

The effects of civil liability for environmental pollution damages caused by oil and gas companies

¹Jafal Abdel Hamid Faza, ²Ali Salah Al-Hadithi

¹University of Tikrit, College of Rights. (Researcher)

jfalabdalhmyd@gmail.com

² ¹University of Tikrit, College of Rights (Assistant Professor)

Abstract:

The research dealt with the effects of civil liability for the damages of environmental pollution caused by oil and gas companies, which the world witnessed in light of the modern industrial revolution, and the need to update some traditional legal rules, to make their application in line with the nature of civil liability for environmental pollution damages caused by oil and gas companies. Some provisions relating to civil liability must be changed, as the Iraqi legislator indicated the necessity of adopting the theory of harm, as it is the only basis on which civil liability can be ascertained for environmental pollution damages caused by oil and gas companies.

Introduction:

Civil liability is one of the most important legal topics, which are closely related to persons, and responsibility is a major focus of civil law, And because of the development and depletion of natural resources that formed many of the pollutants that resulted from this use, As the conditions of civil liability for damages to environmental pollution caused by oil companies, which are errors and damages, and the causal relationship between the error and damage, which has consequences, and it is the obligation of the person responsible to compensate for the damage.

Research problems :

- 1- What are the consequences of liability arising from environmental pollution?
- 2- Do compensation methods have an effective role on the damages that affect the environment itself?

Research Hypothesis:

- 1- There are many implications of civil liability that lead to environmental pollution.
- 2- There are many ways of compensation that affect the environment, including the unified, arbitrary, and the laws of neighborhoods.

research importance:

- 1- The importance of the research lies in the necessity of creating a special system for civil responsibility in the field of environmental pollution.
- 2- Harnessing the general rules of liability contained in the laws to suit the nature of these damages.

Research goal:

- 1- To indicate the compensation in kind for the environmental damage for the oil and gas companies.
- 2- Knowing the estimation of compensation for damages to the environment.
- 3- Explanation of the effects of establishing civil responsibility for environmental pollution.

Research Methodology: In our research we relied on the following:

- 1- Analytical approach: which is based on the analysis of the idea and its talk in the light of strong opinions, 1- In order for it to be attributed to the legislative text that treats it, if any, and to the jurisprudential opinion placed on it.
- 2- Applied approach: It is based on reliance on the positions of the judiciary.

First: compensation that affects the objects and the environment.

1.The concept of compensation:

If there are elements of default responsibility from (error, damage and causal relationship) this arises from the award of compensation. Compensation is defined as “an amount of money or any satisfaction of the type of damage equivalent to the loss suffered by the victim and the gain he missed.

Compensation is the means of justice for the elimination or mitigation of damage, and it is done with the damage, existence or absence, and has no effect on the gravity of the error." (1) .

The Iraqi civil law does not prevent compensation from being other than cash, as Article (209) states: “First: The court shall determine the method of compensation according to the circumstances. Second: Compensation for damages is considered as permissible by the court, according to the circumstances.

2-In-kind compensation for environmental damage:

Compensation in kind means: it is the fulfillment of the obligation in kind, and it falls in contractual obligations. , but in the default liability, it is also possible in a few assumptions that it has breached its legal obligation not to harm others without a right point of view .(2).

The French judiciary applied in this regard, as it stated in one of the cases before it in 1980 regarding the destruction of a forest due to oil leaking from one of the tankers that the amount of compensation awarded for the procedures for restoring the situation to what it was for the damaged forest must be commensurate with the reasonable cost (3) .While the Iraqi legislator did not give the competent administrative authorities this right, he also provided another measure of a fine of no less than one million dinars and not more than ten million dinars, to be repeated monthly. Until the violation is removed (4).

Many environmental legislations clearly and explicitly stipulate the compensation in kind to remove environmental damage, including the Iraqi Environmental Protection and Improvement Law No. (27) of 2009 in Article (32/1) that: 1- He is responsible for any reason caused by his personal actions, negligence, or actions of those under his care. Damage to the environment and compensation is

The effects of civil liability for environmental pollution damages caused by oil and gas companies

required, damage is removed within an appropriate period and the situation is restored to what it was before the damage occurred by its own means, within the specified period of the Ministry and under the conditions set out there.(5).

One of the forms of compensation in kind, as Article (86) of the Egyptian Environmental Protection Law No. 4 of 1994 states that "...The court may order the suspension of the license for a period of no less than a week and not more than 6 months, and in case of recurrence, it may rule to cancel the license."

The Baiji Court of First Instance was formed on May 28, 2014 headed by Judge S_authorized the judiciary in the name of the people and issued the following decision. The plaintiff is the general manager of the North Refineries Company, in addition to his job as his agent, the legal employee (A). The defendant (M) lives in Baiji - Tal Al-Za'tar.

The decision.... In addition to his job by his agent, the plaintiff claimed that the defendant had overtaken part of the numbered property 18/9735-19 AD, the Baiji station owned by his district, Where the defendant did. By setting up buildings, he established shops without right, Therefore, he asked for his invitation to plead and order him to lift the violation that occurred before him on the property above, and to charge him fees and expenses. The annual benefit is estimated at an amount of (one million dinars), and for the public pleading and review of the court above, the attribution of the property No. 18/9735-19 AD Baiji station, which includes that the property is owned by the plaintiff's department, and to pay the defendant that he is a tenant of the property on which shops are built from the Baiji municipality directorate, and to see the court of three lease contracts dated 17-11-2013 concluded between the defendant and the Baiji municipality directorate, including each of which the defendant rented real estate, sequence (2 ,3,4,5,6,7,8) Oil district of each property is 15 square kilometres, for the purpose of establishing a commercial store for a period of time.

Three years for a period from 10/24/2013 to 10/24/2016 and the contracts are affixed with signatures belonging to both parties and the current inspection by the court of the real estate subject of the invitation on 05/21/2014 with evidence and knowledge of an expert surveyor, and it was revealed through the disclosure that the defendant had constructed a number Some of the shops are under construction, some of them are roofed and the other part is not roofed The expert surveyor submitted a sketch of an experience report attached to it, showing the location of the property, its boundaries and dimensions. It is indicated by the area of the overrun by the defendant, and it was found out to this court during the real estate deed, 18/9735 - 19 AD Baiji station as the plaintiff and attributed through the disclosure made by the court that the defendant exceeded part of the property by establishing constructions (shops), The defendant admitted that he had built shops, , and argued that the tenant was from the Baiji municipality directorate, and since the constructions are built on a part of the real estate belonging to the plaintiff's department , The defendant's hand is therefore usurped and infallible if it is real estate The usurper is obliged to return him with a wage, such as (M 197 civilian).

For all of the above, the court decided to rule on the obligation of the defendant (M.F.) obtained by him on part of the property numbered 18/9735-19 m. Baiji station belonging to the plaintiff's department represented by the shopping malls set up on an area of 497 square meters And handing it over free of concerns, according to the chart attached to the invitation file, which is considered part

of the decision for implementation purposes and charged with fees, expenses and attorney fees, and whoever called for him, in addition to his job, the legal employee (A. H) an amount of one hundred thousand dinars, and the decision was issued based on provisions. Articles (21,22,67,140, Evidence), and 159, 161, 166, 185, 203, Civil pleadings, 63 attorneys amended, judgment in attendance subject to appeal and discrimination and publicly understood on 05/28/2014.(6).

Compensation in return for environmental damage caused by oil and gas companies:

The compensation in kind may not be possible or appropriate to redress the environmental damage, especially when that damage is moral or physical, so the judge resorts to the method of compensation in return (7). Which takes the form of obligating the person who caused the damage to pay a sum of money, so the compensation is monetary, Or obligating him to perform a specific matter For the benefit of the victim so the compensation is non-monetary. For the purpose of clarifying the above, we will examine the appropriateness of monetary and non-monetary compensation as follows:

A- Monetary compensation for environmental damage caused by oil and gas companies:

Monetary compensation means: it is the obligation of the person responsible for the environmental damage to pay a monetary amount to the victim in proportion to the damage incurred (8), The principle is that the monetary compensation should be a certain amount, but there is nothing to prevent the judge from ruling according to the circumstances In installments cash compensation or salary income for life (9).

Monetary compensation is monetary and may be non-monetary, as the court orders the offender to perform a particular order, as indicated by article (209/F2) of the Iraqi Civil Code, and the court may order offender By performing a specific order as compensation, it may decide what it deems appropriate to prevent smoke, noise, or harmful odors (10) .

Among the judicial applications:

The civil authority was formed in the Federal Court of Cassation on 15-4-2018 headed by the Vice President Mr. (S) and the membership of the two judges (R, H). Those authorized to judge in the name of the people . The decision was issued by the defendant, general manager of the North Oil Company, in addition to his job as his human rights agent. Distinguished by the decision of the Special Committee for the claims of the operations of the North Oil Company Committee / 2015 Plaintiffs (A, B) The attorney for the plaintiffs with the Special Litigation Committee related to the operations of the North Oil Company claimed that plot number 42/395 M6 Pajuan is a residential plot that belongs to his clients as a "pure" property, and that the defendant had entered it from the taboos of the tube dating back 18-1-2000. And he deprived his clients of it, so he asked to be summoned to plead and a judgment obligating him to pay his clients the amounts claimed as a wage. Which is estimated at (40) million dinars, with fees, expenses and fees charged. The aforementioned committee issued with number one, the North Oil Committee, on 25-1-2016, issued a judgment in attendance obligating the defendant to pay to the plaintiffs an amount of (12938800) dinars as a wage such as the piece subject of the invitation from 1-18-2000. Until 18-1-2015, it is divided between them according to the detail contained in the judgment decision, and the defendant bears the fees of the plaintiffs' attorneys, the two parties bear the relative fees, and the two plaintiffs bear the defendant's attorneys' fees. The defendant's attorneys appealed against the judgment decision on

The effects of civil liability for environmental pollution damages caused by oil and gas companies

cassation, requesting its annulment by their regulations dated 1-2-2016 to set aside the judgment on cassation 1567 / civil / 11-4-2016. Accordingly, the aforementioned committee decided on 11-16-2017 a decision in attendance, according to the first: To oblige the defendant to pay it to the plaintiffs an amount of (11308862) eleven million and three hundred and eight thousand and eight hundred and sixty-two dinars to be distributed to the plaintiffs as detailed in the decision, and the defendant bears the expenses and fees to the plaintiffs' attorney.

Second: the ruling to dismiss the plaintiffs' case by increasing and charging the plaintiffs expenses and fees to the defendant's agents, Third: In order for the representative of the Minister of Oil to object to the decision issued against it, the committee understood the representative of the ministry. His violation shall be recorded in a separate paper and linked to the case. A defendant's attorney, in addition to his position, appealed the decision, requesting his transfer with his dated list. 11-27-2017.

B- Non-monetary compensation for environmental damage:

Non-monetary compensation, which usually includes a judgment to perform a specific matter and as compensation, is not considered in-kind or monetary compensation, as it is the most appropriate compensation for damage and according to what the circumstances require, It is a special kind of compensation, and the recourse to it determines the type of damage caused (11).

And the text of Article (209/2) (12) of an Iraqi civilian, which states that "compensation is estimated in cash, that the court may, according to the circumstances and at the request of the victims, order the return of the situation to the way it was, or order the performance of a certain order, or the return of the same in lesbians, and that As compensation" (13).

The judge may decide to compel the oil and gas company (to another person) who has caused environmental damage, causing him a certain disability.

By paying the costs of a leg or a prosthetic hand, or the costs of a wheelchair, or the costs of residing the victim in a treatment center for the rest of his life, or purchasing expenses, and it is proportional to the degree of significant disability that the victim has suffered. Therefore, we find that the mere ruling for non-monetary compensation may not be sufficient to redress the damage caused, as there is no legal impediment to combining it with other methods of compensation, whether the compensation is in cash or in kind (14).

Second: Estimating compensation for damages to the environment itself:

Estimating compensation for damages to the environment and its public resources is not without some complications, given the special nature of the injured party, as it does not affect an individual in person, but rather affects the public resources of the environment, such as water, air, or soil (15). However, the recent increase in environmental accidents has prompted some countries to adopt standards and methods that help in estimating the value of compensation for damages to the environment (16) and these methods include:

1- Standardized Compensation Method:

The compensation is estimated by looking at the value of the damaged natural resources, in addition to the expenses incurred to remove pollution issued by the oil and gas companies, and restore the

situation before the wrongful act of environmental pollution damage occurred, such as the expenses of cleaning sites when removing oil spills, as well as this method is distinguished In that it allows the monetary valuation of natural resources, which have no commercial value in the first place (17).

2- Venturesome Compensation method:

Legal tables are drawn up that determine the knowledge and price of each element of nature, and they are calculated according to scientific data, and Soviet law applied this method for the black oil that polluted the Baltic Sea in 1979, and the damage was calculated on the basis that one cubic meter of polluted water amounted to damage. One ruble (18).

The French legislator approved this method in some applications, for example, the French Forest Protection Law (19).

The French judiciary also applied this method in a case related to the pollution of a river, where the compensation was calculated on the basis of the length of the watercourse affected by the environmental pollution, estimated at one franc for every linear meter, and half a franc for each square meter in the transverse direction. An American court also applied this method on the occasion of an oil tanker accident that occurred in the United States of America on February 7, 1990, which at the time caused great environmental damage to one of the beaches, which led to its closure for a long period (20). Finally, it is noted that the Iraqi legislator in the Environmental Protection and Improvement Law No. 27 of 2009 stipulated a special method for estimating compensation when he decided to take into account the assessment of compensation for environmental damage, the degree of seriousness of polluting materials of all kinds (21).

3- The method of compensation borrowed from the laws of biology:

This method modifies the extent to which environmental damage affects the reproduction of living organisms that are susceptible to pollution (22). It leads to the elimination of the full capacity on the earth and what is in it, and it is not the destruction that is important to trees and animals as a result of the environmental damage caused by oil and gas companies , What is important is the impact of these damages on the reproductive ability of living organisms, the more the sex of the organism, the greater the threat of extinction, the greater the environmental damage caused by oil and gas companies.

The compensation may be determined by the legislator as to the purpose of this restriction and the discretionary power of the judge. And from that, the Kuwaiti legislator directed the civil law in 1980, in which Article (248) specified compensation at ten thousand Kuwaiti dinars, which may be amended by decree (23).

Conclusion:

It was found in this research that responsibility is a preventive function in addition to reparation, and that pollution is a deep problem that most countries of the world have tried to address and many legislations have been issued to address the problem of pollution and reduce it. The same applies to the environmental lawsuit, and to the plaintiff and the defendant in this lawsuit, which was dealt with by the jurisdiction of the ordinary and administrative courts to consider environmental damages, and

The effects of civil liability for environmental pollution damages caused by oil and gas companies

to estimate the compensation that affects the environment itself, and the compensation in kind or corresponding to the person.

Conclusions:

- 1- The application of the general rules of civil liability is not sufficient to cover all forms of environmental pollution.
- 2- The environmental damage is achieved gradually, not all at once.
- 3- The text of the second paragraph of Article (209) is compensation to be estimated at an amount of money, and it may not be so by taking other forms, including compensation in kind by restoring the situation to what it was.

Recommendations:

- 1- The necessity of developing the rules of responsibility to suit the special nature.
- 2- The necessity of adopting compulsory insurance for liability for environmental pollution damages.
- 3- Imposing legislation to enhance the role of compensation containers in the event that responsibility is not specified.

Margins:

- (1) - Dr. Abdul-Majid Al-Hakim, Abdul-Baqi Al-Bakri, Muhammad Taha Al-Bashir, Al-Wajeez in the Theory of Commitment in the Iraqi Civil Law, part 1, i4, Al-Atak for the book industry, 2010, p. 244.
- (2) - Dr. Abd al-Razzaq Ahmad al-Sanhoury, the mediator in explaining the civil law, part 1, Mansha'at al-Maaref in Alexandria, 2004, p. 816.
- (3) - Article (22) and Article (90) of the amended Egyptian Environmental Protection Law No. 4 of 1994.
- (4) - Article (33/Second) of the Iraqi Environmental Protection and Improvement Law No. 27 of 2009.
- (5) - Saadoun Al-Amiri, Compensation for Damage in Tort Liability, Publications of the Legal Research Center, Ministry of Justice Press, Baghdad, 1981, p. 5.
- (6) - Decision of the Baiji Court of First Instance, No. 182-b, 2014, dated May 28, 2014. (unpublished).
- (7) - Dr. Hassan Hantoush Rashid Al-Hasnawi: - Variable damage and its compensation in tort liability / comparative study / doctoral thesis submitted to the College of Law / University of Baghdad / 2004, p. 85.
- (8) - Dr. Samir Hamed Al-Jamal, Legal Protection of the Environment, Arab Renaissance House, 2007, p. 372 and beyond.

- (9) - Dr. Abd al-Razzaq Ahmad al-Sanhoury, *The Mediator in Explanation of Civil Law*, p 1, Mansha'at al-Maaref in Alexandria, 2004, pg. 643.
- (10) - *The Journal of The Letter of Rights*, a quarterly scientific legal journal issued by the Faculty of Law, University of Karbala, Issue 3, 2010, p. 45.
- (11) - Dr. Adnan Ibrahim Al-Sarhan and Nouri Hamad Khater, *Explanation of Jordanian Civil Law, Sources of Personal Rights, Obligations*, Amman, 2000, p. 487.
- (12) - Article (171) of the Egyptian law in force stipulates: 1- The judge shall determine the method of compensation according to the circumstances and the compensation is correct in installments, and it is valid that the compensation should be arranged and in these cases the debtor may be obliged to provide insurance. 2. Compensation is estimated in cash and is offset by article (269) of the Jordanian law in force.
- (13) - Dr. Saadoun Al-Ameri, *Compensation for Damage to Default Liability*, Publications of the Legal Research Center, Ministry of Justice Press, Baghdad, 1981, p. 162.
- (14) - Dr. Hassan Hantoush Rashid Al-Hasnawi, *Compensation claim for environmental damage*, previous source, pp. 78-79.
- (15) - In a decision issued in 1989 in Chicago, regarding the oil pollution resulting from the "Amoco-Cadiz" accident, the court categorically refused compensation for the pollution of the marine area. In another ruling, a German court went in 1987 to say that the current status of German law does not allow compensation for pollution and damage to German forests, and at the same time, it called on the German legislator to remedy this shortcoming. legislation.
- (16) - Adnan Al-Sarhan, previous reference, p. 125.
- (17) - Dr. Ahmed Bahgat, *Civil Responsibility for the Harmful Act of The Environment*, Arab Renaissance House, Cairo, 2002, p. 165.
- (18) Dr. Said Saad Abdeslam, *Problem of Compensation for Damage to the Technological Environment*, Arab Renaissance House, Cairo, 2003, p. 42.
- (19) - Dr. Abdul Rahman Kassab, Abdul Rahman: *Civil Responsibility arising from environmental pollution*, unpublished master's thesis, Mutah University, Jordan, 2006s 127.
- (20) - David J. Chapman and W. Michael Hanemann, *Environmental Damages in court: The American trader case*, Published research in *The Law and Economics of the Environment*, 2001, Anthony Heyes, Editor, pp.319-367. p.10 – 11. See also: Dale B. Thompson, op, cit, p.10.
- (21) - Dr. Tariq Kazem Ajil, *Criteria for estimating monetary compensation for environmental damage*, published research at the Islamic College, University issued by the Islamic University College, Najaf Ashraf, Issue 36, 2015, p. 102-103.
- (22) - Adnan Al-Sarhan, former reference, p. 128.
- (23) - *Letter of Rights Magazine*, former source, p. 197.

REFERENCE:

1. David J. Chapman and W. Michael Hanemann, Environmental Damages in court: The American trader case, Published research in The Law and Economics of the Environment, 2001, Anthony Heyes, Editor, pp.319-367. p.10 – 11. See also: Dale B. Thompson, op, cit, p.10.
2. Dr. Ahmed Bahgat, Civil Responsibility for the Harmful Act of The Environment, Arab Renaissance House, Cairo, 2002.
3. Dr. Hassan Hantoush Rashid Al-Hasanawi: - Variable damage and compensation in default liability /comparative study/doctoral thesis submitted to the Faculty of Law/University of Baghdad/2004.
4. Dr. Said Saad Abdeslam, The Problem of Compensating For Damage to the Technological Environment, Arab Renaissance House, Cairo, 2003.
5. Dr. Samir Hamed Al-Jamal, Legal Protection of the Environment, Arab Renaissance House, 2007.
6. Dr. Tariq Kazem Ajil, Criteria for estimating monetary compensation for environmental damage, published research at the Islamic College, University issued by the Islamic University College, Najaf Ashraf, Issue 36, 2015.
7. Dr. Abdul Rahman Kassab, Abdul Rahman: Civil Responsibility arising from Environmental Pollution, Unpublished Master's Letter, MutahUniversity, Jordan, 2006.
8. Dr. Abdul Razzaq Ahmed Al-Sanhouri, Mediator in Civil Law, P1, Alexandria Knowledge Facility, 2004 .
9. Dr. Abdul Razzaq Ahmed Al-Sinhouri, Mediator in Civil Law, P1, Alexandria Knowledge Facility, 2004.
10. Dr. Adnan Ibrahim Al-Sarhan and Nouri Hamad Khater, Explanation of Jordanian Civil Law, Sources of Personal Rights, Obligations, Amman, 2000.
11. Dr. Saadoun Al Ameri, Compensation for Damage to Default Liability, Publications of the Legal Research Center, Ministry of Justice Press, Baghdad, 1981.
12. Dr. Abdul-Majid Al-Hakim, Abdul-Baqi Al-Bakri, Muhammad Taha Al-Bashir, Al-Wajeez in the Theory of Commitment in the Iraqi Civil Law, P 1, 4t Edition, Al-Atak for the book industry, 2010.
13. Saadoun Al-Amiri, Compensation for Damage in Tort Liability, Publications of the Legal Research Center, Ministry of Justice Press, Baghdad, 1981.
14. Baiji Court of First Instance Decision, No. 182-b, 2014, dated May 28, 2014. (unpublished).
15. Article (22) and Article (90) of the Egyptian Environmental Protection Law No. 4 of 1994 as amended.
16. Article 33/Second of the Iraqi Environmental Protection and Improvement Law No. 27 of 2009.
17. Law Letter Journal, Quarterly Scientific Legal Journal issued by the Faculty of Law, University of Karbala, Issue 3, 2010 .