



COLLECTIVE MECHANISMS TO COMPENSATE VICTIMS OF TERRORIST CRIMES

¹QUTAIBA SULAIMAN HAMEED ALBORISHA, ²ASSIST. PROF. DR. AHMED MUSTAFA ALI

¹20225270@std.neu.edu.tr

Near East University, Law department, TRNC, 10 Mersin, TR-99040 Lefkosia, Türkiye

²ahmed.ali@neu.edu.tr

Near East University, Law department, TRNC, 10 Mersin, TR-99040 Lefkosia, Türkiye

Abstract

Today, the world is witnessing an unparalleled escalation in terrorist operations, in which civilians of all ages are often victims, and perhaps what Iraq witnessed in the recent period of terrorist operations carried out by ISIS and accepted by al-Qaeda is the best evidence of that, so in the absence of ability The perpetrators of these crimes must pay compensation for many reasons. Either because the perpetrator of these crimes is unknown or has been killed, the primary responsibility for compensation lies with the state, as it is obligated to compensate the victims for the damage they sustained as a result of terrorist operations, and we have indicated in this letter To the issue of the state's responsibility in compensation and its amount, as well as to address the collective mechanisms of compensation (Insurance and Guarantee Funds), which we focused on in an integrated chapter, and which we call on the Iraqi legislator to explicitly adopt them by stipulating them in the laws because these mechanisms have a very important role in compensating the victims of terrorist crimes as they urgently replace the perpetrator of the crime in the face of the victim and this is limited The same constitutes an important guarantee in ensuring compensation for those affected by terrorist crimes.

Keywords: Terrorism - Collective mechanisms- compensation- insurance-victims of terrorism.

INTRODUCTION

There is no doubt that terrorist operations are a source of many damages to civilians.

1. THE IMPORTANCE OF STUDY

The topic of research is of great importance and this importance stems from the fact that it deals with the subject of (mechanisms to compensate victims of terrorist crimes, collective mechanisms as a model) as it is necessary to address such topics in order to indicate the mechanisms available and their effectiveness on the one hand, and because this topic constitutes a modern hour in view of the large number of terrorist operations and their expansion until they have acquired an international character, so it is important and in light of the many victims of these operations to address this issue.

2. JUSTIFICATIONS AND REASONS FOR CHOOSING THE SUBJECT OF THE STUDY

There are many reasons why this topic was chosen, including:

1. The increase in terrorist operations and the resulting increase in the number of victims requires that mechanisms be shown to compensate them for the damage done to them.
2. The desire to highlight the role of collective mechanisms in compensating victims of terrorist operations.
3. Deficiencies in the treatments available to compensate for terrorist operations.



3. THE PROBLEM OF STUDY

The problem with the study is to highlight efforts to compensate victims of terrorist operations in order to demonstrate their effectiveness, not to mention the role played by collective mechanisms in this regard, with a view to outlining the most important shortcomings in this subject and proposing ways to address them.

4. Study hypothesis

The research hypothesis is based on the basic point that traditional mechanisms do not help compensate victims of terrorist crimes, so it is necessary to adopt collective mechanisms that play an important and effective role in this area.

5. STUDY METHODOLOGY

In writing this research, we relied on an analytical approach that relies on analyzing the legal texts relevant to the subject of research as well as addressing the content of collective mechanisms in order to highlight their effectiveness in compensating terrorist victims and highlighting their shortcomings, eventually trying to develop some proposals that would create more feasible mechanisms for compensating victims of terrorist operations.

1.1 THE CONCEPT OF THE VICTIM IN TERRORIST CRIMES

Researching the victim's concept of terrorist crimes requires us to address the definition of the victim and thus distinguish him from what he suspects, so we have divided this research into two demands as follows:

1.1.1 DEFINITION OF VICTIM

The victim was known by several definitions in jurisprudence, which some defined as "a natural or moral person whose legal status has been violated or whose rights have been directly violated". The victim was also identified as the person who had been injured, whether physically or physically or morally damaged as a result of an unlawful assault. The victim was also identified as "every human being or group who has been attacked of any kind in himself or his rights and caused him or his family some harm"¹

At the international level, the Universal Declaration of The Basic Principles for The Provision of Justice identified victims of crime and abuse of power issued by the UN General Assembly by resolution 34/40 of December 11, 1985, as the victim of the following¹. The term victims mean: persons who have suffered individual or collective harm, including physical or mental harm, psychological suffering, economic loss or significant deprivation of their fundamental rights through acts or negligence that violate the criminal laws in force in member states, including those that prohibit abuse of power²."


Regardless of the above definitions, the victim of terrorist crimes is that person who is physically or morally harmed by terrorism and is often the most important person who has nothing to do with what the terrorist seeks³ in his terrorism, which requires compensation.

The definition of victims of terrorist acts is important, whether in international criminal law or national criminal law, because the purpose of defining a victim is to identify groups who may benefit from rights recognized by international criminal law and national laws.

⁽¹⁾ Dr. Mohammed Mohiuddin Awad, Human Rights in Criminal Proceedings, Arab Renaissance House, Cairo, 1989, p. 322.

⁽²⁾Mustafa Al-Awji, victim, Arab Journal of Security Studies and Training, Issue 6, 1408 Ah, p. 15.

⁽³⁾Hadi Ashiq Badai, victim's role in obtaining criminal act from the perspective of university students, master's thesis, graduate school, department of social sciences, Nayef Arab University of Security Sciences, 2001, p. 12.



With regard to international treaties and resolutions, they played a prominent role in defining the victim, and although Rome's provision did not address the basis of the 1998 Criminal Court to define the victim, he left the matter to the rules of procedure and evidence, which defined the victim as¹ "persons of nature affected by the commission of any crime within the jurisdiction of the Court."

The definition of victims in the Universal Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power is also stated: "Persons who have suffered individual or collective harm from terrorist crime, including physical or mental harm, psychological suffering, economic loss or significant deprivation of their fundamental rights through terrorist acts".

As for The Iraqi Penal Code No. 111 of 1969, the Code of Criminal Procedure Assets No. 23 of 1971, they were not defined by the concept of the victim, but the term "victim" was mentioned in the Law on Due Process and without clearly defining the term, as stated in the Law on Compensation of Victims as a result of hostilities, military mistakes and terrorist operations No. 20 of 2009, which he defined in its first article as: "Every natural person has been harmed by hostilities, military mistakes and terrorist operations." The question arises in this context: can the victim of the crime be considered the victim or the victim of the crime? According to a trend of jurisprudence, the victim of the crime is the victim who has suffered harm, whether natural or moral, and in the latter case he may be a public person and may be a private person, given that society as a whole is considered to be a victim of the crime along with the individual victim, if the crime occurs on his security, system and stability².

There is therefore a clear overlap between the term victim and the victim's interest. Unlike the Iraqi legislature, there is legislation to define the victim, including the Polish Criminal Procedure Act of 1969, which in article 40 of it defined the victim as "the owner of legal money or rights directly violated by the crime or threatened to violate whether he is a natural or legal person and groups or public or social associations may be considered victimized even if they are not legal figures".

2. THE ROLE OF COLLECTIVE MECHANISMS IN COMPENSATING VICTIMS OF TERRORIST CRIMES

The need to provide immediate and effective protection to victims of terrorist crimes and to compensate them for the damage caused to them has emerged collective compensation systems, as terrorist threats have increased and spread widespread, with increased risks to victims due to the spread of terrorist acts around the world³.

The development towards objective responsibility has been one of the means used by the judiciary in order to provide effective protection to those affected in general, but this development did not stop there, did not respond to the aspirations of the victims in their ambulance, but this subject develops the law and continues to develop proves that it is always able to keep pace with the movement of human life continuing the development that led to the emergence of new legal systems that have been produced towards strengthening the protection of victims even with the absence of error and even with the absence of responsibility These collectively worded systems are manifested in various forms, including insurance and the establishment of security funds, in

⁽¹⁾ Article 85 of the Rules of Procedure and Evidence for international criminal prosecution.

⁽²⁾ Abdul Karim Al-Radida, the role of the justice services in protecting the rights of victims of crime study a comparison between positive laws and Islamic legitimacy, Dar al-Hamid, Amman, 2012, p. 30.

⁽³⁾ Mohamed Nasreddine Mansour, Ensuring compensation for those affected between the rules of individual responsibility and considerations of social solidarity, first edition, Arab Renaissance House, Cairo, 2001, p. 181.

order to activate the role of the State in the area of equity for victims, in general and victims of terrorist acts in particular¹.

1.2 THE CONCEPT OF COLLECTIVE MECHANISMS

Some have pointed out that the social responsibility in the modern era means that the social body seeks by all means to achieve appropriate compensation for damages to the individual without adhering to the dictates of individual responsibility to abide by its principles ⁽²⁾ whether responsibility based on error or those based solely on theoretical harm risks on one side or even adherence to limiting the obligation to compensation to liability on the other, especially if we know that the purpose of compensation is not to punish the side as much as What is the reparation of the damage done to the injured. As the jurist savatier commented on collective responsibility, he says that the jurisprudence of objective responsibility has been transformed to confirm its objectives and purpose, even if it is on the ruins of the law of responsibility³, by supporting that objectivity through the obligation to compensate and not through the basis of liability until the injured person finds him a collective obligation to commit his direction to compensation besides the injured or instead, and this collective obligation is based not on the basis of the obligation of society to compensate all respect through collective compensation systems. This is after the trend in time became to protect the victim (injured) and enable him to obtain compensation for the damage he suffered easily and easily⁴.

This is because the law as the twin of society has been produced and continues to be produced from the systems that preserve the continuity of the establishment of society, it modifies systems to blame them and the constant variables responsible for the movement of life, which is a fundamental feature of change and since the physical integrity of the human being and the protection of innate social requirements close to the continuation of human life have threatened the terrible dangers of modern harm, this has led to the expansion of objective responsibility in various forms and by presenting the opinions of jurists in the definition of collective responsibility possible Come up with the following results:

1. The burden of compensating victims at its origin rests primarily with the individual responsible in accordance with traditional rules of responsibility.
2. If the victim exhausts all the traditional rules of liability, he has no choice but to rely on collective systems for compensation⁵.
3. The importance and urgent need of collective systems to compensate for the bodily harm that individual defendants are difficult to bear through the extraordinary damage caused by terrorist crimes is evident, where they find their meaning and achieve their objectives (collective regimes) in this context, i.e. in the context of terrorist crimes and the destruction they cause.
4. The emergence of collective systems after a remarkable and potentially dangerous transformation according to some jurists from the era of individual responsibility to the era of social or collective responsibility, which found its meaning, has taken it upon itself to commit to compensating victims through the state or public or private persons all this in light of the decline

⁽¹⁾Rabab Antar Mr. Ibrahim, Compensation for Victims for Damages arising from Terrorist Crimes, Ph.D., Faculty of Law, Mansoura University, Egypt, 2001, p. 453.

⁽²⁾The same source, p. 344.

⁽³⁾Mohamed Ibrahim Al-Desouki, Compensation Report between Error and Harm, Ph.D., Faculty of Law, Alexandria University, 1972, p. 170.

⁽⁴⁾Musa Dosh, Legal System for Compensation of Victims of Terrorist Crime, Comparative Study, Doctoral Thesis, Presented to Abibakar University, Belkaid-Flmsan University, Faculty of Law, 2016.p. 422

⁽⁵⁾The same source, p. 423.



in the role of individual mechanisms as an effective means of half-victims of terrorist crimes because of the privacy of the latter.¹

1. Collective responsibility is in fact a precautionary obligation to compensate independently of the idea of danger and² based on other concepts such as liability, security or social solidarity so that it covers the lack of traditional structures of responsibility, and the opponent of the latter in the obligation to compensate arises with complete independence and separation from the idea of specialized error.

1.1.2 IMAGE OF COLLECTIVE MECHANISMS AND THEIR ROLE IN COMPENSATING VICTIMS OF TERRORIST CRIMES

The collective mechanisms for the disbursement of compensation to victims have taken various forms, while some legislation has established funds for the fulfilment of compensatory purposes, including the French legislator, to bring other legislation into the insurance system to eventually bring these images to the same end: to ensure the right of victims of terrorist crimes to compensation quickly and effectively³.

2.1.2 INSURANCE AS A MEANS OF COMPENSATING VICTIMS OF TERRORISM

Insurance has become an important role in modern societies in the face of its multiplicity of types to cover aspects of activities, except to try to cover the development in various areas of life and the dangers it needs from associated responsibilities and the emergence of new risks such as the dangers of defective products as well as the dangers of pollution and the dangers of terrorist crimes, since these risks are characterized by very serious damage and civil responsibility in general has been affected in its essence or content as a result of the data witnessed by society at the beginning of the industrial revolution and the end of the information revolution. The emergence of groups spreading their economic activity in society such as companies and associations has led to the need to seek a new form of cooperation between these associations and their employees aimed at avoiding the damage to the group and transforming the civil liability system from its original employee, which is a means of deterring dangers and reparation to a compensatory function so that the responsibility of the specialist is⁴ secured. In France there have been many attempts to insure the dangers of terrorism despite the reluctance of some insurance companies in this area as we will see if Research into insurance work in the field of rapid and effective compensation for victims of terrorist crimes requires us to determine what insurance in general is held by parties and arranges effects according to certain conditions and then to look at the technical and legal insurance and the extent to which it applies to the dangers of terrorism.

2.2 INSURANCE DEFINITION

The insurance has sparked a major doctrinal debate, and part of the jurisprudence has defined it as "a process whereby one of the parties, who is insured for a fee, receives the premium on the obligation of the other party, which is the insurer, in the interest of the security or third parties when⁵ achieving a certain risk, and the insurer takes responsibility for a set of risks that are cleared in accordance with the laws of statistics."

⁽¹⁾Musa Desch, same former source, p. 423.

⁽²⁾Mohamed Nasreddine Mansour, former source, p. 178 and beyond.

⁽³⁾Rabab Antar Ibrahim, former source, p. 452.

⁽⁴⁾Dr. Khaled Mustafa Fahmy, Compensation for those injured from terrorist acts: Comparative Study, University Think Tank, Alexandria, 2008, p. 130.

⁽⁵⁾Mohammed Hussein Mansour, Provisions of the Insurance Act, Alexandria Knowledge Facility, 2005, p. 17.



Another aspect of jurisprudence defined it as "a contract under which the insurer is obliged to lead to the insured or to the beneficiary for whom the insurance is required for an amount or income arranged or other financial compensation in the case and type of incident insured or to achieve the risk described in the contract, in exchange for a specified amount or periodic installments that the insured provides to the insured" and as long as the insurance process includes two aspects, one of which is legal related to the relationship of the insured insured, which the previous definition succeeded in standing The second is based on a campaign of technical rules and foundations related to statistics and the many laws that the insurance contract does not envisage without it, otherwise the content of this contract is a prohibited process contained in gambling or a bet, which is the aspect that was overlooked by the previous definition¹. Insurance is a contract that obliges the insurer to lead to the insured or to the beneficiary a sum of money or a salary income or any other financial compensation in the event of the accident insured against him in exchange for installments or any other payment made by the insured to the insured" through the above we find that the Iraqi legislator dealt only with the legal aspect and did not address the technical aspect, but the Egyptian legislator knew the insurance through article (747) of the Egyptian civil law in force where He pointed out that insurance is intended "a contract that obliges the insurer to lead to the insured or to the beneficiary whose insurance is required in his favor amounts of status or salary income or any other financial compensation in the event of an accident or achieve the risk described in the contract in exchange for a premium or any other payment made by the insured insured", he notes on this definition that the Egyptian legislator has highlighted the legal aspect on the technical and higher side and made some kind of conformity between those multiple aspects while The French legislator did not know the insurance contract under the provisions of the French Insurance Act No. 5 of January 7, 1981².

From the foregoing, it is clear to us that the idea of insurance is based on the existence of two relationships:

The first relationship is legal: which is represented by the insurance contract, which represents a relationship between two parties, it is a binding contract on two sides, as it is netting contracts as it is a contract of time where it will take time to meet it, in addition to that it is a contract of compliance as it must be available from the pillars of the contract of the existence of consent and money and the reason differs from other contracts in some special provisions which belong to the nature of this contract, the place of the insurance contract is represented by the insurance contract represented by terrorist acts where The subject of the insurance contract in general is the danger that the insured cheats as he seeks to cover the consequences if it occurs, which, if we may speak, is one of the most important pillars of this contract³.

This will represent the danger against which terrorism is insured, but the parties to the contract will be the insured and insured. Profit through the insurance process so not all risks can be insured and this requires us to identify the risk from which it is safe and whether you can insure the risk of terrorist operations⁴.

⁽¹⁾Haitham Hamed, selected in the commentary of the insurance contract, Enrichment publishing and distribution, first edition, Jordan, 2010, p. 15.

⁽²⁾Dr. Ahmed Samir Al-Sufi and Hala Salah al-Hadithi, The Idea of Insurance for The Damages of Terrorist Operations, A research presented in the proceedings of the third International Conference of the Faculty of Law and Politics at Nowruz University, held during the period 4-5 April 2008, entitled Contemporary Terrorism Causes, Repercussions and Ways of Confrontation, p. 214.

⁽³⁾Mohamed Hossam Lotfi, General Insurance Provisions Comparative Study between Egyptian and French Law, Second Edition, Cairo, Arab Renaissance House, 1990, p. 31.

⁽⁴⁾Ahmed Simer Sufi, Hala Salah al-Hadithi, former source, p. 204.



The second relationship is a technical relationship based on specific considerations that are included in the terms of the insurance contract, as the insurer can only cover a risk if he can make certain calculations of the risk potential to be achieved in the future and the science¹ of statistics is used.

1.2.2 THE EXTENT TO WHICH THE RISKS OF TERRORIST CRIMES ARE VULNERABLE TO INSURANCE COVERAGE

The insurance philosophy is based on trying to expand the circle of shareholders in providing financial security to pay the compensation due when individuals are exposed to enormous damages that are too great to bear, as through insurance the loss can be dispersed and squandered by the presence of a large number of people who are all threatened by one risk so that once this risk is achieved against one of them has been compensated by the amounts of collaborators⁽²⁾.

FIRST: THE LEGAL EXTENT TO WHICH THE RISKS OF TERRORIST CRIMES ARE LEGALLY INSURED:

The risk is the main focus of insurance as a supposed element that the insurance wisher should fortify himself from its financial effects, and in doing so is considered as the shop to which the insurance contract is answered, which makes the latter depend on the existence of the risk and then that other elements of insurance, namely the value of insurance and in exchange for insurance are closely related to the risk insured, that the risk in the insurance sense shares with the risk in the general sense in the sense that it is possible, which means that a future event is not Certainly the occurrence is subject to accident and these dangerous characteristics that must be available in order to be insured as the term danger to the incident may occur and limit the obligations arising from the incident, the danger insured in terrorist acts is the incident that occurs as a result of the terrorist act, which constitutes an unspecified act that occurs in advance and does not depend on examining the will of the believer or believer.³ The danger in general is the justification and the direct reason for which the insurance contract was established, and therefore the risk is to attack the insured, who are the victim of terrorist incidents, and this risk is not realized⁴.

The risk should be potential and not depend on the sole will of a contractor:

1. THE RISK OF TERRORIST ACTS SHOULD BE:

The essence of the idea of danger is probability, uncertainty and probability that fall between two limits: the limit of impossibility and the limit of certainty, when an event is considered an insurance risk that must come out of the confirmation area⁵.

Since terrorist crimes are aimed at striking public order and bringing down innocent people, regardless of their religion, nationality or age, and without discrimination, the activities of terrorist groups undoubtedly constitute potential incidents that can occur at any time, as they are not achievable so that they are likely to occur, fall, bear or bear their type. A personal criterion and therefore the mere feeling of a person's possibility and type of terrorist attack is not considered a risk worth insure, but it is the party that influenced the risk resulting from this attack that allows insurance, as the terrorist risk is in fact incidents that occur in pre-known

⁽¹⁾The same previous source, p. 204-205.

⁽²⁾KhaledMustafa Fahmy, former source, p. 134.

⁽³⁾The same source, p. 141.

⁽⁴⁾Mohammed Abdul Wahid Al-Jumaili, Victims of Terrorism between Responsible Regimes and Compensation Regimes, Arab Renaissance House, Cairo, 2002, p. 17.

⁽⁵⁾Mustafa Mohammed Jamal, Social Security Broker, Arab Renaissance House, Cairo, 1984, p. 41.

circumstances and are outside any future expectations and the resulting damage, which changes according to the circumstances, cannot be expected in every case, place and time from which the terrorist¹ attack occurred. The losses resulting from placing explosives inside a school or will not be the same as those that may occur as a result of the assault on a person or some person using a weapon, the extent of which is the largest and most serious loss to persons or property.

1. THE RISKS OF TERRORIST ACTS DO NOT DEPEND ON THE WILL OF CONTRACTORS:

If the risk is likely to occur by its nature, this possibility is not based on the sole will of one of the parties to the insurance contract because their interests are linked to its occurrence or non-occurrence, as the control of any of them in the occurrence of the danger will make it certain whenever its interest in the occurrence of it is as in the case of the insured or makes it impossible when it is in his interest not to occur as is the case with the believer and both impossibility and assertion are contrary to the situation. With the possibility underlying the insurance process, which invalidates our absolute nullity in this case because of its misplaced risk, this requirement, as the jurisprudence sees it, is derived from and associated with the requirement of the previous possibility, and if it raises difficulty for events in which the will of man may have entered, it is not the case with regard to events that are inherently independent of human will, as is the case with natural events such as floods that damage crops or take lives².

The danger must depend on an external order from the will of one or both of the disabled in order to be insured in the sense that this danger is subject to coincidence that applies to the nature of terrorist crimes, since most of the victims of terrorist crimes are people who have been bad luck and bad luck in the midst of events. A possible number of victims, regardless of their positions, levels, gender or nationality, in order to draw the attention of local and international public opinion to his project or the organizing project to which³ he belongs.

Therefore, the victims of terrorist crimes are victims by chance, which makes the dangers resulting from those crimes apply to the property of being an insurance shop subject to accident. Second hand⁽⁴⁾.

Here the question arises: do people believe in themselves, believe in their money, or both against the most serious terrorist crimes they may want?

In limiting insurance to the dangers that affect money, terrorist crimes are equal to fire, theft or force majeure, such as earthquakes and floods, so there is room for the insured to return to fraudulent methods in his contribution to the danger insured, such as burning the house or shop, and attributing it to the terrorist attack and its insured dangers in order to obtain compensation, but insurance companies are supposed to have a group of experts who play an important role in standing up. the extent to which the insured contributes to the proof of the insured act of it.

If the insurance for the lives and physical integrity of persons is a terrorist hazard, the insured's contribution to harming himself in this regard in order to obtain inconceivable and illogical insurance⁵ amounts.

The purpose of presenting the characteristics of the risk in order to be insured and comparing them to terrorist threats can be said that the latter, given its specificity, both in terms of its

⁽¹⁾Khaled Mustafa Fahmy, former source, p. 142-149.

⁽²⁾Moses Dish, former source, p. 447.

⁽³⁾Khaled Mustafa Fahmy, former source, p. 138.

⁽⁴⁾Moses Dish, former source, p. 447.

⁽⁵⁾The same source, p. 448.

extent and in terms of its sensitivity, is effectively suitable to be insured because of the serious damage it causes to all its victims or the consequences of which has already happened in France.

SECOND: THE TECHNICAL FOUNDATIONS OF INSURANCE AND THE EXTENT TO WHICH IT APPLIES TO TERRORIST THREATS

Insurance is based on technical grounds, all of which aim to achieve solidarity between a group of individuals who are exposed to one risk or similar risks and to clear them in accordance with the laws of statistics¹. Cooperation is carried out between the total insured in order to protect them from a risk that threatens them by paying an amount of insurance value representing the premium to the insured who contributes to the integration of cooperation between this group with the intention of insurance from the danger to any of them, provided that the insured undertakes a certain performance when the insurance risk is realized. The insurance company clears the potential risk pool and conducts such clearing between them in accordance with the statistical laws².

2.2.2 THE POSSIBILITY OF ADOPTING THE IDEA OF INSURANCE AGAINST THE DANGERS OF TERRORIST OPERATIONS

It should be noted that the principle of liability has become incapable of ensuring effective protection of individuals, and to avoid this deficit there has been a urgent need for a supplementary system of liability that stands side by side with it, and this has been done through the development of the means of financial security, which is the idea of the insurance system, and these compensation funds will provide some kind of legal cover where they will work on the basis of the principle of legal solutions in the event of damage to compensation caused by terrorist operations, and therefore we will work to clarify the legal nature of the contract insurance, and then show the legal implications.

FIRST: THE LEGAL NATURE OF THE INSURANCE CONTRACT:

The issue of protecting those affected by the dangers of terrorist operations has become one of the most important problems looking for solutions, especially as it threatens the entity of society, as most countries have moved towards the search for ways to help bear the effects of these dangers in the event of their occurrence, thus guiding the human mind to the insurance system, which works to assess the nature of the risk and determine its magnitude and the extent to which it can be covered and the fragmentation of the effects of those dangers as well as distributing them to a large number of people in society so that they do not Leaving these effects concentrated solely on the person affected, i.e. the insurance aims to transfer all the costs of repairing the damage to the total insurers and thus to ensure the safety of the insured, which is thus a useful solution to the problems of partial bankruptcy to which the injured person may be exposed and this means is a deterrent against administrative risks and is a preventive effect against negligence³.

Moreover, it is an important asset in the national economy of any state, so the goal of insurance is to achieve solidarity and solidarity among a group of people who are exposed to one or a group of threats to their safety and property. The idea of insurance from the dangers of terrorist operations is in fact based on cooperation between the total insured and those who are all threatened by a threat of a single nature in terms of the type and wish to prevent its harmful and serious consequences and therefore they collect an amount of money in which each of them contributes in proportion to what it adds to the total risk and distributes this money to those who solve the

⁽¹⁾ Abdeloud Yahya, Summary of the Insurance Contract, Arab Renaissance House, Cairo, 1985, p. 67.

⁽²⁾ Khaled Mustafa Fahmy, former source, p. 149.

⁽³⁾ Nabila Ismail Raslan, Pollution Risk Insurance, Arab Renaissance House, Cairo, 2003, p. 178.



disaster, especially since the damage caused by terrorist operations is characterized by the fact that High-cost may not be covered in many ways, and on this basis, insurance against terrorist acts is a means of distributing and dispersing losses arising from terrorist operations. Despite the importance of the insurance system, there are dilemmas in its application process in the scope of covering the damage caused by terrorist operations because of the particular nature of this threat¹: the threat² of terrorism, like modern threats such as the technical threat, for example, the threat posed by the use of cyber digital space or maritime piracy, is in fact of a particular nature as it is inconsistent with the technical elements of the insurance contract because it is They are not somewhat widespread and therefore statistics cannot be applied to them.

The damage to terrorist operations is in fact in line with the general rules of the insurance contract, starting with the time limit required for the risk that the risk may have been achieved during the warranty period so that the injured person can obtain the top of the insurance, and if the most dangerous is achieved after the end of the warranty period, then it is not protected.

In fact, this runs counter to the nature of the dangers, it is difficult, if not impossible, to determine the time of terrorist operations, and the risk must be a fraudulent incident, and its occurrence depends on the sole will of one of the parties, particularly the will of the believer, while in practice it is noted that terrorist operations, which pose a threat, are voluntary and may sometimes occur deliberately by their interlocutor. This is why there is a side of jurisprudence in France to consider that the risk resulting from terrorist operations falls under the heading of the voluntary danger, which may not be insured because it collides with the nature of the danger, which is an accident and an emergency Ghanaian order that cannot be expected and is independent of the will of the insured, which does not apply to this type of danger, which is why there is a side of legal jurisprudence to say that it is not permissible to insure absolutely the danger of terrorist operations based on this on The terrorist act, which represents the danger posed by terrorist operations, is expected to occur, which is undeniable in voluntary and general, and the threat of terrorist operations is a gradual or escalating incident in areas where political and security instability and the control of armed groups in the public scene are insurmountable, which is predictable and unavasked. Thus, terrorist acts were not insured in the past as they were somewhat excluded risks prior to the events of September 11, 2001, when these events sounded the alarm, leading countries to seek to cover this type of risk, as the U.S. Congress ratified the Federal Terrorism Risk Insurance Act of 2002,

The U.S. government has also provided sector support to insurance companies to enable them to accept coverage of terrorist acts after the U.S. Congress passed the Terrorism Insurance Act, and the U.S. government promised to compensate insurance companies, especially since the damage was very serious as the amount was \$100 billion in the event of terrorist attacks similar to those of September 11, 2001, as these attacks caused the biggest loss of the insurance industry in the world. Insurance companies alone are unable to cover the damage caused by terrorist acts of this magnitude³.

France has also adopted the same approach and has adapted and developed the rules on the insurance contract so that it can be covered and the application of statistics factors, especially after terrorist operations have become a widespread global phenomenon, and therefore the individual and society alike must be protected against the risks to which they are exposed, as well as the volume of capital invested in this area, which is an economic resource for many companies, must be protected. Insurance against the risks resulting from terrorist operations is defined as a

⁽¹⁾ Dr. Ahmed Sharafuddin, *Transfer of the Right from Compensation for Physical Damage*, Arab Civilization Press, Kuwait, 1982, p. 171 and beyond, and Dr. Abdul Daoud Yahya Masdar, p. 33.

⁽²⁾ Quoting: Ahmed Mahmoud Saad, *Stability of Civil Liability resulting from Environmental Pollution*, Ph.D. Thesis, Faculty of Law, Cairo University, 1994, p. 319.

⁽³⁾ For more see the following link, <http://www.aljazeera.net>



contract between the insured and the insured, who may be a natural or moral person through which the insured is obliged to perform the amount of insurance or compensation for the damage inflicted on the insured or his successor as a result of damage that falls into the content of the risks resulting from terrorist operations. It should be noted that terrorist crimes result in serious serious risks that the largest companies may be unable to take it upon themselves to cover all the risks resulting from them, and therefore must be fragmented, which as a result leads to a doubling of their number so that they exceed the capacity of the national market and require foreign participation, so collective insurance or the so-called merger of insurance companies is the best way to cover such risks, and the issue of the fragmentation of risks intended (reinsurance)¹ is the best way to cover such risks.

It is important to cover those threats of a special nature, for example the September 11, 2001 bombings and the very serious damage they have caused, that the damage of terrorist operations actually collides with the general rules of the insurance contract, starting with the time period required for the risk to occur, which requires the risk² to be.

It may be achieved during the warranty period so that the injured person can obtain the value of the insurance if the risk is realized after the end of the warranty period and is not protected. In fact, this runs counter to the nature of the dangers, it is difficult, if not impossible, to determine the time of terrorist operations, and the risk must be a potential incident, and its occurrence does not depend on the sole will of one of the parties, particularly the will of the believer, while in practice it is noted that terrorist operations, which pose a threat, are voluntary and may sometimes occur deliberately by their interlocutor. This is why there is a side of jurisprudence in France to consider that the risk resulting from terrorist operations falls under the heading of the voluntary danger, which may not be insured because it collides with the nature of the danger, which is an accident and an emergency sudden thing that cannot be expected and is independent of the will of the insured, which does not apply to this type of danger, and the risk of terrorist operations is a gradual or escalating incident in areas suffering from political instability. Security and the control of the public landscape by armed groups and thus insurmountable is an³ expected and unscagatory risk. Insurance against terrorist acts is also an insurance against a constant and unchanging threat, as the probability of a risk is constant and does not change, which makes the severity of the risk stable.

SECOND: THE EFFECTS OF INSURANCE AGAINST TERRORIST OPERATIONS

In the beginning, we cannot fail to note the important fact that the contract for insurance against terrorist operations, like other insurance contracts, creates obligations and rights for the parties to the contract, and will only look into the obligations of the parties to the contract as follows:

1. INSURER'S OBLIGATIONS

It is recognized that there are a number of obligations on the part of the insurer (represented by the insurance company) and the obligation to perform the amount of insurance or the amount of compensation is one of the most important obligations of the insurer, which is decided by the Iraqi civil legislator in article (989) of the Iraqi Civil Code No. 40 of 1951, which states: "The insurer is obliged to compensate for the damage arising from the risk against him, but not to exceed the value of the insurance," through the above. Us: There is an obligation on the part of the insured, which is to compensate the injured person with a sum of money specified in the insurance policy by determining the value of the insured object and on the basis of which the insurance price is

⁽¹⁾ Nabila Ismail Raslan, Pollution Risk Insurance, Arab Renaissance House, Cairo, 2003, p. 32.

⁽²⁾ Mohammed Shukri Srour, Insurance against Technological Hazards, Arab Thought House, Cairo, 1987, p. 30.

⁽³⁾ M. Tom, Les Assurances terredtres, Picard et Besson, cinquiement edition, 1980.

determined, and the document also guarantees the statement of the premium that the insured is obliged to pay to the insured. The French legislator also stipulated in article (L. 113/5) of the French Insurance Act No. (5), issued on January 7, 1981. Based on the general provisions of the insurance contract, the insurance policy will be introduced against the dangers of terrorist operations.

2. THE OBLIGATIONS OF THE INSURED

The second party to the insurance contract is represented by the insured, where it entails a number of obligations arising from the insurance contract in general, including those that are pre-risk, including those that are subsequent to its occurrence, and the obligation to pay the insurance premium is one of the most important obligations of the insured, as determined by article (986/1) of the Iraqi civil law, which stipulates that "the insured abides by the following: A. Payment of premiums or other payments in the agreed term, these obligations are a general effect of the insurance contract, and there is an obligation on the insurer to take care, especially in insurance against terrorist operations, from important obligations that the insured must make in insurance against terrorist acts, and taking precautions is a material fact that can be proved by all legal means of proof."

Insurance against the dangers resulting from terrorist operations is one of the most important means of financial security, where it is subject to the very rules to which any other insurance contract is subject, but the subject of insurance against terrorist operations is characterized by some privacy and perhaps the most important grant of this privacy we find through the status of the insured and the nature of the subject of insurance and its place i.e. the risk resulting from terrorist operations, and despite the importance of this type of insurance, but it did not receive sufficient attention, as it does not receive sufficient attention, as it does not receive sufficient attention. There are legal provisions for this type of insurance and all we find are general rules governing insurance of liability and these rules are correct to describe they need to be adapted so that we can get rules governing insurance against the dangers of terrorist operations where this subject is no longer a specific case but has become a dangerous phenomenon that has affected society in one way or another, due to the fact that this type of damage has had significant negative effects It should be noted that these threats have increased in light of the growing violence and the control of large areas of Iraqi territory by criminal gangs, which has exacerbated their severity. The damage caused by terrorist operations, which are often more valuable than compensation, has taken a new approach as the idea of global jihad has evolved and the methods of international terrorist action have differed.

CONCLUSION

At the end of this research, we have reached a set of findings and proposals, the most important of which will include:

FIRST: CONCLUSIONS:

1. We have concluded that a terrorist crime is every criminal act by an individual or organized group to target individuals, groups or official or informal institutions that damage public and private property in order to disturb the security situation, stability and national unity, or to introduce terror, fear and panic among the people or to create chaos and to achieve terrorist purposes.
2. The victim of terrorist crimes is a person who is physically or morally harmed by terrorism and is often the most important person who has nothing to do with what the terrorist seeks in his terrorism, which requires compensation.
3. We also found that in limiting insurance to the dangers that affect money, terrorist crimes are equal to fire, theft or force majeure, such as earthquakes and floods, and therefore there is

room for the insured to return to fraudulent methods in his contribution to the danger insured, such as burning the house or shop, and attributing it to the terrorist attack and its insured dangers in order to obtain compensation, but the insurance companies are supposed to have a group of experts who play an important role. In the field of finding out the extent to which the insured contributes to the proof of the act insured from him.

SECOND: RECOMMENDATIONS:

1. We suggest that no specific or specific definition of terrorist crimes be adopted because adopting such a definition, no matter how much effort is made, will not be preventing and exhausting all forms of terrorism, therefore, relying on the description of acts that constitute crimes will be better than definition, where all developments and developments in terrorist crime can be absorbed through description.
2. We recommend that the system of proactive enforcement of the law be adopted as a mechanism to reduce terrorist crimes, and this activation includes the international and national sides, which will undoubtedly reduce terrorist crimes and their risks and the resulting harm.
3. We call on the Iraqi legislature to explicitly adopt the idea of collective mechanisms as means of compensating victims of terrorist crimes because of the importance of compensating the victims for these crimes.
4. We hope that our legislators will intervene legislatively to amend the provisions on the form of compensation and the time of its assessment in order to achieve compatibility between the amount of compensation and the variable damage to those affected by terrorist operations and the amendment of Law No. 20 of 2009, where it must take into account when assessing compensation the value of money and the constantly rising prices in order to match the amount of compensation with the extent of the damage, whether through the work of the committees formed under this Law in assessing compensation directly based on the disability rate suffered by it. Injured.

REFERENCES

1. Abdel-Wadood Yahya, Summary of the Insurance Contract, Arab Renaissance House, Cairo, 1985.
2. Abdul Karim Al-Radida, The Role of The Justice Services in Protecting the Rights of Victims of Crime Study a Comparison between Positive Laws and Islamic Legitimacy, Dar al-Hamid, Amman, 2012.
3. Ahmed Mahmoud Saad, Stability of Civil Liability resulting from Environmental Pollution, Ph.D., Faculty of Law, Cairo University, 1994.
4. Ahmed Samir Al-Sufi and Hala Salah al-Hadithi, The Idea of Insurance for The Damage of Terrorist Operations, presented research in the proceedings of the third International Conference of the Faculty of Law and Politics at Nowruz University, held on April 4-5, 2008, entitled Contemporary Terrorism Causes, Repercussions and Ways of Confrontation.2008
5. Ahmed Sharafuddin, Transition of the Right from Compensation for Physical Damage, Arab Civilization Press, Kuwait, 1982.
6. Hadi Ashiq Badai, victim's role in obtaining criminal act from the perspective of university students, master's thesis, graduate school, department of social sciences, Nayef Arab University of Security Sciences, 2001.
7. Haitham Hamed, Selected in The Insurance Contract, Enrichment Publishing and Distribution, First Edition, Jordan, 2010.
8. Khaled Mustafa Fahmy, Compensation for The Injured from Terrorist Acts: Comparative Study, University Think Tank, Alexandria, 2008.
9. M. Tom, Les Assurances terredtres, Picard et Besson, cinquiement edition,1980.
10. Mohamed Hossam Lotfi, General Insurance Provisions A Comparative Study between Egyptian and French Law, Second Edition, Cairo, Arab Renaissance House, 1990.



11. Mohamed Ibrahim Al-Desouki, Compensation Report between Error and Harm, Ph.D., Faculty of Law, Alexandria University, 1972.
12. Mohamed Mohieddin Awad, Human Rights in Criminal Proceedings, Arab Renaissance House, Cairo, 1989.
13. Mohamed Nasreddine Mansour, Ensuring compensation for those affected between the rules of individual responsibility and considerations of social solidarity, first edition, Arab Renaissance House, Cairo, 2001.
14. Mohamed Shukri Srour, Insurance against Technological Hazards, Arab Thought House, Cairo, 1987.
15. Mohammed Abdul Wahid Al-Jumaily, Victims of Terrorism between Responsible Regimes and Compensation Regimes, Arab Renaissance House, Cairo, 2002.
16. Mohammed Hussein Mansour, Provisions of the Insurance Act, Alexandria Knowledge Facility, 2005.
17. Moussa Desch, Legal System for Compensation for Victims of Terrorist Crime, Comparative Study, PhD, Submitted to Abibakar University, Belkaid-Flmsan, Faculty of Law, 2016.
18. Mustafa Al-Awji, Victim, Arab Journal of Security Studies and Training, Issue 6, 1408H.
19. Mustafa Mohammed Jamal, Social Security Broker, Arab Renaissance House, Cairo, 1984.
20. Nabila Ismail Raslan, Pollution Risk Insurance, Arab Renaissance House, Cairo, 2003.
21. Rabab Antar Al Sayed Ibrahim, Compensation for Victims for Damages arising from Terrorist Crimes, Ph.D., Faculty of Law, Mansoura University, Egypt, 2001.