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## **The health, environmental and economic effects on the consumer and others in the electrical energy supply contract and the responsibility of the professional in it (Applied study)**

**Diaa Abdel Karim Abdel Jalil Al-Mansoori**

Al-Mustansiriya University / College of Law - Private Law Iraq – Baghdad

\*Corresponding author email: [Deaa1977d@gmail.com](mailto:Deaa1977d@gmail.com)

**Dr. Mahdi Naim Al-Halfi**

Al-Mustansiriya University /College of Law - Private Law Iraq – Baghdad

Email: [Mahdialilffi69@gmail.com](mailto:Mahdialilffi69@gmail.com)

### ***Abstract--***

If the sources of supplying electric power to the consumer in Iraq differ, the professional's responsibility for errors that may affect the consumer as a result of poor production, transportation or distribution with continuous basis is the responsibility of the actual provider, and if the damages of electricity production are in any case due to the emissions associated with the production process, which negatively affect the environment in general and human health in particular, the more energy manufacturing processes are near the population and sources of agriculture, water and food, the greater the consumer and other damages will be achieved if those sites are in remote areas The energy supplier may be a public or private utility, as if it was a natural or legal person, as is the case for the owners of private generators spread throughout Iraq, due to the lack of energy supply by the main supplier, which is the Iraqi ministry of electricity, and if this is due to another company as long as it is contracted with the ministry of electricity, the consumer or others may be exposed to various harms by the main supplier as a result of any stage of the production, transmission or distribution of electrical energy, so his responsibility is realized at any stage of the production and distribution of electrical energy, or as a result of failure to supply within the conditions of achieving benefit from the contract, which is the electric power, in addition to providing the consumer with

continuous electric current. As for the latter, “unless the private generator,” its damages to the consumer are no less serious than the first provider, and may even be more serious than them, including long-term damage from water and soil pollution, environment, public taste, and the financial burden. The consumer of electric power in Iraq suffers from a lack of electric power supply from the first provider, and suffers from the high cost of processing from the other professional in general, where the determination of the ampere price related with The owner of the generator desire to supply of electrical energy to the consumer without restrictions or conditions regulating his work, and thus the prices of electrical energy supply from private generators vary according to the value of supply and demand, which is directly related to temperature changes, each according to his region or governorate, and both suppliers cause great damage to the consumer due to the seriousness of the place of the product, which is electrical energy, on the one hand, and because of neglect, lack of continuous supply, and the high cost of supply, on the other hand. Therefore, our approach in this study was to determine the health, environmental and economic impacts and the responsibility of the professional person and its basis of each of the electric power suppliers according to their persons in Iraqi law and comparative laws, such as the French and Egyptian law, for example, and to indicate the material and moral damages of the equipment that fall on the contracting consumer and others, as we had the desire to research and scrutinize each Part of the joints of this study in order to determine that responsibility.

**Keywords**--health, environmental impacts, pollution, professional responsibility, electrical energy, consumer, environmental damage.

## **Introduction**

The story of the discovery of electricity began since ancient times when the American scientist Benjamin Franklin began in 1752 AD to prove that lightning is electrical energy, and Iraq was one of the first Arab countries to introduce electricity in its region in 1917, and in 1952 a contract was made with the international IMP company to purchase large electric power plants, and the Iraqi state at that time established the Dora power plant during the reign of King Faisal II, and it was called at the time the Electricity Department (Baghdad Electricity Authority). The electric power supply contract is one of the most important and most dangerous contracts concluded at the present time, because it is one of the contracts that have an impact on the reality of the economic development of the state due to its relation to its economy, projects and services that it provides for electric power to consumers, and it has negative effects on human health and the environment, which also harms humans, whether they are consumers of electrical energy or others.as the processing of such contracts by the state and its apparatus are considered a kind of sovereignty over their territory and the provision of basic services to their citizens who are considered as consumers in this contract, this is on the one hand, and on the other hand because of the

danger of this product that accompanies the stage of its production, transportation and processing to the consumer, which needs great care by the supplier, as breaching the necessary care to supply the electric current may lead to great damage to the consumer and public and private utilities (1).

Although the number of employees of the Iraqi Ministry of Electricity exceeds 100,000 employees between contracts and permanent cadre, the average salary of its employees is 54 billion Iraqi dinars (2), the ministry does not meet half of the consumer's need of electric energy, noting that according to the report of the recent parliamentary financial committees that the expenditures of the Ministry of Electricity deducted from the general budget since (2003 - 2020) amounted to more than 80 billion dollars, and according to experts in the field of energy, including the expert Bassem Jamil Antoine, says: According to high-quality standards, spending every billion dollars gives you the ability to generate (one thousand mica), and since Iraq has spent more than 80 billion dollars, according to the expert, Iraq must now produce approximately (80,000 megawatts), knowing that Iraq's current production does not exceed (19,000 megawatts), as Iraq's current need is 30,000 megawatts. The actual supply by the professional is not more than 15,000 megawatts (3), and since the professional supplying the electric current in Iraq did not improve the provision of electric current to the consumer in a manner that achieves the right benefit in this contract, the emergency supplier appeared and he is the owner of the private generator to supply the consumer with electricity power, which is more dangerous to the consumer than the first supplier.

On the other hand, and in a simple calculation of the number of Iraqi homes that depend on "private generators", where the number of homes is approximately 7 million homes, as a minimum, each house buys 5 Amperes of private generators, and at a price of 10 thousand dinars per Ampere, where the price of the Ampere reaches about 20 thousand dinars sometimes, and thus it is possible to calculate that the average monthly payment of each Iraqi house is about 70,000 Iraqi dinars, which means that the 7 million homes, pay about 500 billion dinars, or half a trillion Iraqi dinars per month, which is equivalent to 6 trillion dinars annually (less of \$5 billion), which represents about 50% of the Ministry of Electricity's budget of less than \$10 billion, or 30% of what the ministry actually needs, amounting to 20 trillion dinars annually.

The ministry has nearly 14 trillion in its annual budget. What Iraqis pay for generators completely meets the additional need for the ministry, bringing its total budget to 20 trillion, which is the exact number that the ministry needs (4). Other reports estimate that what Iraqis pay for generators annually is about 10 billion dollars, which is equivalent to the entire budget of the Ministry of Electricity, in addition to these expenses and their damage to the state and the consumer, but there is greater damage to the consumer and the environment, as the shortage of electrical energy supply resulted in the birth of another supplier of electrical energy, born from the womb of the Ministry of Electricity, who is the owner of the private electrical generator, which is considered the most dangerous to human health in the short term and on the Iraqi environment in the long run, which will be detailed later

## Topic One

### **The responsibility of electric power suppliers concerning the environment and the consumer in the contract for supplying electric power in Iraq**

As we mentioned earlier, the character of the supplier of electric energy in Iraq may change, but this does not mean that the responsibility changes with the change of its people. The law is the same and that the attributes have changed, if the consumer is exposed to physical or material damage or death as a result of electric shock, how can he prove the responsibility of any of the suppliers and specifically about those damages, what is the basis for that responsibility in this contract, and are there sufficient means and guarantees for the consumer so that he can determine the party responsible for the damages incurred in this legal relationship.

Due to the continuous poor supply of electricity in Iraq by the main supplier of electric power, , Ministry of Electricity, this led to the emergence of an "emergency" supplier, which is the private electric generator owned mostly by natural persons, which exacerbated the consumer problem, as there were two suppliers of electric power for the same consumer, and the consumer has suffered from both, the first of which is due to the continuous poor supply of electric current by the ministry, and the second is the prices of electric power supply by the "generator owner" at the black market price that is relatively high than the price of the ministry's supply , and how the generator owner determines operating times without taking into account consumer concern ,as for determining the price of the supplied Ampere from these generators, it is according to the generator owner's desire to supply the electric current to the consumer without restrictions or conditions that regulate his work, and thus the prices of supplying the electric current from private generators vary according to the value of supply and demand, which is directly related to temperature changes, and each according to his region or governorate, and there is no doubt that the harm that affects the consumer does not come by itself, but rather comes as a result of a defect of the product, or some reasons failure to supply or not to continue with the supply, and the supplier's commitment to the guarantee is one of his most important obligations, so that the consumer can benefit from and invest it during the period of contract implementation, i.e. the period of the supplier processing the electric current to the consumer (5), and with the breach of any of the electrical energy suppliers, damages may be achieved as a result of this damage to the consumer, the damages of the electrical energy supply contract are many, large and dangerous, and thus the responsibility of any energy supplier for the damage is realized, provided that there is a causal relationship between the supplier's error and the consumer's damage, and this is what the Iraqi judiciary requires to achieve responsibility, and throws the burden of proof on the injured despite the difficulty to prove that.

To reach an accurate determination of the responsibility of electric power suppliers in Iraq, we must look into the basis of responsibility for each of the electric power suppliers according to the damages that may be caused to the consumer as a result of consuming it, the damages caused by each of the first supplier differ somewhat from the damage caused by the second supplier, the

damages of the latter are in the long term, with the negative effects on human health in general and damage to the environment, as will be detailed later, due to the increase in the number of electric generators in Iraq and the toxins and noise they produce that lead to pollution of the environment and hearing and the distortion of the civilized scene and the public taste of most cities and governorates of Iraq, amid the absence and neglect of the organization and work of such generators. Which is that in all these cases the responsibility of the first supplier is realized because the presence of the second supplier was due to the failure of the first supplier in terms of production, meaning that the responsibility for damages to the consumer, public health and the environment is realized because of the first supplier, therefore, we will discuss this issue in some detail, as follows:

- The first requirement: The responsibility of the public utility (Ministry) as a provider of electric power in Iraq
- The second requirement: The responsibility of the private utility (the owner of the private generator) as a supplier of electrical energy in Iraq

### **Requirement One**

#### **Responsibility of the public utility (Ministry) as a provider of electrical energy**

##### **Environmental and consumer damage**

The General Company of Baghdad Electricity Distribution, with its two branches, Karkh and Resafa, is responsible for the production, transmission and distribution of electricity in Baghdad, as well as the branches of other companies in other governorates of Iraq except for Kurdistan region, where it acquired the legal personality under the Public Companies Law No. 22 of 1997, and it was granted the legal personality on 1 / 1/ 1998. As the company is the one that provides electric power to all contractors and consumers with different uses of electric energy, whether it is for home use, commercial shops, industry or otherwise, as electricity is the main source of all vital activities in all countries of the world, especially Iraq.

Responsibility is a guarantee to compensate for the damage resulting from breaching a legal obligation, and the obligation to compensate is for damages caused by a person by his action or by the actions of his subordinate persons, or by doing things that require special care or a type of guard, or as a result of non-performance of a contractual obligation. In general, it may be contractual one as a result of violating a contractual obligation, or it may be negligent as a result of breaching a general obligation that would cause damage to the consumer of electric energy, even if there is no contract concluded between them. Health damages and damage to water, air, soil and noise are achieved even if there is no contract concluded between the parties to the legal relationship

With regard to the contract under discussion, which is one of the contracts of compliance (6) of a special nature, which entails liability in the event of a damage, the responsibility here is contractual as a result of breaching a contractual obligation, as each responsibility has a rule on which it is based, especially in this contract that once Jurisprudence differed in determining its legal basis. There are

those who established it on the error that must be proven, and some of them based it on the basis of the supposed error, while there is a tendency to establish it on the basis of bearing the liability, and its pillars are also required to be available, which are both the error, damage and the causal relationship.

### **Theory of error must be proven**

Part of the jurisprudence has gone into establishing civil liability on the basis of the error that must be proven, when the product or the supplier causes damage to the consumer that would be due to a defect in the process of supplying the consumer with electric current or because of the dangerous nature of the electric current supply contract, the producer or the supplier is not responsible unless it is proven that the error that had occurred on his part (the breach), i.e., the proof by the injured person (7). Therefore, the controller according to this theory to determine the responsibility of the supplier is the error or deviation in the behavior or care that he must adopt and according to the forms of the profession and on the basis of which it is evaluated and the unusual behavior among producers and processors in terms of awareness, vigilance and foresight, and insight, which is a general obligation for him and because of being a specialist and having sufficient information to enable him to do so (8)

This is what is required by the contract for supplying the electric current, which obliges the supplier to follow the international specifications for the terms of supplying the electric current and all that is necessary to implement the contract and not cause damage. However, this theory has been subjected to many of criticisms, including the difficulty of proving the error on the part of the injured party, especially in dangerous and complex products, in which the consumer is often unaware of the terms of the contract, which makes it difficult for him to obtain compensation for the damage he incurred (9). This is on one hand and on the other hand, the producer or the supplier may take all precautions, but nevertheless the damage occurs, so how can it be said in such an assumption that these damages are due to the fault of the producer or the supplier (10), and this is what happens in the electricity supply contract, due to the danger and the difficulty of this for the consumer to prove the error, and the lack of experience, at least in the used devices, in addition to his injury, with the supplier taking into account the rules of work, and the tendency also went to say that it is not fair to make the producer responsible in the event of loss of monitor or control without monitoring his behavior and what he took of precautions or not (11), this theory is the closest to judicial applications in most third world countries, which lead plans to provide basic services to consumers themselves, in order to preserve their sovereignty on the one hand, and for the purpose of providing support through provision of basic services with subsidized prices for consumers alike, and this is according to what those governments see in the management of their public utilities, including the supply of electric current. For this reason, the Iraqi judiciary in many cases related to the contract of supplying the electric current took this theory and entrusted the task of proving the error and the causal relationship between the error and the damage, despite the difficulty of proving it by the consumer. We believe that this theory cannot be the basis for the responsibility of the supplier or producer because of the aforementioned criticisms.

### **Assumed Error Theory**

The jurisprudence has tended to adopt another basis to determine the legal basis for liability for dangerous products, in general, and the supply contract of electric current in particular, as one of the most dangerous products for which the basis is determined, and in view of the criticisms leveled at the previous counterpart, the jurisprudence has adopted assumed error theory. Its meaning is that the injured person who has suffered the damage does not have to obtain compensation, to prove the error that resulted from the breach of the supplier, but rather he must prove the damage that incurred him as a result of the breach of the supplier, and the causal relationship between the error and the damage (12). Legislation also took this theory, establishing responsibility on a hypothetical basis, and obligating the injured to prove damage only, including the French law, which established responsibility on a direct hypothetical basis for the fault of the producer, in his recognition of responsibility for things, which made it a presumption that the opposite cannot be proven except for a foreign reason, because of that, it is easier for the affected person to prove, because the latter is often far from the technical and knowledge aspects of the product, which makes it difficult for him to do so, in which the legislator included both dangerous and non-dangerous products (13), and we also find that the Egyptian law has taken them, and assumed the basis of responsibility and the affected person did not required only to prove the damage, in Article (178) of the Egyptian Civil Code, but what is noted is that has been limited to products that are dangerous by nature such as electric current, and not all of them (14)

It is contrary to the French law, which included all products, the Iraqi legislator adopted the same basis and took it, and made the responsibility on an assumed basis, but made the assumption simple and capable of demonstrating the opposite, in Article (231) of the Iraqi Civil Code, and he limited it to only dangerous products that It needs special care, in accordance with Egyptian law and contrary to the French law (15). As for the position of the judiciary and the extent of its adoption of this theory in determining the basis of liability, we find that the French judiciary has adopted this trend, and made the mere occurrence and proof of damage evidence of a breach of what is based on liability and is obligated to compensate, unless it is proven that a foreign cause was behind it (16) so, the Egyptian judiciary came in accordance with what the French judiciary brought, and this is what we find in its judicial decisions, which assumed responsibility, and the provider could not pay it except for a foreign reason. The Egyptian Court of Cassation also stated in the decision of the Egyptian Court of Cassation to compensate cart owner an amount of 20,000 Egyptian pounds due to the death of his horse by electric shock (17)

As for the Iraqi judiciary, we find that the injured party is obligated to prove the damage and its causal relationship to the fault of the provider for the purpose of confirming the entitlement to compensation, even if the Iraqi judiciary rarely judges the fault of the provider because the processor provides a public service and that the processor is one of the public utilities in the state, but with that there are decisions that oblige the processor, and if it is a public utility, it will compensate for the damage caused to the consumer as a result of breach of contract. Among those decisions is the ratification decision of the Court of

Cassation, which obligates the Electricity Department to compensate the plaintiff an amount of 5,000,000 five million Iraqi dinars due to the death of his buffalo by electrocution (18).

However, this theory was not free from criticism despite the advantages it achieved in determining the basis of responsibility, including the fact that it works to make the error closer to the imagination than the truth and from the fact that it attaches the error to the product in an artificial way because it evaluates it on an abstract basis and makes him mistaken without looking at his behavior. Also, this theory assumes a conclusive presumption that cannot be proven the opposite, which would violate the general rules of proof, although the French legislator did not impose it as being unable to prove the opposite, but that responsibility can be pushed by the producer when he proves the foreign cause is a basis for error and does not It can neither be expected nor pushed (19)

### **The theory of liability (Guarantee)**

The criticisms of the previous theory, called for legal jurisprudence to search on a legal basis that can be relied upon to determine the responsibility of the supplier or producer for dangerous products, including electricity, which is the subject of the electric current supply contract, which is that every activity can produce damage for which the owner is responsible, and for the damage he causes to the opposing party, even if his behavior is not tainted by any fault (20). In other words, it is not required that the damage has arisen from a deviation in the behavior of the producer (processed) in order for him to be obligated to compensate, meaning that the damage is the basis of this theory (21). That is, it is based on taking responsibility on the basis of an objective criterion.

The French legislator took this criterion in Article (1386) of the Law on Liability for Defective Products No.19 /389 of May 1999, which established it on the basis of damage alone without fault, and in which it considered that electric current is a dangerous product that must be protected from, especially in the case of failure to provide safety and product safety from dangers (22). As for the Egyptian law, we find that it took this theory as a basis for responsibility, but not in its civil law, but under special laws for dangerous products and established them on the basis of bearing the liability, in addition to what was stipulated in the Egyptian Trade Law on this basis as long as the foundations used in its production and the principles of its profession were not taken into account (23). While we find that the Iraqi legislator has adopted this theory in special laws, in addition to the working paper called the reform of the legal system attached to Law No. 35 of 1977, which stipulated in establishing responsibility on the principle of bearing liability, and among those dangerous products is the electric current, which came as a result of the criticisms leveled at Article (231) of the Iraqi Civil Code (24), especially with regard to others, because of the difficulty of proving the breach by the consumer as well.

As for the judiciary and its adoption of this theory as a basis for compensation for damages caused by dangerous products (such as electric current), the French judiciary is the first to adopt this theory and has judicial decisions in it (25). While we find that the Egyptian judiciary under the old law has taken it, but the

matter has changed at the present time, and we find the scarcity of its decisions within the limits of this theory (26)

In the Iraqi judiciary, we did not find the features of applying this theory according to this basis, even in dangerous products, due to its adoption of the supposed error. Despite the necessity of applying this theory to dangerous products, criticism has been leveled against it, as it works to burden the product with all the risks that afflict the counterpart as a result of its activity, which leads to paralysis in economic life and injustice to the producer (27), and because it works to strip responsibility from its ethical side due to the fact that justice requires a balance between what the producer gains and the risks that the producer submits (28). Accordingly, we call on the Iraqi legislator to adopt the theory of liability as a basis for the liability resulting from the supplier's breach of the contract for supplying the electric current as a guarantee for him to compensate due to the fact that the product is a dangerous movables, by amending Article (231) of the Iraqi Civil Code, as the supplier should not pay the responsibility, when he took the necessary precautions, rather he must prove the foreign cause or the fault of the injured himself, or through legislation of a new text in tightening the responsibility of the supplier, and the proposed text is that the producer or supplier bears the damages caused by his product, for a defect in it, unless it is proven that the defect is due to a foreign reason or because of the injured himself, in order to provide civil protection for the consumer in the electricity supply contract, and after the responsibility for breaching the supplier has been realized, its elements must be available, and with the privacy that this contract enjoys, which makes it somewhat different from other contracts, but it is similar to the rest of the contracts in terms of the basis of responsibility, which are:

- Error, breach of the contract for supplying electric current,
- The damage in the contract for supplying the electric current.
- The causal relationship between the error and the damage in the contract for the supply of the electric current.

### **Requirement Two**

#### **The responsibility of the private utility (the owner of the private generator) as a provider of electric power on consumer and environmental harm**

Since 1990, electricity has been oscillating in its inability to be self-sufficient in supplying consumers. Over time, the ministry's failures in the actual supply hours have increased and many reasons have prevented development in the electricity sector, and electricity cuts have continued since that time until we entered 2022. There is nothing new in improving the hours of electrical energy processing for consumers, and that the cause of frequent and long-term power outages led to dependence on the operation of electric generators of various types and sizes in Iraq, as these generators provided all local sectors with electric power to meet their needs due to the lack of electric power supply. The period from the mid-nineties until 2005 was characterized by the use of generators with small energies ranging from 5-10 K.V., which were electrical generators with a local assembly, knowing that this type of generator is not free from the negative effects

of pollution of its various types, except that, their impact was limited due to their small number and size.

After 2003, generators with large capacities ranging from 150-550 k.v were used in the private sector and 150-1750 k.v in the public sector (Government), where many scientific studies have proven that diesel engines of generators emit approximately 40 toxic substances, which contribute to the emergence of many serious problems, including asthma, heart artery blockage, strokes, psychological problems, lung cancer, heart attacks), and toxic substances emitted from diesel exhaust gases contribute to 75% of cancer cases in the United States of America (29). With all those damages that may affect the consumer, whether he is contracting with the owner of the generator with an electric power supply contract or not, the supplier's responsibility is realized in both cases, with the two types of responsibility, the first contractual and the last defaulted case, and given the importance of identifying the types of damages of electrical generators, We will present in detail the damages that arise through the generation of electric power in general and from private electricity generators in a more concentrated way;

### **Air pollution**

The World Health Organization defines air pollution as the condition in which the atmosphere outside the workplace contains substances in concentrations considered harmful to humans or its environmental components. Accordingly, air pollution means that it contains one or more pollutants in effective quantities and for a period of time that may have an impact on his health, animal or plant, or on the biosphere in which man lives (30), and there are many types of gases and impurities that rise into the air as a result of burning the fuel used. in generating of electric power from generators, where large quantities of gases are emitted, which affect the state of gas equilibrium in the atmosphere (31), where the air is polluted by one or more of the following elements: carbon dioxide gas, sulfur dioxide gas, carbon monoxide gas, Nitrogen oxides, and Hydrocarbons.

### **Water and soil pollution**

The operation of electric generators requires the consumption of large quantities of liquefied water, which is estimated at (0.8) m<sup>3</sup> per hour in the cooling process, and this is naturally due to the long operating hours during one day, as this process transforms cooling system of the generator from the closed system to the open one, knowing that the water thrown near the generator carries with it oil and fuel residues and then flows into rivers or abandoned residential places. Since oils and fuels have a density less than water, they float on the surface of the water, and the impact of these residues increases (32), and the owner of the generator seeks to increase the number of generators and their operating hours to obtain the water needed for the cooling process by pulling large diameter pipes from the liquefaction water pipes in order to secure water of cooling process, and this situation leads to cutting off water access to commercial shops and residential homes for long hours, especially in the summer, as large quantities of water are wasted, especially in the summer due to the high temperatures that contribute to the evaporation of water during the operation of generators. With regard to water pollution, which cannot be separated from soil pollution, as it

happens to be transmitted to groundwater through the water released from soil pollution during cooling operations loaded with oil and fuel residues that leak from generators during operating times (33), where they are periodically disposed of it for short periods, that is, every four days, and the generator waste accumulates on the land of the generator site. If the land is dirt, it facilitates the flow of pollutants and their penetration into the soil.

### **Noise pollution**

It is an intangible and invisible pollution that people neglect in the belief that it does not affect the natural and societal life system, but this pollution leads to dangers that result in organic and psychological damage, and this type of pollution is represented by audio or noise pollution (34), Noise pollution is one of the most destructive aspects of the environment, and its sources have increased due to some different uses, especially the electric generator, whether in the public sector or the private one, where citizens resorted to it after the electricity system witnessed a clear deficit until the consumer relied on it completely, as the generated noise by generators is a problem that negatively affects the psychological state, productivity and functional performance of the body. It is a source of anxiety and disturbance that affects the stability and comfort of consumers and other citizens in the homes near and surrounding the generator. Noise is measured in decibels, where the average individual's speech is estimated from (50-60) Db, and the level of 78 Db is the maximum permissible noise level for a person, according to the World Health Organization standard for noise rates (35), as follows;

- Db The level of 78 Db is the maximum noise level allowed for a person and according to the World Health Organization standard for noise rates (35), as follows;
- (20-35)Db is acceptable in hospital areas, (30 - 40) Db is acceptable in educational areas, (25 - 40) Db is acceptable in residential areas, (30 - 60) Db is acceptable in commercial areas, (40 - 60) Db Acceptable in industrial areas.
- Note that the noise pollution caused by generators exceeds the noise rates established internationally and globally, so it exceeds the intensity of thunder sound, which ranges between (90-100) Db, and it also exceeds the sound limits allowed in commercial, residential, industrial, educational, and hospitals areas, which have been identified by international organizations.

### **Visual pollution**

The visual pollution is represented by the lack of beauty in the city by all standards of beauty, as the human ability to visual perception weakens over time, and visual pollution is all that the human sees of heterogeneous and harmonious views distorting the aesthetic form of the environment for all its contents, the visual coexistence of humans plays a dangerous role in directing his behavior, if the surrounding environment is not homogeneous and inconsistent, his behavior will have a great reflection on society, as the lack of visual beauty gradually leads to corruption the common taste, and then the deterioration of the psychological state of the citizen and its grumbling, and thus affect the general output of the

city (36), and visual pollution has several reasons, including: visual pollution through electrical generator wires, which has made residential neighborhoods in many Iraqi cities lose the element of beauty when looking at them, as these wires are installed and connected in a random, uncoordinated and organized way that extends across the streets and in a chaotic manner. Hundreds of frayed electrical wires, many of which are low and even some of which are within the reach of children, lead to many fatal electrocution accidents.

### **Financial burden**

The primary purpose of the state, with its public utilities, is to be responsible for managing the basic services in its territory, which are water, electricity, gas, transportation and other basic services. the main purpose of this is to provide aid and support to all its citizens, consumers of its services, and even those residing on its lands, but we see the opposite in Iraq, where the most important types of services, which is the supply of electric energy, have become burdensome of the citizen in providing the price of the electric energy processing bill for each of the first supplier (General Utility) and the second provider (generator's owner).

The consumer may not notice or realize the difference between the price of energy supply from the first supplier, which is government subsidized, and the other, which is the purchase of energy on the black market. If we do a simple arithmetic calculation with the difference between the price of each of them, it results in sums that may reach millions according to each consumer's use of his own number of Amperes, as soon as summer arrives, and if the consumer prepares to withstand the hot weather and increase the wages of preparing electrical energy from generators, which leads to the dissolution and the decrease the income of the Iraqi individual, and what negatively affects him to provide the necessary life, and in some cases, this atmosphere in the summer heat, the lack of material income and the increase in the number of children may lead to moral damage, some of which lead to cases of divorce and separation due to the inability of the head of the family to provide the appropriate atmosphere for the life of the family and children.

As for the legal basis for the responsibility of the owner of the electric generator, although comparative civil legislation has regulated the owner's responsibility for the harms of the unfamiliar neighborhood (obscene) with explicit texts, legal jurisprudence has differed in determining the legal basis on which this responsibility is based. It is the jurists who went to say that the basis of this responsibility is personal error, because exaggeration in the use of property is considered a departure from the limits of this right and therefore it is tortuous that requires compensation (37).

There are those who evaluate this responsibility on the basis of the theory of abuse of right use , for the owner who causes unfamiliar harm to his neighbor is abusive in the use of his right of ownership (38), while others went to criticize these views by saying that if the excessive use of the property was wrong or arbitrary, we will not needed a text defining the owner's responsibility for it, and we were satisfied with the general rules, as well as for the owner to bear the responsibility for the damage, whatever its degree, and when this responsibility

was limited to obscene or unusual damage, as well as the comparative civil legislation(39), it described the owner's behavior in the harms of the neighborhood as legitimate and this clear evidence that exaggeration is not wrong or arbitrary, because they are illegal, and finally that the abuse of the right has specific forms that should not be exceeded, which is that the owner deliberately harms his neighbor with a high degree, which includes the intent to harm and the owner's intention to achieve an illegal interest (40). However, the sufficiency of the three criteria included in the theory of abuse of the right is not explained in some cases in which the liability of the owner (ie the owner of the electric generator) for the outrageous or unusual harms of the neighborhood is realized. The owner may use his right without intending to harm others. He is behind the use of his right to achieve a new and legitimate interest, but also proves that he has taken all necessary precautions to prevent harm, yet others are harmed.

There are those who criticized this view, saying: Expansion of the theory of abuse of the right to use the right by what takes it out of the specific criteria leads it to a general and ambiguous formulation whose consequences affect on the idea of the right itself. Moreover, the apparent meaning of the term arbitrariness is sufficient to exclude the unfamiliar theory of harm from the scope of this view. The theory, as how can it be said that someone who uses a factory or opens a school, even in a neighborhood designated for quiet housing, is arbitrary. In other words, it is not possible for a person to use his right involving arbitrariness unless one of the aforementioned criteria is fulfilled in his regard. expansion of the theory of arbitrariness in the way the previous opinion says leads to the obliteration of the features of this theory and the disappearance of their identification, and misses the purpose for which the legislator intended by setting standards It does not leave much room for judgment.

Another opinion went to establish the owner's responsibility for the unfamiliar harms of the neighborhood on the basis of the theory of liability. So the owner has the right to his activity and he uses his right of ownership, unfamiliar harm to the neighbor, so he must bear the responsibility for that, so he must pay the fine, as he had the gain ,in other words, the owner of the generator bears the responsibility for his activity in operating the electric generator for the harm he has done to others, the return is the price that accrues to him from operating the generator (41). There is another opinion that establishes this responsibility on the basis of a special organization of neighborly relations, it is a responsibility dictated by social solidarity between neighbors. if the idea of good neighborliness is a matter of ethical nature, but the law in some cases raises it to the level of legal obligations, and based on that, the responsibility of the owner of the generator is based on his breach of a legal obligation, it is said that he is the neighbor's obligation not to cause his neighbor uncommon harm. The right to his neighbor this harm has violated his obligation and was in violation of the law, but this legal violation is not a mistake in the known sense, because the error is a deviation from the usual behavior of the usual person, and here the owner did not deviate from this behavior (42)

Based on the foregoing, we believe that the legal basis for the responsibility of the owner of the generator for obscene damages that afflicts others is the theory of liability, and the meaning of these two theories: that the owner of the electric

generator bears the responsibility for his activity, he is the only beneficiary of the use of his property and obtains from it the gain, it is fair to bear the responsibility of this activity, i.e. damage to others, whether contracted with or not, in application of the rule (gain for fine), and establishing liability on this theory requires a legal text to apply it, with regard to liability for obscene damages to the neighbor (43). The French jurisprudence adopted this theory, the theory of unfamiliar harms of the neighborhood, where their argument was that since the owner benefits from the use of his right of ownership, and monopolizes the resources resulting from it, he must, in return, bear the unfamiliar damages that befall others because of this use, even if it was not issued a mistake or abuse in this use, which is similar to the basis of the idea of she (gain with fine) (44)

### **Requirement Three**

#### **Research findings and recommendations**

Despite the existence of the Iraqi civil law and comparative civil laws, it has been found that in some cases they are not sufficient to confront the forms and forms of abuse that occur by professionals (Electric power suppliers) or intervening (others), so it was necessary for the legislator to intervene in a more systematic and logical way It allows confronting all cases of breach of the contract of supplying electric energy, which affects the lives and money of consumers to the basic degree. The Iraqi Civil Code No. 40 of 1951 did not address all cases in which harm may occur to the consumer as a result of his use of these services, therefore, we find that the Iraqi judiciary came in most of its judicial decisions based on Article (231) of the Iraqi Civil Code, which is not sufficient to cover the cases, as for the Consumer Protection Law No. 1 of 2010, although it specializes in consumer protection and came as a result of the inability of traditional rules to provide effective protection for the consumer (45), it has not yet seen the light, and we have not seen any Judicial decision based on its provisions, and the Iraqi Electricity Law No. 53 of 2017 joined the provisions of the ministry and its structure without addressing the obligations and responsibility in it, except for what came in accordance with the Law Regulating the Conditions of Supplying Iraqi Electricity No. 1 of 1999, where we find that all the terms and conditions came to meet the wishes of the supplier in it without addressing what guarantees consumer protection, except for what we touch only from Article (14) of it, and for these reasons we had to search for some legal texts that enable us to reach the responsibility and its basis for each the suppliers of electric energy in order to achieve adequate guarantees to protect the consumer in such dangerous contracts, which are contracts for supplying electric energy to the consumer, and through our modest research we reached a number of conclusions and recommendations, which we will present as follows;

### **Results**

We have taken great care in defining the results and recommendations of this research, as it reviews a set of provisions and rules that need not set by the Iraqi legislator and others in view of what provides him with the real purpose to fill the apparent deficit in providing adequate insurance for the many and large cases of damage that occur when implementing this contract on the consumer and the non-consumer, due to the lack of research in this field on the one hand, and the

lack of legislation guaranteeing consumer protection on the other hand, and our results in this research were as follows;

### **First: The damage**

Damage may be generated in all contracts when one of the contractors does not abide by its terms, but in contracts for supplying electric energy, damage may be generated even if the contracting parties adhere to all its conditions, because the waste of electric energy production in itself is considered a harm to human health and the environment, in the long and short term if it does not take the necessary measures for this, as the damages resulting from the generation of electric power by the second supplier (the private facility) are greater and more dangerous than the damages that accompany the energy supply by the first supplier (The public facility) and for many reasons, but the most important of which is that the production of the second supplier of energy through relatively small generators, which are located within cities and between residential neighborhoods and their alleys, makes the effect of the remnants of electrical energy production in direct contact with soil, water and air in close proximity to humans, due to the damage it causes in respiratory, visual and noise pollution on the one hand, and the high financial cost of purchasing that energy by the consumer if compared to the price of energy from the first supplier on the other hand.

### **Second: The basis of responsibility**

The basis of liability in any type of contract may be similar, but in this type of contract the determination of the basis of liability is different for each of the electric power suppliers, and despite the different determination of the basis of liability, the liability is existing and shared between them because the legal provisions and rules apply to the person where , the damage resulted from it, even if its description is different as it is a public or a private facility, the attributes change and the law is the same, and the opinions of the jurists varied in determining the basis of the responsibility of the first provider (Public facility) between the theory of error that must be proven by the injured and the theory of supposed error and the theory of bearing the consequences, as it was detailed in the first requirement, as for the basis of the responsibility of the second provider (Special facility), the legal scholars differed in determining it, as some of them tended to consider it a personal error, because it was an exaggeration in the use of property, and others tended to be based on the theory of abuse in the use of the right, and the third opinion established it on the basis of the unfamiliar responsibility of the owner, i.e. bearing the liability in application of the rule (There is no reward without risk.). French jurisprudence adopted this rule with another interpretation as we explained in the second requirement.

### **Third: Responsibility**

Responsibility is a guarantee to compensate for the damage caused by breaching a legal obligation, and the obligation to compensate is for the damages caused by the person by his action or by his persons, and since the responsibility of each of the electric energy suppliers towards the consumer and others does not differ

from the damage caused to him as a result of the fault of any of the suppliers, regarding the fulfillment of the conditions of responsibility, which are both the error, the damage and the causal relationship, and it turns out to us that the contract for the supply of electric power burdens the suppliers with a number of obligations, namely his obligation to supply the electric current and the equipment for the supply for that, as they are rented by the consumer, in addition to his commitment to announce the contract, its location and the mechanism of its use, and the risk arising from it, as well as ensuring the processing and continuity of the process.

Suppliers' obligations varied in Iraqi legislation and both Egyptian and French legislation, as the French jurisprudence emphasized the compliance obligation and its implementation according to what was agreed upon in the contract, whether in terms of physical or functional conformity to it (46), and it has also expanded the scope of this obligation by giving the consumer the right to claim the non-conformity in addition to the claim for guaranteeing hidden defects, which has a shorter period compared to the first case, the French jurisprudence in accepting the claim of non-conformity is based on the texts related to contractual liability in accordance with Articles (1384 and 1147) of the French Civil Code.

While we find that the Egyptian jurisprudence is subject to the violation of the commitment to the processing to the provisions of the hidden defects guarantee, and they are based on that the Egyptian legislator has included the specifications according to which the processing is committed within the defect, i.e. within the provisions of the hidden defects (47), that he has equated the two and this is what was stipulated in Article (447) of the Egyptian Civil Code, Which made the period during which a claim for non-conformity of the place with the agreed specifications upon under the Egyptian Civil Code could be filed is the same during which the claim for guaranteeing the hidden defect is filed, which is one year from the date of receipt of the sold item, another aspect of jurisprudence has gone to establish the obligation to give rise to the obligation to surrender as the former is a subordinate obligation to the latter, and then finds its basis in the rules governing the obligation to surrender contained in Article (1615) of the French Civil Code and Article (435) of the Egyptian Civil Code, and accordingly, it is necessary to In order to fulfill his obligation to deliver, the producer must provide all data related to the use of the product and the damages that may result from it and how to prevent them so that the consumer can benefit from the contract to the fullest extent (48). As for the Iraqi civil law, there was no text similar to what was mentioned in the Egyptian civil law. The Iraqi civil law singled out special texts within the lease and sale contracts to guarantee hidden defects (49), but we find that there are some special laws that the Iraqi legislator includes that can be referred to in order to determine this as in the regulation of the Electricity Supply Conditions Law No. 1 of 1999, in addition to the will of the two parties to the contract, which is the adjuster in determining these specifications of processing (50)

## Recommendations

The Iraqi legislator did not give service contracts in general and the electricity supply contract in particular any kind of interest, as in the named contracts and other contracts, whether it was in the Iraqi Civil Code or the Consumer Protection Law, so we had to recommend the legislator and the public sectoral authorities as follows;

- **First:** We recommend the Iraqi legislator to amend the conditions for supplying the electric current contained in the Law Regulating the Conditions of Supplying Electricity No. 1 of 1999 with the provision of real guarantees to the consumer in this contract, and these conditions must be announced on the pages of the electricity supply department and published in the official newspapers so that the consumer is informed with the terms and conditions in this contract in advance, and that there are specific controls for the installation, operation and pricing of private electric generators.
- **Second:** With regard to Article 231 of the Iraqi Civil Code, where the Iraqi judiciary relies on in its special provisions in this contract, we suggest that the legislator amend the text or add another text: The producer or the supplier shall bear the damages caused by his product, due to a defect or defect in it, unless he proves that the defect is due to a foreign reason beyond his control or due to the fault of the injured himself, and that its provisions include electric power suppliers, whether it is a public or private utility.
- **Third:** We suggest to the Iraqi legislator to consider the responsibility of the supplier in this contract to be the responsibility of the assumed error and bear the consequences, not the mistake that must be proven by the injured party, and that the supplier be responsible for the damage that affects the consumer until he proves that the cause of the damage would not have occurred without force majeure or the fault of the injured himself, and do not place the burden of proof of harm on the weak consumer in this contractual relationship.
- **Fourth:** Amending Consumer Protection Law No. 1 of 2010 and including the recipient of services in the guarantee, as well as the recipient of goods, and that the guarantee is real and commensurate with the seriousness of service contracts such as the contract for supplying electric power, in addition to activating the role of the consumer protection council to provide real protection for the consumer in service contracts basically, and that the law includes the consumer's right to obtain a written document proving his contract for the service \ provided to him with its conditions, as is the case in (Article /5 of the Egyptian Consumer Protection Law), (Article /25 of the Lebanese Consumer Protection Law) and (Article /25 of the Lebanese Consumer Protection Law) and (Article 3-9 of the Palestinian Consumer Protection Law), for example, and its activation instead of remaining ink on paper.
- **Fifth:** Since the problem of production, transmission and distribution of electricity in Iraq, for example, is the responsibility of the public companies for the distribution of electricity in Baghdad and the provinces, and because

these companies are fully owned by the state, the solutions must be issued by the state itself and what we suggest is the following;

- It is necessary for the ministry to bear the consequences of responsibility, as it is the first responsible for supplying energy.
- The necessity of providing the operating fuel material to the owners of private generators with reduced or no wages so that they can reduce the price of electricity production for the consumer compared to the price supplied by the Ministry.
- Determining places that are relatively far away from the presence of population centers to install private generators as much as possible.
- Emphasis on limiting approval to generators that have safety means in terms of pollution and noise (soundproof)
- Appointing periodic inspection teams on the work of these generators, safety and security conditions, and compliance with the specified pricing.
- In the event that the ministry is unable to carry out its tasks, the state must grant the electric power supply service with a contract to major international companies that undertake all production, transmission and distribution conditions in a manner that achieves the benefit of the state and the consumer.

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