



Modernizing the provisions of civil liability in the light of sustainable development criteria

Sahar Hayal Ghanim¹

College of Law/ University of Mosul

sahar.ghanem@yahoo.com

Ajyad Thamir Naief²

College of Law/ University of Mosul

achyadaldolemy11@uomosul.edu.iq

Article information

Article history

Received 6 August, 2023

Revisit 19 October, 2023

Accepted 14 Novamer, 2023

Available Online 1 June, 2024

Keywords:

- Amendment
- Provisions
- Civil liability
- Sustainable development

Correspondence:

Sahar Hayal Ghanim

sahar.ghanem@yahoo.com

Abstract

The objective of civil liability is to provide compensation for damages. Civil liability represents an explicit expression for the resolution of disputes that arise between the parties involved in a legal relationship, regardless of their source. It exists for the purpose of resolving such disputes, based on objective analysis, distancing itself from social and economic factors that lead to contractual obligations, negligence, or legal mandates. Based on this objective, occasional legislative intervention becomes necessary to reconsider these provisions in terms of their cause and effect, especially within the context of economic and social transformation from traditional forms to more complex and evolving forms, in light of the industrial revolution and advancements in modern technology. Sustainable development has emerged, along with environmental issues, noise pollution, occupational safety, defective products, and new developments in nuclear damage. The link between the principles of civil liability and sustainable development mandates the pursuit of the greater societal interests concerning their interrelation within the framework of the general rules of civil liability and the extent of the influence of sustainable development criteria on them. In this context, we delve into the subject matter according to the outlined plan below.

Doi: 10.33899/arlj.2023.142373.1282

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تحديث أحكام المسؤولية المدنية في ضوء معايير التنمية المستدامة

أجساد ثامر نايف

سحر حياي غانم

كلية الحقوق / جامعة الموصل

كلية الحقوق / جامعة الموصل

الاستخلص

الهدف من المسؤولية المدنية هو التعويض عن الضرر ، إذ تمثل المسؤولية المدنية تعبيراً صريحاً لحكم المنازعات التي تنشأ بين اطراف العلاقة القانونية أياً كان مصدرها ، فهي وجدت لغرض الحلول لتلك المنازعات ، اساسها التحليل الموضوعي بإبعاده الاجتماعية والاقتصادية للأسباب التي أدت الى نشوء الالتزامات العقدية او التقصيرية او بحكم القانون ، وانطلاقاً من هذا الهدف نجد ان الضرورة تقتضي بين الحين والآخر التدخل التشريعي لإعادة النظر في تلك الاحكام من حيث السبب والاثر وخاصة في اطار التحول الاقتصادي والاجتماعي من شكله التقليدي الى الشكل الاكثر تعقيداً وتطوراً في ظل الثورة الصناعية ومجالات التقنية الحديثة اذ ظهرت التنمية المستدامة ومنها قضايا البيئة والتلوث الضوضائي والسلامة المهنية والمنتجات المعيبة ومستجدات الاضرار النووية، إذ يفرض الارتباط بين أحكام المسؤولية المدنية ومبادئ التنمية المستدامة تحقيق المصالح العليا في المجتمع من حيث العلاقة المتبادلة بينهما ضمن محتوى القواعد العامة للمسؤولية المدنية ومدى تأثير معايير التنمية المستدامة عليها. وفي هذا المضمون نبحث في الموضوع وفق الخطة المبينة أدناه.

معلومات البحث

تاريخ البحث

الاستلام ٦ آب، ٢٠٢٣

التعديلات ١٩ تشرين الأول، ٢٠٢٣

القبول ١٤ تشرين الثاني ٢٠٢٣

الكلمات المفتاحية

- تعديل
- أحكام
- المسؤولية المدنية
- التنمية المستدامة

1. Introduction:

An introductory overview of the topic

The objectives of sustainable development within the framework of the relevant convention, and the significance it holds in terms of plans and implementation criteria, constitutes a distinct model that signifies a strategic shift in the global trajectory of growth. It encompasses various dimensions and requires interventions that address anything that hinders such growth in the long run. Thus, within this context, civil liability is one of the legal subjects that necessitates legislative intervention to address the ongoing risks arising from human actions or objects in the rapidly advancing fields of technology and information. In line with the general criteria of sustainable development, the aim is to mitigate environmental risks, defective products, nuclear damage, and other related issues. Moreover, in this study, we examine the position of the Iraqi legislator, considering considerations of justice, individual interests, and the imperative of achieving sustainable development.

Reasons for choosing the topic

Global advancements in all aspects have far-reaching implications for the legal realm that governs such progress and the intricacies of its production or utilization. This trajectory encompasses society as a whole, including all individuals. The topic of sustainable development, in some of its dimensions, necessitates the presence of legislation that achieves its objectives within specific and clear criteria for the distant future. One of the crucial legislative aspects is civil liability and the need to modernize it in line with the future goals of sustainable development. It has been a long time since its enactment and implementation, and it now requires intervention that contributes to preventing harm or

rectifying it within the provisions of the Iraqi Civil Code No. 40 of 1951, as amended, and other relevant legislations.

Significance of choosing the topic

The research on modernizing the provisions of civil liability within the framework of sustainable development is significant due to several reasons. It is associated with establishing general provisions and regulations that ensure the protection of the affected parties and guarantee their right to fair compensation for damages. This should be achieved through a balanced equation that keeps pace with the successive advancements in technologies while safeguarding the legal position of the affected party. The focus is on the role of the Iraqi legislator in response to the necessities in this regard, which coincide with rapid and continuous developments in various aspects of economic, social, and environmental life. These developments serve as fundamental criteria that contribute to addressing legal texts within the specific provisions of civil liability.

Research plan on the topic

Researching the topic of modernizing the provisions of civil liability within the criteria of sustainable development requires adopting an analytical approach to legal texts and the role of jurisprudence and the judiciary in two sections. In the first section, we address the general concept of civil liability within the framework of sustainable development. In the second section, we explore the legislative treatment of civil liability provisions within the specificity of sustainable development criteria. The research plan follows the following structure:

2. The general concept of civil liability within the content of sustainable development.

2.1. The concept of civil liability.

2.2. The concept of sustainable development

3. The legislative treatment of civil liability provisions within the specificity of sustainable development criteria

3.1. Amendment of contractual liability provisions.

3.2. Amendment of negligence liability provisions

The research plan will be preceded by an introduction and followed by a conclusion that highlights the most important findings and proposed recommendations.

2. The general concept of civil liability within the context of sustainable development

Civil liability is a topic that has been of interest to jurisprudence and the judiciary in an escalating and continuous manner. Its provisions are closely related to the increasing and evolving risks that affect humans, starting from the Industrial Revolution in previous centuries and continuing with the infinite development of technology, information systems, and artificial intelligence. Furthermore, the necessities of logical transformation in the future goals of development impose additional considerations. Thus, within the overlapping boundaries between civil liability and sustainable development, the issue of defining the general concept of civil liability and its contents within the framework of sustainable development arises.

2.1. The concept of civil liability

Civil liability is a legal system that governs the compensation for damages resulting from a committed fault

or wrongful act. It imposes an obligation on the person who commits the fault to provide compensation. The concept of liability in this regard encompasses various forms of fault and its underlying basis. We will now explore this concept in the following manner:

2.1.1 Definition of civil liability

The term "liability" in general is associated with issues of responsibility since ancient times, both in terms of its collective or individual impacts and in terms of the legal basis upon which it relies.⁽¹⁾ As for civil liability specifically, we encounter the definition of liability linguistically and terminologically in the following two paragraphs:

The definition of liability in the linguistic sense

The term "liability" in the linguistic sense refers to an artificial noun that signifies human accountability. Its origin can be traced back to the verb "sāla," which is commonly used to inquire about the unknown. This is also reflected in the verse of Allah, Subhanahu wa Ta'ala, in Surah Al-Baqarah, verse 189.⁽²⁾ The term also encompasses supplication, as well as threat, imposition of fines, and exaggeration. This is further evident in the verse in Surah As-Saaffat, verse 24.⁽³⁾ Linguistically, liability denotes the condition or attribute of someone who is inquiring about a matter for which he assumes responsibility. It involves the

(1) Hussein Amer and Abdul Rahim Amer, *Civil Liability: Negligence and Contractual*, 2nd Edition, (Dar Al-Maaref, Cairo| 1979) p. 4." For further details, please refer to "Dr. Sami Al-Jarbi, *Conditions of Civil Liability*, 1st Edition, Technical Interpretation (Sfax, Tunisia| 2011) p. 10 and onwards.

(2) Surah Al-Baqarah, 189.

(3) Surah Al-Saaffat, 24.

individual's commitment to adhere to their spoken or enacted obligations.⁽¹⁾

The definition of liability in the legal sense

Liability in the legal terminology⁽²⁾ refers to the "obligation to compensate for harm" and is also⁽³⁾ defined as an "action that causes harm and warrants accountability for the doer." Another opinion in jurisprudence⁽⁴⁾ suggests that liability is a concept based on holding someone accountable for a harmful act that gives rise to new obligations resulting from the violation of previous obligations, regardless of their source. In the Iraqi Code, there is no specific definition provided by the legislator for this term. This is not uncommon as the Code often leaves definitions to the scholars and their interpretations. Furthermore, the concept of civil liability is closely related to flexibility and its potential for development. This is evident in the Iraqi legislator's adoption of a general formula that can encompass all principles of liability, despite relying on many principles that entail accountability and the obligation to compensate. The generality of the provision, as stated in Article (204) of the Amended Civil Code No. 40 of 1951, clearly stipulates that "any harm inflicted upon others, other than what is mentioned in the preceding articles, requires compensation." This provision covers all cases of transgression and resulting harm within the scope of liability for unlawful acts

(1) Ibrahim Anis, Abdul Halim Montasser, Atiya Al-Sawalhi, Mohamed Khalaf Allah Ahmed, Al-Mu'jam Al-Waseet, 4th Edition, Arabic Language Academy (Al-Shorouk International Library| 2004) p. 411.

(2) Dr. Hassan Ali Al-Zunoun, Principles of Obligations (Dar Al-Maaref Printing House, Baghdad| 1970) p. 208.

(3) Dr. Hussein Amer, Previous source, p. 3.

(4) Mahmoud Jalal Hamza, Liability Arising from Inanimate Objects in Algerian Code: A Comparative Study with Egyptian and French Codes (University of Algiers| 1988) p. 15.

(negligence liability). As for contractual liability, the Iraqi legislator has also adopted the generality of this concept within the text of Article (168) of the current Civil Code, which states that "if it becomes impossible for the obligated party to perform the obligation as specified in the contract, he shall be obliged to provide compensation for non-performance of the obligation, unless he proves that the impossibility of performance arose due to an external cause beyond his control. Similarly, compensation shall be awarded if the obligated party delays in fulfilling his obligation.

3.2. Types of civil liability

Civil liability, in essence, is based on certain principles that are indispensable for any type of liability, including the existence of harm, fault, and the causal relationship between them. These principles represent fundamental pillars for establishing civil liability, which can be divided into two categories that we will address in the following paragraphs.

Firstly: contractual liability

Contractual liability refers to the consequences that arise from a breach of obligations arising from a contract.⁽¹⁾ Contracts impose obligations on the parties involved, so if one party fails to fulfill its contractual obligations or delays in doing so, it can be held accountable for the resulting damages to the other party.⁽²⁾

(1) Dr. Abdul Majid Al-Hakim, *Al-Mawjuz fi Sharh Al-Qanun Al-Madani, Masadir Al-Altzam, (Al-Tiba'a wa Al-Nashr Al-Ahliya, Baghdad, Iraq| 1963) p. 347.*

(2) Dr. Abdelkader Al-Araari, *Masadir Al-Altzamat (Al-Kitab Al-Thani, Al-Mas'ooliya Al-Madaniya, 3rd Edition (Dar Al-Aman, Rabat| 2011) p. 14.*

Contractual liability arises due to non-performance or delay in performance, regardless of the debtor's intention in the contract. However, it is a requirement that the contract be valid, meeting its legal elements and conditions. A void contract does not provide a basis for applying liability provisions because it has no legal effect.⁽¹⁾ This is specified by the Iraqi legislator in Article (138/1) of the Civil Code, which states that "a void contract is not concluded and does not establish any legal judgment."

The provisions of contractual liability are subject to the fulfillment of its elements, including fault, harm, and a causal relationship, which would lead to holding the debtor accountable for their own actions or the actions of those employed to perform the contract.⁽²⁾ However, the intervention of an external cause severs the link between fault and harm, and the liability of the debtor is not established due to the presence of such cause.⁽³⁾

Secondly: negligence

Negligence liability in civil law countries, similar to contractual liability, requires the presence of its three elements: fault, harm, and causal relationship. In negligence liability, harm refers to the injury that affects a person's rightful interest, whether it is related to their body, property, emotions, reputation, or esteem.⁽⁴⁾ The remedy in negligence liability is compensation, which varies in scope and content based on the degree and severity of the fault. The legislator,

(1) Dr. Sami Al-Jarbi, previous source, p. 169.

(2) Dr. Ahmed Mohamed Saad, *Mas'ooliya Al-Mustashfa Al-Khasa'an A'khta'*

Al-Tabeeb wa Musa'adihi, 2nd Edition (Dar Al-Nahda Al-Arabiya, Cairo| 2007) p. 340.

(3) Dr. Abdulhamid Al-Shawarbi, *Al-Mas'ooliya Al-Madaniya Fi Dau'i Al-Fiqh wa Al-Qada'* (without publication place) p. 224.

(4) Dr. Hassan Ali Al-Zunoun, *Principles*, previous source, p. 221.

within the scope of this liability, ensures that compensation covers both material and moral damages.⁽¹⁾

3. The concept of sustainable development

The term "development" encompasses the utilization and participation of various multi-faceted energies that contribute to satisfying the needs of society, going beyond the idea of relying solely on financial support. Sustainable development relies on self-capabilities and the surrounding economic and social conditions to transcend the mere provision and consumption of resources, aiming to preserve them within international and national dimensions and criteria. It takes into consideration the achieved benefits and their continuity, transforming the assumptions of development from their abstract form into sustainable ones. We will discuss this gradually in the following sub-sections:

3.1. Definition of sustainable development

The definition of sustainable development, both in language and terminology, requires an explanation of this dual term by examining its components in the following paragraphs:

Firstly: Sustainable Development linguistically

Sustainable development, in linguistic sense, is a term composed of two parts. The first part is "development," which originally means growth or an increase in size or

(1) Dr. Abdul Razzaq Al-Sanhouri, *Al-Waseet fi Sharh Al-Qanun Al-Madani*, Vol. 1(Dar Al-Nahda Al-Arabiya, Cairo| 1964) p. 631. For further details on the position of the Iraqi legislator, refer to: Dr. Abdul Majid Al-Hakim, previous source, p. 418.

quantity.⁽¹⁾ The second part, which means able to be maintained or continued.⁽²⁾

Secondly: sustainable development as a terminology

The concept "sustainable development" is one of the most widely discussed and analyzed terms because it represents a fundamental means of achieving balance among various development considerations. The concept of sustainable development gained prominence through the report "Our Common Future" presented by the World Commission on Environment and Development in 1987, also known as the Brundtland Report. Furthermore, the concept of sustainable development has roots in the Islamic Code, as one of its principles is that the Earth is owned by Allah and not by humans. This implies that humans have a duty to preserve and protect it for future generations.

The concept of sustainable development⁽³⁾ has evolved within the framework of the global focus on human rights. The United Nations General Assembly,⁽⁴⁾ through its Resolution (2626), declared its commitment to sustainable development based on the agreement signed in 1968, which entered into force in 1969. The United Nations Conference on the Human Environment held in 1972 also contributed to the development of the concept. Numerous agreements and resolutions have been issued by the United Nations General

(1) Jubran Masoud, Al-Raed, 7th edition (Dar Al-Alam Lil-Malayeen, Beirut, Lebanon| 1992) p. 248.

(2) Cambridge Dictionary.

(3) The concept of sustainable development dates back to 1882, which witnessed the conflict between the United States and the United Kingdom regarding seal hunting. This case was brought before the International Court of Justice for years. For details, you can visit the Court's website on the World Wide Web at www.icj.cij.org.

(4) Website of the United Nations General Assembly, World Wide Web, link: UN-Doc.A/RES-2626, visited on 18/12/2022.

Assembly, emphasizing the concept of sustainable development and its intended objectives within its economic, social, and environmental dimensions.⁽¹⁾

Sustainable development⁽²⁾ is defined as the idea that aims to meet the basic needs of humans without causing harm to the environment, sustainable development is also⁽³⁾ defined as an individual and collective right that encompasses a set of rights contributing to achieving economic, social, cultural, political, and environmental growth. This means that sustainable development is development in the general sense,⁽⁴⁾ operating within the framework of mechanisms that meet present needs without compromising the ability of future generations to meet the same needs. It requires indicators and methodologies that ensure the implementation of future programs and support their execution at the national level, taking into account comparative criteria with the international community. As a comprehensive concept, the term sustainable development encompasses multiple elements. Consequently, the

(1) For further details on the historical development of the concept of sustainable development, refer to: Dr. Ahmed Al-Muhtadi, 'The Legal Nature of Sustainable Development within the Framework of General International Code Provisions (' a research published in the Journal of Code and Economics, Faculty of Code, Cairo University, Issue 92| 2019) p. 106.

(2) Marcos Orellana, Sustainable Development in the Courts, Introduction, Sustainable Development Code and policy, 2009, p3.

(3) Dr. Luay Taha Al-Malla Haweesh and Hanan Mohammed Shakir Al-Jubouri titled "The Concept of Development and Integrated and Sustainable Rural Development (published research in College of Basic Education Journal, Al-Mustansiryah University, Vol. 22, No. 96| 2016) p. 5.

(4) Majd Omar Hafez. Strategies and Policies for Sustainable and Integrated Planning of Land Use and Transportation in the City of Nablus". A master thesis (College of Postgraduates, Al-Najah University, Palestine| 2005) p. 21.

conceptualization of sustainable development continues to evolve, driven by ongoing and changing challenges that align with international efforts in adopting the intended measures to achieve sustainable development goals. Thus, the terminological concept of sustainable development diversifies and evolves in accordance with indicators and criteria that vividly and tangibly reflect these goals within a strategic planning framework on both the international and national levels.

3.3. The criteria of sustainable development

The concept of sustainable development is based on a clear and cohesive philosophy, guided by policies and regulated by legislation within a balanced program. It is achieved through criteria that form the basis of equilibrium in achieving sustainable development goals. We will discuss these criteria in the following paragraphs:

First: The economic dimension

This standard regulates the utilization of natural resources by modifying consumption patterns to be more sustainable in the future, The legislator's reliance on general principles in legal texts represents a necessity dictated by the principles of justice, which are among the means adopted by the Iraqi legislator in addressing and resolving disputes. It involves radical transformations in prevailing lifestyles. Sustainable development includes mechanisms to address economic disparities between generations by promoting justice and fairness between the present generation and the needs of the future generation. There is a strong correlation between resources and sustainable development, necessitating their preservation against depletion or degradation. Resources, whether on the surface or underground, including water, air, and the atmosphere, should not be treated as unrestricted or freely available.

Instead, their sustainability should be maintained for the longest possible period, ensuring their availability for future generations. Additionally, they actively contribute to improving living criteria, achieving intergenerational equality, and meeting the basic needs that are the responsibility of all countries.⁽¹⁾

Second: The environmental dimension

Environmental events that have emerged in previous decades have emphasized the conviction that balanced environmental management and conservation are fundamental to the process of sustainable development.⁽²⁾⁽³⁾ It is necessary to comply with environmental constraints that serve the objectives of sustainable development.⁽⁴⁾ This includes:

1. Commitment to avoiding excessive use of resources that may be depleted or vanish in the future.
2. Commitment to safe environmental practices, avoiding harm to all types of the environment.
3. Commitment to enhancing the capacity of the environment and all its resources for self-renewal.

(1) Mohammed Zanoun Mohammed Al-Sharabi, "Activating Foreign Direct Investment towards Sustainable Development," Master's thesis (College of Administration and Economics, University of Mosul| 2005) p. 26.

(2) Refer to Article 1127 of the Iraqi Civil Code No. 40 of 1951 as amended.

(3) Dr. Osama Al-Khawli, "The Environment and Industrial Issues: A Study on the Environmental Reality in the Arab World and Developing Countries," (World of Knowledge Series, National Council for Culture, Arts and Letters, Kuwait| 1990) p. 57.

(4) Dr. Douglas, F., Mosif, M., "Principles of Sustainable Development," translated by Bahaa Shahin, 1st edition, (International House for Cultural Investments, Cairo| 2000) p. 9.

The environmental dimension within the framework of sustainable development means optimal utilization of all available resources according to global environmental safety criteria. It involves avoiding excessive use of pollutants and substances that harm all elements of the environment. It is the responsibility of everyone to preserve the interests of future generations.

Third: The technological and informational dimension

The use of technology and information tools is essential for sustainability and contributes significantly to achieving sustainable development. Governments and their institutions play a crucial role in development management, and raising the scientific and knowledge level while developing mechanisms ensures information security, which is the basis for legal security through modern means.⁽¹⁾ This dimension also addresses the relationship between the economic and environmental dimensions. Modern technologies regulate economic activities and protect all resources. They are used to build the environment rather than destroy it. Sustainable development, through effective information management, achieves the transformation of industrialized countries from traditional forms to more efficient ones.⁽²⁾

(1) Klarin , T. , The Concept of Sustainable Development, from its Beginning to the Contemporary Issues | 2018) p69.

(2) Dr. Abdullah Hussun Mohammed, Dr. Mahdi Saleh Dawai, Israa Abdul Rahman Khudair, "Sustainable Development: Concept, Elements, and Dimensions," (Diyala Journal, Issue 67| 2015) p. 351.

Fourth: The social dimension

This dimension includes specific elements that must be present to have an impact on achieving sustainable development.⁽¹⁾ It assumes that social empowerment, participation, principles of justice, and fairness are achieved through internal participation at the local level, based on the characteristics of each society, leading to balanced rights that ensure fairness for future generations.⁽²⁾

4. Legislative treatment of civil liability provisions within the specifics of sustainable development criteria

The comprehensive concept of sustainable development and its general objectives are fundamental to ensuring justice within society. Thus, within the scope of sustainability, it is necessary to modernize the legislative framework and establish legal provisions that contribute to solving future problems, regardless of their nature.⁽³⁾ This

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- (1) Ali Mahdi Dawood Salman, "Economic Analysis of Sustainable Development Indicators in Selected Asian Countries," Master's thesis (College of Administration and Economics, University of Karbala| 2009) p. 11.
 - (2) Raad Sami Abdul Razzaq Al-Tamimi, "Globalization and Sustainable Human Development in the Arab World," doctoral dissertation (College of Political Science, University of Al-Nahrain| 2006) p. 29.
 - (3) Some countries have included references to sustainable development and its criteria in their constitutions, aligning themselves with international positions expressed in relevant agreements. For example, the Constitution of the Republic of Uganda of 1998, Article 27, emphasizes the state's commitment to promoting sustainable development and raising public awareness about the need for sustainable and balanced management of land, air, and water resources for current and future generations. Similarly, the Swiss Constitution of 1999 reflects the same concept.=

particularly applies to the provisions of civil liability, as the world is witnessing revolutionary changes and radical transformations in legal relationships and instruments.

Merely having legislation in any country is insufficient to achieve the goals of sustainable development. It requires reviewing and modernizing legal texts in a manner that ensures fair Code enforcement without exceptions and is in line with sustainable development criteria. The following two sub-sections address this:

=Among the Arab countries that have adopted this concept is Qatar, as stated in its permanent constitution of 2003, Article 33, where the state is committed to protecting the environment and its natural balance in order to achieve comprehensive and sustainable development for all generations.

However, in the Iraqi context, the legislative framework has addressed this matter in a general context, primarily focusing on environmental protection, as stated in paragraph 2 of Article 33 of the Constitution issued in 2005, which guarantees the state's protection of the environment and biodiversity.

Regarding the stance of international and national judiciaries on sustainable development within the criteria and objectives, many of them have adopted this approach. For example, the case of the "Pulp Mills on the River Uruguay" between Uruguay and Argentina, which was subject to decisions by the International Court of Justice in 2010, emphasized the need to balance economic development and environmental protection within the principle of sustainable development. Another example is the decision of the Supreme Court of the Philippines in the case of "Minor Oposa" in 1993, where forty-four children, their parents, and the Philippine Environmental Network claimed to represent the present and future generations and requested a halt to deforestation within the country. The court agreed with the claimants, acknowledging their standing to sue on behalf of themselves and future generations.

It is hoped that the Iraqi legislature will adopt these principles within the provisions of the constitution, enabling the assertion of economic and environmental rights, including the availability of water resources and other wealth, to protect future generations from the risks associated.

4.1. Amending contractual liability provisions.

4.2. Amending liability provisions for negligence.

4.1. Amending contractual liability provisions

The first sub-section focuses on modernizing the provisions of contractual liability within the framework of sustainable development. The legislative treatment of contractual liability should align with the concept of sustainable development and address contemporary financial transaction requirements and civil concepts of emerging needs. This subsection can be further divided into the following branches:

4.1.1. Modernizing the provisions of contractual liability within the economic dimension of sustainable development.

The governing provisions of contractual liability in the Iraqi Civil Code No. 40 of 1951, as amended, have a unique nature as they combine Islamic jurisprudential philosophy, influences from the Egyptian Code of Civil Judgments and Civil Code, which, in turn, draws heavily from the French Civil Code of 1804. These provisions deal with liability arising from breaches committed by the contracting parties, serving as a consequence of such breaches and applicable solely between them.⁽¹⁾ However, before a contract becomes a tool for safeguarding the parties' interests and compensating for damages, it also serves as a means for exchanging goods, services, and currencies and engaging in activities dictated by societal requirements. Hence, it becomes necessary to adopt the concept of the protective function performed by contracts, which protect rights beyond the contract and its parties, extending to non-contractual interests encompassed within the general legal

(1) Dr. Abdul Majid Al-Hakim, previous source, page 351.

system as a principle safeguarding the interests of the society that prioritize future generations' interests from an economic perspective in terms of the protected interest.⁽¹⁾

Thus, within the scope of contractual liability, the Iraqi legislator indirectly addressed personal liability (of the contracting party) and liability for the acts of others, considering the interests of the other party in the contract if harm arises from the breach.⁽²⁾ However, the legislator did not specifically address the concept of liability for the benefit of third parties within its future content, in order to clearly embrace the economic standard of sustainable development.

Contracts are a significant source of obligations, regulating agreements within the realm of financial transactions and their role in the economic aspect between the contracting parties, representing their respective private interests and, consequently, their role in society and public interests. It relies on the will of the contracting parties, which should be directed towards protecting those interests first and then extending beyond them to the principle of future generations' interests.

We hope that the Iraqi legislator intervenes within the aforementioned standard by modernizing some of the

(1) Dr. Muammar bin Tariah, "The Desired Evolution in the Professional Liability System: The Need to Unify the Governing Provisions of Civil Liability," a research article published in the (Journal of Jil for In-Depth Legal Research, Issue 24| 2018| p. 12.

(2) The Iraqi legislator referred to the specific aspect of liability for the acts of others in Article (259) of the Civil Code. This principle was not adopted as a general provision but was indirectly addressed in the legislator's treatment of the debtor's liability for fraud and gross negligence committed by individuals employed to fulfill their obligations.

provisions of contractual liability, whether through amendment or addition. We propose the following:

Firstly: amending the provision of Article (130/2) of the Iraqi Civil Code No. 40 of 1951, as amended, to clarify the concept of the general legal system and make it more inclusive within its general framework, without using the representation and enumeration method for certain cases considered part of the general legal system. We may consider the provisions of the Iraqi Consumer Protection Code No. (1 / 2010), whether in ordinary or exceptional circumstances, to protect consumers from future generations perspective.

Secondly: amending the provision of Article (168) of the Iraqi Civil Code No. (40 / 1951), which defines the aspects of contractual liability in cases of non-performance or delayed performance of contractual obligations. The amendment should expand the principle of compensating the affected party beyond the contracting party, to protect and compensate third parties who are harmed by such breaches in the future. This addition becomes an element added to the traditional elements of compensation as determined by the Code, including the loss suffered by the creditor and the profit foregone, as mentioned in Article (169) of the same Code.

4.1.2. Modernizing the provisions of contractual liability within the scope of the technological dimension of sustainable development.

Information technology (technology) has globally spread and its infinite outputs have permeated all aspects of life. It started with traditional governance and continues to evolve with the use of artificial intelligence. The Iraqi legislator has previously addressed contracting via telephone as an application of technology in its simple form since the

issuance and enforcement of the Code in 1951. However, many forms and details of technology are now used as means of contracting, including mobile phones and the World Wide Web. The Iraqi legislator has attempted to keep up with these advancements through the Electronic Signature and Transactions Code No. (72 of 2012), aiming to match the exponential acceleration of technological progress.

However, in the practical application aspect, there is little evidence of how this Code contributes to address technological issues between contracting parties or with third parties. The legislator still imposes certain formalities for contracting that do not go beyond the existing regulations required for real estate transactions,⁽¹⁾ leases,⁽²⁾ car sales,⁽³⁾ or machinery.⁽⁴⁾ Whether these formalities are for formation or evidence purposes, Articles 90 and 137 of the Civil Code, which states that a contract will be void if the formality requirement, such as registration, is not fulfilled.

Despite the widespread use of technologies, their tools, and their protection methods within the framework of cyber security, the Iraqi legislator still deals with traditional formalities. It is hoped that the legal texts governing contracting within specific forms using technology will be addressed, in line with the intended protection measures to achieve benefit and utility for contracting parties and third parties in the future. The technological dimension is considered one of the criteria that shape sustainable development for future generations. In this regard, it is

(1) See Article (3) of the Iraqi Real Estate Registration Code No. 43 of 1971, as amended.

(2) See Article (7) of the Iraqi Rent Code No. 87 of 1979, as amended.

(3) See Article (10) of the Iraqi Traffic Code No. 8 of 2019, as amended.

(4) See Article (30) of the Iraqi Code of Notary Publics No. 33 of 1998, as amended.

hoped that the Iraqi legislator will intervene within the framework of this treatment to amend Articles 90 and 137 of the Civil Code by adding legal provisions that contribute to achieving the intended purpose of Code No. 72 of 2012, establishing a database that can be referred to in the future, as long as its content is within the framework of technological protection. This will form part of the intended governance in the technological dimension by enforcing formality through artificial intelligence tools in the general provisions. This formulation will serve as a general principle for the provisions mentioned in the relevant specific Codes, whether they are currently enforceable or will be legislated in the future.

4.2. Amending liability provisions for negligence

The provisions of negligence liability are more in line with the sustainable development vision of all resources compared to contractual liability. While they recognize the existence of negligence, they do not deviate from adopting the principle of harm as a fundamental basis for holding the negligence feason, the debtor, accountable to the creditor. Whether the harm is foreseeable or unforeseeable, or whether it is directly inflicted upon the creditor in the present or future, these principles remain applicable. One of the most relevant criteria that can be adopted within the framework of sustainable development is the environmental standard, in addition to the effects of construction, designs, and the responsibility associated with them. These aspects will be discussed in detail in the following subsections.

4.2.1. Modernizing the provisions of negligence liability within the environmental dimension of sustainable development

Legal protection of the environment, in general, has been one of the main subjects addressed by legal jurisprudence through research, analysis, and guidance to impose legal restrictions that ensure such protection, whether in the criminal⁽¹⁾ or civil context. It encompasses a general provision that adopts the principle of holding the responsible party accountable for any environmental damage, as stipulated in Article (204) of the Iraqi Civil Code No. 40 of 1951, in addition to other detailed provisions. The legislator also addressed the general requirements for hunting and acquiring property rights within the framework of Articles (1098) and (1102), and adopted specific measures to protect the environment in other legislations, such as Code No. 41 of 2015⁽²⁾ concerning Noise Control, Code No. 3 of 1997 on Environmental Protection⁽³⁾ and Improvement,

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- (1) The Iraqi legislator addressed the issue of environmental protection in the Iraqi Penal Code No. 111 of 1969, as follows:
- (a) Crimes of sabotage and destruction (Articles 477 and onwards). (b) Crimes of killing and harming animals (Articles 482 and onwards). (c) Crimes of damaging public roads (Articles 478 and onwards); also referring to the Public Roads Code No. 35 of 2002. (d) Crimes of damaging public health (Articles 496 and onwards).
- (2) The Iraqi Noise Control Code specifies the obligations of employers or those responsible for activities regarding noise levels and imposes penalties for non-compliance. The penalties include fines, taking into account the sanctions imposed by the general provisions of the Iraqi Penal Code. For further details, refer to Articles (8) and (9) of the Iraqi Noise Control Code, as well as the Ministry of Environment Code No. 37 of 2007 regarding types of environments, pollutants, and means of protection and control in general.
- (3) Article (6/II) of the Iraqi Code on Environmental Protection and Improvement states that any environmental pollutants that directly or indirectly harm humans or other living organisms, in terms of=

and other relevant decisions such as No. 570 of 1982 and No. 169 of 1977, and Civil Aviation Code⁽¹⁾ No. 148 of 1974 amended by Code No. 17 of 2016. The concept of "environment" as intended in the aforementioned legislations encompasses land, sea, and air, requiring environmental protection on various levels, including human and animal habitats, as well as other resources. It also encompasses the protection of the sea, all water bodies, air quality, and other gases necessary for sustaining future life. Providing legal protection for these aspects means achieving the objectives of sustainable development for these resources in different environments.⁽²⁾

Although the Iraqi legislator has adopted principles of environmental protection in various instances, it lacks the notion of protecting future generations. The scope of protection has been limited to addressing present harm without adequately addressing future damages, especially concerning the goals of protecting the Earth's environment and its benefits. This includes promoting environmental quality in solid waste management and future damages, as well as damages affecting public housing and public health, all falling within the scope of negligence liability

=quantity or concentration, are considered environmental pollutants.

- (1) Furthermore, Code No. 19 of 2012 on Smoking Control also addresses environmental protection. Article (2) clarifies the objectives of the Code, which aim to protect individuals from the health, environmental, economic, and social hazards of smoking. The elements included in the objectives of the Code serve as criteria for sustainable development. The legislator has determined the form and type of penalties for violations.
- (2) Dr. Ahmed Khurshid Hameedi, Raida Yaseen Khudair, "Legal Methods of Protection from Noise," published in the Journal of the College of Law for Legal and Political Sciences, College of Law and Political Science, Kirkuk University, Issue 21| 2017) p. 46.

provisions.⁽¹⁾ The Iraqi legislator has primarily relied on imposing criminal penalties, such as restrictions on freedom and fines, on those responsible for environmental damage. However, the financial compensation remains subject to the general provisions adopted by the Iraqi legislator in the Civil Code, which are no longer sufficient to cover the liability for protecting the rights of future generations as intended by sustainable development. Therefore, it is necessary for the legislator to intervene in this field to ensure the achievement of these objectives. We propose the following measures:

1- The Iraqi legislator should intervene to amend Article 204 of the Iraqi Civil Code No. 40 of 1951, in order to include a comprehensive provision that incorporates the environmental dimension. This provision should impose obligations and compensation for any violations, going beyond what is stated in specific environmental protection legislations and their associated criminal penalties.

2- The Iraqi legislator should intervene to ensure the protection of terrestrial, atmospheric, and aquatic environments through a comprehensive approach that includes the principle of acquiring ownership in obtaining permits and engaging in hunting activities on land and sea. This comprehensive approach should address the provisions of Articles 1098, 1100, and 1102, as well as rights related to the environment and other resources. Precautionary measures should be put in place to protect these resources and prevent their depletion in the future. Additionally, the general provisions of liability, including liability for animals and public roads, should be compatible with the requirements of sustainable development.

(1) Dr. Hassan Hantoush Rashid Al-Hassnawi, "Environmental Damage Compensation Codesuit," p. 61, published research on the World Wide Web at <https://www.hasan.enf.org>, accessed on 5/1/2023.

3- The Iraqi legislator should intervene within a comprehensive framework to allow for the acceptance of class action Codesuits where multiple parties can be held responsible for damages to the environment and its elements. This is necessary to achieve the objectives of sustainable development. In this regard, the Iraqi legislator should grant civil society organizations (non-governmental organizations) the ability to initiate or participate in such Codesuits for the purpose of achieving those objectives.

4.2.2. Modernizing the provisions of negligence liability in the context of construction liability

The Iraqi legislator has regulated construction liability in a limited scope within the legislative framework of negligence liability, as addressed in Articles 229 and 230 of the current Civil Code. This treatment focuses on construction defects and damages, as well as liability for falling objects or structures.⁽¹⁾ These provisions are based on the principles outlined in the Journal of Justice Judgments, which the Iraqi legislator adopted, recognizing the important role of Islamic Sharia principles in society due to their generality and specific applicability. However, these provisions are no longer sufficient to cover the damages that can arise from construction, including future damages that conflict with the goals of sustainable development.

Furthermore, within the relevant legislation, the Iraqi legislator has not addressed these objectives adequately. For example, the Iraqi Municipalities Management Code No. 65 of 1965, does not include clear and specific regulations that achieve the future goals of sustainable development, such as the nature and style of construction and the preservation of architectural heritage in Iraqi cities, construction patterns,

(1) Dr. Hassan Ali Al-Dhunoun. Simplified Civil Liability (Vol. 5, Dar Wael, Jordan| 2006) p. 328.

and their impact on the economic aspect of future society. Additionally, the tools, techniques, and technology used in construction also require legislative intervention to ensure optimal resource utilization in terms of quality and type.⁽¹⁾ Such legislative measures should consider the means of development to prevent their depletion. Clear liability in this regard should be imposed on all parties involved, particularly those responsible for construction works and contracting, within the framework of contractual obligations. This liability should extend beyond their contractual responsibilities to beneficiaries of those contracts. The legislator should intervene to address these aspects to ensure the protection of the rights of future generations and prevent damages arising from poor building design and construction.

5. The conclusions:

5.1. Results:

1. Sustainable development criteria are the principles upon which the achievement of Sustainable Development Goals (known as "Transforming Our World") is based. These goals were explicitly adopted by the United Nations in a General Assembly resolution in 2016. Some governments have adopted national and regional frameworks to achieve these goals based on national-level analysis and monitoring.
2. Sustainable development takes into account the economic, environmental, technological, and social dimensions in meeting individual needs while preserving the rights of future generations. It harmonizes the

(1) Dr. Suleiman Mahna, Zbeida Deeb. Planning for Sustainable Development, published research in the Journal of Damascus University for Engineering Sciences, Vol. 25, Issue 1, 2009, p. 13.

utilization and investment of available resources between the present and the future to meet the needs of society and the well-being of future generations.

3. Sustainable development requires the existence of legislative policies that adopt the necessary measures to achieve the intended goals based on criteria and components within the institutional framework. This framework works to provide legal protection for sustainable development with its individual and general objectives.
4. The Iraqi legislature has not explicitly adopted provisions and provisions that ensure the achievement of sustainable development goals.

5.2. Recommendations:

Based on the findings derived within the scope of the research on sustainable development criteria and their role in modernizing the general principles of civil liability, we propose the following:

1. The Iraqi legislature should adopt the principles of sustainable development and its criteria within the provisions of the constitution.
2. Amend Article (130/2) of the Iraqi Civil Code No. 40 of 1951, to clarify the concept of the general system, making it more comprehensive in its general form without using representation and enumeration methods for some cases that are part of the general system. This should consider the provisions and provisions adopted by the legislature in the Iraqi Consumer Protection Code

- No. 1 of 2010, both in normal and exceptional circumstances, to include protecting consumers from future generations.
3. Amend Article (168) of the Iraqi Civil Code No. 40 of 1951, which sets out the manifestations of contractual liability in case of non-performance or delay in fulfilling contractual obligations. The amendment should broaden the scope of the necessity provision beyond compensating the damaged contracting party, to also protect and compensate those affected by such disruptions in the future. This should be an additional element added to the traditional compensation elements stipulated by the Code, covering the losses suffered by the creditor and the gains that have been missed, according to Article (169) of the same Code.
 4. Amend Articles (90) and (137) of the Iraqi Civil Code by adding legal provisions that contribute to achieving the intended purpose of the Code No. 72 of 2012, representing a database that can be referred to in the future, as long as its content revolves around technological protection. This should form part of the intended governance in the technological dimension, imposing compliance with formalities through artificial intelligence tools in the general provisions. This formulation should serve as a general principle for the provisions in relevant special Codes, whether they are currently effective or future legislation.
 5. The legislature's intervention is needed to amend Article (204) of the Iraqi Civil Code No. 40 of 1951, to ensure

its comprehensive content, including the environmental dimension within a specific clause. It should entail compliance with its mechanisms and compensation for any violations, going beyond what is provided in the specific legislation for environmental protection and its elements in terms of criminal penalties.

6. The Iraqi legislature should intervene to ensure protection for terrestrial, atmospheric, and water environments through a comprehensive approach that encompasses the acquisition of ownership rights from the granting and hunting of land and sea resources. This approach should include precautionary measures that provide protection for these resources and prevent their depletion in the future. It should also address the general provisions of liability for negligence, specifically the liability for things (animals, public roads), ensuring compatibility with the requirements of development.
7. The Iraqi legislature should allow for the acceptance of the concept of class action Codesuits, where multiple parties responsible for environmental damage can be sued, to achieve sustainable development goals. In this regard, the Iraqi legislature should grant civil society organizations (non-governmental organizations) the ability to initiate or participate in such Codesuits for the purposes of these objectives.
8. The Iraqi legislature should achieve sustainable development goals by making amendments within the scope of negligence liability related to damages resulting from the failure to preserve architectural and cultural

heritage. Additionally, the responsibility of the beneficiary and the contractor should be established in the event of non-compliance with these goals and their international standards, in accordance with the construction contract and its specificity in this regard.

The Authors declare That there is no conflict of interest
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