguishing aesthetic damage from the psychological pain resulting from it.

When a person is injured and his body is disfigured, he suffers from a feeling of inferiority because of this disfigurement and the looks of sympathy that follow him everywhere. He also suffers from feelings of frustration and sadness, as well as discomfort because of his thinking about his social and professional position and reputation. The psychological pain resulting from the disfigurement only affects the affected person in his thinking, feelings, emotions and moral values. These matters are purely personal matters whose existence is impossible for experts, doctors, and even judges to confirm, and it is difficult for them to monitor and measure them and know their extent and amount²⁷.

Most French court rulings reject compensation for damages resulting from psychological pain, considering it to be considered compensation for physical pain. Compensating for this suffering independently results in the injured party being compensated

¹⁷ - Mounir Hanna Riad, op. cit., p. 81.

¹⁸ - Al-Fadl Munther, op. cit., p. 125.

¹⁹ - Ajaj Talal, The Civil Responsibility of the Doctor: A Comparative Study, Modern Book Foundation, Lebanon, 2014, p. 60.

²⁰ - Mounir Hanna Riad, op. cit., p. 82.

²¹ - Ajaj Talal, op. cit., p. 63.

²² - Arafa Abdel Wahab, The Mediator in the Criminal and Civil Liability of the Doctor, University Publications House, Alexandria, 2003, p. 95.

²³ - Ibid., p. 98.

²⁴ - Hijazi Abdel Fattah Bayoumi, op. cit., p. 75.

²⁵ - Hussam al-Din al-Ahmad, Medical Responsibility in Plastic Surgery, First Edition, Al-Halabi Human Rights Publications, Lebanon, 2011, p. 55.

²⁶ - Ibid., p. 56.

²⁷ - Arafa Abdel Wahab, op. cit., p. 100.

twice, which leads to an inflated compensation amount, which is undesirable²⁸.

psychological pain resulting from aesthetic damage, represented by the injured person feeling a deficiency in his body, is a natural result of aesthetic damage. Therefore, psychological pain is actually present in all cases in which the incident leads to a physical deficiency for the injured person, as aesthetic damage is necessarily followed by psychological pain²⁹.

As for aesthetic damage, which is represented by change and distortion in the natural appearance of the injured person's body, it is material damage that can be perceived by the senses, and can be measured, its importance estimated, and its amount explained, and thus it can be evaluated with money, as beauty in itself has a value that must be loved and compensated for its loss or deficiency³⁰.

Therefore, aesthetic damage is completely different from the psychological pain that follows it, because aesthetic damage is material damage, while psychological pain is moral damage.

The second axis: Advantages of aesthetic damage.

According to this axis, we will address first and then compensation for aesthetic damage in terms of determining how and how to compensate for aesthetic damage, as well as external considerations and influences in estimating compensation, and then what distinguishes it from damage in general.

First: Compensation for aesthetic damage.

How to estimate aesthetic damage and how to compensate for it will be discussed, as well as the considerations that affect the estimation of compensation, according to the following elements.

1- How to estimate aesthetic damage.

Some believe that the assessment of bodily harm represented by the mere infringement of the right to bodily integrity and the advantages that this right confers should be assessed according to an objective standard, on the basis that the right to bodily integrity is something that all people are equal in, regardless of their personal circumstances. Accordingly, the harm should be assessed according to a fixed and unchanging standard so that all people are equal in the amount of compensation corresponding to the infringement of this right. Compensation must be equivalent to the damage so that the injury does not cause the injured party any profit or loss³¹.

However, the courts retain complete freedom to determine the amount of compensation they deem appropriate, meaning that the court has absolute authority to estimate the value of the damage, and thus to determine the amount of compensation for this damage without anyone supervising it. The Jordanian Court of Cassation has confirmed in many of its decisions when it indicated that the issue of estimating the value of the damage and determining the appropriate compensation for it is an issue in which the trial court is independent³².

It is noted that this absolute power that the court enjoys in estimating the appropriate compensation for the damage is not only its right but also its duty. It must indicate the amount of the damage caused and then determine the amount of fair compensation for it. Therefore, the court, despite its absolute power, is bound by the principle of full compensation for the damage, such that the injury does not cause the injured party any gain or loss, such that the compensation covers all the damage, so the judge takes into consideration the subsequent loss and the lost gain. If the aesthetic damage leads to the loss of the injured party's source of income, the injured party must be compensated for this lost income or subsequent loss³³.

The principle of full compensation for aesthetic damage requires that the judge choose the most appropriate compensation, which is compensation in kind, i.e. removing the damage caused by the cosmetic procedure. However, if the change in the external appearance of the body is with the consent of the injured party, such as facial and body cosmetic surgeries, even if they do not aim for a therapeutic purpose, as well as tattooing, cupping, nose and ear decoration, then although they constitute a deformity in the body and an infringement on the physical integrity of the human being, they do not fall within the scope of compensation for them. This is on the basis that this consent is considered a mistake by the injured party, which limits the responsibility of the person who caused the damage, or the doctor who performs a cosmetic surgery. The consent of the injured party is the direction of his will towards causing the damage himself with the intention of causing it. The consent of the injured party also includes his consent to the action from which the damage most likely occurs, and he is aware and clear of the possibility of the damage occurring, and yet he accepts it, bearing its consequences and risks. As if the results of plastic surgery are not guaranteed, yet the affected person accepts the results and the risk³⁴.

2- How to compensate for aesthetic damage

Tort liability essentially aims to restore the balance that was disturbed by the accident and return the injured party to the state he was in before the accident. Therefore, if it is possible to perform a cosmetic operation on the injured party that would remove the deformity that occurred as a result of the injury or lead to reducing this deformity, and the injured party has requested such an operation as in-kind compensation, then the judge may oblige the person who caused the damage to pay the expenses of that operation. However, the judiciary does not usually stop at the possibility of reducing the mutilation with an appropriate cosmetic medical procedure only, but rather it seeks to correct the mutilation with a sum of money estimated by the judge and which he sees as repairing the damage resulting from the mutilation in addition to the cosmetic medical procedure³⁵.

The prevailing opinion among jurisprudence and the judiciary is to combine compensation in kind, represented by plastic surgery to restore the condition to what it was if the injured party requested this form of compensation, with monetary compensation that corresponds to the damage and that remains after the operation, as the medical operation may not lead to the removal of all the deformity, despite the fact that cosmetic medicine has reached advanced stages of development³⁶.

It should be noted that compensation for damage is estimated at the time the judgment is issued, not at the time it occurs, for two reasons. The first reason is the long duration of the litigation procedures, as the lawsuit continues for years from the time the damage occurs until the judgment is issued. There is a big difference between the value of the damage at the time it occurs and its value at the time the judgment is issued. The second reason is highlighted by monetary inflation and large price fluctuations. This is what the French Court of Cassation has recognized, that the assessment of the value of the damage must be at the time

²⁸ - Ahmed Hassan Al-Hiyari, *The Civil Responsibility of the Doctor*, first edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2008, p. 60.

²⁹ - Al-Fadl Munther, *op. cit.*, p. 127.

³⁰ - Mounir Hanna Riad, *op. cit.*, p. 85.

³¹ - Article 182 of the aforementioned Law No. 05-10.

³² - Kamel Ramadan Gamal, *Civil Responsibility of Doctors and Surgeons*, National Center for Legal Publications, Cairo, 2005, p. 145.

³³ - Mansour Muhammad Hussein, *Medical Responsibility*, Second Edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2006, p. 70.

³⁴ - Kamel Ramadan Gamal, *previous reference*, p. 146.

³⁵ - Mansour Muhammad Hussein, *op. cit.*, p. 72.

³⁶ - Al-Fadl Munther, *op. cit.*, p. 130.

the judgment is issued, not at the time it occurs³⁷.

Therefore, when the judge estimates compensation for aesthetic damage, he must take into consideration determining the value of the distortion, not as it occurred, but as it appeared at the time of the ruling, because the point in estimating the value of the distortion is at the time of the ruling in the case, whether the distortion was greater or less than it was at the time of its occurrence. The judge takes into account in estimating compensation at the time of the ruling the extent to which the distortion developed, greater or less, from the time of the injury to the time of the ruling. It is also taken into account whether the prices and purchasing power of money change up or down from the time of the injury to the time of issuing the judgment. As for the costs of the cosmetic surgery, they are included in compensation for treatment expenses, not in compensation for aesthetic damage³⁸.

3- External considerations and influences in estimating compensation for aesthetic damage

The judge estimates compensation for aesthetic damage according to the importance of this damage to the injured person's body and according to its amount and position in the body. However, the judge cannot estimate compensation for physical damage unless he takes into account, from a practical standpoint, the circumstances, conditions and influences outside the damage. These circumstances and considerations outside the damage are those influences, considerations and personal circumstances related to the injured person and surrounding him, excluding those related to the cause of the damage. These influences are represented by the age of the affected person, the gender of the affected person, and the social status of the affected person.

Age of the injured party: When assessing compensation for aesthetic damage, the judge must stop at the age of the injured party. The mutilation that befalls a girl or a young man in the prime of life differs in severity and impact from the mutilation that befalls an elderly woman or man. The younger the age of the injured party, the greater the aesthetic damage³⁹.

Some believe that the effect of mutilation decreases the older the injured person is. Mutilation in the face of a girl who has not yet married has a more severe effect than the mutilation itself in the face of a married woman, so the younger the age of the injured person, the greater the aesthetic damage, and thus the greater the amount of compensation for him. The Jordanian Court of Cassation took the age of the injured person as one of the considered bases in estimating compensation for physical harm⁴⁰.

The gender of the injured party: Jurisprudence agrees that the amount of compensation for aesthetic damage varies according to the gender of the injured party. The disfigurement that befalls a woman is more severe and more serious than the disfigurement that befalls a man, because beauty has a great value for a woman. As for a man, beauty takes on a lesser degree than for a woman. Even poets, both ancient and modern, have sung about the beauty of women. The gender of the injured party undoubtedly changes the amount of compensation. Whereas compensation for the mutilation that befalls the man must differ from compensation for the mutilation itself that befalls the woman, and therefore the judge must take into account the gender of the injured party when estimating compensation for aesthetic damage, and the Jordanian Court of Cassation has taken the gender of the injured party as one of the considered bases in estimating compensation⁴¹.

Islamic Sharia jurists have also taken the gender of the injured party in determining compensation for aesthetic damage. They differentiate between the damage that befalls a man's hair and that which befalls a woman's hair, as compensation is greater for a woman's hair than for a man's hair, due to depriving her of the benefit of beauty more than for a man⁴².

The social status of the affected person: Some believe that the mutilation that befalls a woman, preventing her from revealing her neck and shoulder in her social environment, then this situation is a source of distress or repression, and requires compensation for this distress for that woman, and this situation gets worse if that woman practices an activity in her community that requires her to participate in seminars or associations or receive groups of people or attend parties on an ongoing basis⁴³.

We see that even in Islamic societies there are different cultures and traditions from one region to another. We find that in certain regions women like to reveal parts of their bodies in order to see their elegance and beauty. In other regions, we find that women adhere to the teachings of Islam. Therefore, we see that the judge here has the final say in taking this consideration into consideration or not taking it into consideration according to the society, its traditions, and the region to which the affected person belongs.

Second: Distinguishing aesthetic damage from other liability damages

From the above, it becomes clear that aesthetic damage is characterized by several characteristics or features that distinguish it from other damages.

1- In terms of proof: Aesthetic damage lies in exceptional cases in which the doctor or surgeon is obligated to achieve a result, as if the surgeon agreed with his client to achieve an end, then the absence of a result in itself is damage. Here, it is sufficient for the client to prove that the result was not achieved in order for the doctor to be responsible.

2- The permissibility of compensation for future damage: meaning that it did not occur immediately, but it is certain to occur in the future, such as if damage occurred to a person as a result of the surgeon's mistake, but its results did not appear until after a period of time. This type of damage is considered, in the judgment of realized damage, to entail liability and compensation, because the judge can estimate compensation for the damage that may result in the future as the effects of the original damage.

3- The presence of aesthetic damages that are reflected on its owner: We do not find them in other damages such as damages that affect the features and damage that is reflected in the profession of the injured person, as is the case for artists and some professions that require a decent appearance, especially when this damage has important financial consequences such as the flight attendant who loses her job due to the disfigurement that affected her face, in addition to what the medical act leaves in his future and psychological state. Moral damage also varies from one person to another. A young man is not like an elderly man, and a girl is not like a boy. The matter is estimated in light of the effects that disability or deformity has on the condition of the affected person.

4- Aesthetic damage does not include the inability to work: Also, the person who has been disfigured often does not need anyone to help and care for him in his daily life, nor does it require the disfigured organ to lose its function, because disfigurement only occurs in the external organs of the body and not the internal ones, so it involves a change in the external appearance of the human body, and the damage does not affect the psychological, sensory or mental capacity of the injured person. Rather, it is only concerned with the physical and aesthetic aspect, and it is also not required to disrupt the injured person's abilities. In addition,

³⁷ - Mansour Muhammad Hussein, op. cit., p. 75.

³⁸ - Kamel Ramadan Gamal, previous reference, p. 147.

³⁹ - Muhammad Al-Husseini, *Plastic and Surgical Operations and Their Criminal Legitimacy between Sharia and Law*, First Edition, Ibn Idris Al-Halabi Center for Jurisprudential Studies, Beirut 2000, p. 60.

⁴⁰ - Nadia Qazmar, *Plastic Surgery - Legal and Sharia Aspects*, first edition, Dar Al Thaqafa for Publishing and Distribution, Amman, 2010, p. 125.

⁴¹ - Muhammad Al-Husseini, op. cit., p. 62.

⁴² - Nadia Qazmar, op. cit., p. 127.

⁴³ - Muhammad Al-Husseini, op. cit., p. 63.

the specificity of aesthetic damage is highlighted by the fact that the great development in modern plastic surgery has given doctors the opportunity to repair the deformity even after a long period of time after the injury, and this is in contrast to other damages.

2. CONCLUSION

Aesthetic damage is considered one of the most important elements of physical damage when estimating compensation for it, as it affects the aesthetic and apparent aspects of the human body, leading to an imbalance in the human aesthetic balance. Therefore, damage represents a basic pillar in plastic surgery, and its proof is considered a necessary condition for its occurrence. Therefore, jurists say that there is no responsibility or compensation if the pillar of damage is absent. That is, it is not sufficient for this responsibility to be due to a mistake made by the official, but rather this act must result in harm to others.

Through this topic, the following most important results were reached:

1- Aesthetic damage is a change in the natural appearance of the injured person's body, whether the deformity is in exposed or uncovered parts of the body.

2- Aesthetic damage is material damage represented by the distortion of the body and the change in its natural appearance. This distortion can be perceived by the senses, and can be measured and its amount explained. Also, the distortion that affects the body of the injured party may result in loss or loss of earnings, which may lead to the loss of the injured party's work due to the distortion that has befallen him.

3 - The principle of full compensation for aesthetic damage requires that the judge choose the most appropriate compensation, which is compensation in kind, i.e. removing the damage caused by the cosmetic procedure. However, if the change in the external appearance of the body is with the consent of the injured party, then although it constitutes a deformity in the body and an infringement on the physical integrity of the human being, it does not fall within the scope of compensation for it, on the basis that this consent is considered a mistake by the injured party and limits the liability of the person who caused the damage.

4- The judge estimates compensation for aesthetic damage according to the importance of this damage to the injured person's body, its amount, and its location on the body. However, the judge cannot estimate compensation for physical damage unless he takes into account, from a practical standpoint, the circumstances and influences arising from the damage, such as the age, gender, and social status of the injured person.

In light of the previous results, the following most important suggestions were reached:

1- Reconsidering health law and keeping pace with current transformations.

2 - The Algerian legislator must regulate plastic surgery with special and explicit texts.

3- Securing the doctor from all cosmetic medical risks.

4 - Establishing a compulsory insurance system against general medical risks.

5-The necessity of setting special standards for the benefit of students in teaching topics related to plastic surgery to form a legal picture for this topic.

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