

The Creative Role of the National Judge in Providing the Civil Protection from the Environmental Damages

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Abstract

The primary objective of the fact sheets about environmental access to justice is to furnish readily available guidelines for initiating a review process before an autonomous judicial institution or an administrative entity. Judges have always been vital in creating and enforcing effective environmental and justice laws. Judges have had to combine principle with practicality when drafting and applying such regulations, and progress has been slow. Critics have criticized them for not adhering to judicial bounds, especially in political conflicts and economic wealth distribution. With UN Environment Programmed support, judges have led efforts to improve environmental legal competency and knowledge sharing. While legal systems vary, certain concerns and their remedies are worldwide. Despite this restriction, international environmental litigation against businesses is possible when serious environmental degradation affects core human rights and interests. Such victims may utilize environmental violations to strengthen their claims.

Keywords: Justice, National Judge, Environmental Damages, Civil Protection

Introduction

The Jordanian Environmental Protection Law is free from rules related to the civil responsibility for environmental damages. So, the rules of civil responsibility for the harmful act are required after a certain environmental damage occurs. In reality, civil responsibility can play a critical and important role in providing environmental protection (Abdelrahman, 2014).

This study seeks to demonstrate the judge's authority in determining civil liability for environmental damages and highlight the judge's innovative approach

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when there are no specific rules regarding civil liability for environmental damages. It aims to examine how the judge establishes a standard that aligns with the relevant subject matter under consideration, based on their judgment, and how this standard is applied to the specific circumstances of the lawsuit (Al Shara'a, 2014).

Civil responsibility for the harmful damage is based on three elements which are causing damage, the damage, and the causal relationship. These elements shall be provided in the environmental responsibility to establish it (Al-Hiti, 2011).

The judge's role is also shown in using his discretionary power, so searching for the availability of elements of civil responsibility for the environmental damages. His role begins also by tackling the pleas and problems that hinder the lawsuit that is filed for claiming compensation for the environmental damages (Al-Mathan & Al-Mahasnah, 2006).

The significance of this study resides in the recognition that a comprehensive and satisfactory legal system for environmental matters necessitates the inclusion of provisions governing civil liability for environmental harm, as well as the delineation and boundaries of such liability. In line with the terms of this obligation, it is feasible to seek compensation for environmental damages. Humanity is susceptible to a range of harms that impact individuals and their belongings, as well as the environment, by causing damage to the shared components of the environment.

This study demonstrated the potential for implementing civil responsibility principles in the context of environmental contamination, as well as the capacity of those impacted by environmentally detrimental behaviors to seek reparation. The implementation of the Jordanian Environmental Protection Law was undertaken to address a range of environmental concerns. The adoption of a specific mechanism for this civil obligation was not implemented. In this scenario, the individual who has suffered environmental harm is required to consult the established principles governing civil culpability for the detrimental action to seek redress for the incurred damages.

The study's main issue lies in the fact that environmental contamination is a novel topic with intricate specificity. This leads to the challenge of substantiating the presence of this pollution, the ensuing harm, and attributing it to a particular individual or organization that may be held accountable for paying the associated damages. Applying the broad norms of civil responsibility outlined in the Civil Code to environmental harm can be challenging.

The objective of this study is to address the following inquiries: The legal notion of environmental contamination is a topic of inquiry. The legal foundation for civil culpability in cases of environmental harm is a subject of inquiry. To what

degree may the broad principles of civil responsibility be modified to align with the specific characteristics of losses arising from environmental pollution?

Methodology

The present investigation employed a descriptive, analytical, and comparative methodology. The descriptive technique will be used to describe the position of the Jordanian law being studied. This will involve identifying the many regulations that pertain to the conceptual framework of environmental pollution and providing an explanation of its features and legal nature. The analytical method is to examine the legal texts within the laws about the research to assess their efficacy and identify any deficiencies in explaining the legal framework for civil responsibility in cases of environmental harm (Al-Mihanna, 2018).

The discretionary judge's power for elements of the civil responsibility for the harmful act

The damaged entity often considers the harmful act as a basis of its lawsuit claiming to guarantee all elements of the damage resulting from the damages subject matter of the lawsuit (Al-Nawaisa, 2020; Al-Billeh, 2022a). These elements may be represented in the defendant's bad factory operation by causing cement dust, acid exhausts, and harmful dust to the damaged plot or foul odors, harmful fumes, toxic gases, and noise from a water purification plant on the damaged entity's plot. (Al-Nasser, 2010; Al-Billeh, 2022).

The lawsuit is founded on the general principles of liability for harmful acts in the Jordanian Civil Law, as outlined in articles (256 – 272). It is also based on the guard's duty to protect the items assigned to them, as stipulated in Article 291 of the Civil Law and other relevant articles, such as Article 1021. These articles impose restrictions on ownership, preventing the owner from causing significant damage to neighbors, particularly if this damage violates laws about private or public interests. In the light of the guarantee prescribed by the two articles 275 and 276 of the Civil Law which tackled the harmful act of the damage caused to the property. By reviewing the preceding lawsuits, we find that the elements of responsibility for the harmful act are as follows:

The judge's discretion for the element of causing the damage in the civil responsibility and causing damage is:

The infringement on the third party's right or property which is protected by law. The judge shall identify the harmful act which is the subject matter of claiming compensation in the lawsuit. The jurisprudence of the honorable Court of Cassation established that the liability subject matter of the lawsuit filed for claiming

compensation due to damages caused by the water purification plants or cement factories is based on its bad operation and not its establishment or existence. The condition of the liability and aspect of causing damages (3) is not the establishment of a plant or factory nor its existence or non-existence in the neighborhood but the condition of claiming compensation is based on the harmful act, which is represented in its bad operation, emission of the foul odors, harmful fumes, toxic gases, and fumes in its surrounding environment.

Building on the foregoing, when the judiciary widens the idea of causing damage, it creates new obligations based on social development. The essence of causing this damage has been measured today based on objective measurement. Since the party that caused the environmental damage may prove that he exerted all his efforts and all possible methods according to his circumstances to prevent the occurrence of the damage, however, he failed to prevent the occurrence of the damage, however, he shall be responsible (Al-Rashidi, 2012; Al-Billeh, 2022c).

Thereon, there is no way to dismiss a lawsuit for compensation which is filed by a new builder in the light of the existence of the water purification plant or the factory saying that the new builder has no right to allege that he suffers from damage due to old situation because the condition and basis of the compensation is not held for building the plant or factory that caused the damage firstly .As it is a legal act in itself the compensation claim is based on provisions of article 1021 of the Civil Law which provided restrictions on the ownership to prevent causing the damage to the neighbor. Thereon, the discretionary power of the judge appears clearly in the scope of the damages which are represented in the operation of the water purification plant or the factory considering such as a condition of the compensation (Al-Ta'i, 2013).

The Jordanian judiciary may find that proving the harmful act according to the intended meaning above requires accuracy and workmanship which shall be evaluated by the experts. The expert can decide in good faith the reason and type of the damage and to state if there is damage or not based on the behavior of the defendant and limits its act (Fahmy, 2020).

If it can be demonstrated to the court, with the assistance of specialized individuals and experts, that the defendant's actions had an impact on the plaintiff's property, resulting in health damages and creating a habitat for insects, rodents, infectious bacteria, and diseases in the surrounding area. Furthermore, the actions of the defendant resulted in harm to the plaintiff's property as a consequence of the release of exhausts containing cement dust, acids, and hazardous particles. Consequently, the damages can be attributed to the defendant's conduct, which was

deemed responsible for ensuring the safety of the neighbors, safeguarding the equipment at their plant or factory, and preventing any harm to third parties (Hilal, 2005).

But can we say that the legality of the establishment of the purification plant gives the legality to its acts?

We can't say that the legality of establishing a purification plant gives the legality to operate it in a harmful way to the third party as it is responsible for causing damages to its neighbors even if the purpose of its establishment is to achieve a public interest (Martin, 1992).

Since the decision of the Jordanian Court of Cassation in its legal capacity No. 728/2002 (a five-judge board) dated 27/5/2002, Adaleh Center Publications was as follows:

* If the wastewater leakage from the Khirbet al-Samra sewage station to the well water, the subject matter of the lawsuit, is running and renewing constantly, causing continuous damage, accordingly, the provision of Article 272 of the Civil Code does not apply in our current case.

*If the well, subject matter of the lawsuit, is drilled, upon a license from the Water Authority, it shall grant the plaintiff the right to benefit from its water, and compensation if the said right is attacked.

*If the wastewater leakage from the Kherbet Al-Samraa station of the Water Authority into the well, in question, caused harm to its beneficiaries, the Water Authority in this case shall compensate the harm caused to the plaintiff as stipulated in Article 256, civil.

*Water sources located within the Kingdom's borders shall be deemed to be the property of the State under Article 25 /A of the Water Authority Law No. 18 of 1988. The owner of the land in which he drilled a well to irrigate it under a license issued by the concerned authorities shall have the right to compensation for the damage caused to it.

* Expertise is deemed one of the means of evidence provided for in Article 2 of the Evidence Act, which is resorted to, to indicate the existence of the damage, its origin, scope, and extent and determining its reparation. As for determining the entity responsible for compensation of the damage, it is subject to the rule of law, and the court.

*If the plot of land No. 49 is not the result of separation of the plot of land No. 38 within the limits of the well, subject matter of the lawsuit, this alone shall not be sufficient to prove that it has not been damaged as a result of contamination of the well water from which it is irrigated.

*The Court of Cassation established that the Water Authority shall be deemed responsible for the damage caused to estates arising from the purification plant, although its purpose is to achieve public benefit”.

But did the defendant's commitment to environmental protection standards and not condemning it criminally due to a crime which is a violation of provisions of the environmental protection law relieve it from the responsibility for the damages caused to the third party?

We can't say that the defendant's commitment to the environmental protection standards or not condemning it criminally due to a crime which is a violation of provisions of the environmental protection law relieves it from the responsibility for compensating the material damages caused to the damaged party which is adjacent to its factories. It's the same when issuing a judgment, and it doesn't matter if the defendant complies with environmental protection standards because the condition of issuing a judgment with compensation is to cause damages to the third party and dispose of its factories' wastes in the plaintiff's plot, whether it took environmental precautions or not (Sultan, 2015; Khashashneh et al., 2023).

Since the decision of the Jordanian Court of Cassation / civil No. 4209/2015 (ordinary court) dated 02/02/2016, Adaleh Center Publications was as follows:

1. The Court of Cassation's jurisprudence on compensation for the cement plant's damage to neighboring properties established that while the cement plant is a project in which the owner acts at his discretion, it is conditional that such is not harmful to others or contrary to laws relating to public or private interest, whereas the complainant's damage was caused by the plant's use and misuse. Accordingly, the accumulation of factory dust on the plaintiff's real estate requires compensation under the provisions of article (256) of the applicable civil law. As for the appeal filed by the appellant's agent considering the decision of compensation for damages and decline in value by the Court of Appeal faulty, in violation of Articles 61, 66, 1021, and 1024 of the Civil Code. What is derived from Articles (61, 66, 1021, 1024, and 1027) of the Civil Code is that the legislator has shown the scope of the use of the right and the limitations on the owner's disposal of his property. If the right holder's use of his right is a legitimate act that does not guarantee harm, and the unlawful use intentionally violates, or if the intended benefit of the act is illegal, or its benefit is not commensurate with the harm inflicted on others, or if it exceeds custom and habit, or if the damage is obscene, or contrary to public or private interest laws, he shall be responsible for the use of his right. Whereas the trial court found that the plaintiff's land was damaged by the defendant's factory's dust and harmful substances from its use. Accordingly, such shall be deemed damage that requires compensation under Article (256) Civil that applies to this lawsuit. If the

Court of Appeal decides to adopt the Court of First Instance expertise of three knowledgeable and competent experts, who submitted their expertise report by the task entrusted to them and estimated the compensation the plaintiff is entitled to according to the formula established by the jurisprudence of the Court of Cassation in similar cases, accordingly such expertise meets the legal conditions stipulated in Article (83) of the Code of Civil Procedure, and the report of expertise is clear for the report, and the appellant did not show any serious reason against it, so, the Court of Appeal convinced of the result reached by the expertise and establishing its judgment accordingly meets the law."

Evaluation of the judge for the element of the damage in the civil responsibility

The damage is identified according to the damage incurred, some damages caused to the financial position or rights related to financial value in the dealing which is named the material or financial damage and it is shown in the two articles 275 and 276 of the Jordanian Civil Law. As the two articles stipulate in the property damage to compensate the like if it is fungible and its value if it has a financial value but for the thing which is simply damaged, the compensation shall be according to the decreased value (Yusefi & El-Zein, 2006; Al-Billeh, 2022d).

The judge faces here the matter of evaluating or identifying the nature of the damage which refers to the civil responsibility and requires the compensation. Thereon, the judge shall take into consideration the personal and objective evaluation when he evaluates the element of damage in the scope of the civil responsibility (Al-Billeh, 2022e).

The judge seeks the help of the court-appointed expert to evaluate the required compensation under the rules of the law and its conditions prescribed by the jurisprudence and judiciary. The team of experts includes an environmental sciences specialist. Proving the damage and evaluation of the compensation are discretionary matters that are entitled to the trial judge according to the jurisprudence of the honorable Jordanian Court of Cassation (Al-Billeh & Abu Issa, 2023; Al-Khawajah et al., 2023).

Evaluation of the judge for the causal relationship in the civil responsibility

The causal relationship is the relationship between the act of causing damage and the damage as the first is the act that generated the second and the judge is entitled to show this causal relationship by defining if there is a causal relationship between the act that caused the damage and the damage or not. Causing the damage shall be the reason for the damage, so if the damage is due to a foreign reason, then the causal relationship will lack (Alkhseilat et al., 2022; Al-Billeh, 2024b).

Therefore, it is conditioned that the damage shall be a natural result of the harmful act. The Jordanian legislator expressed this relationship in Article 257 of the Civil Law by regulating rules of the direction, causing and considered it a main condition in causing the damage. So, the judge finds that the condition of the claimed compensation in the lawsuit is based on the responsibility of the defendant for the equipment involved in its guarding under provisions of article (291) of the Jordanian Civil Law which requires performing special due diligence for protecting from its damages. The causal relationship is established between causing damage and the damage proven to the court in case of the absence of the due diligence required by such equipment for protection from these damages except for a property that can't be protected. This may not reach to level that cancels the causal relationship between them and this case except the force majeure which doesn't consider the causal relationship between causing the damage and the result. Whereas the responsibility for the things is different from the responsibility for the animal that moves without the will of its owner. So, the damage that happens from it is of the causing due to negligence in guarding it. But for the equipment which is the condition of compensation in such lawsuits has no movement except when it is moved by its owner, so the damage resulting wherefrom is of the direction in which the infringement is not conditioned. This makes the defendant who is the owner of the purification plant a perpetrator who caused damage directly against the damaged party considering the health damages, the area for the insects that carry the infectious diseases is a natural result of using the equipment without taking the precautions for protection from its damages caused to the property of the plaintiff. The same case is in causing the direct damage by the damaging tool owned by the defendant that owns the cement factories which is represented in the volatile dust and cement dust emanating from its ovens at the place of damage on property of the plaintiff that led to the act of causing damage directly which is considered a natural result of volatilization of these exhausts and toxic fumes.

The judge determines the scope of discretion by examining the causal relationship between causing damage and the damage and why this causal relationship generates the damage, i.e., why this damage is a direct and natural result of this harmful act (Al-Billeh et al., 2023; Al-Billeh, 2024a).

If the judge concluded that the nature of the occurring violation generates this damage and concluded at the same time that there is a causal relationship as well as it is proven to him that all elements of the responsibility for the harmful act are available, then the defendant is under provisions of article (1021) of the Jordanian Civil Law and its other articles such as article (291) of the same law responsible for compensating the damaged property of the plaintiff by compensating the decrease of the value in consideration of damaging it according to

provisions of article (276) of the Civil Law. This shall be in the light of the result concluded by the technical expert and the result included in the report of the experts submitted by the specialized persons and experts in evaluating the compensation duly.

This is the discretionary and creative effort exerted by the judge in examining and verifying the existence of the harmful act, causing the environmental damage and the causal relationship between them in the scope of the civil responsibility resulting from the environmental pollution (Al-Hammouri et al., 2023a).

The judge's discretionary power in some of the most important problems and legal pleas in the civil responsibility for environmental damages: The Jordanian Environmental Protection Law is free from rules related to civil responsibility for environmental damages. Thereon, it is necessary to highlight the discretionary and creative effort exerted by the judge in tackling many legal gaps and replying to the legal pleas resulting from the lawsuits of the civil responsibility for the environmental damages (Al-Hammouri & Al-Billeh, 2023).

Discretion of the judge for the existence of the foreign reason

Article (261) of the Jordanian Civil Law provides that if the person proves that the damage happened due to a foreign reason in which he is not involved such as a pandemic, sudden accident, force majeure, act of the third party, or act of the damaged party, so he is not obliged to pay a compensation ..."

Force majeure, pandemics, and sudden accidents are the reasons that relieve the responsibility because they cancel the causal relationship between the damages and the harmful incident. The discretion of the judge for these reasons is mere objective discretion which doesn't take into consideration personal or subjective elements related to the damaged person. These reasons are unexpected because the impossibility of expectation happened abstractly and the side of the perpetrator of the harmful act was not considered also. Thereon, these reasons shall be of the reasons that relieve from the responsibility and they shall be unexpected absolutely. This shall be understood based on the methods of expectation that are restricted to guide us to the possibility of the occurrence of the incident that forms the foreign reason. This matter is entitled to the discretionary power of the judge. If the plaintiff can prove that the incident was caused by a pandemic, sudden accident, or force majeure that couldn't be avoided because modern science couldn't discover these methods, he can be exonerated. The judge will also determine if there is a way to prevent force majeure since this manner was completely impossible (Al-Hammouri et al., 2023b; Al-Billeh, 2023b; Block, 2022).

The mistake of the damaged party or the third party is considered of the reasons that relieve the responsibility based on that they are foreign reasons which lead to this result. The rule is that these reasons are subject to evaluation by the judge and there is no doubt that they require the judge to evaluate such in a way that can't be denied about the role of each reason in causing the harmful results generated wherefrom.

Discretion of the judge for the civil responsibility for the illegal use

Many times, the judge finds that the defendant establishes its defense based on the use of its right to operate its factories by the law which grants it the right of mining, etc., or the license granted to it which contravenes its claim to guarantee what it used of right. In this regard, the judge finds that the defendant's operation for its factories is allowed and it shall not be damaged thereafter due to practicing its rights. As the legal allowance contravenes the compensation under article (61) of the Civil Law, whoever uses his right legally can't compensate damage resulting therefrom, but the blame is only on the person who abused his right illegally and exaggerated in violating the rights of others when the intention of violation is available or the criminality in the act's desired interest or benefit is not common (Al-Hammouri et al., 2023c; Alshible et al., 2023).

By examining the reasons for abuse of the right, the judge finds that the interest desired from it even if it is a public interest is not commensurate with the damage caused to the plaintiff, and avoiding the damage has priority more than gaining benefits which makes the defendant abuser of its right and liable under the law.... the result from this abuse (Al-Hammouri et al., 2024; Al-Billeh, 2023a).

Since the decision of the Jordanian Court of Cassation in its legal capacity No. 728/2002 (a five-judge board) dated 27/5/2002, Adaleh Center Publications was as follows:

*If the wastewater leakage from the Khirbet al-Samra sewage station to the well water, the subject of the lawsuit, is running and renewing constantly, causing continuous damage, accordingly, the provision of Article 272 of the Civil Code does not apply in our current case.

*If the well, subject of the lawsuit, is drilled, upon a license from the Water Authority, it shall grant the plaintiff the right to benefit from its water, and compensation if the said right is attacked.

*If the wastewater leakage from the Kherbet Al-Samraa station of the Water Authority into the well, in question, caused harm to its beneficiaries, the Water Authority in this case shall compensate the harm caused to the plaintiff as stipulated in Article 256, civil.

*Water sources located within the Kingdom's borders shall be deemed to be the property of the State under Article 25 /A of the Water Authority Law No. 18 of 1988. The owner of the land in which he drilled a well to irrigate it under a license issued by the concerned authorities shall have the right to compensation for the damage caused to it.

* Expertise is deemed one of the means of evidence provided for in Article 2 of the Evidence Act, which is resorted to, to indicate the existence of the damage, its origin, scope, and extent and determine its reparation. As for determining the entity responsible for compensation of the damage, it is subject to the rule of law, and the court.

*If the plot of land No. 49 is not the result of separation of the plot of land No. 38 within the limits of the well, subject of the lawsuit, this alone shall not be sufficient to prove that it has not been damaged as a result of contamination of the well water from which it is irrigated.

*The Court of Cassation established that the Water Authority shall be deemed responsible for the damage caused to estates arising from the purification plant, although its purpose is to achieve public benefit”.

Accordingly, the right has objective limits related to its extent, scope, target, and goal which is represented in the idea of interest. The objective limits are determined by the source that creates the right as it imposes restrictions that limit its extent, and the holder of the right may not breach it otherwise his work will be illegal. If the law permits the individual to accomplish such and the judiciary controls its use defined by law and achieves its aims, the judiciary develops a general principle that restricts rights to achieving its purposes. Based on the above, the judge will consider that rights are limited to their aims while using his discretionary authority. The goal seems here a restriction to the use of right as the interest shall be the legal goal because the goal of using the right is to achieve the interest taking into consideration the privilege and power granted to the individuals by the law (AL-KHALAILEH, 2023; AL-KHAWAJAH, 2022; ALMANASRA, 2022).

Whereas it is mentioned in the judgment of the Jordanian Court of Cassation no. 2602/2012 on 02/10/2012 that it is established in the jurisprudence in the lawsuits of the Court of Cassation in many judgments that disposal of the owner in his property in a way that causes damage to the third party is deemed a violation and abuse of the right which requires a compensation. When Jordan Cement Facilities Company PSC works its facilities, cement dust volatilizes and falls on nearby real estate, damaging or decreasing its value. This act requires compensation under article (256) of the Civil Law, and the company that owned the factory legally disposed of its property to avoid causing material damage to a third party

that violates the laws and regulations or the customs and practices in the application of the two articles (66 and 1021) of the Civil Law.

Conclusion

The judges handled many lawsuits that have environmental dimensions and applied the general rules of civil responsibility for the harmful acts regarding them. Furthermore, the judges practiced a creative role because the law is free from rules related to the civil responsibility for environmental damages.

We highlighted in this research paper the general rules related to civil responsibility for environmental damages, elements of civil responsibility for the harmful act and some problems and the legal pleas resulting from the lawsuits of the civil responsibility for environmental damages by focusing on the discretionary power of the judge in them.

Although understanding the judge, his discretionary power regarding the lawsuits of the civil responsibility for the environmental damages, and his creative role in all stages of the lawsuit heard before him are highly appreciated the matter needs more clarity from the judiciary to name the things according to their actual names. As operation of the purification plants and volatilization of the cement dust cause air, water, and soil pollution and negatively affect human health.

The judge shall show a bold front to the environmental damages with more creative efforts in this regard taking into consideration the specifics by which the environmental damages are characterized, and the legal challenges faced upon applying the traditional general rules of responsibility in this respect.

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