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The Basis Of Civil Liability For Oil Pollution In Iraqi Law

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Abstract

Environmental damage is considered to be of a special nature, and therefore the general rules contained in the Iraqi Civil Law No. 40 of 1951 may not be sufficient to determine the value of compensation for damage resulting from environmental pollution. The legislator has not explicitly addressed the legal basis for environmental damage, but can resort to the rules The public contained therein to determine the basis for this responsibility in addition to what is stated in the Law for the Protection and Improvement of the Environment No. (27) for the year 2009, which is based on the existence of a fault and damage and a causal relationship between them, whether the cause of the damage is a natural or legal person with the possibility of amending the laws in force to determine the basis of civil liability Contamination E oil SAVING damaged rights, as well as in general environmental protection.

Key words: civil liability, environmental pollution, environmental damage, compensation.

La base de la responsabilidad civil por la contaminación por petróleo en la ley iraquí

Resumen:

Se considera que el daño ambiental es de naturaleza especial y, por lo tanto, las reglas generales contenidas en la Ley Civil Iraquí No. 40 de 1951 pueden no ser suficientes para determinar el valor de la compensación por daños resultantes de la contaminación ambiental. El legislador no ha abordado explícitamente la base legal del daño ambiental, pero puede recurrir a las reglas que el público contiene para determinar la base de esta responsabilidad, además de lo establecido en la Ley para la Protección y Mejora del Medio Ambiente No. (27) para el año 2009, que se basa en la existencia de una falla y daño y una relación causal entre ellos, si la causa del daño es una persona física o jurídica con la posibilidad de modificar las leyes vigentes para determinar la base de responsabilidad civil Contaminación E petróleo AHORRO derechos dañados, así como en general protección del medio ambiente.

Palabras clave: responsabilidad civil, contaminación ambiental, daño ambiental, indemnización.

Introduction

The determination of the basis of civil liability for environmental damage is of great importance at the present time, due to the prevalence of means of industrial and technological pollution, etc., in addition to the emergence of the principle of preserving the environment, whether human, plant or animal, and others. With a lack of legislative rules in providing effective protection at the present time for damage resulting from environmental damage, regardless of the reasons for its emergence. Environmental damage is considered one of the forms of damage that may be caused to others, resulting from the wrongful acts committed by some people, and that each type of damage has a specific peculiarity, and in order to achieve responsibility for this damage, its elements must be available, as is the case in the general rules Therefore, this issue of compensation for environmental damage will be studied within the general rules, because the Environmental Protection and Improvement Law No. 27 of 2009 did not include its articles and texts defining the basis of civil liability for environmental

pollution. Based on the foregoing, the research will be divided into two topics: The first topic: What is environmental damage. The second topic: provisions for compensation for environmental damage. With an indication of the most important results and recommendations that resulted from the research.

1. What is environmental damage

The concept of environmental damage can be included in the general concept of damage, which is the harm that a person inflicts on himself, his money or any legitimate interest to him. If the harm has been related to one of the elements of the environment and is reflected in a harm to the human being, he is called an environmental damage (Help: 2006, 392) and will be in The following paragraphs indicate the environmental damage, its types, and the conditions that must be met in it, the legal nature of the environmental law, as follows:

1.1 Definition of environmental damage

There is no unified juristic definition to define the meaning of environmental pollution because the jurists of the law as well as the statutory laws did not agree on the definition of an inclusive anti-environmental pollution, although some laws such as the Law of Protection and Improvement of the Environment of Iraq No. (27) for the year 2009 stipulated a definition of environmental damage in the article Eighth - and which it says (environmental pollution: the presence of any pollutants affecting the environment by quantity, concentration, or an abnormal characteristic that leads directly or indirectly to harm the human being or other living organisms or life ingredients that exist).

Where it is clear from the text above that environmental damage is achieved by the presence of pollutants in the environment that directly or indirectly cause harm to humans or other organisms, as stated in Article VII of the above law that (- environmental pollutants: any solid, liquid, gas, noise, vibrations or Radiation, heat, glare, or the like, or biological factors that lead, directly or indirectly, to environmental pollution.)

It is worth noting that the legislator mentioned pollution in the first place as one of the reasons for the emergence of environmental damage, then he mentioned another text that includes more severe cases and called it the term environmental disaster and they are stipulated in Article Fourteen of it (- Environmental disaster: serious damage to the environment that is not sufficient for the state's normal capabilities To handle or control its results.)

Therefore, the element of damage as a basis for civil liability for damage

to the environment is achieved in all cases where a person's behavior leads to environmental pollution or deterioration in the sense defined in the Environmental Protection Law, and leads directly or indirectly to harm to humans or other organisms. (The Sea 310: 2004)

1.2 Types of environmental damage

A - Physical damage: It is the damage that affects the injured person in his body or his money (Al-Sanhouri: 855: 1982), and compensation for material damage in the Iraqi civil law is on the basis of subsequent loss and lost profits, according to the text of Article 207/1 of it, which states: (The court assesses compensation in all cases to the extent of the harm suffered and the lost profits, provided that this is a natural result of the wrongful act). Accordingly, material harm may be defined as: everything that affects a person in his body, money, or legitimate financial interest, (Mark 137: 1992).

As for the material damage resulting from the oil pollution of the environment, it may be focused on harm to human health and the consequent treatment that may result in cancer as a result of toxic gases emitted from one of the factories, and damage that may affect his property or land, and accordingly the resulting environmental environmental damage On oil pollution, it may be represented by the environmentally affected person paying expenses to remove or treat the effects of environmental pollution, and the physical damage may be represented by environmental pollution by missing the opportunity for the owner of the property to benefit from his property as a result of the pollution that occurred in the air from a neighboring factory, for example, which leads to a lack of economic value. (The Sea 322: 2004)

B - Moral (moral) harm: It is the damage that a person suffers in honor, consideration, honor, honor, reputation, social status, or financial consideration. Where Article 205 of the Iraqi Civil Code stipulates: (1 - The right to compensation deals with moral harm as well, so any infringement on others is in his freedom, in his display, in his honor, in his reputation, in his social position, or in his financial consideration, making the infringer responsible for compensation.

According to the general principles of compensation contained in the Civil Code, moral and environmental damages may be a distortion that affects a person as a result of toxic substances, for example that lead to deformation of his face or damage to one of his body parts that affects and falls under moral harm (Abdel Majeed: 297: 2007)

1.3 Conditions for compensable environmental damage

First: The damage must be realized

That is, the damage is certain to occur, and it is not hypothetical or potential, whether it actually occurred or will happen in the future, but the potential damage is no compensation due to it except in the case of its realization (Al-Sarhan and Khater: 520: 2005)

Environmental damage resulting from oil pollution, whenever achieved, requires compensation in accordance with the general rules stated in the Civil Law, where Article 204 of it stipulates: (Any violation that affects others with any damage other than what was mentioned in the previous articles requires compensation.)

Within this context, the environmental damage may not show its harmful effects in an immediate or current manner, but may need long periods of time to detect symptoms and damages that have occurred, in addition to the impossibility of predicting the extent of these damages, which may appear in the future as well as the difficulty of proving that the damage caused is the result of oil pollution.) (The Sea: 306: 2004)

Here, it is possible to rely on the general rules mentioned in the Civil Law, Article 204, which stipulates: (Any violation that affects others with any harm other than what was mentioned in the previous articles requires compensation.)

Likewise, the text of Article 208 (If the court cannot determine the amount of compensation sufficiently, it may reserve the applicant the right to demand within a reasonable period to reconsider the estimate.)

Second: The damage should be direct

The direct environmental damage was not a natural result of the polluted action. Where the injured person was not able to pay this environmental damage by making a reasonable effort, but the indirect damage is that which is not a natural result of this pollutant, so the causal relationship between it and the act of the polluter is interrupted (Adhan: 203: 2006) so the basic rule is that there is a causal correlation Between damage and pollution, even if it appears after a period of time, but here the causal relationship between pollution and damage must be proven, according to what was stated in Article 207 of the Iraqi Civil Law, which states: (1) The court estimates compensation in all cases to the extent of the damage caused to the victim and the loss he has lost Provided this is a natural consequence of the wrongful act.)

Third, the damage will be caused to the acquired right or interest of the project to the injured party:

The acquired right is intended for the interest protected by law, or by the

legitimate interest that is compensated for if it is not contrary to public order and public morals. As for if the interest is illegal, it is not considered valid, and compensation is not required. (Sanhoury: 858: 1982)

Legitimate interests are diverse and vary according to social and economic systems, and they vary with the diversity of values and public morals in each country, and with regard to environmental damage, this damage must affect the acquired right or legitimate interest of the victim, as if this harm affects the health of the victim, his family and his property. (Yahya: 252: 1988)

Fourth: The damage must be personal

The plaintiff must be the aggrieved person himself, that is, he has a personal interest in filing a lawsuit for environmental damage, whether the damage is material or moral (Adhan: 108 2006). The Iraqi Civil Law stipulates Article 204 stipulates: “Anyone who inflicts any harm on others other than what is mentioned in the articles” The former requires compensation.)

Likewise, as stated in Article 205 of the same law:

(1 - The right to compensation deals with moral harm as well, so any infringement on others in his freedom, in his display, in his honor, in his reputation, in his social position, or in his financial consideration makes the infringer responsible for the compensation. 2- He may provide compensation to the spouses and relatives of the family for their afflictions. From moral harm due to the death of the injured.)

Fifth: The damage must not have been previously compensated:

It is not permissible for a person to request compensation more than once for the same damage; the basis for compensation is the reparation of the harm that has been done against the victim, and not the enrichment of the victim at the expense of the person who caused the damage, and this is a basic condition for all types of damage. (Abdin: 77: 1987)

It is clear from the above that the establishment of civil liability for environmental pollution, through the availability of the pillars and elements of this responsibility of a harmful act, damage and causation, which necessitates compensation to the defendant.

2. Provisions for compensation for environmental damage

To determine the nature or the adequacy of the general rules in compensation for environmental damage, the research will be divided into two parts, the first is what is compensation and its methods, and the second will determine the person responsible for compensation for environmental damage.

2.1: What is compensation and its methods?

To clarify what compensation is, it is necessary to define compensation, and then define the compensation methods as follows:

2.1.1 What is compensation?

It is the effect and the reward that results from proving responsibility for the cause of the damage. Before that, a lawsuit must be filed against the person who causes harm, before the competent courts, for the purpose of removing the damage and forcing him to compensate him (Al-Sanhouri: 961: 1982).

In this regard, the Iraqi Law for the Protection and Improvement of the Environment Law No. (27) for the year 2009, Article 32 states:

(First: Any person who causes his personal act, negligence or negligence, or the actions of those under his care, supervision, or control of persons or followers, or his violation of laws, regulations, and instructions, is responsible for the environment, and it is necessary to compensate and remove the damage during an appropriate period and return the case to what it was before the damage And by his own means and within the period specified by the Ministry and the conditions established thereof)

Likewise, what is stated in the Iraqi Civil Code, Article 207, is that the court assess compensation in all cases to the extent of the damage suffered and the loss of profits provided that this is a natural result of the illegal work. The compensation shall include deprivation of the benefits of notables, and the guarantee may include wages.

2.1.2 Compensation methods

The Iraqi Civil Law has indicated that the court may set the compensation method according to the circumstances, and it is correct for the compensation to be a premium or an arranged income, and in this case the debtor may be obligated to provide insurance.

There are two ways to compensate for damages, compensation in kind, that is, to restore the situation to what it was before the damage occurred, and this type of compensation is considered the basis for compensation for damages arising from environmental oil pollution, in addition to stopping environmental damage and removing its effects. Environmental damage may worsen over time, as it may reach an uncontrollable stage, and therefore compensation in kind is based on restoring the situation to what it was with stopping the damage achieved (Kassab: 120: 2006).

As for compensation in return, in the event that it is impossible to compensate in kind for the damage caused or usually the situation to what it was and then resort to implementation in return for compensation, which aims to protect it as an injured party and the reparation of what has caused

compensation in return for the side of stopping the environmental activity causing damage (Qandil: 18: 2004)

In the Iraqi Environmental Protection and Improvement Law, some texts related to the compensation mechanism, which are imposed by the Environmental Protection Council specified in the law, were also mentioned, in which compensation for damages came, as Article 32 stipulated:

(First: Anyone who causes personal action, negligence or negligence, or the actions of those under his care, supervision, or control of persons or followers, or his violation of laws, regulations, and instructions, is responsible for the environment, and it is necessary to compensate and remove the damage during an appropriate period and return the case to what it was before And by his own means and within the period specified by the Ministry and the conditions set by it.

Second: In the event of his negligence, negligence, or failure to do what was stipulated in the previous, the Ministry after notifying him shall take measures and procedures to remove the damages and return to the cause of all that he incurred for this purpose in addition to the administrative expenses taking into consideration the following criteria:

A - The degree of severity of pollutants of all kinds.

B - The impact of pollution on the environment, now and in the future.

Third: The liability for the damage caused by the violation above is presumed.

With the amount of compensation for damages incurred as a result of the violation in the special fund of the Environmental Protection Council until its use in decontamination.

2.2 Responsible for compensation for oil environmental damage

Responsible for compensation is the person who caused environmental damage and after proof of error, damage and causal relationship by the plaintiff in front of the competent court, and accordingly the person causing the damage is obligated to compensate for the damage he caused, whether in kind compensation or compensation in return. There are also cases in which compensation falls on another person, in cases of responsibility for others' actions and responsibility arising from doing things (Idol 131: 2006).

2.2.1 Responsibility for the actions of others

This responsibility is the responsibility of the controlling person and the responsibility of the subordinate for his affiliate business, as the government, municipalities and other institutions that perform a public service and every person who exploits an industrial or commercial institution is

responsible for the damage caused by their employees, if the damage is caused by an infringement that occurred during them while performing their services. (Abdul Majeed: 2007: 330)

And the servant can get rid of the responsibility if he proves that he has done the necessary care to prevent the damage occurring, or that the damage had to be a reality even if he gave this care This is stipulated in Article 219 of the Iraqi Civil Code.

There is also what is known as the liability arising from things. Everyone who has at his disposal mechanical machines or other things that require special care to prevent their harm will be responsible for the damage he causes unless he is proven to have taken adequate care to prevent such damage from occurring, without prejudice to what is stated in This is one of the provisions of special and according to the provisions of the Iraqi civil law. (The Tiger: 78: 2014)

2.2.2: Liability of the legal entity

Every person who acquires the legal capacity according to Iraqi law, whether he is a natural or juristic person of companies, institutions, bodies or associations, is considered to enjoy the legal personality and eligibility and that qualifies him to practice all the legal behaviors permitted by the person who enjoys legal capacity from the right to act and the capacity to perform as well as litigation and other rights Thus, the state of the natural person shall be responsible for any error or damage arising from it, which may affect the person in his life, health, moral rights or infects the animal or nature, and the legal person represents the director of the institution or whoever authorizes him from the Chairman of the Board of Directors or the legal representative. Yaman: 90: 1964)

The civil law mentioned the moral persons:

A - The state.

B - Public administrations and establishments granted by law are a legal entity independent of the state's personality, under the conditions it determines.

C - The brigades, municipalities, and villages that the law confers on the legal entity with the conditions that it determines.

D - the religious denominations that the law confers on the legal entity with the conditions that it determines.

E - Endowments.

F - Commercial and civil companies, except those stipulated in the law.

G - Associations established in accordance with the provisions established

by law. (Article 47 of the Iraqi Civil Code)

Each legal person shall have a representative of his will, and he shall enjoy all rights except those that are inherent in the capacity of the natural person, within the limits determined by the law. He also has an independent financial liability, and he has the capacity to perform this within the limits stipulated in his construction contract and imposed by law, and he has the right to litigate or prosecute him before the Iraqi courts. (According to the provisions of the Iraqi Civil Law, Article 48)

Conclusion

After explaining the basis of civil liability for damage resulting from pollution resulting from oil activity, the most important findings and recommendations that resulted from the research can be explained.

Results

1- Civil liability for the environmental damage resulting from the activities of the oil sector is realized according to the general rule mentioned in the Iraqi Civil Law No. 40 of 1951 of the existence of three main pillars, namely (the act of damage and the occurrence of the resulting damage and a causal relationship between them)

2- The burden of proving the act of harm and its effects and the causal relationship between them falls on the affected person.

3- The damage to a person varies from damage to his body, health, or material damage, and moral damage may also enter if it is proven. The other aspect of damage covered by compensation is damage to the animal or nature

4- Compensation is assessed at the discretion of the competent court. Compensation may be spent on the implementation of an in-kind by returning the case to what it was or executing in exchange for material compensation to the affected party and according to the damage he suffered and what he missed, and the court's decision may go beyond stopping the environmental activity causing the damage.

Recommendations

1- Amending the Law of Protection and Improvement of the Environment No. (27) for the year 9200 by adding texts indicating or defining the legal basis for civil liability for the cause of environmental damage in accordance with the Iraqi Civil Law in order to enable the aggrieved party to know the basis of civil liability.

2- Establishing specialized courts to handle disputes arising from environ-

mental damage, due to the special nature of this damage, which requires the existence of a specialized judiciary, as is the case in the newly established courts for publishing and media issues.

3- Activating the role of the Environmental Protection and Improvement Council, as well as the role of the environmental observer, in a manner that ensures proper implementation of the Environmental Protection Law.

4- The introduction of health insurance companies to insure the employees about the environmental damage.

5 - Obliging the oil companies and national or foreign institutions operating in the oil sector with various activities in accordance with the provisions of the Environmental Protection Law, and the matter stands out more in relation to foreign companies and their subjection to the Iraqi judiciary in a manner that guarantees the right of the aggrieved party to protect his interests and obtain compensation.

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