



Determining the applicable law for the damages caused by Coronavirus pandemic

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Abstract - All the laws when they are legislated, they must be made to achieve certain goals to insure the interest of some concerned parties in the community, and normally these laws are made in favor of weak people and protect their rights. Sometimes the laws have been issued to create balance between the people. As it known the laws may include preventive procedures which can play big role in giving rights and providing protection, especially the environmental issues like corona virus which invade all the world and spread the disease throughout, so these procedurestry to recover citizen's rights and demand, in return, indemnities for hurt people(who got hurt) due to coronavirus and.And Identify the people who are involved in spreading the Epidemic and millions of people got infected as a result of the worldwide disease, therefore, the international authorities and people concerned in the field of international law must legislate suitable law deals with the issues related to corona epidemic.

Keywords: laws, coronavirus, Epidemic

I. INTRODUCTION

First Section

The Necessity For Creating A Legal Adaptation To Handle The Corona Pandemic And Its Effects

Corona virus (Covid 19), has became biggest issue and the world's most prominent event, and it hit all the around the world and influenced on all life field such as health, economic, and tourists fields, one of the negative signs is some of responsible people got incapable (financially) to implement their commitments on time whether towards their employees, or other parties, not to mention, the damages caused by covid-19 that hit all the communities and raised anxiety and fears of all the people in the world, the casualties affected different kind of facilities. More importantly, security and economic, health, social implications were considered by many nations as concern number 1. Therefore, the mobilization of all the levels of possibilities to confront this threat is needed to reduce as much as possible the damages.

Corona virus was considered an unprecedented pandemic and the whole world is facing this menace and, it was so hard or (impossible) to deal with it through the normal methods and procedures so this situation must be treated by adopting unusual process, it is called "exceptional circumstances", and the law has to find a way to fix things and put them back on track (and trying to get things back as it were before). this study includes two demands, the first one is defining Coronavirus pandemic (linguistically and terminologically) and then showing the adaptation of the Corona pandemic as an environmental threat.

First Demand

The Definition Of Coronavirus Pandemic And Its Effects (Linguistically And Terminologically)

First: The Definition Of Coronavirus In Linguistic Sources:

Pandemic: consist of two words: pan: means "all" and demic "demos" in an ancient Greek language means "people" In Arabic language it can be defined as "plague" it is distress⁽¹⁾, the meaning of distress in Arabic notion is great need for money, and without money the man will be perished and his life is doomed⁽²⁾, the Arab has a well-known aphorism (disappearing the basic needs from man's life, it is more severe than the outbreak of the epidemic).

Second : The Definition Of Coronavirus Idiomatically

(1) Al-Taher Ahmad Al-Zawy, arranging the comprehensive dictionary by the method of the luminous lamp and the basis of rhetoric, part 1, Al-Fiker printing house, 3th edition, 1959, Paige 202.

(2) Muhammad ibn Abi Bakr al-Razi, Mukhtar As-Sahih, Part 3, Dar Al-Kitaab Al-Arabi, Beirut, 1989, Paige 119.

The pandemic is an epidemic of an infectious disease that has spread across a large region, for instance multiple continents or worldwide, affecting a substantial number of people, pandemic affect not only human beings but also affect environment and plants and cattle ranch, farms, corps, fishes, trees etc⁽³⁾.

As it know pandemic is not like endemic disease which is defined as a widespread with a stable number of infected people. The widespread endemic diseases with a stable number of infected people like the frequent seasonal influenza⁽⁴⁾ aren't considered pandemic because they occur simultaneously in large regions of the globe and they don't spread around the world.

Coronavirus pandemic generated from virus look like crown or wreath it transmit and cause diseases among many creatures like mammals especially humans and birds. the virus cause respiratory tract infections .some cases of this virus is considered as mild illnesses in humans and include some cases of the common cold (which is mostly related to the common influenza cold, Pneumonia and bronchitis⁽⁵⁾).

The International health organization defined Coronaviruses as a group of certain viruses that hit human beings and animals, like we said, coronavirus attack respiratory tracts and it range from mild to lethal. Mild illnesses in humans include some cases of the common cold, while more lethal varieties can cause Middle East respiratory syndrome and Severe acute respiratory syndrome SARS, and lastly coronavirus has been appeared which is called Covid-19.

The International health organization describe this disease as a new kind and it is difficult to be confined or controlled among the countries , the coronavirus pandemic has negative repercussions and bad consequences in global the political and economic and social fields⁽⁶⁾.

All the international health facilities agreed that Coronavirus is classified as dangerous contagious pandemic and it transmits quickly from one person to another at the same time⁽⁷⁾. On the other hand the organization of International health sorted out, according its data, coronavirus as pandemic in 11/3/2020 ⁽⁸⁾ after three months of registering first positive case in China.

Second Demand

Classifying Coronavirus pandemic as an environmental threat

If we look to the facts, we conclude the world confront big unexpected threat, this critical period of our lives has witnessed growing challenges and inevitable risks since the emergence of coronavirus cause economic impacts and resulted in vast human losses and, it caused the death of many lives and continues to do so, and it could be no less dangerous thanor (constituting a danger equal to) Spanish flu in 1918, when it resulted in the death of million people, and it is considered as most horrible environmental disaster in the history of humanity. This disaster can occurred once again despite the age of latest technologies we live,

Due to growing risks of this pandemic, we, therefore, find immediate and appropriate solutions to get rid of this invisible danger, among the solutions we should create it up is protecting people whose interests have suffered losses and damages as a result of the epidemic and the legal authorities have to release some procedures and reform actions and right solutions to overcome the constraints and create new strategies to balance between the rights of the most aggrieved people.

(3)The emerging corona virus, a comprehensive health awareness guide, issued by the World Health Organization, first edition, published in 5/3/2020, page 4.

(4)Dr. Hussein Bin Salem Al-Dhahab, The Theory of Pandemics in Islamic Jurisprudence, a research published in the journal of Sharjah university for Sharia and Legal Sciences, Volume 8, Sohar University, Oman, 2011. Paige 9.

(5)Dr. Saddam Muhammad Mahmoud, D. Ali Ibrahim Hussein, The implications of crises and social catastrophe on practices accounting, Coronavirus (COVID-19) modeling, analytical and theoretical study, research published in the magazine of Tikrit University for administration and economic Sciences, College of Administration and Economics, Volume 16, Issue 49, part 1, 2020, Paige 3.

(6)Dr. Raed Bayan, The crime of transmitting the infection the new Coronavirus in exceptional circumstances, an article published on the website of International Truth, in 18/3/2002, the date of the visit 9/9/2020, on the following link

<http://factjo.com/Articles.aspx?id=٧٠40>

(7)Corona virus, why did the World Health Organization classify it as a global epidemic ?, News published by (BBC) agency news in 12/3/2020, the date of the visit 9/3/2020, at the link

<https://www.bbc.com/arabic/science-and-tech>

(8)World Health Organization website www.who.int, visit date 12/4/2020

The international tight connections for the entire world showed that the negative events can lead to unpredicted consequences and the situation can get out of hand if the countries adopt vague attitude to the epidemic and if they don't stand firm to reduce massive danger emanating from coronavirus. unawareness can contribute to spread it over the world if the global procedures didn't act wisely and firmly towards the disease, the public health situation would be exacerbated and the environmental damage may increase if the countries were incapable to restrain the environmental illness and large number of people will loss their properties and health⁽⁹⁾.

The physical loss: means somebody losses either his property , money, or his health and couldn't be able to conduct his business anymore due to financial damages⁽¹⁰⁾, So in the view of law any kind harm to the man weather physically or financially that made him incapable or failed to make payments to the other people it called material damage and the result of environmental defect can cause illness or death due to widespread of disease, it's worth mention the effect of that is not only limited to the affected person himself, but also to his family or relatives.

The Iraqi legislator referred that property damage include two elements:

It is every kind of loss or damages inflicted on the victim and what he will be deprived from future benefit or interests⁽¹¹⁾, on condition that is normal consequence of the illegal acts⁽¹²⁾, as for the physical ecological damage that hit someone due to his living in the that environment, the law granted him full indemnification for the damages and the judge will offered to him a compensation equivalent to the of his business⁽¹³⁾.

the environmental damages mostly refer to mass of people , for instance when a pandemic hit certain village or city, the pandemic will hit all the people who live in that area, just like it happened to us due to Corona pandemic, in this case the law must indemnify them collectively through certain organization like environmental protection agency , these agencies should settle down with the affected person to a compromising solution as an intent to satisfy him to avoid filing a lawsuit Because of the high costs of litigation in the courts.

As for moral injury, it is meant as non profit damages, this kind of damage include sentimental, moral or psychological effects may hit the affected person, the damages could be either sentimental hurts or blacken his reputation or defame his name and his social status, the law and juridical institutional are agreed that the moral injury must be treated the same as the property or business damages, and the victim must receive proper indemnification, because the victim has lost the necessary joys of normal life and pleasure and relieve feeling had been faded away so it will be difficult for him to live usual life just like living in an environment free of pollution⁽¹⁴⁾ like the quarantine accompanied by unsecured and absence of health feeling and intimidation and worry and risk of disease.

In order to compensate the victim with the moral injury there are several conditions must be available , firstly is the certainty of environmental damage and secondly, the environmental damage ruined the interests of victims, thirdly the victim shouldn't receive before an environmental compensation and lastly the environmental damage cause direct damages on the victim's life⁽¹⁵⁾ .

As for the Iraqi legislation, the civil law has frankly state the victim's damage to receive his right under the cause of tortious liability, whether in the illegal business that lies in money⁽¹⁶⁾, or in illegal business comes

(9)Dr. Mohamed Kamel Morsi, Explanation of Civil Law, Obligations, Part 2, International printing Press, Cairo, 1950, Paige 115.

(10)Dr. Abdul Majeed al-Hakim, Abdul-Baqi al-Bakri, Muhammad Taha al-Bashir, the Brief in the theory of commitment in general, in the Iraqi civil law, part 1, Al-Atek printing house, without Year of publication, Paige 167.

(11)Article 1/202 of the Iraqi Civil Law No. 4 of 1951 stated as follow: that "the court shall estimate compensation in all cases as much as the person was hurt , and what he suffered from damage and lost earnings, provided that this is a natural consequence of the unlawful act."

(12)Dr. Abdul Majeed al-Hakim, Abdul-Baqi al-Bakri, Muhammad Taha al-Bashir, the Brief in the theory of commitment in general, in the Iraqi civil law, part 1, Al-Atek printing house, Paige 213

(13)D.Hassan Hantoush Rashid Al-Hasnawi, The Environmental Damage Claim, a research published in the journal of Ahl Al-Bait university, College of Law, No. 13, without Year of publication, Paige 16.

(14)Dr. Abdul Razzaq Al-Sanhouri, Mediator in Explaining Civil Law, part 1, printing House of Revival of Arab Heritage, without Year of publication, Paige 581

(15)Ibtihal Zaid Ali, Compensation for Environmental Damage, a research published in the Journal of the Kufa University, Kufa Studies Center, Legal and Administrative Studies, Volume 1, No. 34, 2014, Paige 182.

(16)Article 126: "If someone destroys someone else's money or reduces its value directly or by negligence, the money payback will be a guaranteed, if this damage was intentional, but if the perpetrator and other responsible factor were met together, have a responsibility to one another about the guarantee ."

to the soul⁽¹⁷⁾, As well as the common provisions, whether in liability for personal actions⁽¹⁸⁾ or in liability for others (third-party liability)⁽¹⁹⁾, or those which deal with things⁽²⁰⁾.

Second Section

The Applicable Law About The Effects Caused By The Coronavirus Pandemic

The International or local judicial bodies should rule on liability lawsuit and compensation for damages arising from pollution of the environment, the settling of liability lawsuit must have the international character and foreign cases to solve and sort laws conflict. Sometimes there are more than one legal system pretend they have the right to solve the dispute, therefore, we will clarify (through two demands below) the jurisdiction of the local legal bodies that are able to handle the national regulations with regard to the subject of environmental pollution

First Demand

Local Law Enforcement

The duty of jurisdiction is to rule on civil liability lawsuit arising from environmental damages, and the determination of applicable law is subject to general rule in the private international law relating to civil liability and according to this rule, the applicable law about the civil or tort liability is local law, it deals with the law of the place of harmful act occurrence⁽²¹⁾.

The local law is: group of legal rules in force for every person who lives or just passing through a specific country, this law is subject to the security authority of the private international legal relations⁽²²⁾, the civil liability rising from harmful act or wrong local (law of the place of harmful act occurrence) is subject to compensation. The specialty of local law is based on several considerations. the liability of harmful act is not necessary relied on any objective element can be substantial to refer to the strong connection between the place and its event, Therefore, the element of cause or the legal incident must be considered it as the center of gravity about the liability, and the law of the place is an appropriate law to judge the legal system of liability.

On the other hand, the jurisdiction of local law is based on a basic famous principle, which is the principle of territoriality. All the laws lean on the ground of regionalism, and it would be natural if it applies to unlawful or harmful acts that harm people, so the authorities will adopt the law of the place of harmful act occurrence. And the country, in which the harmful incidence occurred, has the option to impose a guarantee to provide national security and stability for all the citizens according to the, in accordance with the principle of territorial sovereignty⁽²³⁾

As for the lawsuit for compensation arising from the harmful act, it is the law of country concerned in which the harmful act occur, the International legislation have mentioned the civil liability and describe this law an applicable law or it called, or as (the law of the concerned country in which the harmful act took place)⁽²⁴⁾

the Iraqi legislation include some points in the field like:

- 1- Non-contractual obligations are subject to the law of state in which the incidence took place .
- 2- The provisions of previous item do not apply about the obligations arising from the unlawful work on the events that occur abroad and they are considered legitimate in Iraq, even if they are unlawful in the country in which they occurred.⁽²⁵⁾

(17) See Article 209 and beyond, the Iraqi Civil Law No. 4 of 1971

(18) See Article 218 from the Iraqi Civil Law.

(19) Article 204 "Any abuse causes damage to the person other than what was mentioned in the previous articles shall be compensated."

(20) Article 221 and beyond, the Iraqi Civil Law No. 40 of 1951.

(21) Dr. Abd al-Rasool Abd al-Ridha, Private International Law, Sanhour Library, Beirut, 2018, Page 393

(22) Dr. Abbas Al-Aboudi, Conflict of Laws, International Jurisdiction and Execution of Foreign Judgments, A Comparative Study, Sanhour Library, Beirut, 2015, Page 192.

(23) Dr. Abbas Al-Aboudi Ibid, Page 191.

(24) Dr. Ghalib Al-Daoudi, Dr. Hassan Al-Haddawi, Private International Law, Conflict of Laws and Conflict of international jurisdiction and implementation of foreign judgments, part 1, Al-Atak for the book industry, Cairo, without Year of publication, Page 192.

(25) see the Article 21 Enactment of the Iraqi civil law

Second Demand

Applying The Most Suited Law In Favor Of Affected Person

Despite the principle of the jurisdiction of local law is common as vital law, and activate the state law in which the damage took place, there is nothing to prevent applying other law if it appears to be more suitable for the affected person, and this validity can be estimated as this is the law which best release best and fast compensation for the affected person, as an intent to achieve justice. Or it can be treated with the theory of liability claim as the basis for the defendant's liability.

As to taking responsibility for environmental damage, it can adopt what is the most appropriate law, because the environmental standards and levels between countries varies from country to another, choosing the suitable law is subject to law most favourable to the affected.

According to this theory, the harmful act of the non-contractual obligations is subject to the law of the original relationship to which the harmful act is related. In damages to the fund of other party in a relationship is subject to the law of the location of money, and crossing the line of the legal limits in discipline against the wife by her husband is subject to the law of the husband's nationality at the time of marriage because it because it is one of law effects, and harmful acts by a dual national are subject to the judge's nationality law if the judge's nationality was among the involved multinationals. Based on this opinion that the harmful act may be related to several relationships, which makes it difficult to determine the original relationship and then the suitable law that cover the action⁽²⁶⁾.

The person who undertakes the harmful activity and operates under low environmental standards or less than the applicable standards in most countries or at least in the countries which receive pollution, he will find himself obligated to pay compensation according to the law of the last involved country, and when the person's negligence is approved and his failure to take responsibility, according to Some of the jurists. The choice of applicable law will be on the ground of criterion that takes into account achieving a balance between the conflicting interests of the opponents, which means, take into the consideration the interest of the perpetrator of harmful act on the one hand, and the interest of the affected persons on the other hand, and the interest include two points:

1- The interest of the (affected) claimant, this interest will be done when it obtain fair compensation for the damaged person, and it cannot be achieved if we rely on one of the liability element, because it may lead to depriving the affected of the advantages if he is given the freedom to choose the suitable law of compensation.

2- The interest of the defendant (the perpetrator of the harmful act) his interest is achieved when he's no longer responsible for an act that could be considered a legitimate act according to the law of the country in which he committed this act.

so it is most likely that the person knows or is supposed to know about the law of the country in which the harmful act was committed, and the balance is achieved between the interests of the perpetrator of the harmful act and the affected person by giving affected person the freedom of choosing the law that is best and most suitable for him, whether it was the law where the harmful acts took place or The law of the place where the act was committed⁽²⁷⁾.

he Iraqi legislation emphasize the necessity of applying the principles of most common private international law⁽²⁸⁾, and it must be fulfilled, and there is no dispute that the sources of this law are inspired by the general legal principles that are generally recognized among civilized countries, these principles will ensure, by their judiciaries, good compensation to the affected body, this will provide the opportunity for the competent authority to hear the case, to issue judicial rulings for appropriate compensation without being bound by specific legal rules that may prevent releasing compensation to the affected body, and in addition to that, whether the items of international law or the principles of justice

(26)- Dr. Firas Karim Shayaan, The law applicable towards non-contractual obligations, a lecture published on the website of Babylon University, in 9/24/2011, date of visit 9/10/2020, the following link <http://www.uobabylon.edu.iq/uobColeges/lecture.aspx?fid=V&depid=T&Icid=5502> ...

(27) Muhammad Jalal Hassan Al-Atrushi, Damages resulting from environmental pollution and applicable law, research Published in the Journal of Legal and Political Studies, Year 1, No 1, 2013, Page 51

(28) Article 30: "must be followed in case it wasn't mentioned in the previous articles regarding conflict of laws provisions, the most common principles of private international law."

and fairness are applied, it must always will give good chance to the legal competent authorities to hear the case and issue judicial decision for appropriate compensation according to that law or those principles until the affected person will recover his previous situation before he was damaged, and this is what he deserves a just and good compensation, which considers one of the standards of the law in removing the damage from affected person⁽²⁹⁾.

We see that the claim of compensation by the people who have been affected by the spread of the Corona virus across borders is somewhat difficult

Because we don't know who is responsible for the disease and which country is responsible for that?, meanwhile increase in the number of people who were affected and infected increased and many people lost loved ones because of the pandemic, therefore we call for creating certain mechanism, by agreement between countries, in order to compensate the affected people, even by only a small amount, or at least the efforts will be combined in order to limit the corona spread and save other lives.

II. CONCLUSION

1. Corona virus pandemic is a new disease that challenges the whole world and it is difficult to control its rapid global spread among countries, and the term pandemic has political aspect, it means the emerging of "Coronavirus" has had global economic, political and social effects on the world.

2- Countries are responsible for negligence in stopping the spread of the pandemic, countries failed to take preventive measures and there was an absence of a firm commitment to the universal health regulations.

3-The applicable law to civil or tort liability is a local law, that means, the law of the harmful act occurrence, which creates the obligation of compensation.

4- The applicable law about the compensation lawsuit arising from the harmful act shall be the law of the country in which the act is occurred

5- The legal basis for the liability about the damage is that it does not exist in international law any current international rule allows the countries to carry out.

The theory of absolute liability, it is still only theory that has not yet reached the point of being considered one of the general principles of law, and it cannot be resorted to through an explicit international agreement, and if such agreements are not available, it is difficult for victims of environmental pollution (such as the Corona pandemic) to move Liability claim based on the theory of error or the theory of wrongful action to claim compensation.

6. proving who caused this disaster is not an easy thing in term of environmental damage, especially if several factors and causes overlapped causing mass of damages and the responsibility lies with all interested countries

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- 7) 7 - Muhammad ibn Abi Bakr al-Razi, Mukhtar As-Sahih, Part 3, Dar Al-Kitaab Al-Arabi, Beirut, 1989

(29) Muhammad Jalal Hassan Al-Atrushi, Ibid, Paige 52.

- 8) Dr. Mohamed Kamel Morsi, Explanation of Civil Law, Obligations, Part 2, International printing Press, Cairo, 1905.
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- 14) <http://factjo.com/Articles.aspx?Id=٢٠٩٠>
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- 16) <http://www.uobabylon.edu.iq/uobColeges/lecture.aspx?fid=V&depid=T&Icid=...>