

Legal Treatments for Mobile Phone Harms under the Legislative Developments: a Comparative Study

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ABSTRACT

The use of the mobile phone has spread widely among consumers, as the mobile phone revolution has brought about a shift in living patterns and livelihood resources. It contributes to creating new business activities and changing the method of communication between people until the telephone network, given the services it provides, has become the widest machine the world has ever seen. This requires establishing legal restrictions on the import of mobile phones. The use of a mobile phone has many social, physical, healths, environmental, or legal effects. As for the latter, we notice in Iraq that there is no legal regulation for communications that providers of telephone services adhere to in their relationship with users.

. **Keywords:** Harm - Phone - Mobile - Environment

authority in Iraq no. 65 of 2004 according to which the media commission was established to clarify the legal treatment of the topic of the research as well as to explain the status of the environmental laws and the extent of protection they provide within the scope of compensation for damages arising from mobile phones in terms of imposing fines. These fines serve as punitive compensation to show the extent of the possibility of activating such compensation in Iraq similar to European laws. Texts of Iraq civil law and the views of jurisprudence related to aspects of research will be discussed, while supporting the study for judicial decisions as a mirror that reflects the reality of research ((legal treatments of mobile phone damage in light of legislative developments - a comparative study)).

1. Legal Treatments in the Constitution Laws

The order issued by the Coalition Authority in Iraq No. (65) for the year 2004 - according to which the Iraqi Media and Communications Commission was established - did not mention a specific designation for the service provider nor the restrictions on both parties to the mobile phone service contract. However, Section 5 (M1 and 2) indicated that the Commission (The Media and Communications Commission (Media and Communications Authority) undertakes the task of managing the licensing processes for telecommunications. It also undertakes the establishment of a legal system for licensing those operating wired and wireless communication networks,

Introduction

The damage arising from the mobile phone does not show its effects when affected by it, but rather it does not appear until it fully occurs in the future after a period of time that may be longer or shorter according to the type of affect. This raises the question of the extent of the causal relationship between pollution and its source? At the same time, we notice an increase in the incidence of cancer in the world, especially Iraq, and injuries increase whenever the geographical area is closer to the location of the mobile phone towers. Accordingly, when the presence of damage from these towers is proven, another question arises about how to compensate for such damages: Is it possible for the owner of the tower to stick to the rules of precedence or exploitation? Also, what is the effect of the administrative license in establishing responsibility?

Thus, some telecommunications authorities have adopted the task of educating the users. This is through issuing directives that include many examples of the arbitrary conditions that the mobile phone service provider includes in the contract.

These ideas and questions will be discussed in chronologically in the light of the latest instructions issued, namely Instructions No. 1 of 2007 regarding the prevention of non-ionizing radiation emitted by the main and secondary towers of mobile phones in Iraq. It also shows the status of the order issued by the coalition

and Quality Control Law For the year 1979. Instructions No. 1 for the year 2007 is related the prevention of non-ionizing radiation issued by the main and secondary towers of mobile phones in Iraq. These instructions were issued based on Article 24 of the Iraqi Environmental Protection and Improvement Law No. 3 of 1997. Article 1 / first of which stipulates the definition of non-ionizing radiation emitted from main and secondary towers of mobile phones as electromagnetic radiation located at low frequencies starting from 10 MHz and above, such as rays released from main broadcasting stations and antennas for mobile phones. The purpose of issuing these instructions is to protect living organisms and other elements of the environment from non-ionizing radiation and their biological effects. This is according to Article Two of these instructions (The reasons for issuing these instructions, Al-Waqi'a Al-Iraqiyya, Issue Seven, 2007).

Article 4 stipulates that companies of systems covered by the provisions of these instructions provide devices to measure exposure values for the general population in accordance with the valid law for the protection and improvement of the environment. This is according to Article 18 of the Iraqi Environmental Improvement Law of 1997.

Moreover, penalties and precautionary measures can be imposed on the related person from companies, laboratories and establishments as the law gave the General Directors of the Environment or their representative a warning to any facility or laboratory that has polluting effects on the environment to remove the influencing factor within ten days from the date of notification of the warning. Failure to respond to the warning cause the general manager suspend work or temporarily close the company causing the damage for a period not exceeding one month, and a recommendation can be submitted to the Environment Protection Board to issue a permanent closure order according to Article 12 of the Environment Law of 1997.

Here, the orderly and racing state in the Iraqi legislation to regulate liability arising from the damages emanating from mobile devices appears. When violating the legal procedures, mobile phone companies are subjected to penalties such as fines, confiscation, suspension of the company from practicing its activity, and its dissolution based on the amended Iraqi Penal

broadcasters and transmitters, and telecommunications service providers, defining the required licensing conditions.

We note that the above order for the year 2004, according to which the Iraqi Communications and Media Commission was formed in Section (1), Article (2) thereof, and its text ((Protecting the interests of Iraqi citizens as consumers of telecommunications services)). Section (9), Article (1 / c) referred to the penalties imposed by the Commission for the right to authorize service providers. It is in the text ((Request to mitigate the harm suffered by the consumer or repair the damage suffered)).

Some countries impose on consumers the use of low-efficiency mobile devices to provide communications only, and those devices lack high-tech programs. These devices do not allow the use of programs for social communication, for example, under the pretext of reducing or avoiding the damages that result from them. They thus reduce the economic effects of compensation for the damage caused as a result of using the phone in a way that harms others (Ghani, 2020). Also, there is a draft Iraqi media and communication law, referred in Article (2/14) to ((guaranteeing consumers' rights at the health, financial, social and legal level)).

We note that the 2004 order assigned to the Iraqi Communications and Media Commission several tasks, including defining licensing conditions and creating codes of professional practices without going into detailed matters. Also, the legislator discusses matters related to commercial aspects that aim to obtain the largest possible profit.

If we discussed the issue from the constitutional side, Article 40 of the Constitution of the Republic of Iraq 2005 stipulated that ((Freedom of communication and postal, telegraphic, telephonic, electronic and other correspondence is guaranteed and it is not permissible to monitor, eavesdrop or disclose except for legal and security necessity and by a judicial decision)).

In terms of the Iraqi Radio Communications, Law No. 159 of 1980, did not lay down the legislative basis for the legal liability arising from the installation of mobile phone towers, nor did it set controls the import of such devices that are supposed to be subject to quality control. This is to know their danger classified a dangerous goods in accordance with the Standardization

and Improvement Law 2012, as well as the regulations and instructions issued related to the prevention of rays emitted from the towers of telecommunications companies represented by Instructions No. 1 of 2007 (cancelled according to the instructions of the Ministry of Environment in 2010).

1.3. The effect of the administrative license for mobile phones on the establishment of liability for damage.

The administrative license is defined as the permission issued by the competent authorities to practice a specific work or activity or open a factory or the like that may not be practiced without this permission (Muhammad Jamal Jibril, 2018). It is considered one of the means of interference by the state in the business or individual activities that may cause damage to the other mobile phone towers (Al-Mousawi, 2011). Especially, the interference is in business that may lead to harm people or cause danger to obtain an administrative license in order to practice work or industrial or commercial activity (Khalil, 2012). Likewise, the owners of the buildings, and before starting their construction, obtain a building permit, which gives the administration a prior opportunity to monitor work and know whether the building is in compliance with the conditions in the general rules.

It should be noted that the nature of the administrative license in general is of a kind character, meaning that it relates to the licensed shop not to the owner of the shop. Here, the subject of consideration is the licensed activity, the conditions for its practice, its conditions and the consequences thereof. It follows from the in-kind character that the administrative license enjoys Assignment by the licensee to another person by assignment.

The question arises whether the damage the neighbor is complaining of was caused by licensed phone towers.

The Iraqi legislator in civil law did not address the issue of assigning the responsibility of the owner to mobile phones, and the 1986 draft of the Iraqi civil law did not address this issue. Also, the explainers of the civil law did not explicitly indicate to what extent the person responsible for the harmful act could pay the administrative license, but they included some statements that carry in meanings not permissible to pay the administrative license (Ramadan, 2013). The

Code No. 111 of 1969, describing telecommunications companies as legal personalities.

After 2003, a set of legislations appeared to confront mobile phone crimes and regulate their work, such as the Iraqi Products Protection Law, the Money Laundering Law 2004, the Environmental Protection 2. **Damage of radioactive materials from mobile phones and the basis of liability for damages arising from them**

The development in various fields of human life and the modern technology that occurred greatly helped providing a lot of subsidies and facilities needed in most of his life. However, this development that took place in the technological field has negative side effects despite its great benefits. The remnants of industries and radiation that arise from establishments with industrial activity negatively affect the neighborhood environment and make people's lives vulnerable to imminent danger (Evan, 2004).

These radiations are one of the most important sources of environmental pollution, as they are very dangerous and widespread on the earth. Their danger increased after the discovery of nuclear and atomic energy and uranium enrichment, in addition to the large number of nuclear tests. All of this would affect humans and their lives (Salama, 2005).

Through this we understand that those radiations that are emitted from industrial waste and war remnants pose a great danger to human life. Also, they are considered uncommon harms, because they have an effect on infecting many dangerous diseases. This justifies those who were harmed by them to seek compensation and remove those harms if possible. As a result, the Qatari Radiation Protection Law No. 31 of 2002 was issued.

The Iraqi Environmental Protection Law is concerned with the issue of radiation pollution of air. This concern is evident in texts and paragraphs, as Article (32) of the same law forces the person responsible for environmental damage to compensate and remove it and restore the situation to what it was before the damage occurred. In addition, Article (33) gave the Minister the right to close the facilities that cause environmental damage that leads to unfamiliar neighborhood damage for a period of thirty days, which can be extended until the violation caused by those facilities.

damage to pay his civil liability that s/he has obtained an administrative license authorizing her/him to practice this commercial or industrial activity, because this license, even if it exempts from criminal liability, does not exempt him From civil liability (Hawass, 2010).

3.2. Precedence in ownership or exploitation and its effect on liability arising from telephones:

There is no doubt that the owner is responsible for unfamiliar harms to the neighborhood that inflicts the neighbor if the damage occurred after the neighborhood was realized. For example, in a residential neighborhood, a person established an annoying premise or founds a factory or establishments with activity in the neighborhood.

However, it sometimes happens that the harmful act or use precedes the establishment of the neighborhood. For example, if a person establishes an iron and steel tannery or any other activity, and someone buys a piece of a land adjacent to this factory, and this proximity is achieved (Muhammad and Ghani, 2017). The question arises here about the extent to which a homeowner can complain about the damage suffered as a result of his neighbor's use of ownership?

The Iraqi legislator did not address the issue of precedence in ownership or exploitation. However, s/he understands through the text of Article (1051/3) of the Iraqi Civil Code that precedence in ownership or exploitation would prevent the owner from assuming the responsibility for the subsequent harm to his neighbor. This article stipulated that (If someone is disposing of his property in a legitimate manner and another comes and creates a building in his side and harms his action, then he must pay the damage him/herself).

3. Conditions for the responsibility of the mobile phone owner to compensate for damages.

Error, as a general rule, is an essential part of legal liability for damages to mobile phones, and when not needed, there is no liability or compensation for the damage suffered by the injured, and error in civil liability as one of its parts stipulated in all civil codes with different expressions for it (Yunus, 2016). The person who suffers the damage is to compensate the injured person during life. This obligation is transferred to heirs after death. These are obligated to pay the amount of compensation from his estate before dividing

explanier partly (Haydar, 1971) dealt with the issue of payment of the administrative authorization. However, on the part of the aggrieved neighbor (the plaintiff), as s/he stated that the administrative authorization of the owner of mobile phone towers that resulted in harm to the neighbor does not prevent the aggrieved neighbor from requesting the removal of those damage. Another aspect (Fadel & Alwan, 2017) dealt with this issue on the part of the neighbor who caused the damage stating that the administrative license does not prevent the owner from assuming responsibility for the harm inflicted on the neighbor.

We conclude from the texts that of some of the Iraqi civil law commentators that the owner (the person causing harm) may not avoid responsibility by saying that s/he obtained an administrative license to conduct his activity that resulted in harm to others.

As for the French jurisprudence, it took a period of time relying on the issue of the administrative license for mobile phone towers. This jurisprudence stated that it absolves the owner from responsibility in the event of uncommon disadvantages. However, this opinion was hesitant and somewhat concerned until a large part of the French jurisprudence was declared denying what was previously applicable. It stated that granting an administrative license to the applicant who does not prevent the prosecution of the harmful neighbor on the pretext that s/he possesses an administrative license, and this jurisprudence justified this opinion to the criterion of differentiation between administrative law and civil law with regard to the harm that inflicts people from mobile phones, considering that there is a penalty received by the owner of the factory for its construction contrary to administrative regulations. In civil law, there is a penalty which is compensation for the injured, while the administrative license prevents the factory owner from being punished, but in the event that the factory causes unfamiliar harm. This license does not exempt the official (the defendant) from paying Compensation for damage to mobile phones (Hawass, 2010).

The Egyptian legislator has embraced that trend in the text of Article (807/2) of the Civil Code as (.... and the license issued by the competent authorities does not prevent the use of this right) (Saad, 2008). Thus, the Egyptian legislator has granted the right of the injured neighbor claiming compensation for the unfamiliar damage suffered from the mobile phones. Also, it is not permissible for the person responsible for the unfamiliar

cause billions of losses through radiation from mobile phones.

Civil penalties are represented by compensation that may amount to punitive compensation as a result of the environmental damage that occurs due to mobile phone towers of a diffuse nature. This nature means that the harm infects the environment in its various fields and expands and develops in time and place, such as radioactive pollution from mobile phones. In addition, most of the environmental pollution comes from countries. However, the spreading nature of this damage makes it so widespread in most parts of the world that it is difficult to determine its actual source and the extent of responsibility of the perpetrator, whether they are individuals or companies, and the same applies to the harm that affects individuals through mobile phones (Al-Ghariri, 2018).

Compensation is the appropriate alternative to erase the effects of the violation. Among the laws that provide compensation for environmental violations is the UAE Environmental Protection Law No. 24 of 1999 as amended, as each of the articles (71.72) mentioned environmental violation. Article 71 explains the next (everyone who, by their actions or negligence, causes harm to the environment or to others as a result of violation of the provisions of this law or the decisions issued to implement it shall be responsible for all costs necessary for the treatment or removal of these damages). The perpetrators are also obligated to any compensation that may result from them. Article 72 stipulates the following (Compensation for environmental damage referred to in Article 71 of the law includes damage to the environment itself that prevents or reduces the legitimate use of it, whether it is temporary or permanent, or harms its economic and aesthetic value, as well as the cost of rehabilitation) (UAE Environmental Protection Law No. 24 of 1999 as amended).

Conclusion:

After finishing this study, the following conclusions were reached:

A. Findings:

1. It has become evident to us that the technological development that took place in various areas of life, especially in the domain of media and communications, has affected the human being through exposure to many and dangerous damages that reach the

it among them (Markus, 1971). The rule is that there is no inheritance until after the debts are paid (Al-Dhanun, 1991). The debtor is transferred as soon as s/he dies, burdened with a right in kind to the creditors of the deceased debtor, which entitles them to follow it and collect their debts under the hands of any heir or whom the latter has disbursed. This is as long as the debt is outstanding without this heir. If the creditor of the lawsuit makes the judicial claim to pay the expiration of the debt in relation to him/her. The heirs are only jointly paying the debt.

A mistake is not sufficient to arrange for joint responsibility, but rather there must be one harm as a result of those mistakes.

By unity of damage, it is intended that the damage caused by each of the multiple officials is the same damage that resulted from the action of each one of them (Muhammad Kamel Morsi, 1955). When there are multiple owners of the towers, meaning that the damages are of the same nature, represented in a specific bodily injury, or damage to something specifically, in terms of if every mistake causes harm to the person in a specific field, then they should not ask solidarity with another person whose mistake caused various harms (Rahman, 1991). If the severity of the mistake of each shareholder can be determined, a judgment shall be distributed according to the severity of the error. The Iraqi civil law is based on this criterion in the distribution of responsibility, whereby the principle is for the court to divide the responsibility according to the severity of the error. The exception is that the division is equal in the event that the court is unable to determine the seriousness of the mistake of each shareholder based on Article (2/217) Iraqi civilians

4. Legal treatment of cell phone damages according to environmental laws.

The concept of the legal environment in Iraqi legislation was mentioned in the Environment Protection and Improvement Law No. 27 of 2009 and in Chapter 1, Article (2), paragraph (5) thereof on (the surrounding with all its elements in which living organisms live and the effects resulting from human economic, social and cultural activities) (Al-Zubaidi, 2012). The environmental violations may develop into serious crimes affecting the environment, as environmental crimes are at present the most profitable criminal activity. Also, this growing problem around the world as criminal groups exploiting the environment

form shows the penalty incurred when one of the parties breaches the contractual obligations imposed on them. These obligations are financial fines, dissolution of the company, suspension of its work, or confiscation of its money with compensation if needed.

2. The study also suggests that the Iraqi legislator stipulate in the Iraqi Consumer Protection Law No. 1 of 2010 the right of mobile phone consumers to form associations or institutions. These institutions enable mobile phone consumers to gather in one place according to the geographical area to confront service providers in the event of health damages or radiation. Importing devices that have harmful effects on consumers may cause damage. The study also recommends abolishing the arbitrary requirements imposed by importing mobile phone companies.

3. On the other hand, we believe that we must ask the Media and Communications Commission in Iraq to include in the regulations it issued everything related to dealing with matters related to achieving special legal protection for telecommunications subscribers in general and mobile phone users in particular. These could include the payment systems for the fee and the obligations of both the costumers and the service provider, the assignment of service and cancelling a service. They could also include how to transfer the number from one user to another, suspending or canceling the service by the user, determining the legal age of the subscribing, how to transfer the number from one subscriber to another upon death. They could also involve complaints from both parties alike, as well as informing the user of the risks of the imported mobile device and how to compensate for the damages caused to the consumers him/her or other users.

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extent of death due to radiation and waste emitted from mobile phone towers. These radiations are one of the most important sources of environmental pollution which are seriously dangerous with a clear spread. Its danger has increased with the technical developments that are taking place in the range of mobile devices.

2. There are many legislations aimed at limiting the effects of mobile phone towers. The Iraqi Environmental Protection Law focused on the issue of air pollution by radiation. This law obliges the person responsible for environmental damage to compensate for the environmental damage and remove it, with the Minister's authority to close the source of damage that comes from harm such as the issued damage from mobile phones.

3. Due to the shortcomings of the legislative treatment with regard to determining the liability arising from the import of mobile phones and the extent of their risk, we propose to the Iraqi legislature to enact a law on communications and media, and to stipulate in it that the Media. Also, the Communications Commission must restrict the import of mobile phones for all telecommunications companies. In addition, it should oblige service providers to instruct mobile phone user on how to deal with annoying calls and messages as a means of preventing the damages arising from them in order to avoid the compensation amounts that cause those damages.

B. Suggestions:

1. We suggest that companies importing mobile phones prepare a special form for the purchase of mobile devices when importing them. This contractual

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