

CIVIL LIABILITY FOR ELECTRONIC WASTE

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ABSTRACT

Our use of modern technologies is increasing day by day, and communications technology and various information systems occupy an advanced position, especially those that are linked to Internet services, and today almost no house is free throughout most countries of computers and personal phones of various types and sizes and has become a necessity of life and contributed to achieving Qualitative leaps in the field of improving performance and developing productivity, but at the same time increased quantities of electronic waste consumed, which are classified as electronic waste exported to developing countries, including Iraq, and at large rates, and became dangerous to the health of The human being and his environment, so where do these old consuming devices go and how will the protection from them be legislative, behavioral, or giving up on their use.

Keywords: Electronic Waste, Civil Liability

INTRODUCTION

There is no doubt that the environment is the periphery in which a person lives, as well as living organisms, it is the asset of mankind and its heritage. However, the tremendous scientific and technological progress that society has witnessed has enabled man to exploit its resources and harness its potential, and if it is the person who creates and shapes his environment that gives food, And The opportunity to achieve its goals and objectives embodied in luxury, development and enjoyment of basic rights, the most important of which is the right to life and good health.

In view of the technological development in various areas of life and because of what we live in an open world, many electronic pollutants that the natural environment cannot tolerate result in millions of tons of waste, which affected human health, especially in developing countries, which are considered by the big countries as landfills for their waste, and they export to many of them. The electronic devices used after a period of their use due to their full awareness of the difficulty of disposal when they are completely disrupted or the high costs of burying them, so they are exported to these countries, including Iraq, at low prices for their use until they are disrupted, and through it many diseases emerged. Which affected on the human life? Its dangerous increased its negative results of what components contain dangerous materials such as phosphorus, barium, lead and others. Therefore, proper management and regulation of electronic waste has become a point of worry today because of its harmful impact on the environment as well as the people who deal with it because developing countries face a double problem due to the large domestic production of electronic waste as well as import from industrialized countries (Chaudhary, 2018).

The truth is that civil liability plays a role in providing environmental protection by setting a system that achieves deterrence and reform through responsibility, and although the law of civil responsibility tends to compensate for the damage that is occurring, at the same time it is considered a truly preventive goal for those who engage in an activity that harms the environment and also does everything in He was able to take all measures to prevent pollution from occurring, or at least reduce it, to avoid obligating the often costly compensation.

Research Importance

The importance of this research is reflected in the necessity of examining the reality of environmental and health damages that electronic waste affects in Iraq, and is there a role for the Environmental Law in protecting the environment from these electronic waste, and how far is the civil responsibility in its estimation to compensate those affected by these waste.

Research Problem

Electronic waste is one of the most problems that cause a danger to the environment as a result of its accumulation and the difficulty of disposal or recycling, as well as electronic pollution, which has become a threat to developing countries, including Iraq, as it is a target for the export and disposal of used electronic devices. Can we eliminate these electronic wastes by creating laws that prevent the export of these electronic wastes to developing countries?

Search Plan

The First Topic: What are electronic waste and its risks?

The First Requirement: Definition of electronic waste

The Second Requirement: Environmental risks and repercussions of electronic waste

The Second Topic: Civil liability for the dangers of electronic waste

The First Requirement: Elements of liability arising from pollution of electronic waste.

The Second Requirement: -Effects of civil liability for electronic waste pollution,

Previous Studies

Awad (2018) deals with the electronic Waste, Environmental Implications Legislative Conflict Prevention, Protection and Technical Maturity Mechanisms. It is different from my study in the responsibility of the electronic wastes.

Mohamed (2018) studies the civil responsibility surrounding humans in this way it is different from my study in pollution by electronic wastes.

Al-Shazly (2018) analyses the idea of contract targeted for the application of the law by protecting the consumer which differs from my study in the civil responsibility of the electronic waste.

The First Topic

What are Electronic Waste and its Risks?

The First Requirement: - Definition of Electronic Waste

Given the rapid developments in technology in every breath we take, it becomes very difficult to give an accurate definition of electronic waste, but it can be given a comprehensive definition that it is all electrical or electronic equipment that has been used, or has not been used and has become unusable, either because of its breakdown or Because of its age, or because of the emergence of modern types, it has replaced it, or because it has been unable for these devices to keep pace with modern technology (Mohamed, 2018).

Several successive studies have confirmed the bad and extremely dangerous impact on human health, especially when widespread use of the personal computer and the accompanying input or output devices for different data and information, and it causes eye strain which are symptoms that lead to difficulty in vision and double vision and a constant feeling of headache, stress and injury Anxiety and depression (Al-Shazly, 2018).

Studies conducted on e-waste have confirmed that (50%) of this waste is computer hardware that works excellently but does not keep pace with technical developments, especially what has been brought about by steady progress in modern software engineering technology that requires extremely fast and sophisticated devices, for example in the United States The American government destroyed more than 20 million computers in 1998 AD, and in 2001 more than 41 million devices were destroyed, and in 2005 AD (63) million computers were destroyed, according to an environmental survey conducted in Oregon The United States found that 6000 thousand computers are destroyed daily, and experts confirm that These numbers will rise sharply over the next few years (Al-Shazly, 2018).

Likewise, there are other sources of electronic waste represented in the medical, engineering and sports devices of an electronic nature that operate with computer programs as well as electronic delivery devices, and in general any electronic device intended to be an integrated part of one of the traditional devices that depend on its operation on other requirements such as (batteries, tapes Magnets, oils and inks) and as such, these devices and their accessories become waste that threatens the environment as a result of the emergence of more advanced types (Al-Shuaibi, 2014).

The (Basel) Convention defined hazardous wastes in Article (2/1) as (materials or things being disposed of, or intended to be disposed of or required to be disposed of according to the provisions of national law (Ammad, 2018). The Iraqi Environmental Protection and Improvement Law No. (27) of 2009 defines hazardous waste as (the waste that causes or is likely to cause as a result of its contents of materials - serious harm to humans or the environment) (Al-Shuaibi, 2014).

The Second Requirement: - The environmental risks and implications of e-waste

Waste is a threat to human health and safety, because these wastes contain toxic materials that harm the human being and the environment, and are used in the manufacture of these electronic products. Parts, transportation, and circular panels become dangerous when they are damaged or dangerous when those concerned dispose of them in a random manner so the toxic materials leak into natural resources from water, air and soil (Al-Dabousi, 2018). Electronic waste contains large quantities of compounds and toxic chemical elements that are harmful to human health and all elements of the environment. Electrical and electronic circuit boards contain lead and some of its oxides that affect the nervous system as well as its effects on children's mental development. Lead is concentrated in control panels, screens, computer batteries, and printer boards, Calcium, cobalt, and cathode ray tubes present on TV and computer screens. Reports indicate that 80% of electronic waste in industrialized countries is exported to Asian countries and some of these are used. The equipment and the damaged ones are recycled and precious and precious metals are extracted from it, such as gold, silver, palladium and copper, and within very poor environmental and industrial conditions, where the method of direct burning in the open air is often used and the use of very primitive equipment (Al-Shuaibi, 2014) It is one of the most important goals of the process of sound management of e-waste through the application of the principle of reuse, recycling and recovery in a correct way through the application of many advanced technical procedures, including searching for the best options for reusing these equipment and recycling them and relying on clean technology and then disposing of the treatment products and supports these activities A set of appropriate and supportive legislation (The Iraqi Environmental Protection and Improvement, 2009).

The appropriate management of e-waste is discussed by many different stakeholder groups around the world, including international organizations, governments, academia, industry and organizations (Non-governmental organizations). The main reason for this is that e-waste causes problems in developing countries, as well as efforts to raise awareness and facilitate changes in consumer behavior (Ammad, 2018).

Environmental surveys conducted on electronic landfills, as well as workshops that have recycled in some developing countries, have shown serious pollution of surface and ground water, soil and air, which helped spread lung and kidney diseases, skin diseases and cancers among the population in these areas endemic with chemical gases and electronic waste. The intention is diverse.

Therefore, the bodies concerned with environmental affairs must follow up on this environmental problem and support their steps with strict environmental regulations and legislation in order to control the volume of electronic waste (Al-Shuaibi, 2014).

And from the statistics that indicate the existence of electronic waste, in 2006 more than one billion mobile phones were shipped to all parts of the world, yet Nokia has recycled only 2% of those phones that sell it, but in the electronic computer market, the giant companies specializing in This field has recycled 9% of those old computers only, while more than 90% of them remain outside this region (Al-Dabousi, 2014).

The Second Topic

Civil Liability for the Dangers of Electronic Waste

The men and scholars of the law divided the sources of commitment into voluntary sources of commitment, namely contract and individual will, and non-voluntary sources of commitment, which are the law, illegal work, and enrichment without reason.

And I will search for illegal work as a source of commitment, meaning that the injured person who has sustained damage will return to compensation for the cause of the damage that he sustained and this is called civil liability and the aim of it is to redress the damage, and civil liability may be contractual or default, but I will search for tort liability as a measure of civil responsibility, and that Because tort liability is broader and more comprehensive than contractual responsibility in that it is not permissible to agree to mitigation or exemption from it, and it includes the expected and unexpected damage, but this does not prevent the contractual responsibility from being achieved if its pillars are achieved and therefore I will touch on this topic to look Two yen for the first elements of the responsibility arising from the pollution of electronic waste and secondly the effects of responsibility at this stage.

The First Requirement: Elements of liability arising from pollution of electronic waste

First/the error: - The error is the basis in each of the two responsibilities, which means a breach of the previous commitment, is it a contractual error due to the circumstances of the contract, or an obligation imposed by law under tort liability, because the relationship between the provider and the third party is not based on a contractual relationship, the breach that occurs in these The situation is not a violation of a specific obligation regulated by the will of the two parties, but rather is a result of a general obligation imposed by the law that requires no harm to others (Tanskanen, 2013).

And the Iraqi legislator stipulated in Article (231) that (everyone who has at his disposal mechanical machinery or other things that require special care to prevent their harm will be responsible for the damage he causes unless he proves that he has taken adequate care to prevent such damage from occurring, without prejudice to this. Including special provisions contained therein) (Al-Hayani, 2009).

Article (10) of the Iraqi Environmental Protection and Improvement Law [9] states that the owner of any project shall, before starting its construction, submit a report to assess the environmental impact and includes the following:

- 1) Estimating the positive and negative impacts of the project on the environment and the effect of the surrounding environment on it.

- 2) The proposed means to avoid and treat the causes of pollution in a manner that achieves compliance with environmental regulations and instructions.
- 3) Urgent and potential pollution cases and precautions to be taken to prevent their occurrence.
- 4) Possible alternatives to using technology less harmful to the environment and rationalizing the use of resources. etc (Al-Shuaibi, 2014).

And some jurisprudence knew the environmental error every violation of a legal obligation to cause environmental damage, or it is a violation of a person or company from the transfer or recycling of electronic waste, which leads to damage to the environment or to others.

The physical element in the environmental error is the attack on the rights of others through the harmful or infringing act issued by the person or company responsible for recycling it for electronic waste that would cause pollution to the environment, and this is actually positive, or it may be a negative act when the company recycles the electronic waste by disposal Of them by burning them, but without taking the necessary precautions to reduce the amount of pollution resulting from combustion (Muhammad, 2019).

The French legislator and the European direction were not satisfied with the rule that the act would lead to the occurrence of the damage, but rather to protect people from the risks of goods and products, and established a kind of objective responsibility that is arranged to guarantee the harm to any person, whether material or moral, and benefit from the provisions of that responsibility every harm Whether the person is contracted or not contracted with the product. Suffice it to prove the causal link between the defect in the commodity and the damage incurred (A.I.C, 1951).

Substantive civil liability is defined as liability, which is essentially sufficient for the existence of a causal relationship between the damage and the work or activity even if this work or activity is the source of the damage right and correct. The objective theory destroyed the element of error and called for the necessity of civil liability based on the element of harm resulting from the harmful activity, with a causal relationship between the damage and the harmful activity available (T.I.E.P, 2009).

And in order for the protection offered to the affected to be more effective in the face of the damage caused by the defective and dangerous products, it stipulated another responsibility to ensure the safety of the victim, especially if the victim was unable to reach an identification or the identity of the actual product. As the liability here is a backup or alternative, on the basis that the seller or distributor represents an extension of the manufacturer of the product, and for this it was necessary to make the liability system not be based on the error (Al-Dabousi, 2018).

And the difficulty of the topic of responsibility in the environment as a liability without error and determining who is responsible for the damage, and what it requires to bear heavy expenses that constitute an obstacle to him in his economic activity, which is at the same time necessary for the growth of society. The European Union has gone in an attempt to develop a unified law, for all the countries of the European Community called the term (White Paper), its content of which is the civil liability without error on every person who produces waste during his industrial or commercial activity or who changes the components or nature of the waste or imports This waste or whoever stores this waste or who are authorized to dispose of it (Mansour, 2009).

Second/harm: - harm is defined in a language (harm, in the names of God) the beneficial harmful. Harm and harm are language: against benefit, and harm is not beneficial. Narrated on the authority of the Prophet Muhammad (may God bless him and grant him peace), he said: "There is neither harm nor harm in Islam." Harm is harmful together and harm is one act (Hanafi, 2018).

As for harm as a term, it is not possible to find a comprehensive definition that prevents it in the legal texts, and it defied its definition of legal jurisprudence, and it took upon itself to define it as (the harm that a person inflicts on one of his rights, or in an interest legally considered, whether this legitimate interest relates to the integrity of his body or With his money, his consideration, his dignity, or his feelings) (Al-Daluou, 2016).

As for environmental damage or damage resulting from pollution with electronic waste, it is that damage resulting from pollution operations or environmental infringements, which affects others or the environment (Omar, 2016).

Article (2/1) of the European directive issued in 2004 regarding civil liability for environmental damage defined environmental damage as (every harmful change that affects the environmental environment with its types or places of nature or protected nature, and changes its initial state that arose. on her) (Manzur, 1999). Damage is considered the primary element without which liability is not held, and it is also considered a necessary condition for the establishment of liability (Al-Muhanna, 2018). The damage caused by electronic pollution is due to the danger of electronic waste, through the leakage of dangerous and toxic electronic devices components into the soil, air or ground and surface water to reach the human body to directly harm it (Taher, n.d).

Damage as an important component of civil liability and the entitlement to compensation for it requires that certain conditions be met in accordance with the general rules and that the damage be real and direct, and that the damage is done if it actually occurred, or will inevitably occur, meaning that if the damage has not been achieved, it is sufficient that it be Its occurrence is certain, even if it slackens into the future (Annex, 2014). As for the physical harm from pollution of electronic waste in the field of civil liability, it is the material damage that affects human health to the extent that it leads to poisoning and injury to infertility and cancer as a result of exposure to these pollutants, and this is all related to direct damage. As for indirect damage, we find it difficult to estimate it to compensate for that. To include a text in the law requiring compensation for indirect environmental damages (El-Ahwany, 1988). Likewise, several studies have shown that the flexible material "coltan", which is used in the mobile phone industry, caused the death of three million people in the world in 1998 (Al-Dabousi, 2018).

As for the French legislator, the producer was obligated to take the necessary measures to stop the damage starting from notifying the buyers (personally through contracts that may contain their addresses or by announcing the defect and how to avoid it and ending with the withdrawal of the product from circulation) (Taher, 2018). And the harm of electronic waste contamination may be slackened for years to show its effects, in addition to the fact that the damage is subject to the rule of determining the claim for compensation and environmental damage that contradicts that completely, as its effects do not appear often as soon as it occurs, but it slack for periods, and in front of the slackness of the effects of pollution and the inability to determine it accurately, if the injury was compensated When filing a lawsuit, the effects of the damage will remain in the future because the activities of the contaminated product meet the legal requirements, so the continuation of the activity means the continuation of pollution, and accordingly, the peculiarity of the environmental damage requires the development of the traditional rules of responsibility, especially as the person has become aware that the intricacies of life increase every day. With technological development, which carries environmental damages (Al-Rashidi, 2012).

And because the element of harm is the one that distinguishes civil liability, therefore it is required for it to occur that the damage that affects others is affected, and that the damage affects a legitimate interest (Taher, 2018).

Third/The Causal Relationship: - According to the traditional rules for convening fault liability, it is necessary, in addition to proving the fault of the responsible of the pollution, and the occurrence of environmental damage occurring with electronic waste. A causal link must be established between error and damage (Ghestin, n.d). The causal relationship is of great importance in the field of civil liability, as it determines the act that caused the damage among the acts surrounding this accident on the one hand, and on the other hand it is used in determining the scope of responsibility, as the damage often results in other damages (Al-Jayashi, 2017).

Although the responsibility of the producer is based on an assumption of liability which, according to the principle, requires that no liability be paid except because of force majeure, as it

is not related to his mistakes, but rather is related to his activity and incurs him to be fined for worth, whoever takes possession of a project has a duty to pay compensation for the damage caused by this Employment without straining the harmed party that he is entitled to compensation, that is, achieving compensatory justice for the harmed party to resort to full coverage of the risks (Dupuy, 1977). However, the European and French legislators did not adopt the theory of bearing the responsibility upon its launch. He adopted a special and restrictive picture of bearing the responsibility in which it is related to proving the defect of the sales and causing it to cause damage (Omar, 2016). A difficulty arises in establishing the causal relationship between the damage to electronic waste and the error that caused this damage, as the injured person's claim to electronic waste is always rejected because he is unable to prove the causal relationship between the damage caused to him and the occurrence of this damage in order to slow the emergence of this electronic waste pollution to the future, and this difficulty lies In proving the causal relationship, due to the difficulty of attributing the location of the pollution to the incident that caused the pollution, and the responsible person obligated to compensate for it (Hafeez, 2018). All of this is due to the tremendous technological development, and therefore, civil liability must be established according to the objective theory to achieve compensation for the victim as a result of his contamination of electronic waste, whether it was attributed to a specific error or adherence to normal attainment. Enough for the causal relationship between the behavior of the producer and the damage affected the harmed person without evaluation to his behavior.

The Second Requirement: - The effects of civil liability for pollution of electronic waste
Compensation

The responsibility arises from the obligation of the person responsible to compensate the harmed party for the damage caused to him. Compensation is the reparation of the harm caused to the victim (Salam, 1996). And the Iraqi Civil Law has indicated in the text of Article (202) on ((every harmful act of the soul who kills, injures, beats, or any other type of abuse is required to compensate for the most occurred damage)) In general, compensation is intended as a means of repairing the damage, and specifically it means repair, not full and effective eradication of the damage that has occurred (Jamii, 2000). And for the purpose of repairing or mitigating the damage many ways, this is because the principle is that the compensation is monetary as the judge appreciates it in a sum of money, but there is no provision in the Iraqi civil law that prevents the realization of compensation in kind, as the court has discretionary power in determining the method of compensation and how it is estimated according to the provisions of Article (209) An Iraqi civilian which states that (“The court shall appoint the method of compensation according to the environment, the compensation either being parts or a salary, and in this case the debtor may be obligated to provide insurance”) (Hanafi, 2018).

The principle in fault liability is that the compensation is monetary and in kind compensation is an exception, unlike contractual responsibility where the in kind compensation is the original, while monetary compensation is an exception (Mansour, 2019). As for compensation for environmental damages with electronic waste, the Iraqi legislator did not address it in terms of the original compensation, whether it was in kind or in monetary. According to the general rules, the compensation in kind for the harmful act, and we do not move to monetary compensation unless it is impossible in kind compensation. There is no doubt that the compensation in kind is the best way to compensate for the damages of environmental pollution with electronic waste if possible. Here are two types of compensation:-

First/In-Kind Compensation: It is generally intended to restore the situation to what it was before committing the mistake that caused the damage (Taher, 2018). It is intended as a civil part for environmental pollution to compel the person responsible for the error according to a court ruling to remove the damage to pollution if possible, and there is no doubt that this type

of compensation is the best in the field of environmental damage, because it is necessary for the one causing the removal of these damage and erasing it completely if possible instead of giving the harmed person an amount From money and keeping the situation as it is in monetary compensation, and therefore there are several mechanisms for in kind compensation that is governed by, including repairing the affected environment, *i.e.*, restoring the situation to what it was and likewise stopping harmful activity.

- 1) Restore the situation to what it used to be: it means every reasonable procedure aimed at rehabilitating or repairing environmental elements or mitigating or preventing environmental damages, by repairing and restoring the environmental medium from these electronic waste (al-Tai, 2013). The European Directive on waste has stipulated in Article 4 of it (that the plaintiff can request either to return the case to what it was or to request the recovery of the expenses he spent on returning the case to what it was) and it is clear from this text that he has been granted authority To judge the person responsible for causing the damage by obliging him to restore the situation to what it was before, by treating those electronic waste by recycling or disposing them according to the conditions and controls (al-Hakim, 2007). As for the Iraqi legislator, it has been stipulated that “(anyone responsible for any reason for his personal act, negligence, or by those under his care, supervision, or control of persons or followers, or his violation of laws, regulations, and instructions, is harmful to the environment and is obligated to compensate and remove the damage within an appropriate period and return the case To what it was before the occurrence of the damage, by its own means and within the period specified by the ministry and the conditions set by it etc ...). It appears from this text that the legislator has applied the general rules with regard to civil liability for environmental damage and it was more effective to introduce a system of civil liability for pollution Environmental Electronic data imported from other countries, because these rules may be inappropriate to the nature of environmental damage and does not guarantee access to adequate compensation in this regard (Hamad, 2016). Stopping harmful activity to the environment: stopping harmful activity as a form of in kind compensation is a future protection for the environment affected by electronic waste, by preventing new damages from occurring in the future by preventing the import of electronic goods that are expired and that cause harm to their users. The French legislator, as well as the Egyptian legislator, have the right of the plaintiff to request the stopping of illegal activities that harm, while the Environmental Protection and Improvement Law No. 15 of 2003 did not mention the stopping of harmful activities as compensation in kind (Dupuy, 1977).
- 2) Second/monetary compensation: When it is impossible to take the portion of compensation in kind and restore the situation to what it was before the occurrence of environmental damage, then the judge will have to resort to monetary compensation, which is a reserve compensation and cash compensation as an executive civil part is to pay an amount of money to those who have suffered harm from the tractor or Illegal activity (Fathallah, 2019). The court shall award monetary compensation within the scope of environmental damage when it is impossible for it to award compensation in kind in restoring the case to what it was before the environmental damage occurred. Regarding the application of the penalty for monetary compensation in the Iraqi Environmental Protection Law, the legislator stipulated that (“ it is responsibility for anyone who caused his personal actions to harm the environment and is obligated to compensation)” In light of this text, we can say that the damage resulting from environmental pollution is a special nature, so the legislator should have The Iraqi has to pay attention to compensation for him, by subjecting it to special rules that are broader and more comprehensive, so that the compensation will achieve the desired goal in the field of redressing environmental damage for the waste of electronic devices waste (Tahere, 2018).

CONCLUSION

At the conclusion of this research, it becomes clear to us that environmental pollution through electronic waste has an impact on the environment in general and on human health in particular, so many measures must be taken to limit its harmful effect because these electronic waste are caused by different devices that we use every day and cannot be dispensed with About it, which necessitates the necessity of guidance and awareness of its harms, and the legal protection of the harmed person and his right to compensation should be ensured as a result of

the harms he suffered. At the end of this study, we reached several conclusions and recommendations as follows:

RESULTS

- 1) The pollution caused by electronic waste differs from other types of pollution, as it is a new pollution that threatens human health and threatens all elements of the environment because it is distinguished by its multiple sources.
- 2) The damage that is achieved through electronic waste is not achieved in one go, but gradually over the coming generations.
- 3) The absence of special laws in Iraq that address the problem of pollution by electronic waste and do not show how to get rid of it, which helps to increase its danger.
- 4) Lack of proper management of electronic waste as a measure that helps in managing used and consumed products in a manner that protects people and the environment.

RECOMMENDATIONS

- 1) Amendments must be made to the Iraqi Environmental Protection and Improvement Law No. 27 of 2009 in order to keep pace with technological development to remedy deficiencies and organize a more comprehensive protection of the environment from the damage of electronic waste.
- 2) Promote the sound management of electronic waste to reduce the damage caused by electronic waste components.
- 3) Relying on the objective civil liability rules as a basis for compensating the damages resulting from pollution of electronic waste.
- 4) Working to recycle electronic waste using modern technologies under governmental supervision.
- 5) Issuing a package of laws limiting the import of used and poorly manufactured electrical and electronic equipment.
- 6) Criminalizing burning electronic waste or throwing it in unlicensed places.

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