

## **The legal basis for civil liability arising from damages caused by Communication network**

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### **Abstract**

The current study addresses the issue of the legal the legal basis for civil liability arising from damages caused by Communication network towers and the legal nature of the damages resulting from them; whether they are considered uncommon neighborhood damages, or do the traditional general rules of civil liability apply to them? The current study found that the study communication towers are considered dangerous in nature, and therefore, they are subject to the provisions of Article (291) of the Jordanian Civil Law No. 43 of 1976, and the entity that is considered as liable is telecommunications company, due to its liability regarding use, guidance and control in addition to the moral element, therefore, it is considered the party liable for the damage caused by the frequency of waves. In the current study we recommended the Jordanian legislator to amend the text of Article (291) of the Civil Law by adding a new paragraph to it that shows the identity of entity liable for the damage of the things at its disposal, in addition to extending the liability and to abandon the basis adopted by the abovementioned law, which is the supposed error, a supposition that accepts proving the contrary, by adopting the new legal basis based on the element of harm.

### **Introduction**

The mobile phone has become one of the indispensable priorities of human life, and it has become accessible to everyone. Communication through mobile phone knows no boundaries, and what is undeniable is that every technology has its advantages, just as it is not without negative effects and residuals that may be harmful to the public health of humans and the environment as well. Therefore, there has been much debate recently about the impact of telecommunication networks (mobile phone towers) on human health and safety and the environment alike, and the severe damage that these networks and towers may cause.

Article (291) of the Jordanian Civil Code No. 43 of 1976 states: “***Whoever has at his disposal things that require special care to prevent their damage or mechanical machines, shall be liable for the harm these things cause, except for what cannot be avoided, without prejudice to the special provisions contained therein***”. This text is the legal basis for the civil liability of the owner of telecommunications networks for damages and compensation against such damage.

### **Second: Problem of the study**

The problem of the current study is to clarify the basis of civil liability resulting from damages caused by telecommunication network towers and the legal nature of the damages resulting from them. Is it

considered an uncommon neighborhood damage or does the traditional general rules of civil liability apply to it?

### **Third: Study Methodology**

This study depends on the **descriptive-analytical approach**, which requires the study of the research with the help of description and analysis, through the analysis of legal texts and the statement of jurisprudential opinions and jurisprudence in this regard.

### **Fourth: Study plan**

This study necessitated addressing it through two successive sections:

**Topic one: Personal and objective theories of civil responsibility.**

**Topic two: Concept of guarding telecommunication network towers.**

#### **Topic one: personal and objective theories of civil responsibility**

In order to establish the basis of liability resulting from the damages caused by communication towers, two trends emerged, the first of which considers compensating the damage caused by the influence of the towers through the behavior of the responsible person and an indication of whether his behavior was wrong, so the responsibility is borne by him (personal theory), and the second trend considers the damage regardless the behavior of the person responsible for such damage (objective theory). We discuss this through two main sections as follows: -

#### **Section one: personal theories**

This theory continued as a haven for jurisprudence and the judiciary to justify a person's accountability for the damages caused to others as a result of the use of his property<sup>1</sup>, so there are opinions that make the responsibility for the harms of unfamiliar neighbors lie in the theory of error "what is called damage", but the definition of the concept of damage was the subject of a difference, which is what this section seeks to discuss in several parts as follows:-

#### **Part one: Responsibility for personal action**

Civil liability is the obligation of a person to compensate for the damages he has caused to others<sup>2</sup>. Responsibility for the personal act has found great interest from the Jordanian legislator, given that the principle is the person's responsibility for his actions that harm others, so the legislator stipulated it in Articles (256 to 287) of the Jordanian Civil Code, where the legislator built it on harm and did not require the presence of error, so all damages to others obliges the doer, even if he is not aware of the damage he might cause, to guarantee (compensate) the harm, and the Jordanian legislator took this from Islamic jurisprudence<sup>3</sup>. Whereas Article (256) of the Jordanian Civil Code stipulates that: "Any

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<sup>1</sup> Abeer Abdullah Ahmad Derbas, Civil Liability for Uncommon Neighborhood Damages Resulting from Environmental Pollution in Palestine, Comparative Study, Master's Thesis, College of Law and Public Administration, Birzeit University, Palestine, 2014, p. 31.

<sup>2</sup> Amjad Muhammad Mansour, The General Theory of Obligations, Sources of Commitment, 3rd Edition, House of Culture for Publishing and Distribution, Amman, 2018, p. 244.

<sup>3</sup> Adnan Ibrahim Al-Sarhan and Nouri Hamad Khater, Explanation of Civil Law, Sources of Personal Rights: Obligations, 7th edition, House of Culture for Publishing and Distribution, Amman, 2019, p. 367.

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harm to others obliges the doer, even if he is not aware of the damage he might cause, to guarantee the harm.” Given that the responsibility assessed by Jordanian law is related to the harmful act, which is a tort liability, meaning that a person's act leads to harm to others, and it is a responsibility that is based on mere harm<sup>1</sup>.

Here the responsibility for things is established on the basis of the general rules of tort liability, where the person is responsible for his personal action, and he is responsible for doing things such as communication towers he is entrusted to guard them, do he is liable for compensation for the damage caused by such towers<sup>2</sup>.

The rules of tort liability require the existence of error and damage and the causal link is achieved between them, and then the plaintiff has to prove the elements of responsibility, which is a very difficult matter. Therefore, the legislator relieved him of the burden of proving the element of error with the presumption that the guard who caused the damage neglected the duty imposed on him to maintain the thing and take preventive measures to prevent harm to others<sup>3</sup>.

### **Part two: Breach of Neighborhood Obligations**

A part of jurisprudence established the responsibility for the harms of the neighborhood on the basis of the existence of certain obligations between the neighboring owners according to which each owner uses his property within the objective limits drawn by the law, provided that it does not result in harms to the neighbors.

**First: Responsibility is a legal obligation:** The proponents of this trend, led by the French jurist “Capitant”, see that the obligation towards the neighborhood is imposed by the law, which requires not to cause damage to the neighbors beyond the limits of the norm, and a breach of it necessitates holding the doer liable<sup>4</sup>.

Despite this, some believe that it led to important results. It suffices for the establishment of responsibility to prove the non-implementation of the obligation not to harm the neighbor, except in the case of a foreign fault, which, with its availability, is excluded from liability. Hence, we find that the law did not organize a clear basis for establishing responsibility on the owner for the harms of the uncommon neighborhood harms<sup>5</sup>.

**Second: Responsibility is a customary obligation:** Responsibility for the uncommon harms of the neighborhood is based on a customary obligation, where custom imposes on the owner an obligation not to cause uncommon harm to his neighbor, and if he breaches his obligation, he has breached a customary obligation imposed on him, which requires holding him responsible on the basis of breaching this obligation. The proponents of this trend rely on the fact that if there is no text in the

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<sup>1</sup> Explanatory Notes for the Jordanian Civil Law, Volume 1, 3rd Edition, Al-Tawfiq Press, Amman, 1992, p. 275.

<sup>2</sup> Adnan Ibrahim Al-Sarhan and Nouri Hamad Khater, Explanation of Civil Law, Sources of Personal Rights, previous reference, p. 518.

<sup>3</sup> Suleiman Morcos, Lectures on Civil Responsibility in the Techniques of Arab Countries, Institute of Arab Studies, Cairo, 1960, p. 190.

<sup>4</sup> Yasser Al-Minawi, Civil Liability arising from Environmental Pollution, New University House, Cairo, 2018, p. 301.

<sup>5</sup> Zarara Awatif, Property Owner's Responsibility for Uncommon Neighborhood Harms, Ph.D. Thesis, Faculty of Law and Political Science, Hajj Lakhdar University - Batna, Algeria, 2013, p. 204 and beyond.

civil law that deduces the basis of liability for uncommon harms, it is necessary to refer to custom as a source of law to find a basis for this responsibility<sup>1</sup>.

By referring to custom, we find it actually, and since ancient times, the owner is not obligated to compensate for the common harms that people tolerate, and compensation for unfamiliar harms. Article (1027) of the Jordanian Civil Code stipulates that it differentiating between common and uncommon harm by stating: "**...but it requires only the removal of these harms if they exceed the usual limit, taking into account the custom, the nature of the real estate, the location of each of them in relation to the other, and the purpose for which they were allotted**". Article (66) of the Jordanian Civil Code specified the criterion for preventing people from abusing the right by saying: "**... d. If custom is exceeded**"

But this theory has been criticized that custom is not suitable as a basis for liability, although it can be a source of the legal base. There is a difference between the source and the basis, in addition to the fact that the law, when dealing with custom, considered it a criterion for distinguishing between familiar harm and uncommon harm, and did not mean to consider it as a basis on which liability is based<sup>2</sup>.

## **Section two: objective theories**

In view of the impossibility of the injured person obtaining compensation for damage in light of personal theories, the objective theory arose that refuses to assess the error personally. Rather, this theory denies the error as a basis for responsibility and evaluates it on the basis of damage, considering that every act results in a harm that the doer must be held responsible of it whether he was mistaken or not<sup>3</sup>. There are two trends in this regard, which we discuss in two independent parts as follows: -

### **Part one: Theory of bearing Liability**

The theory of bearing the liability for action on the element of harm is evaluated and does not consider error as one of the pillars of responsibility, as the person's responsibility is realized as soon as the element of harm is available, and the harmed person only has to prove the damage and the causal relationship between the damage and the harmful act, which is one of the applications of objective responsibility<sup>4</sup>, and nature of industrial and commercial activities that generate technological risks, including the danger of communication networks that affect humans, the environment and others, we can find their basis in the idea of bearing the liability<sup>5</sup>.

We believe that the responsibility resulting from the communication towers bears the responsibility, and the responsibility for the towers is based on two conditions: the condition of damage and the causal relationship between the damage and the activity of the tower. As for the behavior of the guard, the

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<sup>1</sup> Faisal Zaki Abdel Wahed, *Environmental Damage in the Neighborhood and Responsibility for It*, Wahba Library, Cairo, 1989, p. 644

<sup>2</sup> Abu Zaid Abdel Baqi, *Determining the Legal Basis of Responsibility for the Harms of Unfamiliar Neighborhood*, A Critical Analytical Study in Comparative Law and Islamic Jurisprudence, *Journal of Law*, No. 1, 1983, pp. 104-p. 104.

<sup>3</sup> Khaled Mohammad Abdul Salal, *Civil Liability resulting from the damages of mobile phone towers*, a comparative study, Master's thesis, Al-Ahliyya Amman University, Jordan, 2015, p. 33.

<sup>4</sup> Sahib Al-Fatlawi, *Sources of Obligation in Civil Law, A Comparative Study of Islamic Jurisprudence*, 1st Edition, House of Culture for Publishing and Distribution, Amman, 2020, p. 379.

<sup>5</sup> Jabbar Saber Taha, *Establishing Civil Liability for Unlawful Action on the Damage Factor*, Comparative Study, Master's Thesis, Salah al-Din University, Iraq, 1984, p. 18.

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theory does not pay any attention to it as the guard has to compensate the harmed for the damage caused by the tower, and the harmed person only has to prove that the damage occurred and that, and the responsibility is considered here unless the guard proves that the tower was not in his guard at the time of the accident and that there was no causal relationship between the damage and the activity of the tower.

### **Part two: the theory of guarantee**

This theory is based on the fact that every person in society has the right to act freely, but this behavior is bound by the limits imposed by the regulations in a way that preserves the rights of others, Therefore, his behavior in a way that harms or prejudices the right of others to his stability requires a guarantee, i.e. compensation for damages<sup>1</sup>.

Since the telecommunications company has the right to carry out its activity by securing the communications of individuals through telephone towers that emit electromagnetic waves in accordance with the regulations and instructions for its work, taking into account the rules of caution not to harm others, and if its activity causes harm, the harmed person has the right to invoke his physical safety and request the right to compensation for harm. Responsibility arises as a confrontation between the doer's freedom of action and the victim's right to his stability, as it establishes responsibility on the occurrence of the act that constitutes a violation of the right of others to stability and safety of his body and money<sup>2</sup>.

### **Topic two: Concept of guarding telecommunication network towers**

A number of jurists established the responsibility that occurs as a result of the dangers arising from communication towers according to the theory of guarding things, whether it was an assumed or fixed error, especially with regard to things that are under guard and that need special care, such as mechanical machines. The jurists emphasized the responsibility of the owner for the damages that occur to the neighborhood from the things under his guard, but they differed about the permissibility of proving the opposite or not, and the jurisprudence differed about the nature of the guardianship that requires responsibility, whether it is a legal guard or actual guard. This study seeks to discuss that, through two main sections, as follows: -

### **Section one: Theories of guardianship and its legal nature**

Researching the nature of guardianship contributes to the appointment of the person who is responsible for redressing the damage caused by communication towers, is he the worker or technician who undertakes work in those towers, or the company that has the authority to manage and control, which indicates the determination of the quality of guarding between legal and actual<sup>3</sup>, and this is what this section seeks to discuss through several parts:

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<sup>1</sup> Khaled Mohamed Abdel Salal, *ibid*, p. 37.

<sup>2</sup> *Ibid.*, p. 38-pg. 39.

<sup>3</sup> Iyad Abdul-Jabbar Molouki, *Responsibility for Things and Its Application to Legal Persons*, Babel Press, Baghdad, 1989, p. 111.

## Part one: the concept of guarding and its types

**First: The concept of guarding:** the importance of the term guard comes from the link between responsibility and the idea of guarding, where the guard is the one who has the right to use the thing according to what it was prepared for, and he has the authority to monitor and administer it<sup>1</sup>, and then he has an obligation to prevent him from causing harm to others.

Guarding the tower is the responsibility of the telecommunications company, and therefore, the telecommunications company is responsible for any mistake committed by the guard.

The company is responsible from two aspects; the first is that it is responsible for the guard's fault if the damage is proven by the harmed party, and on the other hand, the company is responsible as a supposed guard<sup>2</sup>.

If the guard's mistake is not proven in guarding the tower, the company's responsibility is according to the rules of responsibility for things as it is responsible for the guard of the tower<sup>3</sup>.

Guarding is one of the conditions for achieving civil liability, and it can be inferred from the text of Article (291) of the Jordanian Civil Code, which states: "*Whoever has at his disposal things that require special care to prevent their damage or mechanical machines, shall be liable for the harm these things cause, except for what cannot be avoided, without prejudice to the special provisions contained therein*", which is the prevailing theory in jurisprudence and the judiciary<sup>4</sup>.

### Second: Types of guarding:

**1. Legal guarding:** The debate about legal guarding and physical guarding arose in the context of talking about the thing becoming outside the guard's management and control, as the adopters of legal guard considered it the right exercised over the thing, whether in use, management and control<sup>5</sup>, which applies to the work of communication towers, as the company has pledged to someone, who is mostly the person who the tower is built on his land or on his property by managing and operating the tower within certain conditions that are agreed upon under a contract. Nevertheless, the theory has been criticized as it is not required for the guard to have a right over the thing and to consider the thief a guard and this is illogical<sup>6</sup>.

**2. Actual guarding:** According to guarding, as mentioned above, the guard is considered the one who has the authority to use and manage the thing, and here the legal authority is not satisfied, but it is sufficient for it to be an actual authority, i.e. an authority that is not satisfied with the legal right over the thing, but the actual authority<sup>7</sup>. Although the tower is in the possession of the operator, the company

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<sup>1</sup> Tariq Abdel Raouf Saleh, *The Civil Responsibility of the Guardianship of Dangerous Objects in Kuwaiti Civil Law*, 1<sup>st</sup> Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2010, p. 204 Et seq.

<sup>2</sup> Ibrahim Fadel Youssef, *Human Responsibility for Animal and Inanimate Accidents*, 2<sup>nd</sup> Edition, Cooperative Press Workers Association, Amman, 1983, p. 151.

<sup>3</sup> Abd al-Razzaq Ahmad al-Sanhouri, *The Al-Wasset in Explaining Civil Law, The Right to Property*, 3<sup>rd</sup> Edition, Part VIII, Dar Al-Nahda Al-Arabiya, Cairo, 2011, p. 1228.

<sup>4</sup> Iyad Abdel-Jabbar Molouki, *Responsibility for Things and Its Application to Legal Persons*, *ibid*, p. 134.

<sup>5</sup> Reda Metwally Wahdan, *Al-Wajeez in Civil Liability, Guarantee*, 3<sup>rd</sup> Edition, Dar Al-Fikr Wal Qanoun for Publishing and Distribution, Cairo, 2018, p. 145.

<sup>6</sup> Khaled Mohammad Eid Salal, *ibid*, p. 50

<sup>7</sup> Sahib Al-Fatlawi, *Sources of Obligation in Civil Law*, previous reference, pg. 438

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is the owner of the authority to use and manage it, and if it does not have the authority to manage and control, it is not considered a guard of the tower<sup>1</sup>.

### **Part two: The attitude of comparative Jordanian law on guarding theories**

By searching for the meaning of guarding in the Arab laws, we find that most of them did not put a specific and legal meaning to guard things. The Jordanian and Iraqi civil laws were devoid of defining the legal meaning of guarding as well, and their texts on responsibility for things did not refer to the adoption of any of the two previous theories. Article (291) of the Jordanian Civil Code states: “Article (291) of the Jordanian Civil Code, which states: *“Whoever has at his disposal things that require special care to prevent their damage or mechanical machines, shall be liable for the harm these things cause, except for what cannot be avoided, without prejudice to the special provisions contained therein”*.”

Article (231) of the Iraqi Civil Code stipulates that: *Anyone who has at his disposal mechanical machines or other things that require special care to prevent their damage shall be responsible for the damage they cause unless it is proven that he took adequate precautions to prevent such damage*”.

Hence, it holds the responsibility resulting from the accidents of things, and here are the communication towers, for the guard or whoever the towers were at his disposal without clarifying the meaning of the guard and nor considering the theory of physical or legal guarding<sup>2</sup>, which is what the Egyptian Civil Code also stipulated in the text of Article (178) of it.

At the judicial level; we find that what the Jordanian Court of Cassation decided indicated that the Jordanian Civil Code has applied the theory of actual guarding on the thing under guarding, where the court rule:

*(The guarding is an actual authority over the object regarding its control , disposal of it and manage it, and that the principle in guarding is that the owner is responsible for guarding, and the guard is responsible for the harm that occurs to others from this object, and the burden of proof falls on the guard to sidetrack that responsibility)*<sup>3</sup>.

### **Section two: the legal nature of liability for damages caused by communication towers**

The process of researching the legal basis for civil liability resulting from damages caused by communication towers requires researching the legal responsibility of the property owner to the extent that allows him to erect the tower first, and then clarifying the responsibility of the tower owner for the damages resulting from it, and are they considered jointly responsible? This will be discussed in this section in several parts as follows: -

#### **Part one: The nature of the property owner's responsibility**

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<sup>1</sup> Tariq Abdul Raouf Saleh, Civil Liability of the Dangerous Objects Guard in Kuwaiti Law, *ibid*, p. 106

<sup>2</sup> Jamil Al-Sharqawi, The General Theory of Commitment, Volume 2, Sources of Commitment, Dar Al-Nahda Al-Arabiya, Cairo, 1993, p. 500.

<sup>3</sup> Jordanian Court of Cassation Decision No. 2447/2002, 7/11/2003, Adalah Publications.

It is customary for the telecommunications company to rent a property from its owner for the purpose of erecting towers on it, in return for the property owner receiving a certain fee to be agreed upon.

There is no doubt that the right of ownership is one of the broadest in-kind rights, and therefore the owner is free to exercise his powers that give him the right to benefit from his property, but this power is restricted by the owner's commitment not to abuse his right to the extent that harms his neighbors, which is considered as an arbitrary use of right<sup>1</sup>. Legal scholars differed in the theory of arbitrariness, as a group of them believed that arbitrariness is based on the idea of infringement, and therefore the abuse of the right is nothing but a mistake that generates tortious responsibility that requires compensation, whether it is: compensation in kind or financial compensation<sup>2</sup>.

## **Part two: The nature of the responsibility of the owner of communications towers**

**First: The responsibility of the tower owner:** Some legislations set conditions for applying the harms of the neighborhood to the damages of electromagnetic waves. These conditions are as follows:

**1. The tower owner's excessive use of his right:** It is a natural condition, as the right of ownership gives its owner the powers of use, exploitation and disposal, and not every act of the owner entails responsibility, and it is a matter left to the estimation of the nature of the object and the decision of the judge<sup>3</sup>. If the harmed person asks the owner to compensate the damage, and the owner fails to do so, the owner shall be held liable from that time.

According to the general rules, the harmed party within the scope of the uncommon damages, either asks for in kind implementation, in kind compensation, or financial compensation.

Fines may be imposed for each day or unit of time in which the owner does not remove the damage or the imposed actions. Removing the damage shall be by preventing its occurrence or minimizing it as much as possible, such as demolishing the wall that harmed the neighbor, blocking windows leading to the damage, or toxic fumes from residential areas, or modifying the method of usage in the factory<sup>4</sup>.

**2. That the uncommon damage emanates from the antenna tower:** the damage is uncommon if it exceeds the usual limit in what the neighbors usually bear from each other by virtue of the neighborhood, and if it exceeds the limit, compensation must be paid<sup>5</sup>.

The controls used in determining uncommon harms are flexible controls that accommodate what may be developed by industrial and scientific progress in the future so that it exceeds the usual and recognized limit as a result of the different nature of real estate and its location from one property to another<sup>6</sup>, in addition to the prevailing customs and circumstance of time and place, and this was what

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<sup>1</sup> Anwar Sultan, Sources of Obligation in Civil Law, A Comparative Study of Islamic Jurisprudence, 11th Edition, House of Culture for Publishing and Distribution, Amman, 2020, p. 296.

<sup>2</sup> Fathi Al-Derini, The Theory of Abuse of Right in Islamic Jurisprudence, 3rd Edition, Al-Resala Foundation, Beirut, 2008, p. 89.

<sup>3</sup> Abdul Razzaq Al-Sanhoury, Al-Waseet in Explaining Civil Law, Right to Property, 4th Edition, Al-Halabi Human Rights Publications, Beirut, 2011, p. 695.

<sup>4</sup> Ahmed Shawky Abdel Rahman, The original in-kind rights, Mansha'at Al Maaref, Alexandria, 2014, p. 27 Et seq.

<sup>5</sup> Mohammad Hamdan Abdeen Asran, Civil Liability for Compensating the Damage of Mobile Phone Towers Waves, op. reference, p. 944.

<sup>6</sup> Marwan Kassab, Responsibility for the Harms of the Neighborhood, 1st Edition, Jean-Claude Antoine Helou Press, Lebanon, 1998, p. 20.



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civil legislation approved<sup>1</sup>. The Egyptian judiciary stipulates the existence of liability without requiring a violation, as it decided that the neighbor is obligated to compensate his neighbor for the damage he suffers, even if he does not violate a legal text when the damage is huge and exceeds the norms.<sup>2</sup>

The Iraqi Civil Code established the responsibility on the telecommunications companies as the owner of the tower on the basis of an assumed error that can be proven to the contrary according to Article (231) of the Civil Code, and here there is no problem in proving the error in the case of the damage caused by the main towers.

The error is proven here once the non-compliance with the standards and specifications specified for the work of the towers is proven. Therefore, we find that the instructions for the protection of non-ionizing radiation of the main and secondary towers of Iraqi mobile phones No. 1 of 2007 stipulated that the companies owning these towers should obtain an environmental license. The administrative body has a moral and legal responsibility towards the citizens for what it decides on the environmental impact.

**Second: The owner of the property and the owner of the tower are jointly liable:** In the illegal act, the harmed party cannot usually be attentive by agreeing on the solidarity of those responsible for the common mistake in advance, before it occurs. For example, we find, for example, the Iraqi legislator in the text of Article (217) of the Civil Code stipulating that:

*"If there are multiple parties responsible for an illegal act, they are jointly bound by their obligation to compensate the damage without distinction between the original perpetrator, the partner and the culprit"*, and this is what Article (265) of the Jordanian Civil Code and Article (169) of the Egyptian Civil Code stipulate. If the property owner rents a part of a real estate to the guard of the towers by exploiting his right to install the tower what results in a harm to the neighbors due to the non-ionic radiation of the tower's antennas and its accessories, the responsibility of the property owner shall be raised according to the rules of abuse of the right.

The solidarity obligation is raised between the owner of the property and the owner of the tower, where the unity of the source is achieved. The commitment of the property owner is a legal obligation represented in the rules of abuse, and the commitment of the tower guard is a legal obligation represented in the rules of responsibility for things, and the unity of the damage caused to the harmed party is achieved<sup>3</sup>.

Finally, we see that there is a solidarity in tort responsibility between the property owner on the basis of the theory of abuse of the right, and the owner of communication towers on the basis of responsibility for things, as a result of the damage caused by the towers as a result of the non-ionizing radiation emitted by them, which must be compensated according to the provisions of the law.

## **Conclusion (conclusions and recommendations)**

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<sup>1</sup> Ahmed Ramadan, Civil Liability for Damage to the Neighborhood Environment, 1st Edition, Dar Al-Habib, Amman, 1990, p. 90

<sup>2</sup> Shakir Nasser, Al-Wajeez in the Original Rights in Kind, Volume 2, Al-Maaref Press, Baghdad, 1989, p. 383

<sup>3</sup> Ammar Abdel-Hassan Ali, The Civil Responsibility of the Guards of Cell Phone Towers for the Antennas, A Comparative Legal Study, Master's Thesis, Faculty of Law, Al-Nahrain University, Iraq, 2017, p. 116 and beyond.

This study dealt with the legal basis for civil liability resulting from the damages caused by telecommunication networks, as these towers are considered necessary for the purpose of providing the service to subscribers, as communication companies are the providers of the communication service.

At the same time, a very big problem appears, represented by the danger of mobile phone towers due to the non-ionizing radiation emitted from the antennas. It was necessary to search for the legal basis on which these people can rely to claim compensation for the damages that may befall them as a result of these towers and their radiation.

At the end of the study, we reached a number of results and recommendations, as follows:

### **First: Results of the study**

1. It turns out that communications towers are considered dangerous in nature and are therefore subject to the provisions of Article (291) of the Jordanian Civil Law No. 43 of 1976, and the telecommunications company is considered the guard, because it has the authority to use, direct and control in addition to the moral element, so it is considered the responsible party about the damage caused by the waves of the antennas.

2. We found out that uncommon neighborhood harm rules are applicable to the telecommunications company in relation to the damage caused by the tower to people residing in the property on which the tower is built or people residing in the properties adjacent to the tower.

### **Second: Recommendations**

1. We suggest to the Jordanian legislator to amend the text of Article (291) of the Jordanian Civil Law No. 43 of 1976 by adding a new paragraph to it that shows the person responsible for the damage of the objects at his disposal, in addition to tightening the responsibility and leaving the approved basis, which is the assumed error that accepts proof of the contrary by adopting the new legal basis based on the principle of damage; because development in mechanical machines and things that require special care necessitate a change in the legal basis that protects people from the dangers of these things subject to the provision of this legislative text.

2. We suggest to the Jordanian legislator to amend Article (1027) of the Jordanian Civil Code, by deleting the phrase “serious harm” and replacing it with the phrase “uncommon harm”; this is because the damage in the case of uncommon damages does not require that the damage be serious.

We also suggest adding a paragraph to the text stating that (the license issued by the competent authorities does not prevent the use of this right), as well as changing the word (owner) and replacing it with the word (neighbor), so that the application of the text is not limited to the owner, but even includes all users of all or part of the property for the purpose of benefiting in any way.

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