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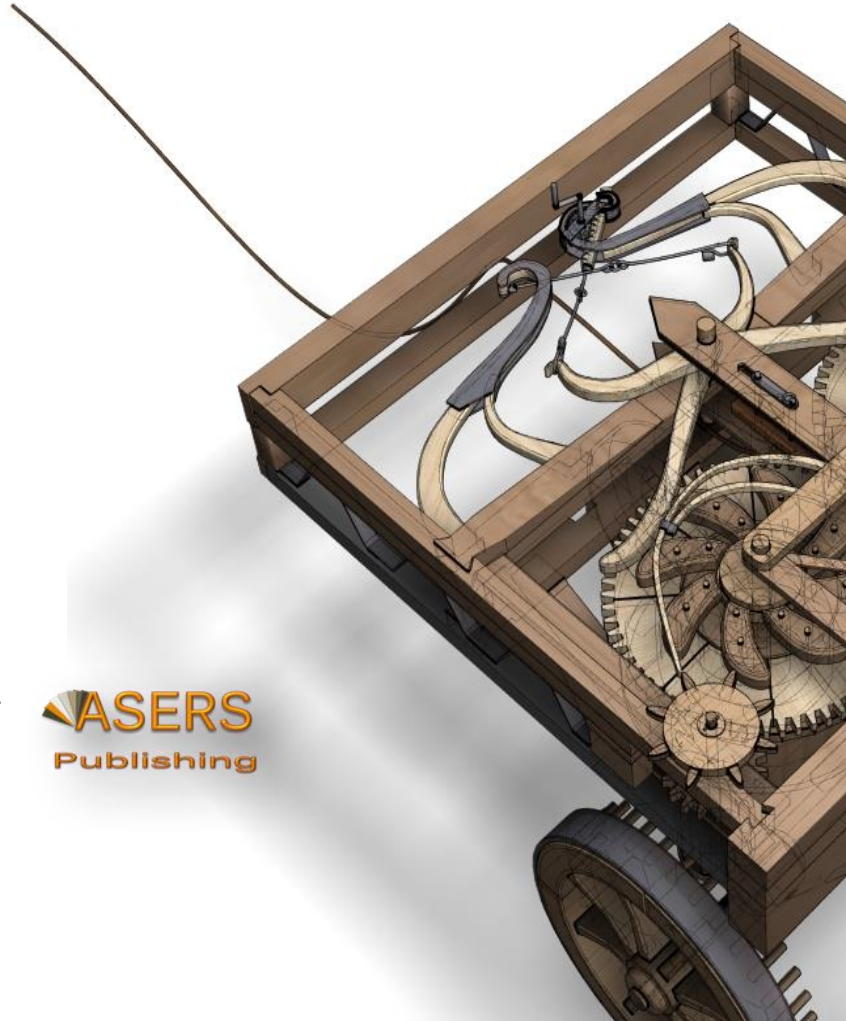
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The Legislative Shortcomings Aspects in the Jordanian Environmental Law. Comparison with International Law

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Abstract:

Most of the legislation in the countries have established laws and regulations to protect the national environment of countries, as Jordan is one of these countries, where the Jordanian environmental law has developed rapidly in order to keep pace with developments in various industrial and technological fields, for the purpose of protecting the environment and in cooperation with the relevant international and regional bodies, however, legal protection of the environment is not provided for in the text of the Constitution, also, the Jordanian legislator did not set up a special system for environmental damage compensation, did not included it in the civil law, in addition to the fact that local environmental legislation does not include the modern principles of environmental damage compensation contained in the international conventions, which signed and ratified by Jordan. The accumulation of these deficiencies affected the effectiveness of environmental law and the mechanism of its application.

Keywords: environment; environmental law; jordanian law; international law.

JEL Classification: K32; K19; K10.

Introduction

The environmental protection notion is one of the recent topics in the Arab legal systems, also its one of the topics that are newly regulated in the comparative legal systems as it reflects a new stage in the development of the concept of human rights, therefore, it was necessary to have an authority within the structure of the state, as its duty to preserve the right to a clean and sanitary environment and to take all measures to prevent pollution.

The real starting point for considering and addressing environmental issues was the first United Nations Environment Conference (1972), which is the first international document that reflects forms of international cooperation to combat aggression against the environment and reduce its risks.

Developing countries faced many environmental issues and sought to put in place legislation to reduce pollution and pay attention to the preservation of the environmental system, after the Stockholm Conference, the United Nations Environment Program focused on environmental legislative fields in the developing countries, with an emphasis on including environmental issues in the internal constitutions of developing countries.

Jordan considered as the first Middle Eastern country completed the development of a national environment strategy in July 1991, with the aim of maintaining the continuous ecological balance of the environment elements in order to ensure the prosperity and well-being of the Jordanian society, and to achieve and maintain peaceful development, and to strive for its continuity, to achieve this aim, a set of laws and

regulations have been developed with the aim of protecting the environment but scattered in various national legislations.

Temporary Environmental Protection Law No. (12) Of (1995) which was repealed by Temporary Environmental Protection Law No. (1) Of (2003), the Environmental Protection Law No. (52) Of (2006) was later issued, and in an attempt by the legislator to remedy the shortcomings in this law, it was canceled and replaced by Environmental Protection Law No. (6). (2017), with the aim of tightening penalties on environmental infringement and obliging institutions to submit an environmental impact assessment study before obtaining environmental licenses, the new law also defines hazardous materials that are prohibited or restricted from being imported to Jordan, and the methods to deal with such material.

However, the amended Jordanian Environmental Law No. (6) of (2017) did not include articles related to civil liability, and the principle of participation of the different categories of civil society in environmental management, in the formulation of environmental policies, and in the enforcement of such legislation has not been solidified, furthermore, the new law did not specify a competent court and specialized judges to consider the environmental crimes, leaving the jurisdiction to the court in which the offense falls, this raises the question about the legal references on which the legislative authority to enact environmental laws, and its value within the legal hierarchy within the national level as a criterion for regulating the rights, duties, and freedoms of individuals within the society.

While at the international level, environmental law did not take into account the principles contained in international treaties regarding compensation for environmental damage, which raises the question about the extent to which civil liability is understood to compensate for all forms of damage, due to the lack of consideration of modern concepts and principles such as the principle of fining the polluter or the obligation to take preventive measures to prevent environmental damage.

This research aims to identify and highlight the most essential aspects of legislative shortcomings in Jordanian environmental law, in order to organize this research within the limits of its scope, it has been divided into two sections, the first section dealt with the legislative shortcomings in the Jordanian environmental protection law through three topics represented in the absence of provisions for environmental protection in the Jordanian constitution, the absence of a judiciary and court specialized in environmental affairs, and finally, the shortage of an explicit text for compensation for environmental damages in the civil law, while the second section dealt with the absence of modern principles of environmental protection in Jordanian law, through three topics: the principle of prevention, the polluter pays, and collective participation in protecting the environment.

1. The Legislative Shortcoming in the Jordanian Environmental Law

As a result of the Stockholm Conference, many countries have enacted in their constitutions and laws the right to a clean and healthy environment, however, national environmental legislation still lacks several key issues which we will address as follows:

1.1 The Jordanian Constitution does not Contain Legislative Provisions Related to Environmental Protection

The Stockholm Declaration, in its first principle issued in (1972), stipulated that “the human being has a fundamental right to freedom, equality and decent living conditions in a clean environment that allows him to live in dignity and prosperity.” The Stockholm Declaration also emphasized the great responsibility of governments to improve and protect the environment for future generations.

The Stockholm Conference declaration is the first international document on the principle of international relations between states with regard to environmental affairs and how to deal with this issue and responsibility for the damages it sustains, as well as an international action plan that included (109) recommendations to governments, United Nations agencies, and international organizations to set-up the necessary measures to protect life and address environmental issues.

The recommendation of the Stockholm Conference was for governments to take appropriate steps to recognize these mutual rights and responsibilities, but due to the great disparity in national legal systems and procedures made it impossible to propose appropriate processing that would be applicable in all cases, therefore, some countries have tended to amend their basic laws or constitutions, while other countries have tended to issue special national laws or charters that define the rights and responsibilities of citizens and the state with regard to environmental protection and sustainable development, the World Charter for Nature (1982) affirmed that the “Right to a Healthy Environment” raises to the level of fundamental human rights.

Later, the Rio de Janeiro conference (the capital of Brazil) on Environment and Development was held in (1992), in which the fact that the environment is linked to sustainable development was emphasized, then the (Johannesburg) Conference in South Africa, which was held ten years after the Rio Conference, which showed that issues related to the protection of the environment are involved under the framework of international human rights law, where environmental protection is considered part of the essential human rights, and the preservation of the environment represents a kind of preservation of the human right to life, where the simplest definition of the environment is, all kinds of elements that surround the human being, that is, the framework in which the individual performs his life and various activities, so that, the right to a natural and healthy environment is increasingly considered as an essential element of human rights (For more information about summary outcomes of this conference, please refer to the International Red Cross magazine (in French) Issue No. (648) (December 1972), Page. (754) ff., and Issue No. (644) (August 1972) Page. (310) ff.).

The responsibility of individuals, societies, and the state is to preserve the environment, as national legislation in many countries tends to emphasize the necessity of this commitment, while some of these countries dealt with provisions for preserving the environment as constitutional rules so that the state made this right inalienable or prevented, since it is a constitutional right like other rights such as the right to life (Rabayieh 1996), and it should be noted that more than (150) countries have demanded this right in their constitutional and legislative texts (<https://news.un.org/ar/story/2019/08/1038411>).

As the Jordanian constitution did not explicitly stipulate for the protection of the environment and considering it a human right, despite the importance of the environment soundness internationally, as well as Jordan's accession to most international conventions, although this protection is stipulated in the National Charter, it does not rise to the rank of the Constitution, in addition, the national charter was not mentioned in the Jordanian constitution, and this is what the French legislator realized when he reinforced the environment charter by referring to it in Constitutional Law No. (2005-205) of (1st March, 2005), as the French Constitution did not include in its version (1958) any reference to the environment protection (Jo du 2 mars 2005, Page.3697).

With the exception of some Arab constitutions, the Jordanian constitution, like other Arab constitutions, there is no recognition of this right (Omar 2021), among the Arab constitutions that stipulate the right of the environment soundness is the Iraqi constitution for the year (2005) in Article (33 II), as well as the constitution of the Kingdom of Saudi Arabia, just as the Tunisian Constitution, which was ratified on (27th January, 2014), contains a provision that recognizes the right for soundness environment, as according to Article (45), the state guarantees the right to a sound and balanced environment, contributes to climate safety, and providing the means to eliminate environmental pollution.

The stipulation of environmental concerns in constitutions meets several objectives, including ensuring the highest rank for the environment in the legislative hierarchy normative, ensuring the maximum guarantee of stability through protection from ordinary laws and changing circumstances, this leads to the embodiment of the environment as one of the main collective values of the nation and gives it direct protection of the right to a clean and sound environment (Ost 1995).

The provision of the right to a sound environment in the constitution would lift the status of environmental protection to the level of human rights, analogous to freedom of opinion, the right to information, and community participation, the stipulation of this right will have implications for the disposition of administrative entities or by constitutional, civil, criminal or administrative judges, this will enhance the awareness of citizens and associations that the right to a sound environment is a human right, which has been validated at the national and international levels.

Such right is one of the rights to life components and its constitutional enshrinement is acknowledgment to its sanctity and considering it one of the peremptory norms "jus cogens", it is also an affirmation of the state's essential responsibility to protect and preserve the environment, and it imposed an obligation toward the citizens to protect the environment, therefore, it's necessary to give it a prominent position in the national legal standards and to include it in the constitution.

The Constitution is the references frame for all environmental legislation within national jurisdiction, the enshrinement of this right in the Constitution will lead to the adoption of procedural guarantees in line with human rights, particularly on issues related to the rights and freedoms and their practices, ensuring the individuals' right to resort to the ordinary courts, as the Constitution provides a stable legal basis for judicial decisions in the environmental field and provides a real value in implementation, the right of the individual to a healthy environment, which is also considered a personal right, is one of the individual rights enshrined in the Constitution and implies his right to judicial protection, this will restrict any authority, whether executive or legislative, even if

this authority was reinforced by the discretionary authority to infringe on that right to limit the conditions and purposes of its practices (Al-Hasban 2011).

Human rights and environmental protection are interrelated, as a safe, sound, healthy, and sustainable environment is necessary for human beings to relish their rights, and developing effective measures to ensure the conservation and sustainable use of the ecosystem and biodiversity on which the full relishing of human rights depends, as the constitutional provision commits countries to fully comply with their human rights obligations (https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FP_ReportFrench.PDF).

In recent years, the topic of the environment has been widely included in constitutional provisions, while the environment has not been uniformly introduced into principal laws (Morand-Dévriller 2014), as it relied on environmental awareness, while few countries have not enacted constitutional laws related to the environment, such as Denmark, Ireland, Australia, Japan, the United States (Maître and Huglo 2003), and Jordan.

It seems that the topics of environmental protection in the Jordanian constitution are implicitly and indirectly included within the constitutional provisions related to the state's social and economic objectives, or based on the social logical needs, as the legal system is a reflection of those needs (Al-Hasban 2011).

The Jordanian constitution was enacted in (1952), that is, before the Stockholm conference (1972), despite the process of subsequent amendments that took place in some articles of the Jordanian constitution, the issues of rights and freedoms were not addressed, and this is in contrast to the cases of some other countries that adopted the results of this conference in their constitutions, and an example of these countries is "Portugal" which amended its constitution on (2nd April ,1976), where it affirms in Article (66) of Title (III) that " Everyone has the right to live in a human, healthy and ecologically balanced environment.", another example is "Spain", which Article (45), Paragraph (1) of its constitution for the year (1978) granted this right in order to relish the environment suitable for human development.

The method of implicit and indirect constitutional acknowledgment to the right of sound, a healthy and balanced environment based on linking it to the protection of the constitutional rights is futile, due to its narrow scope and its reliance on the approximation of provisions and interpretation of constitutional texts related to protected constitutional rights, which, in a more straightforward sense, can be acknowledged at one time and rejected at another.

1.2 The Absence of a Judiciary and a Court Specialized in Environmental Affairs

The duplication of texts related to the environment is the most important issue that Jordanian legislation suffers from, in addition to the duplication of responsibilities of institutions concerned with environmental affairs, which leads to a lack of clarity in the adoption of the applicable text, the implementation mechanism, and the competent authority, as the main dilemma is that the Jordanian environmental law has not dealt with all environmental violations, and keep it at the discretion of the judge in civil and criminal lawsuits, without stipulating specific penalties, as they were determined only in accordance with the regulations and instructions issued later under the Environmental Law, while many of these regulations/instructions were not issued.

Also, the Jordanian environmental law did not specify a jurisdiction court to look into environmental crimes, keeping the jurisdiction to the court in which the offense occurred, here, it should be noted that developed countries such as the United States of America, Germany, and Japan have a qualitative specialization in environmental laws, even the courts are competent to adjudicate all kinds of environmental issues, among the categories of environmental law:

- Environmental Administrative Law.
- Environmental Criminal Law.
- Environmental Economic Law.

The International Union for Conservation of Nature called for the specialization of judges in the environment by creating specialized prosecutions, and establishing environmental courts, in accordance with the country's national legal systems.

The establishment of a national judicial entity specialized in environmental issues constitutes an added value in an advanced understanding of environmental issues, reduce the investigation period, improving legal awareness of environmental disputes and a sense of legal security, and issuing decisions more in line with the nature of the dispute and less controversial*.

* In criminal matters, Spain has established a National Public Prosecutor's Office for Environment and Town Planning, Sweden has a National Environmental Prosecutor's Office, and a Federal Public Prosecutor's Office for Environment and

Contemporary environmental problems, such as biodiversity, climate change, air pollution, food, agriculture, and phytosanitary products, play a major role in the need for the qualified and specialized judiciary and lawyers specialized in environmental issues.

1.3 The Absence of an Explicit Provision for Compensation for Environmental Damage in the Jordanian Civil Law

The Jordanian Environmental Law did not include articles of civil liability leaving it to the provisions of public liability, unlike the environmental laws in comparative legislations, where a special law was allocated, and in order to accommodate environmental damage, especially with regard to damage to nature, the Jordanian legislature did not amend the provisions of the Civil Law, similar to what the French legislator has done, where the amendment made under the so-called "biodiversity" law in the French Civil Law of (2016) is the first in France that allows the possibility of explicitly including damage to the environment in the Civil Law, this is for the purpose of including environmental liability and environmental damage in civil law.

The new Article (1240) of the French Civil Law replaced the old Article (1382) which stated that: "Every act whatsoever committed by a person by mistake which harming others, the person who caused it is obligated to pay compensation".

(Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.)

This formulation excludes consideration of environmental damage because "others" are necessarily persons, this determination does not take into account the aspect of damage the nature if environmental damage were to occur, while the new Article (1240) of the French Civil Law stipulates that the error is as follows:

"Every act, whatsoever committed by a person that causes harm to the environment, obliges the perpetrator of the mistake to repair it".

(Tout fait quelconque de l'homme, qui cause à l'environnement un dommage, oblige celui par la faute duquel il est arrivé à le réparer)

The Article includes environmental damages resulting from reckless or negligent actions, as these changes aim to improve the legal tools for the environment, expand the range of violations, and impose an obligation to compensate everyone, and submit proposals for a better direction, commensurate with the damages, mechanisms of prevention and repair, and expanding the range of violations that are likely to fall on the environment.

The Jordanian Civil Law requires proof of "interest" to set a complaint or build up an environmental damage claim, as the Jordanian legislature did not illustrate the environmental damage in the legal texts and did not define environmental damage, and it was rarely addressed by the jurisprudence, nature damages are a complicated matter in terms of perceptions and observation, especially in the micro sciences, in addition to the fact that the sources of harm to nature are many and varied, as well as the means of pollution, and its development stages, the extent or severity of damage may also vary, resulting in the need to analyze both environmental damage and statutory law mechanisms to fit the nature of the damage, a clear and consistent definition of environmental damage cannot be explored, but it can be defined through two concepts, the first is based on the environmental damage caused by natural phenomena, and the second is the harm that affects humans, whether material or moral, directly or indirectly[†].

The French Court of Cassation ruled in the lawsuit between the municipality of Mascart (coastal city) and Total, due to the leakage of petroleum products from the oil tanker (Erica), that the environmental damage consists of "direct or indirect damage to the environment, resulting from the infringement[‡]", and the term "environmental damage" was understood from legal texts and law cases, and damage to the environment can be classified as collective harm, which is a reasonable hypothesis, as long as "any environmental damage affects society as a whole.[§]"

The damage volume will increase when it is an environmental, and the legislative changes to be considered when drafting must be adapted to damage to the environment, there are changes related to the requirements of the special nature of the environmental damage, which in turn poses difficulties related to the

Cultural Heritage is located in Brazil. Argentina has created a National Environmental Prosecutor, and the US Environmental Protection Agency (EPA) has a specialized criminal investigation division and expertise in civil and administrative matters.

[†] For more information, refer to (Avan Abdel Aziz Reda), (Tort liability for environmental damage), a comparative study, Zain Rights Publications, Beirut (2015).

[‡] Cass. Crim. (25 sept. 2012), dit Érika préc. Et Cass. Crim. (22) (mars 2016), (n° 13-87650)

[§] A. COMITI, Prévention et réparation du dommage écologique, thèse, Lille (2, 2000, 743) pp, spéc. Vol. (1) page. (24).

characteristics of the environmental damage, in which are usually explained by insufficient standards of liability, in particular, civil and the location of its application to environmental law.

The mismatch of environmental law with the purely environmental damage increases, because the "primary" victim is not a person but nature, and this can be understood, for example through the "classical" civil liability, where a person can denounce the abuse that a person has been subjected to, the law does not require a whistle-blower to provide evidence of any connection to the alleged abuser, however, the issue of the environment, no matter how serious it is, falls under the protection of the individual, that is, the defence of individual and personal interest, this makes it possible to conclude that a fortiori is not required in environmental liability, where everyone has a reasonable reason to act, even in the event of damage, therefore, proof of 'interest' should not be required by law to file a complaint or file a claim (Camproux Duffrène 2015), in fact, statutory law usually requires the individual interest if anyone desires to raise a lawsuit, despite its lengthy procedures, and in general, the environmental interest is collective, as difficulties will be encountered when it is individual, related to the 'individual' interest.

The reparation and compensation concept for environmental damage depends essentially on focusing on the reparability of environmental damage and restoring the status quo ante, but now that the idea of repair has been put into focus, it is recommended that it be identified as a precautionary measure to be considered.

Concerning the principle of full compensation for environmental damage, the French Civil Law in the new Article (1240), which was initially adopted under Article (1382) of the same law, indicates that the meaning of reform in civil liability is the rehabilitation and removal of all traces of damage in civil liability and/or compensation when it is not possible to erase "all" traces of damage, *i.e.* restoring the status quo ante, as if such damage had not occurred, that is, it is about getting as close as possible to full reparation, and the term "compensation" is used to refer to amounts paid to victims as compensation.

The Jordanian legislator dealt with the harmful action in terms of its general provisions and liability for personal acts, including a crime against oneself or less, and harm to others assets, after, he dealt with responsibility for objects and machines, then he dealt with usurpation and destruction^{**}, concerning establishing liability, the Jordanian Civil Law stipulates that the defendant himself must commit an act that harms others, and this act alone requires a guarantee.

Environmental damage is the core of liability in general, as there is no civil liability without the presence of the element of damage, the occurrence of damage is objective, as it is a material event that can be demonstrated by all means of proof, including evidence and presumptions, the Court of Cassation in its jurisprudence, tends to the principle that "material damage cannot be determined by presumptions, instead, the claimant of material damage must provide evidence of the occurrence of the damage, and the extent of that damage, so that the expert elected can estimate compensation for that damage"^{††}, while the Jordanian legislator did not distinguish between reform and compensation, compensation makes a difference from reparation in that it involves the idea of compensation in some different legal systems, and this difference is slight or even imperceptible, for example in the Anglos. - The Saxon system that specifically uses terms of compensation or damages rather than the term "repair" like Jordanian law (Jean-François 2018).

2. Failure to Include the Main Principles of International Treaties on Compensation for Damage in the Jordanian Environmental Law

The effectiveness of international environmental law depends on the adoption by states of the principles of treaties that protect the environment through their internal authorities, so that these principles can be implemented at the national level by incorporating them into state laws, or considered part of the internal state laws, where Jordan signed and ratified more than (155) treaties related to environmental affairs, but unfortunately did not implement them in the basic provisions such as the introduction of the principle of polluter pays, the principle of prevention, and collective participation in protecting the environment (A'amar).

2.1 The Precautionary Principle

The Jordanian Environmental Law of (2017) did not provide for the adoption of the principle of precaution and assigning responsibility on the basis of violating this principle, the traditional rules regarding the prevention of environmental damage in international law have now taken a different form, by placing the principle of non-

^{**} For more information refer to: Dr. Hamza, Mahmoud Jalal, (Simplification in Explanation of the Jordanian Civil Law), (2006), page. (324) and beyond.

^{††} Example: Penal Cassation Case No. (256/97), published on page (2568) of the issue of the Bar Association Journal (1998).

precaution in the foreground rather than being in the rear, by activating the principle of prevention and avoiding harm, and imposing an obligation on countries to compensate for harm, in fact, this rule establishes a key principle of international environmental law (Nguyen, Dallier, Pellet 2002), which is the responsibility to take measures to prevent transboundary environmental damage, in addition to liability for compensation for damages in the event of transboundary damage, as the general principle in international law is that a state in breach of its international obligations has a duty to remedy the damage it has caused, this issue is not a new one, as in the case of (Trail smelters), the concept of Canada's absolute international liability was excluded, and Canada's liability was considered due to its failure to fulfill its obligations and commitments to take precautions, as in the (Gabcikovo-Nogymaros) Case (September 25, 1997), the International Court of Justice noted the limitations inherent in the compensation mechanism itself for environmental damage, and on this basis, because such damage is often irreparable, the Court emphasized the need for caution and prevention[‡].

The rules regarding taking precautions against harming the environment have evolved since (1970), the multiplicity of treaties concluded on the environment has led to the establishment of customary rules that impose on the state more precise, specific and extensive obligations, and if there is a problem and difficulty in the application, this will gain it accuracy in the future and the possibility of its application by the judiciary.

Precautionary measures are not the only factor that places an obligation on the state, which is expressed in the principles (22) of the Stockholm Conference and (13) of the Rio Declaration, but states must also adopt national laws regarding liability and compensation for environmental damage, as this principle has been adopted in several international conventions such as the Law of the Sea Convention (1982) and Article (13) of the Convention of (1992) on the transboundary effects of industrial accidents, these rules require states to create a special system for this responsibility, in other words, a state that does not establish a system of responsibility can be said to have committed an international wrongful act.

Adopting the precautionary and preventive approach serves many important functions, such as promoting compliance with international environmental standards, and an incentive to protect the environment as a result of the threat of liability and compensation burdens for harmful economic activities, simultaneously, it is an incentive for states and individuals to avoid actions that lead to environmental damage.

2.2 Not Including the "Polluter Pays" Principle in the Jordanian Environmental Law

The principle of "polluter pays" relates to the simple idea that "the operator of a dangerous activity that causes harm to the environment must repair the damage, meaning that the environmental damage to the environment will be included in the price of the product or service" (Pigou 1924), this principle is not about identifying or defining pollutants; That is, it is not necessary that the person responsible for the damage be the one who pays, which means that this principle does not establish fair legal principle (Barde 1991), with regard to issues related to the dangers of accidental pollution, this principle implicitly obliges the operator of a dangerous facility to pay the costs of damages and necessary measures, and this principle has been accepted and applied in internal laws" (<https://undocs.org/pdf?symbol=ar/A/CN.4/543>).

The "polluter pays" principle is expressed in various ways, and has a mandatory status in law as a general, customary and contractual rule, principle (16) of the Rio de Janeiro Declaration explained that "National authorities should endeavor to promote the internal fulfillment of environmental costs and the use of economic instruments, taking into account the precautionary approach, or according to which the polluter in principle bears the cost of pollution, taking into account the public interest and in a manner that does not conflict with the interests of international trade and investment".

As a matter of fact, the adoption of such a system in Jordanian legislation serves several important functions, including:

- The function of organizing competition to serve the environment, with the beginning of the seventies, the Organization for Economic Cooperation and Development (OECD) adopts the principle of "polluter pays" by not subsidizing investments harmful to the environment, in order to spend on pollution resistant investments, encourage compliance with international environmental standards and implement both: the precautionary approach and the prevention principle.

- Remedial function: Whatever preventive or precautionary measures to reduce the occurrence of pollution, pollution is bound to do some harm, so the principle of "polluter pays" appears as a guarantor of compensation for the damage caused by pollution.

[‡] La sentence arbitrale du 11 mars 1941, dans l'affaire de la Fonderie de Trail entre les Etats-Unis et le Canada, R.S.A., vol. III, p. 1965

- A threatening function: to pay against environmental damages from society in general in order to rectify the damages arising from this act or activity. The threat of liability and the potential burden of reparation measures may be a catalyst for more precautionary approaches in economic activities, resulting in the avoidance of environmental risks and damage.

- Punitive function: The “polluter pays” principle may act as a deterrent to some activities harmful to the environment or may lead to the continuation of preventive measures, it is an incentive for states and individuals to avoid actions that harm the environment.

There are a variety of economic tools that can be used to motivate the productive industrial sector to comply with environmental law, the differentiation of economic instruments is determined based on many factors that govern this choice, one of these factors is the role that the state plays in the development process and whether it applies a free economic system or a restricted and controlled economic system.

Another factor is the ability of environmental protection entities to follow up the implementation of environmental legislation, also, the extent to which the institutions of the private sector or the business sector bear the burdens of these economic instruments, as well as the conditions surrounding investment in that country, is among of these factors.

Carbon taxes, energy taxes on petroleum to restrict and rationalize its use, reduce carbon dioxide emissions, and sell emissions are among the economic instruments, wherein incentives are considered among the most important economic tools used to achieve compliance.

The types of incentives vary, either monetary incentives provided by the administrative authorities concerned with protecting the environment for the establishments that carry out activities or projects that protect the environment and comply with the law, or tax incentives in the form of tax exemptions or reduced taxes on activities and projects aimed at improving the quality of the environment, whereas these incentives can be in the form of tax exemptions for pollution control equipment or environmentally friendly resources.

One of the economic tools used to achieve the compliance is the imposition of fees that represent immediate burdens borne by the establishment as a result of the pollution it causes to the environment, for example, the tax rate tends to be higher in areas where water is a source of freshwater systems or is characterized by low pollution and there is a desire to maintain this level of pollution (Ahmed 2000).

The "Deposit Refund Scheme" is also an economic tools, which is a mechanism that combines the process of refunding the deposit and the tax on the consumption of the product, and a discount if the product or its packaging is returned for proper recycling or disposal, that is, the price of inputs containing hazardous materials includes an additional amount, and part of the sum will be recovered after verification of the return of hazardous waste to its collection areas, an example of this process is the US deposit redemption system, the fee and payment system for beverage containers currently in place in ten states, this procedure has currently been applied to cans and bottles of soft drinks, lead-acid batteries, motor oils, tires, various hazardous materials, electronics...etc., the "Deposit Refund Scheme" approach can be used to address many environmental problems by charging initial fees on production or consumption and using this fee income to deduct “green” inputs (Walls 2013).

It is noted here that the Jordanian legislator did not put in place incentive systems to protect the environment, develop and preserve its resources, and did not take into account the principle of reward and punishment in the form of customs, tax exemptions and others, such as adding a special tax to the good or service that pollutes the environment, which has a role in improving environmental behaviours and activating environmental legislation by including environmental dimensions in economic policies, through which support mechanisms of sustainable environmental financing, and the polluter bears the cost of the damage he causes to the environment as a result of these activities, recently, based on the rules of environmental economics and environmental accounting, economic feasibility studies for facilities or projects are not limited to calculations of costs and financial returns, but rather include the environmental impacts of their activities and the health or social damage they cause, environmental accounting is a field for determining the use of resources, where impact costs measure for the economic impact of any facilities on the environment and estimates the risks arising from it, these include cleaning and decontamination costs, environmental fines, penalties and taxes, the purchase of pollution reduction technologies, and waste management costs (https://ar.wikipedia.org/wiki_note-1).

2.3 Collective Participation in Environmental Protection

Citizen participation has been defined in various ways but generally falls under the term citizen participation in analysis, advice and decision-making in matters in which the government has power through the usual representative channels (Dorsey and McDaniel 2001).

The “Barrier Law” was issued in France in (1995) (<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000551804>) as a new form of embodying the principle of participation in environmental law, which presented as one of the original visions of environmental democracy, the public debate about it was distinguished with regard to its procedural and institutional peculiarities (https://www.persee.fr/doc/rjenv_03970299_1988_num_13_4_2390#rjenv_0397-0299_1988_num_13_4_T1_0398_00), four main principles are the elements of this law, which are inspired by the European Union Convention on Civil Liability for Damage Caused by Activities Hazardous to the Environment (Lugano Convention), and from the Declaration of the United Nations Conference on Environment and Development held in Rio de Janeiro in (1992), these four principles are represented in the Principle of Prevention, and according to this principle, there should be no delay in adopting effective and appropriate measures in order to prevent environmental damage at an acceptable economic cost, the Rio Conference was an attempt to find a middle ground between economic development and environmental protection, a set of texts contained in the Rio Convention that can be understood as binding on environmental development, among these principles is the right to development, which must be achieved in accordance with the needs of development and the future of future generations^{§§}, in addition to the principle of citizen participation in environmental issues^{***}.

The so-called “Bouchardeau” law in French law, issued in (1983), which is concerned with democratizing public investigations and protecting the environment, over the years it has been completed by a whole series of provisions that provide guarantees for participatory actions, innovative measures have been developed for this purpose, such as the holding of popular congresses, the creation of associations whose role in environmental protection has been recognized, this action reinforced subsequent claims for its inclusion in the human rights movement (Maljean-Dubois 2013), and some may consider environmental law as a restriction of freedoms, especially when it comes to reconciling rights and freedoms in the field of personal relationships, and the desire to find the right balance between the need to protect citizens from pollutants and the need to allow manufacturers to go about their activities (Rahman 2015 -2016).

The Jordanian legislator did not integrate the principle of civil society participation with its different categories in environmental management and the formulation of environmental policies and the application of these legislations, the environmental law did not provide any real or effective role for environmental associations and non-governmental organizations concerned with protecting the environment, and the new law gives the Minister of Environment an absolute and wide discretion that enables him to disable the application of some environmental rules to polluting facilities, such as disabling the right of participation of civil society representatives and stakeholders in an evaluation study environmental impact, and their right to participate in decision-making for the establishment of the project, although industrialists or investors are not entitled to exploit and use the common environmental properties (air, water, and soil) because they are not the only beneficiaries, the civil societies in general and environmental associations in particular face several obstacles that hinder their ability to achieve its objectives in the field of environmental protection and to participate in the necessary preventive role to protect the environment from violation and to contribute to environmental decisions through its membership in national bodies in the field of environment, development, investment and planning, this weakens the position of (civil societies represented by environmental associations) concerning these common resources because it does not have the legal capacity to negotiate or participate in decisions relating to shared environmental resources, and granting environmental associations the right to legally challenge decisions and licenses issued by the Ministry of Environment and/or any governmental entity that violates national and/or global environmental measures, as the government is obligated to observe conformity and appropriateness in the application of environmental procedures and rules according to its seriousness and gradation.

Collective participation democratizes the administrative decision-making process and public debate is a useful tool for analysis and participation in public decision-making as long as participation is not a form of decision (Bertrand and Marguin 2017).

It is perspicuous that policies related to environmental management and public health directly affect citizens, therefore, citizens must have input, as citizen participation in environmental management and sustainable development is a very important topic, which also emphasizes the role of NGOs, and more generally “civil society”, including environmental groups, by adopting pluralistic viewpoints and arriving at an outcome that serves the necessary interests of society, the political system needs these groups to formulate the general will

^{§§} Principle (3) of the Rio Declaration: It requires the realization of the right to development in order to equitably meet the development and environmental needs of present and future generations.

^{***} Principle (10) of the Rio Declaration.

and to enforce and monitor the implementation of that will along with its impact on the lives of societies, resulting in creating functions that other institutions cannot perform (Dorcey and McDaniels 2001).

It is concluded here that most observers of the current status of the environmental movement, both reformists and radicals, have agreed that the non-political nature of these movements is over and that environmental NGOs should have a role in political decision-making (Dorcey and McDaniels 2001).

The environmental NGOs are part of civil society, which expresses its commitment to participate in public administration, to act as a counterweight to governmental and private institutions (or to perform in coordination with them), for monitoring and sustainable development purposes.

Conclusion

It seems clear that the Jordanian legislator, despite his efforts to keep pace with contemporary developments, did not take into account the paramount importance of introducing the right to a clean and sound environment in the constitution, that subject this right to change or detract from its value as a human right, the explicit constitutional provision on this right constitutes an obligation on the ordinary legislator, to carry out the process of enacting laws regulating this right that clarify the detailed provisions for it, while not including civil liability for environmental harm in the environmental law itself or in the civil law will weaken the legal protection for compensation for harms and remain incomplete because it is unable to absorb all the harms it causes to the environment.

The Jordanian legislator has not adopted the "polluter pays" principle, which expands the concept of liability for environmental damage and constitutes an incentive to reduce the use of environmentally harmful substances, and economic instruments can also play a major role in providing the financial resources necessary to encourage and implement national environmental programs and projects at the public and private levels, moreover, failure to adopt preventive concepts to prevent harm will have negative repercussions on the environment, as preventing harm is better than treating it, also the failure to establish citizen participation and neglect the civil society plays a major role in the decline of the driving force for change in order to establish or protect basic human rights in this field.

Recommendations

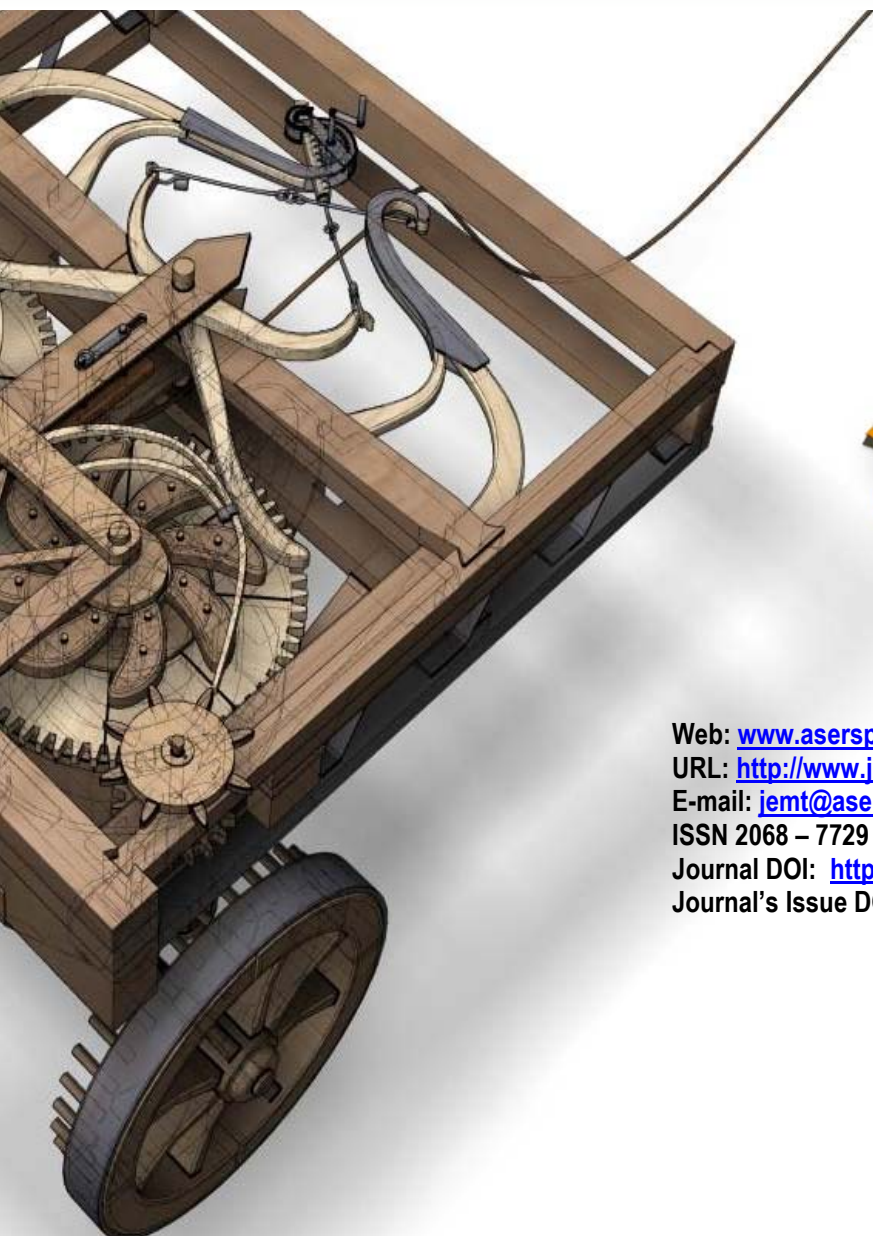
- The necessity of stipulating in the Jordanian constitution the right to a clean and sound environment, as it is one of the essential human rights.
- Inclusion of provisions that meet the requirements for the implementation of international environmental agreements in national environmental legislation, such as the principle of prevention and the polluter pays and the adoption of the incentives system in the Jordanian environmental law.
 - Enact a system of regulations for liability for environmental damages and/or amend the Jordanian Civil Code regarding civil liability for compensation for environmental damages.
 - Supporting the principle of citizen participation and giving an effective role to associations and non-governmental organizations to contribute to the formulation of policies and decision-making related to the environment.

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