

## **The tort liability of the transmitter of viral infection in light of Algerian Legislation**

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**Abstract---**The negligence of a person infected with a contagious virus, and his failure to comply with the preventive and therapeutic measures imposed to prevent the transmission of the infection to others, may result in infecting third parties. Consequently, his tort liability arises, entailing an obligation to compensate the injured person for the damage suffered, including both actual loss and loss of profit, whether such direct damage was foreseeable or unforeseeable. However, this liability is based on fault, which must be proven by the injured party. In many cases, proving the fault of the person who transmitted the infection may be difficult, if not impossible, which may deprive the injured party of his right to compensation. This situation calls for adapting the general rules of fault-based liability and moving toward strict liability based on damage rather than fault, in order to ensure the injured party's right to compensation.

**Keywords---**Tort liability, viral infection, infection transmitter, fault, damage.

### **Introduction**

Physical health and safety are considered fundamental human rights, as they hold great importance in the life of the individual and society. They must not be violated or infringed upon under any circumstances<sup>1</sup>. However, the dangerous viruses that the world experiences from time to time are among the most severe disasters threatening the safety of individuals, potentially causing the death of many people worldwide and affecting even more.

Since the law is a set of general rules regulating the behavior of individuals in society and is required to intervene to organize life in all situations, its intervention in normal circumstances is considered

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<sup>1</sup> Amiri Farida, Hospital Liability in the Medical Field, Master's Thesis in Law, specialization in Professional Liability Law, Faculty of Law and Political Sciences, Mouloud Mammeri University of Tizi Ouzou, Algeria, 2011, p. 5.

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necessary. In exceptional circumstances, however, such intervention becomes even more urgent and essential to control matters and restore them to their proper state. Therefore, legal intervention during the spread of epidemics and diseases is required with seriousness and urgency, as was clearly observed during the outbreak of the COVID-19 pandemic and the rapid spread of the virus causing the infection<sup>2</sup>. The State took precautionary measures to prevent the spread of this virus and devoted its efforts and resources to providing protection for its citizens. Nevertheless, despite the binding nature of these decisions and orders, some individuals violated them, causing harm to others. This led to the necessity of assuming legal liability, whether criminal, administrative, or civil, which constitutes the core focus of our study.

In this context, it can be said that the rules of civil liability occupy a prominent position among the topics of civil law, as they address the risks threatening an individual's security, health, and all rights—especially when an individual suffers harm caused by another person, whether natural or legal<sup>3</sup>.

The subject of our study concerns the tortious liability of the carrier of viral infection. Accordingly, we pose the following research problem: What is the civil penalty imposed on the carrier of viral infection? Undoubtedly, the reason behind choosing this topic is that viral infections—despite being a relatively recent phenomenon worldwide following the spread of the COVID-19 virus and despite their severe effects that may cause substantial harm to individuals, even leading to death—lack specialized studies addressing them, as well as specific legislative regulation.

In order to answer the research problem, we relied on a combination of the descriptive and analytical methods in order to cover the various aspects of the research, starting with a comprehensive definition of infectious viruses and concluding with the tortious liability arising from them.

## 1. Concept of Infectious Viruses

Infectious viruses are considered major hazards affecting human health and threatening life. Although viruses may exist within the human body without being harmful and may sometimes even be beneficial—since their presence may enhance immunity against pathogens<sup>4</sup>—they are generally dangerous. This necessitates a clear understanding of these infectious viruses, followed by an examination of the mechanisms through which such infections are transmitted.

### 1.1 Definition of Infectious Viruses

A virus is a small infectious living organism—a microorganism—primarily composed of nucleic acid surrounded by a protein coat. It lives as a parasite within a host cell, which enables its replication. The virus attaches to a living cell, enters it, and releases its nucleic acid, the genetic material containing the necessary information for the copying or replication of the virus. This genetic material is either deoxyribonucleic acid (DNA) or ribonucleic acid (RNA). The viral genetic material controls the host cell and compels it to replicate the virus. The infected cell typically dies because the virus impedes its normal functions. Upon cell death, new viruses are released, which continue to infect other cells. However, some viruses do not kill the cells they infect; rather, they alter cellular functions, causing the loss of control over normal cell division, and in some cases, leading to carcinogenesis<sup>5</sup>.

Viruses consist of two or three components: a helical particle, a protein layer, and sometimes a viral envelope. The genes of all viruses consist of either DNA or RNA, which are long helical molecules containing genetic information. All viruses possess a protein layer that protects these genes, and some are enclosed within a viral envelope composed of lipids that surrounds them when they are outside host cells.

<sup>2</sup> Ahmed Hussein, Criminal Liability for the Transmission of Coronavirus Infection (COVID-19), *Journal of Judicial Ijtihad*, Mohamed Khider University of Biskra, Algeria, Vol. 12, No. 2, 2020, p. 490.

<sup>3</sup> Maki Abd al-Nasser Inas, Tort Liability Arising from the Transmission of Coronavirus Infection – A Comparative Study, *Journal of the College of Law for Legal and Political Sciences, College of Law, University of Babylon, Iraq*, Vol. 9, Special Issue, 2020, p. 123.

<sup>4</sup> Al Ali Ahmed Ali Hassan; Al-Luhaybi Saleh Ahmed, A Legal Reading of the Novel Coronavirus (COVID-19), *Journal of the Kuwaiti International College of Law, College of Law, University of Sharjah, United Arab Emirates*, Issue No. 6, 2020, p. 601.

<sup>5</sup> Kramer Laura, Overview of Viral Infections, Wadsworth Center, New York State Department of Health.

André Lwoff was the first to define viruses in 1957, providing a clear definition that reflected the understanding available at that time—an understanding that was advanced for its era. According to his definition, viruses are entities capable of causing disease and carrying a single type of nucleic acid (oxidized or non-oxidized). They replicate based on their genetic material and are incapable of growth or division. They also lack their own metabolism, which indicates their inability to produce energy<sup>6</sup>.

### **2.1 Transmission of Viral Infection**

An infectious disease is a disease that affects the human body or the body of another living organism and is characterized by its ability to spread rapidly from one person to another. Infection refers to the transmission of a disease from the infected to the healthy person by any means of transmission<sup>7</sup>, the entry of pathogenic agents into the human body, where they grow and multiply. Infectious diseases are disorders caused by microorganisms such as bacteria, viruses, fungi, and parasites. Many microorganisms live in or on our bodies; these organisms are usually harmless or beneficial. However, under certain conditions, some microorganisms may cause disease by invading the human body<sup>8</sup>. Accordingly, infection can be defined as the entry of an infectious agent into the human body and its development and multiplication therein in a manner that may pose a risk to public health.

Viruses spread and transmit through various means, such as ingestion, inhalation, sexual relations, contaminated blood transfusion, or insect bites. The most common infections are respiratory infections, which affect the nose, throat, upper respiratory tract, and lungs, including pharyngitis, common cold, influenza, and others. Viruses may also affect other parts of the body, such as gastroenteritis affecting the digestive system, and encephalitis affecting the nervous system, among others.

Viral infections are transmitted vertically, from mother to child, or horizontally from one individual to another. Horizontal transmission is the most common mechanism of viral spread. It may occur through blood transfusion, exchange of bodily fluids through activities or contaminated food or water, inhalation of viruses present in aerosols, or via disease vectors such as animals or insects like mosquitoes. Each virus has a preferred mode of transmission. The speed of spread of viral diseases is related to several factors, most notably population density and preventive health measures. There is evidence that many highly lethal viruses remain dormant in biological reservoirs in remote areas, and human encroachment into such isolated natural regions may lead to the emergence of epidemics.

### **2. Tortious Liability Arising from the Transmission of Viral Infection**

The negligence of some infected individuals, those suspected of infection, or even their contacts, and their disregard for public health and safety standards, as well as their failure to comply with the mandatory preventive and therapeutic measures aimed at preventing the transmission of infection to others, may result in infecting others. This, in turn, leads to the spread of such epidemics, raising the issue of tortious liability of the carrier of the dangerous viral infection toward others. Accordingly, we will clarify the rules of tortious liability arising from the transmission of viral infection and examine its legal effects.

#### **2.1 Rules of Tortious Liability Arising from the Transmission of Viral Infection**

To understand the rules of tortious liability of the carrier of viral infection, it is necessary to address the scope of such liability as well as the elements on which it is based.

##### **2.1.1 Scope of Tortious Liability Arising from the Transmission of Viral Infection**

Civil liability is a legal system under which anyone who commits a wrongful or unlawful act is obliged to compensate the person harmed in his person or property. This requires that the harmful act establish the legal link between the liable party and the injured party, and it imposes the obligation to compensate for the harm caused to others based on the general rules of liability.

<sup>6</sup> Fabry Astrid, *Fruits from the Garden of Knowledge – Humans and Viruses: Is It a Lasting Relationship?*, Abu Dhabi Tourism and Culture Authority, Abu Dhabi, 2012, p. 16.

<sup>7</sup> Ankan Ahmed, *The Medical Jurisprudence Encyclopedia*, 1st ed., Dar Al-Nafa'is, Amman, 2000, p. 701.

<sup>8</sup> Youssef Salah Eddin Youssef, *Consequences of Contracting Infectious Diseases*, Dar Al-Fikr Al-Jami'i, Alexandria, 2007, p. 62.

This liability may be contractual or tortious, aiming to compensate for the damage resulting therefrom. However, the damage covered by contractual liability and intended to be compensated is the damage arising from a breach of a contractual obligation, meaning that the contract is the source of this liability. In contrast, tortious liability is the sanction for breaching a general legal duty, namely the duty not to harm others<sup>9</sup>.

Tortious liability is considered clearer in terms of the consequences resulting from the transmission of viral infection, which arise from the breach of the general duty imposed by law, requiring every individual to exercise caution and avoid causing harm to others. The source of the obligation on which tortious liability is based is the law.

Within the scope of tortious liability of the carrier of infection, any person infected with an infectious virus must report their infection to health authorities for the purpose of isolating them from society in order to prevent the spread of infection. Furthermore, the infected person is required to undergo medical tests and examinations and must not neglect them, as failure to do so may result in infecting others or even causing their death or permanent disability. The carrier of the virus must not neglect or intentionally transmit the infection to others by violating the legal duty not to harm others. They must respect the laws, regulations, and instructions that prevent the transmission of infection to others; otherwise, they will be subject to legal accountability.

For example, the liability of individuals for violating legal provisions during the outbreak of the COVID-19 pandemic is tortious liability arising from a harmful act, based on the concept of breaching a general legal duty—the duty not to harm others<sup>10</sup>. This liability arises from violating the general legal duty imposed by law on every individual to exercise caution and avoid causing harm to others; therefore, it is a sanction for a general duty imposed on all, and the source of the obligation on which tortious liability is based is the law.

However, the legislator did not specify special legal rules for the tortious liability of the carrier of viral infection, but left it to the traditional provisions of the general rules of civil law. The basis of this liability and its effect is found in Article 124 of the Algerian Civil Code<sup>11</sup>, which states: “Any act, whatever it may be, committed by a person through his fault and causing harm to another, obliges the person who caused it to compensate for it.” The legislator merely established the general principle that anyone who errs and causes harm to others through his wrongful act is obligated to compensate for this harm.

### **2.1.2 Elements of Tortious Liability Arising from the Transmission of Viral Infection**

Fault is considered the foundation of tortious liability; however, it is not sufficient for liability to arise. In addition to fault, both damage and a causal link between them must exist, as they are also essential elements of this liability.

#### **First: Fault**

The basis of tortious liability is fault, which means the breach of a general legal duty imposed by law on every individual, represented by the duty not to harm others<sup>12</sup>. It constitutes a deviation from the conduct of an ordinary person, based on discernment and awareness. Fault, as the basis of tortious liability, comprises two components:

The objective element: the harmful act, which is the act committed by the person that causes harm to another as a result of negligence, carelessness, or failure to exercise necessary caution<sup>13</sup>.

<sup>9</sup> Ben Omran Ahmed Youssef; Meshaa, Adel Saad, *The Legal System of Civil Liability for Damages Caused by the COVID-19 Pandemic*, *Al-Asmeriya University Journal: Sharia and Humanities*, Al-Asmeriya Islamic University, Libya, Vol. 34, No. 1, 2021, p. 48.

<sup>10</sup> Ben Omran Ahmed Youssef; Meshaa, Adel Saad, *op. cit.*, pp. 49–50.

<sup>11</sup> Law No. 75-58 of 26 September 1975, containing the Civil Code, Official Gazette No. 78, issued on 30 September 1975, as amended and supplemented by Law No. 05-10 of 20 June 2005, Official Gazette issued on 26 June 2005.

<sup>12</sup> Abdul Madjid Al-Hakim, *A Concise Explanation of Civil Law – Sources of Obligations*, Legal Library, Baghdad, 2007, p. 489.

<sup>13</sup> Khalil Ahmed Hassan Qaddadah, *The Brief Explanation of Algerian Civil Law*, 4th ed., National Office of University Publications, Algiers, 2010, p. 242.

The subjective element: awareness, meaning that this harmful act must be committed by a person possessing a degree of awareness or, at least, being legally competent, so that they can be held responsible for their actions. Liability does not arise for a person lacking legal capacity<sup>14</sup>, according to Article 125 of the Civil Code.

In the case of any person infected with an infectious virus, the person is considered ill. Nevertheless, this illness poses a danger to society, which obliges them to take necessary measures to prevent the spread of the virus they are infected with. Failure to comply with this obligation and failure to follow the required conduct result in harm to others and contribute to the spread of infection. It should be noted that the deviation from the required conduct by this patient is not limited to intentional conduct aimed at harming others; it may also be unintentional, resulting from negligence or carelessness.

Unintentional transmission of infection is conceivable only when the person is unaware of their infection and interacts with others without taking preventive health precautions, thereby transmitting the infection to them. For example, a person may notice symptoms appearing on their body but refuses to undergo necessary medical examinations and continues to interact with those around them. It may also occur due to negligence or recklessness. Negligence is the awareness of the deviation in one's conduct without the intention to achieve the resulting harm to others, such as the infected person neglecting to investigate the nature of the virus and its mode of transmission, or adopting a passive stance by failing to isolate themselves despite knowing of their illness. Recklessness refers to the person's poor assessment of the possible consequences of their conduct, such as a father taking his family to crowded markets amid the spread of a dangerous infectious virus.

However, the most evident and common form of unintentional transmission of infection is the violation of laws, regulations, and directives, violating the precautionary measures<sup>15</sup> adopted by the State to prevent the exacerbation and spread of epidemics. The State employs all its authorized powers to eradicate the epidemic and reduce the risks to its citizens, which vary from one country to another depending on the state's capabilities and resources<sup>16</sup>.

The best example of this is the preventive measures taken by Algeria in response to the spread of the COVID-19 virus, which began with the announcement of a prior exceptional holiday for all educational institutions on 12 March 2020<sup>17</sup>, followed by the issuance of a set of legal and regulatory texts containing several preventive measures, most notably:

Executive Decree No. 20-69 on preventive measures to curb the spread of the COVID-19 pandemic and combat it<sup>18</sup>.

Executive Decree No. 20-70 defining supplementary measures for the prevention of the spread of the COVID-19 pandemic and combating it<sup>19</sup>

Fault—whether intentional or unintentional—is measured by an objective standard rather than a subjective personal one. The required conduct is that of an ordinary person placed in the same circumstances as the person who committed the act. If the conduct aligns with that of an ordinary person, there is no deviation from the legally required conduct. If deviation occurs and causes harm to another, the person is considered liable<sup>20</sup>.

<sup>14</sup> Mohammed Abdullah Al-Dulaimi, *The General Theory of Obligations*, Open University, Libya, 1998, pp. 214–215.

<sup>15</sup> Precautionary measures are a set of legal procedures designed to confront a certain risk and aim to protect society; Abdulaziz Abdul-Muati Alwan, *The Extent of the State's Obligation to Compensate for Damages Arising from the Coronavirus (COVID-19): A Comparative Study*, *Legal Journal*, Faculty of Law, Cairo University, Egypt, Vol. 7, No. 3, 2020, p. 107.

<sup>16</sup> Abdulaziz Abdul-Muati Alwan, *op. cit.*, p. 108.

<sup>17</sup> Official website of the Algerian Ministry of Health, <https://www.covid19.santé.gov.dz>, accessed on 02 September 2023.

<sup>18</sup> Executive Decree No. 20-69 of 21 March 2020, relating to measures for the prevention of the spread of the Coronavirus (COVID-19) pandemic and its control, *Official Gazette* No. 15, issued on 21 March 2020.

<sup>19</sup> Executive Decree No. 20-70 of 24 March 2020, determining supplementary measures for the prevention of the spread of the Coronavirus (COVID-19) pandemic and its control, *Official Gazette* No. 16, issued on 24 March 2020.

<sup>20</sup> Mohammed Abdullah Al-Dulaimi, *op. cit.*, pp. 211–212.

## Second: Damage

Damage is the second element of tortious liability. It is not sufficient for liability to arise that a harmful act occurred; the act must also cause damage. Damage is the object of the obligation to compensate<sup>21</sup>. Where there is no damage, there is no obligation to compensate and no liability.

Damage is defined as the harm affecting a person's right or legitimate interest, whether the interest is material or moral; it is the loss affecting a right protected by law<sup>22</sup>.

Damage is represented by the change in external conditions that were good and then became bad as a result of the wrongful conduct. This change is the material and moral representation of damage. Damage may be material, affecting the person's property, or moral, affecting their feelings, emotions, or honor, as follows:

**Material damage:** It includes both bodily and financial damage. In the case of infection with a viral disease, bodily damage occurs as soon as the infection is contracted, transforming the person from a state of health to illness. For example, symptoms of infection with COVID-19 may range from a common cold to death. The virus may cause pneumonia, which may be severe and fatal. It also attacks nearly every system in the human body, which may directly damage organs and lead to cardiac rhythm disturbances, blood clotting, strokes, or heart attacks<sup>23</sup>.

In addition to bodily harm, viral infection may cause financial damage, such as the patient's inability to work, which exacerbates the harm by causing job loss and deprivation of income. The patient may also be unable to perform daily activities<sup>24</sup>. Moreover, financial losses include expenses for medical consultations, treatment, vaccines, and other related costs.

**Moral damage:** This includes psychological and emotional suffering experienced by the infected person and the accompanying changes in their lifestyle, such as harm resulting from social isolation and public stigma, which may cause psychological collapse similar to that experienced by COVID-19 patients who were subjected to quarantine and complete isolation from society, along with severe physical pain and the constant fear of death. This harm affects not only the patient but also their family, leading to family breakdown and disintegration. Relatives may reject each other; spouses may abandon their partners; children may be expelled from school; workers may lose their jobs. All these situations cause severe psychological harm.

To establish damage, whether material or moral, several conditions must be met:

- The first condition is that the damage must be realized, meaning that the infection and resulting harm have occurred. Future damage is considered realized if its occurrence is certain in the future.
- The second condition is that the damage must be direct, whether expected or unexpected.
- The third condition is that the damage must affect a right or legitimate interest<sup>25</sup>.

## Third: Causal Link

The causal link between fault and damage represents the third element of liability. It is the direct connection that links the fault committed by the liable person to the damage resulting from it that affected the injured party. It is not sufficient for liability that fault and damage exist; a direct link between them must be established, meaning that the fault caused the damage<sup>26</sup>. Therefore, the causal link attributes a specific act to its perpetrator<sup>27</sup>. Accordingly, the person infected with a viral disease must prove that the infection was transmitted to them as a result of the fault of a specific person or persons, whether the fault was intentional or unintentional.

<sup>21</sup> Abdelkader Al-Far, *Sources of Obligation – Sources of Personal Rights in Civil Law*, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Algiers, 2004, p. 118.

<sup>22</sup> Abdel-Razzak Al-Sanhouri, *Al-Waseet in the Explanation of Civil Law*, Vol. 1, Dar Al-Shorouk, Egypt, 2010, p. 713.

<sup>23</sup> Asmaa Hassan Amer, "Civil Liability Arising from the Transmission of the Coronavirus Infection," *Journal of Legal and Economic Studies*, Faculty of Law, Zagazig University, Egypt, Vol. 8, No. 2, 2022, pp. (not specified).

<sup>24</sup> Ahmed Mohammed Lotfi Ahmed, *AIDS and Its Religious and Legal Effects*, New University Publishing House, Egypt, 2005, p. 50.

<sup>25</sup> Aayed Al-Khalailah, *Electronic Tort Liability*, Dar Al-Thaqafa, Amman, 2005, p. 122.

<sup>26</sup> Mohamed Hussein Mansour, *Sources of Obligation*, University Publishing House, Egypt, 2000, p. 99.

<sup>27</sup> Abdel-Rashid Mamoun, *Causation in Civil Liability*, Dar Al-Nahda Al-Arabiya, Egypt, 1985, p. 112.

However, the difficulty faced by the injured party is that most viruses, notably the COVID-19 virus, spread rapidly, making it difficult to determine the source of infection. The infection may also result from contact with multiple persons who did not take precautionary measures, leading to multiple perpetrators whose faults caused the damage. Therefore, proving the causal link becomes difficult when more than one person is involved and it is unclear whether one, some, or all of them contributed to causing the harm.

Accordingly, the defendant may rebut the allegation of liability by claiming the occurrence of an unforeseen event, although this defense does not negate the fault represented by negligence and failure to take precautionary measures in the presence of an infectious disease, as witnessed recently during the COVID-19 pandemic. The defendant may also argue that the fault was that of the injured party himself, for failing to take all precautionary measures that would protect him, in which case the judge will assess the matter. The defendant may also argue that the fault was caused by a third party, and in this case, the judge will determine the extent of the contribution and which fault—whether that of the third party or the defendant—absorbed the other, as only the latter is considered. If the defendant and the third party jointly contributed to causing the damage, the judge will distribute liability among them according to the severity of each party's fault in transmitting the infection<sup>28</sup>.

## **2.2 Effects of Tortious Liability Arising from the Transmission of Viral Infection**

Tortious liability of the carrier of viral infection entails certain legal effects. One of the most significant effects is the requirement to prove the liability when filing a claim for compensation, with the aim of obtaining compensation for any harm that the person has suffered as a result of being infected.

### **2.2.1 Proof of Tortious Liability Arising from the Transmission of Viral Infection**

Liability of individuals for harm resulting from their personal acts represents one of the most prominent forms of tortious liability. Tortious liability is based on fault, which is a matter of proof. Fault is not presumed; rather, it must be proven by the injured party who has contracted the viral infection. This is the general rule in tortious liability, as the law has not deviated from it toward liability based on presumed fault or strict liability except in specific cases expressly stipulated by legal texts<sup>29</sup>.

Accordingly, the injured party, the person who contracted the viral infection, cannot proceed with a liability claim unless they prove the fault of the responsible party, the damage they suffered, and the causal link between them. However, this rule is of limited application in labor law; once the injured party proves the occurrence of fault and the damage, it is presumed that the damage arose from the fault, meaning that the causal link is implicitly established. If the responsible party wishes to exonerate themselves, they must prove the existence of an external cause, such as an unforeseen event, force majeure, the fault of the injured party, or the fault of a third party<sup>30</sup>.

Tortious liability arising from viral infection is a liability stemming from a harmful act; thus, it is a factual matter that can be proven by all means of evidence. Methods of proof in Algerian law have varied, starting with written evidence<sup>31</sup>, which is considered one of the most important means of proof. However, preparing written evidence proving the transmission of viral infection to the plaintiff raises an issue, as the plaintiff cannot predict this. Nevertheless, the plaintiff may rely on the results of medical tests and examinations to prove that the defendant was infected before the transmission of the infection to the plaintiff. However, this does not constitute written evidence proving the actual transmission of the infection, as scientific proof that the infection was transmitted from the defendant to the plaintiff merely because the defendant was infected earlier does not exclude the possibility of transmission from another person. Therefore, other evidence must be relied upon to prove the transmission of infection<sup>32</sup>.

<sup>28</sup> Rehan Mahrous El-Sayed Ibrahim El-Fakharani, "Civil Liability for the Transmission of Viral Infection," *Journal of Jurisprudential and Legal Research, Faculty of Sharia and Law, Damanhour University, Egypt*, No. 41, 2023, p. 2148.

<sup>29</sup> Abdel-Razzak Al-Sanhouri, *op. cit.*, p. 776.

<sup>30</sup> Ali Filali, *Obligations – The Act Entitled to Compensation*, 2nd ed., Mouvem Publishing House, Algiers, 2010, p. 324.

<sup>31</sup> The Algerian legislator stipulated proof by writing in Articles 323 to 332 of the Civil Code.

<sup>32</sup> Ahmed Abdul-Hussein Kazem Al-Yasiri, "Civil Liability for the Transmission of the Novel Coronavirus (COVID-19): An Analytical Legal Study Compared to Islamic Jurisprudence," International Virtual Conference titled "The Impact of COVID-19

We note that witness testimony<sup>33</sup> plays an important role in proving this matter. Witness testimony is the statement of a non-party person in court regarding an event that occurred by another person and that may establish or negate a right of another. The plaintiff may, therefore, rely on witnesses to prove that the defendant had contact with them or performed any act that caused the transmission of the infection, especially if medical tests show that the defendant's infection preceded that of the plaintiff.

The occurrence of infection may also be proven through presumptions<sup>34</sup>. A presumption is the inference of an unknown fact from a known fact. The proof does not concern the fact to be proven itself, but another fact closely related to it; thus, proving the known fact by inference<sup>35</sup> is considered proof of the unknown fact. Accordingly, the judge may infer the transmission of viral infection from the defendant if it is proven that the defendant performed an act likely to transmit the infection, such as escaping from quarantine and contacting the plaintiff.

The plaintiff may also rely on an oath<sup>36</sup> to prove that the infection was transmitted from the defendant. An oath is invoking the conscience and faith of the opponent to prove one's right, by requiring the opponent to swear before the judge that they are not indebted to the claimed right, or that they did or did not perform a specific act. However, resorting to an oath is considered a waiver of other means of evidence. The oath may be ordered by the court to supplement the evidence presented (supplementary oath), or it may be requested by the party (decisive oath), which ends the case.

However, despite the importance of the element of fault and the necessity for the plaintiff to prove the defendant's fault in infecting them, it may sometimes be difficult, if not usually impossible, for the injured party to prove the fault of the person who transmitted the infection. Therefore, applying the general rules may prevent the injured party from obtaining full compensation for the damage suffered. Consequently, it is necessary to adopt strict liability based on damage rather than fault, whereby any act causing harm to another requires compensation. In other words, liability is established based on damage even if the person did not commit a fault in the usual sense, but exposed the lives of others to danger and caused them harm. Therefore, the person who creates a risk by their act must bear the consequences of this risk and be liable for the harm caused to others<sup>37</sup>.

Reviewing the provisions of the Civil Code after the 2005 amendment clearly shows the legislator's affirmation of the fault-based liability system, as the legislator retained Article 124 as the general rule for liability for personal acts. However, the legislator did not completely reject the objective trend of liability, as it was adopted in a narrow scope in some applications through the amendment of certain articles, such as those related to the liability of a principal for the acts of their agent. In the same context, the legislator introduced a new strict liability—product liability. The amendment also established a new strict liability of the State for bodily harm in the absence of a liable party<sup>38</sup>. This opens the way for expanding the scope of strict liability to include the liability of the carrier of viral infection, given the severity of the harm caused by such infection and the difficulty of proving fault, which may prevent the injured party from obtaining their right to compensation.

### **2.2.2 Compensation Arising from Tortious Liability for the Transmission of Viral Infection**

If the elements of tortious liability are established, compensation must be awarded to the injured party. Compensation may be either in kind or monetary.

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on the Health Level and Its Political and Legal Repercussions in the World," Faculty of Law, University of Babylon, Iraq, 2020, p. 228.

<sup>33</sup> The Algerian legislator stipulated proof by testimony in Articles 333 to 336 of the Civil Code.

<sup>34</sup> The Algerian legislator stipulated proof by presumptions in Articles 337 to 340 of the Civil Code.

<sup>35</sup> Omar Ben Saad, "The Nature and Subject of Proof in Algerian Civil Law and Judiciary," *Afaq Al-Uloom Journal*, Zian Ashour University, Djelfa, Algeria, Vol. 4, No. 13, 2018, p. 72.

<sup>36</sup> The Algerian legislator stipulated proof by oath in Articles 343 to 350 of the Civil Code.

<sup>37</sup> Mamdouh Mohamed Khairy Hashem, *Tort Liability in Light of Modern Technological Developments: Faultless Liability in Civil Law – A Comparative Study*, Dar Al-Nahda Al-Arabiya, Cairo, 2002, p. 13.

<sup>38</sup> Brabah Yamina, "The Objective Approach to Civil Liability." *Algerian and Comparative Public Law Journal*, University of Relizane, Algeria, Vol. 7, No. 2, 2021, pp. 210–213.

Compensation in kind means restoring the situation to what it was before the damage occurred. Undoubtedly, compensation in kind is the best means of redressing damage. However, it is usually impossible to resort to such compensation in the context of tortious liability for viral infection, as it does not correspond to the damages resulting from it and may not remedy them. Therefore, the judge has no option but to rule for monetary compensation, which is a sum of money awarded to the injured party to redress the damage suffered, in accordance with Article 182 of the Civil Code.

This compensation includes the losses incurred by the injured party due to medical expenses, medications, and even safety and preventive measures, as well as lost earnings resulting from infection, due to quarantine or hospitalization, which negatively affected their work and income, provided that this is a natural consequence of the fault, and in accordance with the second paragraph of Article 182 of the Civil Code. In terms of the concept of breach, in tortious liability, compensation is awarded for direct damage, whether expected or unexpected<sup>39</sup>.

In the case of multiple persons being liable for transmitting the viral infection to the injured party, their liability for compensation is joint and several. This liability among them is equal unless the judge determines a specific share for each in the obligation to compensate, in accordance with Article 126 of the Civil Code.

The judge determines the extent of compensation for the material and moral damage suffered by the infected person according to the aforementioned provisions, taking into account the surrounding circumstances affecting the injured party, such as chronic diseases that exacerbate the illness, e.g., a heart patient infected with COVID-19. The circumstances surrounding the perpetrator of the harmful act are not taken into account, as compensation is not a punishment but a means of redressing damage. However, they may be used in proving the facts of the case, such as intentional escape from quarantine or failure to wear a mask<sup>40</sup>. If it is not possible at the time of judgment to determine the amount of compensation definitively, the judge may reserve the injured party's right to request a re-evaluation within a certain period. The basis for revising compensation is that the damage may change after judgment; the change that allows revision is only an increase, whereas a decrease cannot be requested by the liable party due to the *res judicata* effect<sup>41</sup>, in accordance with Article 131 of the Civil Code.

The judge determines the method of monetary compensation deemed appropriate based on the circumstances, such as a lump-sum payment, installment payments, or periodic payments. In either case, the judge may require the debtor to provide security, in accordance with Article 132 of the Civil Code.

Compensation is limited to the claims of the injured party and does not exceed them; the judge has no authority to award an amount greater than what the injured party requested<sup>42</sup>.

## Conclusion

From the foregoing discussion of the subject of our research, we conclude that infectious viruses constitute major risks that affect humans and threaten their lives, due to the ease and multiplicity of the means of transmitting viral infection to a healthy human body, which causes significant material and moral damages. This is clearly demonstrated by the recent spread of the novel coronavirus.

The negligence of a person infected with a contagious virus and their failure to take the required preventive and therapeutic measures to prevent the transmission of infection to others may result in infecting others. Consequently, tortious liability arises against the carrier of such viral infection on the basis of fault, which means the breach of a general legal duty imposed by law, represented by the duty not to harm others. Fault is an element that must be proven by the injured party who contracted the infection.

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<sup>39</sup> Abdel-Razzak Al-Sanhouri, *op. cit.*, p. 1097.

<sup>40</sup> Ahmed Abdul-Hussein Kazem Al-Yasiri, *op. cit.*, p. 312.

<sup>41</sup> Abdel-Salam Ahmed Bani Ahmed, "Tort Liability of the Carrier of Infection (Coronavirus) in Jordanian Law: A Comparative Study," *Alger University 1 Annals, University of Algiers 1, Algeria*, Vol. 34, Special Issue: Law and the COVID-19 Pandemic, 2020, p. 681.

<sup>42</sup> Karim Ashoush, *The Medical Contract*, Dar Houma for Printing, Publishing and Distribution, Algiers, 2011, p. 209.

The establishment of tortious liability of the carrier of viral infection entails an obligation to compensate the injured party for the losses they have incurred and the profits they have missed, whether such damage is direct, expected, or unexpected. If the judge is unable to determine the amount of compensation definitively at the time of judgment, they may reserve the injured party's right to request a reconsideration of the assessment within a specified period. Compensation may also be paid in installments or as periodic payments, and in both cases, the judge may require the debtor to provide security.

Based on the foregoing, the following proposals may be adopted:

- The need to reinforce ethical responsibility among members of society, which requires them to follow precautionary measures to prevent the transmission of viral infection between individuals.
- The need to raise awareness and encourage individuals to undergo vaccination against prevalent viruses, as it was observed during the COVID-19 pandemic that many individuals refrained from vaccination, which increased the severity of the infection and the danger of the epidemic.
- The need to adopt strict liability based on damage rather than fault, given the severity of the harm caused by such infection and the difficulty of proving fault under the general rules, which may prevent the injured party from obtaining their right to compensation.

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