



## CIVIL LIABILITY FOR ENVIRONMENTAL POLLUTION

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<p><b>Received:</b> 20<sup>th</sup> November 2023 <b>Accepted:</b> 14<sup>th</sup> December 2023 <b>Published:</b> 24<sup>th</sup> January 2024</p>	<p>Environmental pollution is one of the most important problems facing the environment, which affects human beings directly, as it affects their health, body and money, what has increased the difficulty of this problem is the lack of attention to it by the concerned authorities, as this aspect was neglected and there were no real treatments for it, despite the enactment of legislation for environmental protection and the imposition of penalties and fines on those who cause environmental pollution, but there is no follow-up by the authorities concerned with this matter and there is no control, so the laws remain suspended In this aspect, it has not been activated, and in this case, the problem of environmental pollution remains without real treatments and the problems it misleads in the health, economic and social aspects. The research concluded with several results, namely that the participation of the administrative authorities of the judiciary in the assessment of compensation for environmental damage this would restrict the role of the judiciary in this area and away from objectivity and impartiality, in most cases pollution is issued by one of the institutions affiliated with the administrative authorities. As for the recommendations, the judiciary must consider all types of compensation resulting from environmental damage and not give the administrative authorities authority in this area except for their powers in control, guidance and supervision.</p>

**Keywords:** environmental pollution , Civil liability, administrative authorities

### INTRODUCTION

Praise be to Allah, Lord of the Worlds, and prayers and peace be upon the Master of the Messengers and his family and companions, the good and pure. Environmental pollution is one of the most important problems facing the environment, which affects human beings directly, as it affects their health, body and money, and what made this problem more difficult is the lack of attention to it by the concerned authorities, as this aspect was neglected and there were no real treatments for it, despite the enactment of legislation for environmental protection and the imposition of penalties and fines on those who cause environmental pollution, but there is no follow-up by the authorities concerned with this matter and there is no control, so the laws remain suspended In this aspect, it has not been activated, and in this case, the problem of environmental pollution remains without real treatments and the problems it misleads in the health, economic and social aspects. The problem of research is on the role of legislation in addressing the problem of environmental pollution and in reducing the risks of pollution and its role in redressing the damage to individuals due to this pollution and the restrictions it imposes on factories, factories and economic institutions to preserve the environment.

The descriptive analytical approach has been adopted through the analysis of the legal texts that dealt with the subject of research and its role in granting compensation to the affected to redress the damage, where the researcher found that this approach is the best approach that can address the problem of research based on the above, we will divide the research as follows:

**The first topic: the legal basis for the determination of civil liability for environmental damage**

**The second topic: the parties to the compensatory lawsuit and the penalty resulting from civil liability**

#### The first topic

##### Legal basis for determining civil liability for environmental damage

In general, tort liability is based on three pillars: error, damage and causal relationship, environmental error for the basic elements that must be available with the rest of the elements to determine civil liability for environmental damage and then rule compensation as reparation for the damage suffered by the victim of this error, which is based on several elements of the material element, which is the materiality that comes out on the crime scene and can be

perceived by the abstract senses, without which it cannot be considered that the crime has occurred, there is no punishment for ideas And plans are in the reservoirs of the human soul.

The moral element refers to the intention to harm others and proves the bad faith of the offender and his criminal intent and the commission of the crime deliberately so that he uses all available means to reach the result of the crime and insist on it.

In addition to the element of damage, where criminal behaviour must lead to causing damage, whether material, which causes material or moral damage that affects the human feeling and psychology and physical damage

As well as the availability of a causal relationship between the error and the damage, the error must lead to the occurrence of damage directly and as a natural result of it, and environmental damage is also based on these pillars being the general foundations for determining any civil liability, so this damage occurs because of the environmental error that entails harmful consequences against others that require the responsibility of the culprit based on the foregoing, we will divide this section as follows:

### **First Requirement Environmental error and damage**

In this requirement, we will address the environmental error and then address the environmental damage as follows:

#### **Section I Environmental error**

One of the most important basic elements governing tort liability is the illegal act, the human being is free in his actions and choice provided that there is no harm to others, whether they are persons, or property, and is obliged to compensate when his illegal act caused harm to others, every illegal act that harms the environment requires the cause of compensation and this act must be characterized by the wrong to put the owner under penalty of legal responsibility ([1]).

The error has several elements that can be summarized as follows:

#### **First: The material element**

It is the external behaviour that comes from the human being, whether negative or positive, it is the material that appears on the crime scene, which can be touched by the external senses of the human being, and there can be no crime without the material element, that is, without the materiality of the crime appears and watch, so it is not possible to be held accountable for just thinking about committing the crime ([2]).

#### **Second: The Moral Pillar**

It is the intention hidden by the offender, under which he planned to commit the crime and identified the means of committing it Valjafter according to this element will result the crime and worked to commit it with a conscious will and free and harmful to criminalize the act that he made and despite that committed the criminal act is aware of what he did and chose this path freely and consciously ([3]).

#### **Third: The Sharia Pillar**

This element is represented by the existence of the legal text that criminalizes the act, there is no crime or punishment without a text, the legal text is the one that determines the specifications of the criminal act, which determines the appropriate punishment for this act and warns those who commit it and works to deter others ([4]).

#### **Fourth: The Social Pillar**

This pillar is the prohibition of society for criminal behaviour and non-acceptance and disapproval of society has many determinants and behaviours that reject and do not accept them and this varies from one country to another state, and in the state, one from one society to another society, what is considered of behaviour what is familiar in a state or society is not considered so in another state or society ([5]).

### **Section II Environmental damage**

It is one of the elements of environmental crime, which determines the responsibility of the perpetrator and is represented by three types that can be summarized as follows:

#### **First: Material Damage**

It is the damage that affects a person in his money and leads to his material loss and the loss of material gain that was expected to be obtained without this damage ([6]).

The researcher believes that the material damage that results from the environmental error is represented in many cases, such as the case of establishing a factory or factory in the area of his residence, which led to a decline in the prices of houses and real estate in that area, where citizens retreated from housing in that area due to the escalation of fumes and the large number of pollutants in it, noise and noise, and the material damage may result from physical injuries that the individual is exposed to due to pollution, as is the case for cases of suffocation, for example, or skin diseases due to pollution in In these cases, the person will visit doctors and hospitals and spend large sums of money for treatment, and here the material damage meets the moral damage represented by feeling pain, sadness, people's perception of the patient, in addition to physical damage.

#### **Second: Moral Damage**

It is the damage that affects a person in his feelings, affection, balcony and consideration and causes him sadness and pain because of the insults, insults and slander he is exposed to ([7]).

Moral damage is all harm to a person on the balcony and considered, whether by saying such as cursing and reason and verbal insult and harm to reputation with obscene words, or already as beating that does not leave a trace on the body, but its impact is on the soul maximum and inform ([8]).

It affects the human being in the moral aspects, unlike the material damage that affects the human being in the material aspect and does not exceed to other aspects ([9]).

### **Third: Physical Harm**

It is the damage that affects a person in his body due to environmental pollution such as cases of suffocation, asthma, poisoning and others due to gases emitted by factories and laboratories and may reach the extent of a person's infection with cancer and other diseases ([10]).

The researcher believes that environmental pollution causes much damage that must be compensated for as reparation for the damage that hit the human being in the money or feeling and balcony and consider or in his body, damage in the environmental field is possible and occurs significantly and is almost repeated continuously due to air pollutants, factories, industrial areas and the escalation of smoke columns and others, so environmental damage can not be overlooked or tolerated because of the various damages that may not be forced by compensation, but is determined As a means of mitigating these damages.

## **Second Requirement Causation**

It is not enough to determine civil liability for the occurrence of the fault of the causative and injury to the injured person, but there must be a causal link between them so that the fault is the one who caused the damage without the presence or participation of other reasons in it because this would disperse the main cause of the harmful act, so the rules on civil liability cannot be applied without this causal link ([11]).

It is possible that the error causes the harmful act and may contribute to many wrong acts in causing damage in the case of one wrong act that led to one result, there are no problems in this case because the wrong act led to the harmful result, but it is difficult to decide the issue of responsibility for the events of the harmful act if there are multiple wrong acts and all named in the events of the criminal result, in this case, responsibility can be determined in the case of succession of the two accidents, the wrong act can lead to The injurious result is followed by other acts, in which case everyone is a contributor to the events of the criminal result, but each must be held accountable to the extent of his contribution to it([12]).

In this area, there are two theories governing the causal relationship between fault and damage, which we will deal with briefly as follows:

### **First: the theory of equivalence of causes**

We see this theory that all causes would cause the result regardless of its strength or weakness, as long as there are several reasons, they are all causing the criminal result ([13]).

The Iraqi legislator has adopted this theory under the provisions of the Penal Code No. 111 of 1969, as amended. ([14]).

### **Second: The theory of the productive cause**

In this theory, a distinction is made between the types of causes that would cause the criminal result between the cause of the product and the cause of the accident, so the work of the first is neglected and the second is neglected and the cause is considered productive if it leads to the occurrence of the result according to the natural course of things ([15]).

This theory was adopted by the Jordanian legislator[16]. as well as the Kuwaiti legislator[17].

As a general rule, as long as the fault is assumed by the defendant, it is the responsibility of the plaintiff to prove the causal relationship between the act and the result, and it is not without difficulty with regard to proving the causal relationship for environmental damage because of the difficulty of determining the source of damage It is known that with regard to pollution the results vary as the sources of pollution are many and different and vary on the impact of the consequences that result from pollutants vary from place to place and according to their type. The pollution caused by ships for the transport of oil derivatives is different from the pollution caused by factories and factories, and the latter is different from the pollution caused by volcanoes and car smoke, and so the pollution varies according to its source and the result that results in the difficulty of determining the source of damage, natural conditions have an important and essential role in this regard and therefore it is difficult to determine the source of damage, in the event that toxic and polluting substances are thrown by a factory into the river water, in this case, everyone who uses river water will be harmed. The difficulty that arises in this case is how to estimate the compensation, whether before the dumping of toxic substances or after the river may be originally polluted by other parties, in this case there are several reasons that contribute to water pollution and it is difficult to determine the cause of the product and the cause of the accidental ([18]).

As well as the difficulties of proving the causal relationship in the field of environmental pollution assigning the plaintiff to prove the damage with accurate scientific evidence in the event of damage to the plaintiff from environmental pollution due to the presence of a factory close to his house and leads to the emission of toxic gases, he must prove that the percentage of emission of gases and toxic substances exceeded the standards and scientific

standards and qualitative determinants that must be adhered to in this area and the competent court has the authority with regard to estimating the evidentiary strength of the evidence submitted to it, but with regard to With the evidence presented to the court regarding the proof of environmental damage, the judge's authority is narrowed because he does not have experience in this field and because matters related to pollution are purely scientific matters, in addition to the necessity of issuing the judicial ruling objectively and without courtesy or favoritism to anyone. Sometimes when a lawsuit is filed against a large industrial enterprise, the judge may consider it as the strong party and oblige it to compensate the plaintiff despite his commitment to scientific standards and laws on environmental protection, in which case the judge moves away On objectivity in issuing the judicial ruling, favoring the plaintiff and ruling with his personal knowledge and erroneously in his judgment and oppressing <sup>[19]</sup>.

This confirms the assumption of the existence of a causal relationship between the error and the damage because if the error is only assumed and it is the responsibility of the injured to prove the causal relationship, it means that the injured person is forced to prove this relationship to prove the error and in this case can not be the presumption of the supposed error and since the causal relationship is assumed the cause can be denied by proving the existence of a foreign cause that breaks the link between the error and the damage <sup>[20]</sup>.

### **The second topic**

#### **Parties to the compensatory action and the penalty resulting from liability**

Every damage must be met with compensation, and as long as the person does not resort to the initiative to compensate those who caused the necessity and redress of this damage, it is necessary to resort to the competent courts to file a lawsuit by the aggrieved person who delivers his voice to the judiciary that he is affected by the act of the second party, whether it is an individual, a company or an institution, or whether it is a natural or legal person.

The parties to the compensatory lawsuit are represented by the plaintiff, who is the person who has suffered the damage, whether the damage is material or moral, every person affected by the right to resort to the judiciary to rule him with appropriate compensation to compensate for the damage caused by the act of others, and it is the responsibility of proving the existence of the damage and proving the occurrence of the harmful act, the evidence is on the plaintiff and may face some difficulties in the field of proving environmental damage because it relies on scientific measurements that determine the percentage of pollution in the atmosphere and whether the defendant exceeded this percentage of Whether.

As for the second party, it is represented by the defendant, which is the person who caused the damage to the plaintiff, this damage may be intentional or unintentional, and in both cases, he must be sentenced to compensate the injured person, but in the case of unintentional damage, the amount of compensation can be mitigated by the amount of compensation for lack of bad faith or intention to damage others.

The penalty that results from civil liability is compensation, after the matter is submitted to the court, the latter works to examine the evidence and legal evidence provided by the plaintiff to prove his claim and prove the damage he suffered, if it is not convinced of its right to compensation or does not reach the defendant's fault, the latter is not sentenced to compensation, and if it reaches a conviction of the existence of the damage, it rules compensation

Based on the foregoing, we will divide this section into the following two requirements:

#### **First Requirement**

##### **Parties to the compensatory action**

The error may cause environmental damage to a person or a group of people, whether the damage is material or moral, and the right of those who suffered damage to claim compensation, provided that he proves his capacity to litigate, but this does not mean that he is deprived of claiming compensation, but rather replaced by his representative on behalf of the law before the civil courts with the right to claim compensation before the criminal courts for consideration in the criminal case <sup>[21]</sup>.

The parties to the compensatory action are represented by the plaintiff and the defendant, which we will address briefly as follows:

#### **Section I**

##### **Plaintiff as a party to the compensatory action**

The right of injury damage to file his lawsuit before the competent courts to claim compensation to compensate for the damage suffered by the legal rule contained in the Code of Civil Procedure, which is based not a lawsuit without interest so the plaintiff must have an interest in filing the lawsuit no lawsuit without interest, whether the plaintiff himself or his representative as a guardian or guardian or trustee <sup>[22]</sup>.

The lawsuit shall be instituted by the victim of the unlawful act or his representative if he is interdicted for profligacy or negligence <sup>[23]</sup>.

The aggrieved person, when he is fully competent, is entitled to file a lawsuit in order to claim his right before the competent judicial authorities, and if he is not fully competent, the lawsuit shall be filed by a person acting on his behalf, such as the guardian, trustee and guardian. <sup>[24]</sup>.

The person filing the lawsuit must be the owner of the right or legal status to be protected or his representative, as is the case with the agent who acts on behalf of the principal, and the guardian who acts on behalf of the minor <sup>[25]</sup>.

The plaintiff may be the general successor, such as the heir, creditor or private successor, and the creditor may be when he files the lawsuit in the name of the injured debtor indirect infection in the event that the damage is material <sup>[26]</sup>.

As for the right to compensation for moral damage, it shall not be transferred to the successor and the creditor except in the case of multiple value by virtue of an agreement or judgment issued by the competent court and has the degree of bits. [27]).

Spouses and relatives of the family also have the right to resort to the courts in order to claim their civil right for moral damage caused to them by the death of the injured person [28]).

## **Section II Defendant**

It is every person who commits an illegal act or is responsible for it under the provisions of the law, such as the guardian, guardian or curator, and in the case of multiple defendants, the plaintiff has the right to file a lawsuit against any of them with all compensation, and he has the right to file a lawsuit against all of them ([29]).

The aggrieved party has the right to file a lawsuit against the person responsible for the damage without the need to file it against the person who caused the damage based on the provisions of responsibility for the action of others ([30]).

It is possible to replace the defendant Halfa as the heir and replace the compensation for the damage that occurred by the testator before his death in the estate and the lawsuit is filed against the general successor, which is the heir being a representative of the estate and in the case of multiple inheritance, there is no solidarity between them, but each of them is committed to the proportion of his share of the estate to compensate the affected ([31]).

It is not permissible to recourse against the successor for compensation due to the fault made by the official before his death unless the elements of tort liability are fully realized because of the money he received. [32]).

If individuals are injured due to the leakage of chemicals by the laboratories of their relative, if the affected people can identify the plant that caused the pollution and can prove it, in this case, the culprit is held accountable, and if the plaintiff is unable to do so, in this case, the court shall apply the rules of joint liability against the causatives ([33]).

The aggrieved person can file a lawsuit against the representative of the legal person, such as associations, companies, institutions and unions, as is the case in the case of imposing a certain duty under the provisions of the law, if the addressees do not perform the provisions of the law with this duty, they commit a legal violation, even though this violation is the result of deliberate or negligence, as is the case with the direct return of the employer within three months from the date of the registered notice sent to him by the health authorities of the establishment of special liquidation centres to reduce Percentage of pollution in water [34]).

It is also possible to determine the responsibility of the state for environmental damage if one of its facilities commits a mistake that caused this damage, so these facilities are held responsible for the pollutants they dump in rivers and harm individuals and fishermen ([35]).

## **Second Requirement Penalty for civil liability**

This type of penalty aims to redress the damage suffered by the victim and the latter has to waive it because it is a personal right, unlike the criminal penalty, which aims to punish the offender and deter others, and the victim cannot waive it even if he waives his right because of the existence of a public right that cannot be waived ([36]).

The Iraqi legislator provided for the penalty of imprisonment and a fine for anyone who caused environmental pollution according to the details mentioned by the Environmental Protection Law No. (27) of 2009 in Chapter IX thereof, which bore the title of punitive provisions ([37]).

Jordan's Environmental Protection Law No. 6 of 2017 also stipulates the penalty of imprisonment and a fine for anyone who causes damage to the environment. [38]).

The researcher believes that it is possible to combine the criminal penalty with the civil penalty in the event of violation of the rules and provisions of the laws on the environment in addition to the right of the affected to request compensation and file a lawsuit against the institution, the owner or the factory that caused him damage, and the penalty may reach the extent of withdrawing the license from it as an administrative penalty.

The image of the penalty in civil liability compensation, which aims to redress the damage of the injured person and does not aim to punish the actor or the cause of this damage, compensation here is decided in favour of the injured and does not carry with it a penalty for the offender or deterrence to others and in this area has imposed some legislation on the protection of the environment compensation in kind as reparation for the damage, which is to restore the situation to what it was before the occurrence of the harmful act through the removal of the harmful act, which is one of the best ways to compensate Because it resolves damage without leaving traces of it. [39]).

Among these pieces of legislation is Kuwaiti legislation. [40]).

Although it is very difficult to determine the compensation in kind for environmental damage due to the multiplicity of issues related to this type of pollution and their intertwining, especially since the sources of pollution in this area are many, such as pollution of river water with certain pollutants, in this case the damage can be removed by removing those pollutants or using special means of water purification, but the general rule governing tort liability is compensation as a means of reparation for damage, i.e. the payment of an amount of money ruled by the competent court, either at once Or in the form of payments, and this falls within the powers granted to the judge, where he has the right to oblige the cause of damage to pay the amount of compensation in full or in the form of installments without the intervention of the injured party in this matter, and the arbitrator can ask the person causing the damage to provide documentary insurance for the debt of the injured person, who has remained in his custody for a long

period of time, as well as the official can be sentenced to pay an amount to a third person or to an insurance company, provided that the company pays the insurance amount or Discharge to the injured person([41]).

Some legislations have determined the amount of compensation by including the loss of profit and loss of the injured person, as is the case with the Jordanian Civil Code[42], Kuwaiti law[43] and the Civil Code, of Iraqi([44]).

The researcher believes that compensation must include compensation for the injured person and the loss of profit and this is what achieves justice and repairs the damage because it performs two functions, one of which is what the lost gain and the other is the loss suffered by the injured person.

At the same time, compensation must not exceed the value of the damage or be less than it so that it does not lead to reparation for the damage, but must cover the value of the loss suffered by the injured except in exceptional cases that take into account the personal circumstances of the injured and the circumstances that confuse the occurrence of the harmful act and the gravity of the error, without taking into account the physical damage except in rare cases, and the case of multiple officials responsible for the harmful act, they are partners in tort and the amount of compensation is distributed among them, each according to his contribution to this Domain ([45]).

## **CONCLUSION**

1. The lack of a real desire and a serious stand to protect the environment from pollutants, despite the enactment of legislation for the protection of the environment, was not applied correctly and properly and did not take its role in the field of punishment and deterrence.
2. The participation of the administrative authorities of the judiciary in the assessment of compensation for environmental damage, would restrict the role of the judiciary in this area and move away from objectivity and impartiality, as in most cases pollution is issued by one of the institutions affiliated with the administrative authorities.
3. The lack of instructions for companies during their contracts to preserve the environment, in most cases the contract is made to establish factories or factories close to residential areas, and in this case, the terms and conditions of the contract are adhered to and their location cannot be changed despite the pollutants they cause.
4. Discouragement of insurance from environmental damage due to the presence of many restrictions and government routines in this area, which made many individuals isolated from insurance in this area despite its great importance and its money from the positives in this regard.

## **RECOMMENDATIONS**

- 1- The environment must be preserved in a real way by paying great attention to this aspect and preventing all means that would contribute to environmental pollution in areas close to the population, such as factories, factories and industrial facilities.
- 2-The judiciary must consider all types of compensation resulting from environmental damage and not give administrative authorities authority in this field except for their powers in control, guidance and supervision.
- 3-The legislator must issue binding instructions to companies to preserve the environment during their contracts with those companies, and in this case, the preservation of the environment is the first concern before the subject of the contract and the resulting economic, social and other benefits come.
- 4-The need to encourage insurance in the field of environmental protection by facilitating its procedures and reducing red tape.

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