

# THE STANDARD OF UNUSUAL DAMAGE IN COMPENSATION FOR NEIGHBORHOOD NUISANCES: A COMPARATIVE STUDY

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## Abstract

The neighborhood bond between landlords or property owners creates a legal relationship that imposes mutual obligations, most notably the obligation not to harm the neighbor. If the use of the property results in damages that are common in the neighborhood and cannot be avoided of course, these damages do not entail legal liability on the owner; If the damage exceeds the usual limit, causing unusual damage to the neighbor, liability is incurred, and the owner has an obligation to compensate.

The right to compensation for unusual neighborhood damage is provided for by two basic conditions: first, the existence of a legal neighborhood relationship between the parties, and second, that the damage achieved is of an unusual nature beyond the limits that are customary to be accepted within the scope of relations between neighbors.

As for the forms of compensation, they vary according to the nature of the damage. Compensation may be in kind, by removing the source of the damage and restoring the situation to what it was, or it may be in cash, when it is not possible to implement in kind, in order to ensure that the damage caused to the injured is fairly and effectively repaired.

**Keywords:** unusual damage, injustice, personal injury, compensation in kind

## INTRODUCTION

Praise be to God, the Lord of the Worlds, and peace and blessings be upon the good of the missionaries, our master Muhammad, and his companions. After that, we will explain the introduction of our research tagged (the unusual damage standard in compensating for the damages of the neighborhood) as follows:

### Preamble to the research topic

Compensation is the cornerstone and natural sanction of civil liability, and this derives from the general principle that anyone who commits an act causing damage to others is obliged to compensate the injured person; In essence, civil liability is not intended to punish the perpetrator but to restore the balance that has been disturbed as a result of the damage. Thus, compensation is the legal means of reparation, whether material or moral, and it is aimed at placing the injured person, as far as possible, in the same position as before the occurrence of the harmful act, and this is achieved through restitution in kind when possible or monetary compensation estimated according to the size and nature of the damage in order to ensure justice and equity between the parties.

And there is no dispute, jurisprudence and judicial, that restitution in kind is the best means of reparation for the damage as it aims to remove the harmful effect and return the injured to the situation it was before the occurrence of the act of responsibility, and this is achieved by effectively erasing the damage, whether by returning the thing to its origin, repairing what was caused by the defect, or stopping the act causing the damage; In some cases, however, it may be practically or legally impossible to carry out restitution in kind, either because the situation cannot be restored, because it is difficult to determine its exact features, or because it is contrary to a public or private interest, and in such cases, restitution in kind is replaced by compensation in exchange, often in cash.

### Importance and Rationale of the study

The importance of this topic is reflected in the fact that it constitutes one of the most prominent axes of modern legal studies, as compensation for unusual neighborhood damages has received increasing attention in jurisprudence and legislation, which has been directly reflected in regulating liability arising from damages that fall within the scope of the neighborhood relationship, and this topic has gained a prominent position, whether at the general level in the legal system, or in the framework of the real estate law system, because of its role in consolidating neighborhood rights and enhancing the protection of real estate property by reducing the forms of encroachment that may be committed in this context.

### Research Problem

The problem is that this research highlights the urgent need to adopt a specific and clear legal framework on which the courts rely when considering compensation claims arising from unusual neighborhood damages. This need is even more urgent given the special nature of these damages, which are distinct from other forms of damage, making it inappropriate to apply general rules of civil liability and compensation without a legal adaptation that takes into account their specificity.

### RESEARCH METHODOLOGY

This research relied on the analytical approach in studying the jurisprudential opinions that dealt with the standard of unusual damage in compensating the damages of the neighborhood, and the comparative approach was used by analyzing and comparing the texts of both the Iraqi Civil Law No. 40 of 1951 (in force), the Egyptian Civil Law No. 131 of 1948, in addition to the French Civil Law issued in 1804, as amended according to the Civil Law Amendment Decree on February 10, 2016, in order to identify the legal and judicial positions in each of these legislations.

### Fifth Research Plan:

We divided this research into two sections as follows: Unusual neighborhood damage compensation conditions.

- 1) The damage is achieved and direct
- 2) The damage is personal and affects the legitimate interest of the affected person.

First Subsection: Unusual neighborhood damage compensation terms

It is necessary for the concept of neighbourhood to be extended in order to understand many cases of prejudice the neighbour incurred, such cases require compensation. It is possible that the harm the neighbor incurs is a result of the activity of a third party nearby in terms of location, with no direct contact between them. Consequently, a great importance lies in defining the meaning of neighbourhood for the sake of applying legal provisions regarding the case of neighbourhood. Particularly, when we acknowledge that such provisions are differentiated from general rules in terms of establishing responsibility, compensation and the type of harm that requires compensation (Ziyad K. A. The Relationship between Ownership and Actual Control of Real Estate in Compensating for Unfamiliar Neighborhood Harms, Journal of the Faculty of Law for Legal and Political Sciences, Volume 11, Issue 43, 2022, pp. 84-85.)

Compensation is one of the most important effects of the responsibility of this person towards the injured neighbor. The rules of liability require compensation for the injured neighbor, as it is considered a means of justice to redress the damage suffered by the injured neighbor. The right of the injured to compensation arises from the unlawful act from the time of completion of the elements of liability rather than from the time of the error. Compensation is in exchange for the damage suffered by the injured whether intentionally or unintentionally, whether direct or caused. This is what the injured want in reparation for the damage suffered, or removing it if possible. Based on the general rules of civil liability, if the elements of this liability are available from error, damage, causal relationship, which resulted in its judgment Civil liability may be defined as a person's obligation to compensate for the harm he initiated to others. The nature of liability for unusual neighbourhood harm is called as tort liability, which is a person's obligation to compensate for the harm resulting from his actions or of those under his care or supervision, individuals or followers (Shaker M. S. R - Civil Liability for Electronic Mixing - Research published in the Journal of the College of Law and Political Science - University of Kirkuk - Volume 13, Issue 50, 2024, p. 43), the responsible must compensate the injured for the damage suffered. Compensation is the effect that results from achieving liability, which is its penalty. The main goal is not to punish the responsible but to compensate the damage caused to the injured person, or to mitigate it completely, by removing the damage if possible, or award of compensation in favor of the injured person. The decision of the Egyptian Court of Cassation stated: "The claim for compensation is the judicial means through which the injured can obtain from the official compensation for the damage he suffered if he is not legally recognized. He must prove that he is the owner of the right that the damage occurred to him or otherwise his claim is unacceptable." Appeal No. 8835 of the year 64, session 25/10/1995, published on the website of lawyers' secrets on the international network and at the following link:  
<https://asras.all-up.com/>.

However, the question to be asked is what are the characteristics or conditions of compensable damage? We will clarify these conditions to answer this through the following:-

- 1) The damage is done directly.

Liability exists only if the damage has been done, i.e., it has been done effectively, and is not merely hypothetical or potential future damage, which is a fundamental condition for enabling the injured to claim compensation. However, the damage is not required to be present at the very moment when the infringement occurred, but is sufficient to be inevitable in the future, leaving no doubt. (Abdel Rahman, 2013, p. 177).

The damage claimed is required to be unequivocally and unequivocally established, so that the judge is fully satisfied that the injured would have been in a better legal or factual position had it not been for the act committed by the defendant and which led to the realization of his liability, and there is no difference between the damage being actually done, or the occurrence being definitively confirmed in the future. (Al-Ameri, 1981, p. 1).

The entitlement to compensation requires that the damage be direct, meaning direct damage that is a natural and expected result of the harmful act, and that the injured person cannot pay or avoid it despite a reasonable effort. Indirect damage, on the other hand, is not considered a logical extension of the harmful act, so that the causal relationship between the act and the result is severed, and the defendant is not asked about it as long as it has taken an indirect form. However, jurisprudence and the judiciary have settled in some cases on the possibility of compensation for indirect damage, whenever special circumstances justify it (Nabil, 2020, p. 284) and the damage is direct, because the damage is limited to the case of the succession of events that caused a series of damages that affected the plaintiff alone. (Egyptian Court of Cassation, Civil, 1995, p. 117).

## 2) The damage is personal and affects the legitimate interest of the affected person

It is obvious that a person is not entitled to claim compensation for damage caused to others, unless he is a legal representative of the injured person or his successor, as is the case in the case of a heiress who proceeds to claim compensation based on his capacity as heir. If there are more than one injured person, the damage caused to one of them may be an extension of the damage caused to another, so that it is reflected on him and he suffers indirect personal damage. This type of damage is known in jurisprudence and jurisprudence as recoil or reflex damage, which is a consequential damage that may be taken into account in some cases when the causal relationship between him and the original harmful act is established. (Al-Ameri, 1981, p. 38; Al-Sanhouri, 1998, p. 687).

In order to be compensable, the injury must infect an existing right or legitimate interest of the injured person or their legal dependants, and it is understood that a financial interest, even if it does not amount to a full right, is sufficient to grant the injured person the right to claim compensation, so long as that interest is legitimate and deserves legal protection, as it is worthy of care within the existing legal system. (Abdel Rahman, 2013, p. 176).

It is also required that the damage be caused by a legitimate interest of the injured person, and that the damage not be compensated in advance. In the event that the neighbor is harmed by a certain act, this act must be contrary to laws or administrative regulations, such as if the person responsible for the damage makes excessive noise, undertakes acts that disturb peace and tranquility, or commits acts that are considered arbitrary in the use of the right, for example, building a chimney or erecting a high fence that leads to the blocking of light or air from the neighbor. In such cases, the interest harmed is a legitimate interest, and the right to claim compensation for it is proven. (Hawas, 2011, p. 205).

It is required that the person who suffered the injury be the same person who has the right to claim compensation, and this right is not established for others, unless he enjoys a legal capacity that allows him to do so, such as being an agent for the injured person or a general successor to him. In the event of the death of the creditor, the right to compensation for the material damage he suffered is transferred to his heirs by inheritance, as it is one of the rights that enter into the estate and are transferred to the heirs as a general successor. (Suleiman, n.d., p. 187).

The purpose of compensation is to make reparation for the injury suffered and to return it, as far as possible, to the state it was in before the injury occurred. Accordingly, the injured person may not claim compensation for the same damage more than once, as this is a kind of undue enrichment at the expense of the defendant, and it violates the principle of fair compensation, which restricts reparation to its actual limits without increase. (Al-Malkawi & Al-Omari, 2006, p. 76).

## Second Subsection: Forms of unusual neighborhood damage compensation

Restitution in kind is the root of unusual neighborhood damage, and is the restoration of the status quo ante, as the most appropriate and effective means of reparation; However, this type of compensation may be subject in some cases to legal or material obstacles to its implementation, which requires the resort to compensation in exchange as an alternative solution, and when adopting this alternative, a balance should be achieved between the interest of the injured neighbor in removing the damage inflicted on him, and the interest of the neighbor responsible for the damage in a way that does not violate the principles of justice and equity, and we will divide this demand into two sections, the first deals with restitution in kind and the second deals with compensation in exchange according to the following:

### First Branch: Restitution in kind

Reparation in kind is “the provision to restore the situation to what it was before the wrongdoing of the person responsible for the damage was committed”, and some define it as: “The injured person shall receive an alternative in kind for his right violated by the wrongful act”. When material damage occurs, restitution in kind or (specific compensation) is preferable. For example, a landlord can build a wall that blocks the neighbors’ light, and a court can rule that the wall be demolished as a form of compensation. In this case, compensation is better than monetary compensation because it removes the damage from its roots and restores the property to its original state before the damage occurred (Markos, 1956, p. 118).

Restitution in kind is considered the best type of compensation because it leads to the restoration of the situation to what it was in repairing the damage, and this is stipulated in Article (209) of the Iraqi Civil Law No. (40) of 1951 and its amendments, which is also stipulated in Article (1200) of the Journal of Judicial Judgments in that the outrageous damage is paid in any way in application of the rule (the damage is still) and (no damage and no harm), and the removal of the outrageous damage may require prevention of use and may not require it. (Abu Zahra, 1996, p. 104).

Article (1051/2) of the Iraqi Civil Law No. (40) of 1951 and its amendments clearly stipulated that: "A king who is threatened that his property will be damaged by excavations or other works that occur in the neighboring eye may request to take all necessary measures to prevent damage and may also request the suspension of work or take the urgent precautions needed, pending the court's decision in the dispute." The penalty here is to remove the violation, and compensate for the damage as it is in the past and the present, it may also occur in the future whenever it is true, but if it is just an illusion of its occurrence, here it cannot be compensated for because it may or may not occur.

Restitution in kind is not a single form, as it varies according to the circumstances of each case and according to the type of damage, for example, it may be taken to modify the method of exploitation of something at a certain time, and it is considered partial restitution in kind in this case or stop the exploitation completely and be full restitution in kind, so if the restitution in kind is possible, the judge may rule on it. If the damage is caused, for example, by the owner erecting a wall, the ruling may be made to demolish this wall (Al-Sanhouri, 1998, p. 709). In this sense, the Court of Cassation in the Kurdistan Region of Iraq ruled in its decision, which stated: "It turned out that the Duhok Court of First Instance had based its ruling on the ongoing disclosure with the knowledge of the expert, which showed how to remove the damage claimed to be lifted due to the leakage of dirty water from the (Qastal) Spti Tank located in the defendant's house to the plaintiff's store to the plaintiff's store, so the plaintiff's store, the plaintiff's store, the plaintiff's store, the plaintiff's store, so the ruling is valid and in accordance with the provisions of the provisions of the damage (1051) of the Civil Code and decided to ratify it." (Civil Chamber II Decision No. 264, 2007, May 6, unpublished)

And Article (209/2) of the Iraqi Civil Law No. (40) of 1951 and its amendments stipulated the multiplicity of forms of compensation by saying: "Compensation in cash is estimated that the court may, depending on the circumstances and at the request of the victim, order the restoration of the situation to what it was or to judge the performance of a certain order and the return of the example in lesbians, as a form of compensation."

Article (171/2) of the Egyptian Civil Law No. 131 of 1948 and its amendments stipulates that: "Compensation in cash shall be assessed on the basis that the judge may, depending on the circumstances and at the request of the victim, order the return of the case to what it was, or to rule to perform a certain order related to the illegal work, as a form of compensation. The article stated that the original in compensation is cash, but allowed the judge to rule on restitution in kind or execution in kind.

The assessment of compensation is also within the discretion of a judge who exercises a substantive role and whose assessment is according to the circumstances of each case. It should be noted that the damage that requires compensation must not be considered in his assessment of the same damage, but must take into account the circumstances surrounding the owner, as well as the loss of profits and the loss of opportunity. These circumstances have an overriding effect on the assessment of compensation for damage to the neighbor.(Shahla, 2017, p. 33).

Despite its conditions, the judge is not obliged to rule on restitution in kind, and if the injured person requests it or the debtor does, the award of compensation is permissible for the court, which may or may not rule on it depending on the circumstances (Taha, 1971, p. 482). In this sense, the Federal Court of Cassation ruled in a decision that included: "It was found to be incorrect and contrary to the law, because the constant of the investigations conducted by the court and the accompanying expert reports, which found that there was an infringement by the defendant (distinguished) on the defendant (distinguished) by an amount of (20) cm wide and 16 meters long, and that this violation cannot be removed on the plaintiff's property without causing significant damage to the defendant's house and with a high percentage represented by the possibility of the fall of rooms adjacent to the encroaching wall, in addition to the other reasons described in the three and five reports, and where Article (21/21) of the Civil Code stated that: "No damage is still proven."

In the event that the violation is removed, it will lead to significant damages in his house compared to the percentage of the violation that does not exceed (20 cm 16 m). Therefore, the plaintiff's claim is obligated to respond and he can file a lawsuit to claim the same wage or compensation if he has a requirement and its conditions are met, and since the court went against the advanced point of view in its distinguished ruling, which disturbed his health, so he decided to overturn it."

And this is what the Egyptian Court of Cassation also decided in a ruling that includes the advanced meaning, which stated: "The original is the implementation of the obligation in kind, and it cannot be compensated by any implementation through compensation unless it is impossible to implement in kind." In another ruling of the same court, it decided: "The owner must commit to the physical repair of the building that caused damage due to the crack of its construction, and the property of his neighbor was damaged."

Restitution in kind is not a single form, as it varies according to the circumstances of each case and according to the type of damage, for example, it may be taken to modify the method of exploitation of something at a certain time,



and it is considered partial restitution in kind in this case or stop the exploitation completely and be full restitution in kind, so if the restitution in kind is possible, the judge may rule on it. If the damage is caused, for example, by the owner erecting a wall, the ruling may be made to demolish this wall. In this sense, the Court of Cassation in the Kurdistan Region of Iraq ruled in its decision, which stated: “It turned out that the Duhok Court of First Instance had based its ruling on the ongoing disclosure with the knowledge of the expert, which showed how to remove the damage claimed to be lifted due to the leakage of dirty water from the (Qastal) Spti Tank located in the defendant’s house to the plaintiff’s store to the plaintiff’s store, so the plaintiff’s store, the plaintiff’s store, the plaintiff’s store, the plaintiff’s store, so the ruling is valid and in accordance with the provisions of the provisions of the damage (1051) of the Civil Code and decided to ratify it.”

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Despite its conditions, the judge is not obliged to rule on restitution in kind, and if the injured person requests it or the debtor does, the award of compensation is permissible for the court, which may or may not rule on it depending on the circumstances. In this sense, the Federal Court of Cassation ruled in a decision that included: “It was found to be incorrect and contrary to the law, because the constant of the investigations conducted by the court and the accompanying expert reports, which found that there was an infringement by the defendant (distinguished) on the defendant (distinguished) by an amount of (20) cm wide and 16 meters long, and that this violation cannot be removed on the plaintiff’s property without causing significant damage to the defendant’s house and with a high percentage represented by the possibility of the fall of rooms adjacent to the encroaching wall, in addition to the other reasons described in the three and five reports, and where Article (21/21) of the Civil Code stated that: “No damage is still proven.”

In the event that the violation is removed, it will lead to significant damages in his house compared to the percentage of the violation that does not exceed (20 cm 16 m). Therefore, the plaintiff’s claim is obligated to respond and he can file a lawsuit to claim the same wage or compensation if he has a requirement and its conditions are met, and since the court went against the advanced point of view in its distinguished ruling, which disturbed his health, so he decided to overturn it.” (Decision No. 174, Appellate Property Chamber, 2020, January 15, unpublished).

And this is what the Egyptian Court of Cassation also decided in a ruling that includes the advanced meaning, which stated: “The original is the implementation of the obligation in kind (Published Appeal No. 364, Year 46 Q, 1979, June 20, Government Cases Administration Journal, 1(24), 238), and it cannot be compensated by any implementation through compensation unless it is impossible to implement in kind.” In another ruling of the same court, it decided: “The owner must commit to the physical repair of the building that caused damage due to the crack of its construction, and the property of his neighbor was damaged.” (Egyptian Court of Cassation, cited in Amir & Amir, 1979, p. 170).

## Section II: Compensation in Exchange

When the judge finds that restitution in kind is not possible to redress the damage, compensation in exchange is either monetary compensation or non-monetary compensation, we have clarified that the judge in liability arising from damages in the neighborhood does not resort to monetary compensation except in the case that restitution in kind is not appropriate and is not possible, so he resorts to monetary compensation, which is a type of compensation in exchange, which is based on paying a certain amount of money to the affected person to compensate for what was damaged by his damage, and some defined it as: “It is an amount of money equal to and equal to the benefit that the creditor would have received if the debtor had carried out its obligation in a manner that requires them out of goodwill and mutual trust between people.” (Abdel Rahman, 2007, p. 429; Colin & Capitant, 1959, p. 159).

In this case, the judge shall rule on monetary compensation. The legislator stipulated in Article (171/2) of the Egyptian Civil Law No. 131 of 1948 and its amendments: “The compensation in cash shall be estimated that the

judge may, depending on the circumstances and on the request of the injured, order the return of the case to what it was, or order the performance of a certain order related to the illegal work, as a compensation."

The French judiciary initially considered that the compensation is only in cash and the judgment does not recognize restitution in kind as it was stated in a decision of the French Court of Cassation: "If the responsibility of the land carrier for loss is proven, the compensation is obtained by obliging the responsible carrier to pay an amount of money as a matter of malfunction and damage, and the courts may not rule to oblige the carrier to compensate for the lost or damaged thing in kind (Decision No. 469, June 4, 1924, cited in Haddad, 1960, p. 173)".

However, the court did not settle on its aforementioned position, so it allowed compensation to be in cash or other than cash, and gave the court of issue absolute authority to choose the most appropriate compensation method to repair the damage, it may be required to oblige the official with a certain thing instead of obligating him with an amount of money.

The monetary compensation is required to prove the damage and in the event that it is not proven, the plaintiff does not deserve the compensation claimed. Thus the Federal Court of Cassation ruled in a decision that included: "The distinguished plaintiff requests the judgment to compensate him for the serious damage resulting from the radiation of mobile phone towers installed on the roof of his neighbor's house opposite his house, as well as the ruling to remove the installed tower. The court hired an expert, then three experts and then five experts from the consultant engineers who submitted their report dated 13/2/2014 AD.

This report included the absence of traces, clarity or leakage of gas or polluting emissions from the exhaust during the operation of the electricity generators that feed the tower. The tower devices are implemented within the environmental controls, instructions and standards, and there is no damage caused by the communication tower. As this report came detailed and the reason the court took a reason for its distinctive ruling pursuant to the provisions of Article (140/I) of the Evidence Law No. (107) of 1979, so the act of the distinguished defendant / second defendant by renting a rooftop to erect the communications tower for the distinguished defendant / first defendant Asia Company shall be free of any unusual damage in order to remove it and award compensation. This is what the Court of Subject has ruled." (Decision No. 435, Civil Transport Chamber, 2014, March 23, unpublished). The monetary compensation is in two ways: it is estimated by the court as a whole and this is the original in monetary compensation.

The second is in the form of parts or installments paid in the form of income payable for life, but their number is not known in advance and is not interrupted except by the death of the injured person (Taha, 1971, p. 483). This is in addition to the existence of insurance that may be decided by the court in the latter case to ensure the continued payment of the income by the debtor. (Atiya, 2000, p. 103). It is not necessarily an amount of money, although it is the prevailing thing, and it can be non-monetary compensation, including compensation by performing a certain order. This is most appropriate to redress the damage caused to the neighbor, as it is not restitution in kind because it does not include a provision to return the initial case to what it was before the damage occurred. It is not monetary compensation because it is not required to pay a certain amount of money. It is considered compensation of a special type required by the circumstances in some forms of damage (Abdel Aziz, n.d., p. 175).

In libel and insult cases, the judge may rule on the basis of compensation by publishing the judgment that convicted the defendant in the newspapers, as is the case in the decision issued by the Federal Court of Cassation, which included: "It was noted that the experts assessed the monetary compensation due to the plaintiff, and their report did not include his entitlement to another compensation, so that the court could oblige the defendant to publish an apology to the plaintiff on the Al-Sumaria satellite channel and the Al-Sumaria News Agency for seven consecutive days. Even assuming the validity of the ruling, the ruling paragraph in such a case must include the publication of the ruling decision in the same entity through which the statements in question were published." (Decision No. 1496, Civil Chamber, 2012, September 3, cited in Yassin, Al-Mashhadi, & Al-Rubaie, 2014, pp. 108–111). Article (171/2) of the Egyptian Civil Code No. 131 of 1948 and its amendments stipulated that: "The performance of a particular order relating to the wrongful act shall be governed by the Court, as a measure of compensation." The Court may rule on such measures as it may deem sufficient to prevent smoke, noise or the danger of fire. (Amir, 1956, p. 531).

An example of non-monetary compensation is that the court requires the owner of the stove to equip his stove with a chimney at an altitude that repels the smoke damage to those next to him from the population. Another example is to order the owner of the chimney to raise it in a way that eliminates the damage to the neighbor. In all cases where it is impossible to compensate in kind and has no way of resorting to non-monetary compensation, it must award monetary compensation. This compensation in unusual neighborhood damages requires that the injured be sentenced to an amount of money given to him at once to repair the damage, as the original is the ruling of a certain amount of money that the official gives to the injured person at once (Al-Sanhouri, 1998, p. 1095). In this sense, the Federal Court of Cassation ruled in a decision that included: "After careful consideration of the distinguished judgment, it was found that it is in accordance with the law that the distinguished defendant requested the judgment of the right to compensate for the distinguished claim for the serious damage that occurred in his property No. 161 / 1161 22 M6 Camp adjacent to the defendant's property No. 161 / 15 M6 camp as a result of the construction of the building on it. As the court parked to the experts, where it conducted the examination and returned it with the knowledge of several experts, the last of which was with the knowledge of nine experts whose report came with an estimate of more than the estimate of the seven experts. As the defendant is the appellant who appealed the report

of the seven experts, and the appellant is not harmed by his appeal, and since the report of the seven experts came reasoned and reasoned, and it becomes a reason for the ruling (Article 140 / I) of the Evidence Law, so he decided to ratify the ruling." (Decision No. 43987, Appellate Chamber, 2017, June 20, unpublished). In the Kadhimiya Court of First Instance verdict, it included: "After the plaintiff claimed that his neighbor (the defendant) carried out expansion works for his house, including an external bathroom and a back kitchen, and connected the water drainage pipes directly to the plaintiff's yard, which led to the accumulation of wastewater and the emission of foul odors and the spread of insects, causing health and environmental damage to him and his family, the court considered the case. The on-site disclosure was carried out in the presence of an engineering and health expert, as it was found out that the drainage pipes actually end in the land of the neighboring property, and cause the accumulation of permanently contaminated water. The court considered that the defendant exceeded the use of his property, and performed a physical act that is harmful to the unusual neighborhood.

The discharge of water to the property of others represents an illegal assault that violates the provisions of Article (196) of the Iraqi Civil Code. This called the court to oblige the defendant to require the defendant to remove the drainage pipes immediately (15) days from the date of the judgment's acquisition of the peremptory degree, and obliging the defendant to pay a financial compensation of (1,500,000 Iraqi dinars) to the plaintiff for environmental and moral damages, and the defendant to bear the costs of the lawsuit and the fees of the lawyer." (Decision No. 412, Civil, 2023, Kadhimiya Court of First Instance, December 10, unpublished).

Also, another judgment of the Court of First Instance in Baghdad included: "After the plaintiff claimed that the defendant, her direct neighbor, installed a large-size electric generator in the garden of his house, which caused high noise and continuous vibrations, which negatively affected the physical and psychological comfort of her, and her family, in addition to smoke and foul odors emanating from her, especially at night hours. The expert's confirmation that the generator produces noise at a level of 82 decibels (higher than the limit allowed in residential areas), and that vibrations are felt in the adjacent walls, with the emission of smoke and noticeable oil odors. The court found that the defendant, although he uses his right to save energy, his use of his right has exceeded the familiar limits. This constitutes unusual neighborhood damage under Article (196) of the Iraqi Civil Code. This prompted the court to oblige the defendant to move the generator to a site that does not cause direct damage to his neighbors, or to take the means of complete technical isolation of sound and smoke within a period not exceeding (30) days, and to oblige the defendant to pay compensation of (2,000,000 Iraqi dinars) to the plaintiff for psychological and moral damages, and to charge the defendant with the costs of the lawsuit and the fees of the lawyer." (Decision No. 123, Civil, 2024, Baghdad Court of First Instance, October 15, unpublished). If the owner is obliged to compensate the injured neighbor for gross (unusual) damage, whether it is an accident or an old one. The judge has discretion with regard to compensation, as the restitution in kind may be burdensome for the official or severely injure him. Therefore in such a case he has the power to award monetary compensation, and to balance the interests

## CONCLUSION

After completing the topic of the unusual damage standard in compensating neighborhood damage, we show below the most important results and recommendations that we have reached, which are:

### First: Results

1. It should not be said that this relationship is limited to contiguous properties only, but it is achieved when they have a specific geographical area, even if their properties do not contiguous.
2. The lesson in proximity to people is that everyone who occupies the property may be responsible for the damage, whether he is an owner or not.
3. Unusual damage is the cornerstone of this liability; merely the usual damage is not enough to sustain the liability without causing the damage.
4. The idea of compensation for neighborhood damage is outside the general rules of compensation, as it stipulated that the damage caused by the liability should be an unusual damage, not just direct damage.
5. The legislator's departure from the general rules of compensation in this type of liability was not limited to the damage only, but also extended to the compensation itself. The principal in compensation for this liability is restitution in kind (removal), not cash, contrary to what the legislator stated in article 209 of the Iraqi Civil Code.
6. The obligation of the person responsible for compensating the unusual damage is not an absolute in-kind obligation that is transferred to the property and not transferred to it, but a special in-kind obligation that is in-kind because of its attachment to the ownership of the property, but it is occupied by only the official and not transferred to others.

### Second: The recommendations we propose are:-

1. We suggest to the Iraqi legislator not to limit the status of the injured neighbor to the owner only, as the neighborhood is a material fact that the owner and others may be affected by it.
2. We propose that a text be included in the Iraqi Civil Code setting out the criteria and guidelines by which to determine whether the damage is familiar or unusual.
3. We propose adding a paragraph to the text of Article 253 of the Iraqi Civil Code, which includes "If the judge considers that the amount of the fine is not sufficient to coerce the debtor who refuses to implement, he may increase

the fine whenever he sees a need to increase, as mentioned in Article 213, paragraph 2 of the Egyptian Civil Code No. 131 of 1948.

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