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Civil Liability for Damage to Non-Ionizing Electromagnetic Radiation (Comparative Study)

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Abstract

The spread of non-ionizing electromagnetic radiation constitutes a kind of environmental pollution, as well as nuclear pollution, marine pollution, soil pollution and other types of environmental pollution that society suffers from and is looking for reasonable solutions to overcome them or reduce their scope, and electromagnetic pollution is often the most dangerous other types of pollution because of the generality of its spread, non-ionizing electromagnetic radiation spreads in places of residential gatherings, which is determined that the law must respond quickly in modern society for every requirement or Technological development that affects the direction of technological and economic development and develops the rules and ideas prevailing in the traditional legal system of civil liability to protect the right of the victim of non-ionizing electromagnetic radiation to compensation.

Keywords: Civil Liability, Damage, Non-Ionizing Radiation, Fault, Liability, Injured

Introduction

The use of the mobile phone has become a natural matter and is almost one of the necessities of life and its requirements, whether in personal, social or economic relationships, and despite the many benefits of the mobile phone, there are negative effects on health as a result of the use of these devices, despite the presence of means of prevention used to reduce these negative effects, and the source of these damages is concentrated in non-ionizing electromagnetic rays issued by mobile phone towers, especially since these damages do not appear immediately, but after a period of time due to the accumulation of these rays and waves appear over time, and their effects appear both on the nervous system or on the functions of the brain in humans, and these systems may be within cities and in residential neighborhoods, where they send and receive enormous non-ionizing radiation, which harms public health and the environment and causes damage to human health if it exceeds the limits permitted by law¹.

In February 2009, the Los Angeles Institute of Public Health published results shown by international research confirming the association of non-ionizing electromagnetic radiation with various cancerous tumours, cardiovascular disease, Alzheimer's, memory loss, premature ageing, frustration, nerve impact and immune system damage disease, and these rays are related to the increased activity of microbes that infect humans, which leads to the inability of his immunity to resist them.

The spread of damage imposes on the legislator to intervene and find legal means and tools to

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ensure the reduction of these damages caused by non-ionizing electromagnetic radiation and thus facilitate the access of those affected to compensation, taking into account the circumstances of all parties and the change that these circumstances may impose in terms and applications, and the Iraqi Environmental Protection and Improvement Law No. 27 of 2009 was issued if Article (15 / fifth) of the law stipulates that "the practice of activities emitting non-ionizing electromagnetic radiation emitted from stations Main broadcasts, towers and antennas for mobile phones and others, except within the scope of instructions and controls issued by the ministry for this purpose."

Article (2) of the instructions for the prevention of non-ionizing radiation issued by mobile phone systems No. (1) for the year 2010 in Iraq stipulates that "these instructions aim to protect humans from the possible biological effects of non-ionizing radiation from mobile phone systems, taking into account the labor legislation with regard to workers in these systems and related to their occupational health and safety."

However, Law No. 27 of 2009 and Instructions No. 1 of 2010 did not specify civil liability in the event of damage, which requires reference to the rules of civil liability in accordance with the traditional rules in the Civil Code to examine the source of the obligation to compensate for electromagnetic damages, whether in the traditional framework that imposes adherence to the frankness of the texts and adherence to the intention of the legislator or otherwise, until a legal obligation is reached that can be thrown at the companies that own mobile phone systems, which emit electromagnetic radiation. Non-ionizing and thus facilitates the access of those affected to compensation, taking into account the circumstances of all parties and the change that these circumstances may impose in terms and applications.

The Importance of Research: The subject is of a special nature, as it is related to the health and safety of man and the environment, and has imposed its presence on the systems, ideas and legal theories prevailing in civil law in general and on civil liability arising from non-ionizing radiation damage in particular, so that the structure and content of these theories must be reconsidered in a way that keeps pace with this progress so as not to be a barrier or stumbling block to scientific and technological development and at the same time not to be an obstacle to the affected person obtaining his right to compensation that makes up for the damage.

Especially since there are several legal concepts and ideas that we accept as they are in the general rules of what enables the victim to obtain his right to compensation as the idea of error as a pillar of responsibility and proof of fault by the victim, which calls for the development or abandonment of the rules and ideas prevailing in the traditional legal system of civil liability, which collides with the injured in obtaining compensation for the damage of non-ionizing electromagnetic radiation.

Research Objectives: Determine the basis of civil liability arising from the damage of non-ionizing electromagnetic radiation issued by mobile phone systems, which ensures compensation for damages and makes the companies that own mobile phone systems forced to process the rays issued by their towers in a way that eliminates or reduces the size of these damages in order to avoid the obligation to pay compensation to the people affected by the towers and thus take into account the environmental dimension.

Research Problem: The legislator did not address accurately the problems that appear due to the damage of non-ionizing electromagnetic radiation issued by mobile phone systems, so does the error serve as a basis for civil liability despite the change in social and economic ideas that were associated with it at its first inception, and is the error suitable to be the basis of civil

liability for non-ionizing radiation damage, despite the difficulties of proving the deviation of the companies that own the mobile phone systems from the usual behavior? What is the legal basis on which civil liability for radiation damage is based? Non-ionizing electromagnetic radiation issued by mobile phone towers? How adequate, are the rules contained in the Civil Code and the Law on the Protection and Improvement of the Environment in providing the necessary protection for persons affected by non-ionizing radiation?

We will try to answer the above questions according to the comparative analytical approach in Iraqi, Egyptian and French laws, and analyze the rulings of the judiciary and the opinions of jurists in this area and this will be through the division of the study into two sections as follows:

The First Topic: the Personal Criterion of Civil Liability for Non-ionizing Radiation Damage

The tort liability is the penalty resulting from the breach of an obligation imposed by law, and the legislator has organized tort liability on the basis of the fault that must be proven in responsibility for personal acts, and then approved the supposed error in the responsibility of the keeper of things, and tort liability is based on three pillars: error, damage and causal relationship, if one of them is demolished, responsibility will not be achieved and the personal criterion in determining the basis of civil liability for damage to non-ionizing electromagnetic radiation is based on the element of error, which we will show as following:

The First Requirement: the Error Must Be Proved, the Basis of Civil Liability for Non-ionizing Radiation Damage

Article (202) of the Iraqi Civil Code stipulates that "every act harmful to the soul of killing, wounding, beating or any other type of harm shall be subject to compensation from the damage caused," and Article (204) of the same law stipulates that "every infringement inflicting any damage to others other than what was mentioned in the previous articles shall require compensation."

Article (32/I) of the Iraqi Environmental Protection and Improvement Law No. 27 of 2009 stipulates that "anyone who, by his personal act, negligence or negligence, or by the act of those under his care, control or control, including persons, followers, or violations of laws, regulations and instructions, causes damage to the environment and is obliged to compensate and remove the damage within an appropriate period and restore the situation to what it was before the damage occurred...."

From the above articles, the responsibility of the guardian of the mobile phone systems causing the damage is determined by the rules of tort based on error if the conditions for their application contained in Articles (202) and (204) of the Iraqi Civil Code are met ⁽²⁾, as three elements must be available, error, damage and the causal relationship between them, and the injured person claiming compensation must establish evidence of the availability of these three pillars to prove his right to compensation for non-ionizing radiation damage to mobile phone systems. The fault of the guard of mobile phone systems according to the standard of the common man ⁽³⁾.

This is what the Court of First Instance of Tarmiya ordered to compensate the plaintiff (five million dollars) for the damage suffered by him from the towers of the defendant director of the ether company / in addition to his job based on the text of Article (202) of the Civil Code ⁽⁴⁾.

The mistake of the guard of mobile phone systems whose non-ionizing radiation causes damage may be a violation of the laws and instructions in force, as many legislations have been issued, including those related to the protection and improvement of the environment, some on the protection of non-ionizing radiation from mobile phone systems, and other legislation aimed at preventing pollution of the environment ⁽⁵⁾.

The companies that own the mobile phone systems (the guard) must observe the laws and instructions in force, in particular the instructions for the prevention of non-ionizing radiation, and the need to obtain an administrative license in advance and not to exceed the scope of the license granted, and⁶ if the guard of mobile phone systems violates one of these rules, he is civilly responsible for the damage of the rays issued by these systems, because he committed a mistake if he did not obtain a license or if he did not observe the requirements required by the instructions in this regard, if this error resulted in Damage to third parties, which he had to compensate in accordance with the general rules of tort ⁽⁷⁾.

This was ruled by the Court of First Instance of Bayaa/Karkh in a decision to dismiss the plaintiff's lawsuit demanding the suspension of work to install a tower belonging to the defendant, the managing director of Asia Cell Company, in addition to his job, because it is near children's schools, which poses a danger to the environment and human health due to the non-ionizing radiation emanating from the tower, and the reasoning of the decision because the defendant did not violate instructions No. 1 of 2007 and obtained approval from the Ministry of Environment. ⁽⁸⁾

The fault of the guard of mobile phone systems caused by non-ionizing radiation may be the occurrence of damage by negligence or failure to take the necessary measures to prevent or reduce harms, and the guard of telephone systems may commit a negligent mistake by deviating from the usual behavior of the person, so his behavior is wrong if he does not take the necessary precautions and possible means placed by science at his disposal, in accordance with customary behavior, in order to avoid the severity of harms, and therefore the guard of mobile phone systems has committed a mistake if he does not degrade the surface of A building occupied by a base station with a non-metallic fence from all directions or the height of the fence is less than one and a half metres, since its negligence constitutes an error justifying the award of compensation in accordance with the general rules of liability for things ⁽⁹⁾.

Some of the decisions of the Iraqi Court of Cassation came to apply the rules of tort, as it ruled that "the public facility for water and sewers, when it drains the water collected in the streets to residential neighborhoods where there are no regular sewers, but performs a public service and therefore does not ask for the damage caused to others unless it arises from an infringement that occurred during the performance of its employees' services..." ⁽¹⁰⁾.

The liability of the guard of mobile phone systems for non-ionizing radiation damage based on the rules of liability based on the fault that must be proved is not sufficient to protect the victim because of the difficulty of proving the fault of the guard of mobile phone systems, as liability based on error requires proof by the text of Article (186) of the Iraqi Civil Code.⁽¹¹⁾ The availability of the fault of the guard of the systems and the injured party must prove the percentage of error of the damage, that is, the injured party must prove that the guard of the systems deviated from the behavior familiar to the usual person. In such circumstances, whether by proving that he violated the laws and instructions in force, which he is obligated to observe or by proving the negligence of the guard of the systems or by not taking the necessary measures and precautions to avoid damage caused by non-ionizing electromagnetic radiation issued by mobile phone systems.

This is what the Court of First Instance of Jalawla / Diyala ruled in a decision to dismiss the plaintiff's claim for compensation for damages caused by non-ionizing electromagnetic radiation from the mobile phone systems belonging to the defendant, the managing director of Asiacell / in addition to his job because the defendant's fault was not proven ⁽¹²⁾.

The injured party is unable to prove the fault of the guard of the mobile phone systems and is responsible for the damage of non-ionizing radiation, due to the fact that the victim is not associated with the guard of the systems and therefore cannot put his hand on the error or omission attributed to the guard of the systems and cannot know whether he has taken the necessary means and measures to prevent damage caused by non-ionizing radiation, as well as the lack of technical knowledge of the affected person of the harmful activity, which for him is unknown and strange, which makes it impossible for him to know or know the rules The art governing that activity ⁽¹³⁾.

The very nature of non-ionizing radiation damage can be an obstacle to proving error, as such damage does not appear immediately after the establishment of mobile phone systems, but rather their appearance is lax and is often discovered after a long time, and therefore it is difficult to prove the fault of the guard of mobile phone systems after such a long period, especially if the mobile phone systems have undergone developments or changes or if the system has ceased or terminated ⁽¹⁴⁾.

In addition, non-ionizing radiation damage to those affected may be attributed to several mobile phone systems and not to a single system, and error may be common among all companies that own the systems, so it is not possible to determine the system guard to whom negligence, negligence or error is generally attributed ⁽¹⁵⁾.

Also, the responsibility of the guard of mobile phone systems for non-ionizing radiation damage on the basis of the rules of liability based on the fault that must be proved, is not enough to protect the injured because the guard can pay his responsibility if he can prove the absence of fault on his side, and prove that his behavior is consistent with the behavior of the usual person by establishing evidence that he has taken all the measures and measures required by laws and instructions, and has taken the necessary precautions, in accordance with the standard of the common man and that he did not violate the laws and instructions in force out.

This is what the New Baghdad Court of First Instance ruled to dismiss the plaintiffs' claim for compensation for material and moral damage as a result of the death of their testator due to non-ionizing radiation issued by the mobile phone system in accordance with medical reports.⁽¹⁶⁾

We believe that civil liability based on fault and duty of proof falls short of accommodating civil liability for damage to non-ionizing radiation of mobile phone systems, and does not provide protection for those affected by these rays, which requires the search for another basis for civil liability to cover the damage of non-ionizing radiation issued by mobile phone systems.

The Second Requirement: the Error is Not Provable the Basis of Civil Liability for Non-ionizing Radiation Damage

Article (231) of the Iraqi Civil Code stipulates that "whoever has at his disposal mechanical machinery or other things that require special care to prevent their damage shall be liable for the damage caused by them unless it is proven that he has taken sufficient care to prevent the occurrence of the damage ..." ⁽¹⁷⁾, and the thing that requires special care to prevent its damage is everything that may pose a danger to individuals or the environment if the necessary care is

not taken to prevent damage when the person uses these things, namely either They require special care because of their nature or by their circumstances and circumstances that require special care ⁽¹⁸⁾.

In Iraq, Article (2) of the instructions for the prevention of non-ionizing radiation issued by mobile phone systems No. (1) of 2010 stipulates that "these instructions aim to protect humans from the possible biological effects of non-ionizing radiation from telephone systems. mobile subject to the labour legislation about workers in these systems and related to their occupational health and safety."

According to Article 231 of the Civil Code, for the custodian of objects whose custody requires special attention for damage ⁽¹⁹⁾ caused to others, the responsibility of the custodian of objects requiring special care for damage caused to others is required to be under the custody of a person.

²⁰ The Egyptian Court of Cassation has ruled that "the object in the provision of article 178 of the Civil Code is what special care is required to be guarded if it is dangerous by nature or by its circumstances and circumstances by becoming in a situation or condition that normally allows damage to occur".

It is also required for the responsibility of the custodian of things that require special care to guard that damage occurs to others by doing that thing, and this requires positive intervention of the thing in the occurrence of the damage, and this is so if the thing is in a situation or condition that allows it to cause damage usually, but this intervention does not require direct physical contact between the thing and the injured ⁽²¹⁾, and the Iraqi Federal Court of Cassation ruled that "it is established from the lawsuit papers that the wheat crops belonging to the plaintiff were burned as a result of The electric spark that broke out from one of the electric poles near the plaintiff's plantation, and since the electric poles are objects that require special care to prevent their damage, and since the Electricity Department has not carried out such care, it is, therefore, liable for the damage caused pursuant to the provision of Article 231 of the Civil Code."⁽²²⁾

If these previous conditions are met,²³ the error is assumed on the part of the guard, and therefore his responsibility for the damages caused to others, and some jurisprudence has argued that civil liability is based on the assumption of the fault of the guard of the thing and this error is represented by not controlling the thing in the required way, which leads to the escape of the reins of the thing from his control, and therefore it is not the responsibility of the injured to prove the fault of the guard, but his error is assumed through a legal presumption that the negligence of the guard of the thing Cause harm to others.

The purpose of exempting the victim from proving the fault of the official - the guard of mobile phone systems - and to reduce the burden on the affected person, due to the difficulties that would lead to the inability of the affected person to prove the error of the guard of things for the damage caused to him due to his relative impossibility in proving, and his lack of technical experience in the field of radiation and communications, if the mobile phone systems emit non-ionizing rays that cause diseases of the reproductive system or malignant tumors in the lung or gradual loss of For memory, the difficulties increase for the affected person in proving the fault of the guard of mobile phone systems for non-ionizing radiation, and that reducing the burden of proof and not assigning the injured person to prove the fault of the guard of things does not mean that the error is not a pillar of civil liability for things, because the goal is to mitigate the affected person and protect people from the dangers of non-ionizing radiation from mobile systems⁽²⁴⁾.

The Iraqi legislator has adopted the theory of the supposed error in the Environmental Protection and Improvement Law No. (27) of 2009, where Article (32/III) stipulates that "the responsibility of the cause of damage resulting from the violation of items (first) and (second) of this article is presumed."

According to the theory of presumed error, the presumed error can be proven to the contrary by the official guard of the thing - the guard of the mobile phone systems - to prove that no fault was made on his part and thus get rid of responsibility, which was ruled by the Court of Cassation in the Kurdistan Region of Iraq by a decision that "the responsibility of the Electricity Department is legally assumed because it is responsible for taking the necessary precautions to prevent damage, and that this responsibility remains until proven otherwise..."⁽²⁵⁾.

The Egyptian Court of Cassation ruled by a decision that "to achieve the responsibility of the custodian of the things prescribed in Article (178) of the Egyptian Civil Code, the damage must occur by doing the thing, which requires that the thing intervenes positively in causing the damage, if the guard pays this responsibility before the Court of First Instance that the intervention of the thing was only a negative intervention, as the injured person himself entered the wells of waste that caused the damage, the appealed judgment if he did not face this essential payment and did not discuss it shall be defective, which necessitates reversal."⁽²⁶⁾

The Iraqi Court of Cassation also adopted the theory of presumed error in its decision, where it ruled that "the plaintiffs' son died as a result of an electric shock while he was going to school as a result of the fall of electrical wires on the ground, and since electrical lines and their accessories are considered objects that require special care to prevent their damage, in application of the provision of article (231) of the Civil Code, so the defendant's responsibility / in addition to his job for the damages caused to the plaintiffs is realized".⁽²⁷⁾

The Iraqi Court of Cassation also ruled on the theory of the supposed error in its decision that "the leakage of water from the stream belonging to the department of the distinguished and causing damage in the house of the distinguished on it, so the responsibility of the distinguished was achieved in accordance with the provisions of Article (231) civil ..." ⁽²⁸⁾.

We believe that the adoption of the theory of presumed error can be proven to the contrary, and does not provide protection for the victim in the event that the guard of the mobile phone systems proves that no fault was made on his part and thus eliminates civil liability.

The Second Topic: the Objective Criterion of Civil Liability for Non-ionizing Radiation Damage

The civil liability according to the objective criterion focuses on the damage and its attribution to the companies that own the mobile phone systems, and the affected according to the objective criterion is exempted from proving the error, the civil liability exists even if there is no error, and this was about the development that occurred in the field of using things and the consequent danger and damage caused to others as a result of the guard's use of these things, which we will show as follows:

The First Requirement: Error in Custody is the Basis of Civil Liability for Damage to Non-ionizing Radiation

According to this theory, the guard is obligated to prevent the thing from causing harm to others, and in the event that the guard of the thing does not implement this legal obligation or the thing escapes from control by the guard, causing damage to others, the guard is wrong,

and once the damage is achieved, the error is fixed, not on the basis of the supposed error, but on the basis of the fixed error, as the obligation of the custodian of the thing not to harm others is an obligation to achieve a result and not an obligation to exercise care, and the custodian of the thing cannot get rid of civil liability by proving that it is not his fault and that his conduct is compatible with that of the hostile man.⁽²⁹⁾

This picture of the fault of the guard of the thing is the fixed error that cannot be proven otherwise, the guard's obligation to control the thing and take the necessary measures to avoid any damage that may occur from the use of the thing or direct it, is an obligation to achieve a result, and then there is no way for the guard to deny this error by proving its opposite, and it remains for him to pay responsibility except to deny the causal relationship between the act of the thing and the damage that occurred, and the guard of the thing can get rid of his responsibility by proving that he is not wrong, and he cannot get rid of of civil liability except by proving the foreign cause⁽³⁰⁾.

The Egyptian Court of Cassation ruled in a decision on error that cannot be proven to the contrary, and stated in the decision that "the responsibility of the custodian of the thing is based on a presumed fact that it occurred from the custodian of the thing presumably does not accept proof to the contrary..."⁽³¹⁾

The Court of First Instance of Diwaniyah also ruled in a decision to oblige the defendant the director of the ether company / in addition to his job to raise the mobile phone tower, which causes harm to the plaintiffs and their families as a result of non-ionizing radiation issued by the tower.³²

We believe that the adoption of the theory of fixed error is not capable of proving the contrary and does not cover all the damage caused by non-ionizing radiation issued by mobile phone systems, because the foreign cause eliminates responsibility for things, as the legislator stated at the end of the text of Article (231) of the Iraqi Civil Code⁽³³⁾"... Unless it is proved that the damage was caused by a foreign cause in which he has no hand...", and this is an obstacle for the injured person who finds himself without legislative protection, so that if the guard of the mobile phone systems and the person responsible for the damage succeeds in proving that the damage was bound to be a fact, as it is attributed to force majeure or the act of others, and is not attributed to the guard and has no hand in it.

The Second Requirement: Bearing Liability as the Basis of Civil Liability for Non-ionizing Radiation Damage

The idea of this theory is that every person who practices business and uses things that would cause damage to others must bear the consequences of his actions and actions, and the risks that result from them, and be responsible for them even if he has committed to his behavior and did not make any mistake⁽³⁴⁾, as this theory is based on the element of damage, and does not consider error as a pillar of responsibility, and the basis of civil liability of companies that own mobile phone systems for the damage of non-ionizing radiation issued by them is the act The cause of damage, that is, the responsibility is based on the material causation between the activity of companies and the damage resulting from the practice of this activity, and the affected person must prove the damage, and the causal relationship between the damage and the activity that caused the damage, because companies are asked according to this theory not on the basis of the damage that occurred by their fault, but on the basis of the damage that occurred by their action and activity, which is consistent with economic development, after mobile phone systems have become a source of great danger, and at the same time generate

huge funds for companies. Damage caused by non-ionizing radiation from these systems must be compensated⁽³⁵⁾.

This theory is based on the rule of fining sheep, as it does not count the element of error, but civil liability is based on the occurrence of damage only, as it is difficult to prove the error of the guard of polluting activities, including mobile phone systems and the damage they cause, it is necessary to apply the rule of fining sheep to every person who benefits from the practice of an activity that poses a danger to the environment and humans and generates a benefit, he must bear its rewards and responsibility for the damage caused by his activity to others. Whoever refuses to operate a particular project must be fined compensation for the damage caused by this operation, and the companies that own mobile phone systems that obtain a benefit from these systems, are obliged to compensate for the damage of non-ionizing radiation issued by the systems, and since the use of modern technology cannot be dispensed with, because of the progress and welfare it achieves for humanity, then the companies that own mobile phone systems must bear in mind that they will bear the potential risks as they obtain a license for these systems. resulting from non-ionizing electromagnetic radiation emitted by it, and the consequent obligation to compensate for the damages resulting therefrom, in return for the profits it obtains, thus ensuring that the injured party receives compensation without the need to burden him with the burden of proving the fault of the companies that own the mobile phone systems⁽³⁶⁾.

The French court of Toulon ruled that the lack of scientific certainty on the damage of mobile phone systems does not preclude the award of compensation for the supposed risk, and that the defendant's commitment to the company Puygues Telecom Telecom with the regulations and conditions for the installation of the towers is insufficient to get rid of liability, and the court decided to oblige the defendant to pay monetary compensation of (70,000) euros and in-kind compensation represented by the removal of the tower⁽³⁷⁾.

As it is not fair for the owner of the activity to obtain a fruit and account for the benefits and benefits generated by him and leave it to others to bear the risks of this activity, but justice requires reparation for the damage in the event of damage and this damage was not the result of someone's fault, it is fair to bear these risks as his benefit achieved the responsibility, and it is not fair for the affected to bear the damage that occurred to him because of his inability to prove the error, or that the activity The person who has suffered the damage is legitimate⁽³⁸⁾.

When the companies that own mobile phone systems install towers in order to provide services to subscribers and return a material profit, it is not logical that people near these towers risks of non-ionizing radiation emitted from mobile phone towers, so the companies that own mobile phone systems bear responsibility for these risks in exchange for the profits they reap⁽³⁹⁾.

Anyone who creates an increased risk to others through the use of dangerous objects and materials must bear the risk of such risk and is obliged to compensate for the damage caused by such use.⁽⁴⁰⁾

Article (110/I/1) of the French Environmental Protection and Improvement Law No. 91 of 1983, as amended by Law No. 1087 of 2016, stipulates that "the absence of scientific certainty, given the scientific knowledge and techniques available at a given time, shall not prevent effective, proportionate and economically acceptable measures to prevent irreversibly realized danger that threatens serious damage to the environment."

The Paris Court adopted the theory of liability in its decision, holding that "the liability of the owner of the thing does not result from fault of his spouse but from that just principle that whoever reaps from doing something must bear the damage caused".⁽⁴¹⁾

The French Versailles court also ruled in a decision to remove a mobile phone tower from its location and caused the decision that the legality of the activity and its benefit to society is not sufficient in itself to rule out the existence of harm, and that the scientific debate on the harms of non-ionizing radiation from mobile phone towers is still open, but studies have not confirmed that these towers are free of the possibility of harm in the future. ⁽⁴²⁾

We believe that the theory of bearing responsibility is more a guarantee for the affected in the extension of comprehensive protection from non-ionizing radiation issued by mobile phone systems, as it is based on the element of damage without the need to prove the error of the companies that own the mobile phone systems, or assume their error, especially since the damage resulting from non-ionizing electromagnetic radiation issued by mobile phone systems does not appear until after a period, as compensation for damage, even without error, is the most appropriate legal basis for the nature of the damage. We call on the legislator in Iraq to intervene with legislation by law that explicitly stipulates the responsibility for civil liability for the damage of non-ionizing radiation issued by mobile phone systems, as the rights of persons deserve to occupy a more important place within the scope of civil liability.

Conclusion

At the end of this study, we reached the following results, and we seek to make some recommendations, as follows:

First: Results

Jurisprudence tried to determine the legal basis for civil liability for the damage of non-ionizing electromagnetic radiation, because this liability is not regulated by the legislation of most comparative countries, and the judiciary has varied its provisions in determining the basis of this responsibility, and we have excluded civil liability based on error and must be proved, because it falls short of absorbing civil liability for non-ionizing radiation damage to mobile phone systems, and is not enough to protect the affected because of the difficulty of proving the error of the guard of mobile phone systems, and the guard can pay his responsibility if He was able to prove the absence of error on his part, and prove that his behavior is consistent with the usual behavior of the person by establishing evidence that he took all the procedures and measures required by the laws and instructions, and took the necessary precautions, according to the standard of the common man and that he did not violate the laws and instructions in force.

We concluded that the theory of presumed error cannot be proven to the contrary, because it does not protect the victim in the event that the guard of the mobile phone systems proves that no fault was made on his part and thus eliminated civil liability.

It turns out that the theory of fixed error cannot be proven to the contrary does not cover all the damage caused by non-ionizing radiation from mobile phone systems, because the foreign cause excludes responsibility for things.

We found that the theory of bearing responsibility is more a guarantee for the affected in extending comprehensive protection from non-ionizing radiation issued by mobile phone systems, as it is based on the element of damage without the need to prove the error of the companies that own the mobile phone systems, or assume their error, especially since the damage resulting from non-ionizing electromagnetic radiation issued by mobile phone systems

does not appear until after a period, as compensation for damage, even without error, is the most appropriate legal basis for the nature of the damage. caused by non-ionizing radiation of mobile phone systems.

Second: Recommendations:

We recommend the legislator in Iraq not to adopt the general rules in the civil law in determining the basis of civil liability for the damage of non-ionizing electromagnetic radiation issued by mobile phone towers, and we recommend legislating a special law or amending the Iraqi Environmental Protection and Improvement Law No. 27 of 2009 by adding an explicit text to bear the responsibility by the companies that own mobile phone systems in civil liability for damage to non-ionizing rays issued by mobile phone systems, the rights of persons deserve to It occupies a more important place in the scope of legal civil liability, and civil liability is based on the element of damage without the need to prove the fault of the companies that own the mobile phone systems, or assume their error, as it is the most appropriate legal basis for the nature of the damage caused by non-ionizing radiation of mobile phone systems.

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¹⁰Decision of the Iraqi Federal Court of Cassation No. 24888/Civil Commission/1994 of 30/12/1995.

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¹⁵Dr. Saeed Saad Abdel Salam, *The Problem of Compensating for the Damage to the Technological Environment*, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 112.

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²⁶Egyptian Court of Cassation, Appeal No. 316, 24/4/1978, Collection of Cassation Rulings, Technical Office, Year 9, p. 1079.

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³⁰Dr. Abdel Halim Abdel Qader Abu Hazeem, *Responsibility for Inanimate Things*, 1st Edition, Dar Al-Thaqafa, Amman, 1998, p. 76.

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³⁴Dr. Raed Muhammad Al-Nimr, *Guarding in the Scope of Responsibility for Things*, Dar Wael Publishing, 1st Edition, Amman, 2015, p. 60.

³⁵Dr. Jabbar Saber Taha, *Establishing Civil Liability for Unlawful Action on the Element of Damage*, Al-Shaab Press, Baghdad, 1986, p. 96.

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⁴⁰Dr. Jabbar Saber Taha, *op. cit.*, p. 98.

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