

Compensation for environmental damage in comparative legislation

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Abstract: This paper aims to highlight the extent of human negative impact on the environment, especially as the scientific age enters and technological advances. The unusual damage to the environment, and its geographical expansion beyond the country's own borders, threatens the environment in our current situation.

Reparation for such damage has many difficulties, such as in restoring the situation before environmental damage occurs. and difficulties in assessing monetary compensation, and difficulty in accessing environmental damage intermediaries at many times and this is in fact a consequence of the characteristics of these damages known under the general rules, Attempts have therefore been made to adapt civil liability rules in the field of disputes arising from environmental damage civil liability", as well as the search for effective and integrated means of resolving those difficulties outside the general rules of civil liability.

Key words: Environment, environmental damage, civil liability, compensation

ملخص: تهدف هذه الورقة البحثية إلى إبراز مدى التأثير السلبي البشري على البيئة، خاصة مع دخول العصر العلمي والتقدم التكنولوجي، فالأضرار غير المألوفة التي لحقت بالبيئة، وتوسع نطاقها الجغرافي خارج حدود البلد نفسه، أصبحت تهدد البيئة في وضعنا الحالي.

ويواجه جبر هذه الأضرار صعوبات كثيرة كالصعوبات في استعادة الوضع قبل وقوع الضرر البيئي، والصعوبات في تقدير التعويض التقدي، وصعوبة الوصول إلى وسيط الأضرار البيئية في أوقات عديدة، وهذا في الواقع نتيجة لخصائص هذه الأضرار المعروفة بموجب القواعد العامة، ومن ثم بذلت محاولات لتكييف قواعد المسؤولية المدنية في ميدان المنازعات الناشئة عن الضرر البيئي، بالإضافة إلى البحث عن وسائل فعالة ومتكاملة لحل تلك الصعوبات خارج نطاق القواعد العامة للمسؤولية المدنية.

كلمات مفتاحية: البيئة، الأضرار البيئية، المسؤولية المدنية، التعويض.

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1- Introduction:

Scholars of international law are working hard to develop a set of legal norms and to organize a set of plans for the programming of international conferences with a view to determining the international responsibility of persons of the international community to address the damage caused by pollution of the environment, as well as to pursue the mistakes of individuals and persons towards the environment and to identify elements and foundations of International liability based on the work of persons of the international community, while international environmental law experts are working to impose a set of legal norms that hold persons liable prior to harm, these legal norms try to clearly define the actions that persons of the international community are expected to take to fulfil their obligations which are essential to prevent harm to territories under their control and activity , and to areas beyond their territorial jurisdiction.¹

The situation of degradation and pollution has led to the need to protect and preserve the environment from all forms of damage². It is clearly reflected in the holding of numerous international meetings, conferences and meetings, including the Stockholm Conference held in Sweden in 1972 on behalf of the humanitarian environment during the period 5-16 June.

The Stockholm conference represents the starting point of concern for the environment. Its goal was to establish common principles to guide humanity and the world's people to preserve environment and its development, It has had several positive results, most notably the awakening of the world's consciousness that the multiple pollutions had become a threat to the environment as a result of persistent and worsening contamination.

If environmental damage is of a peculiar nature that distinguishes it from other damage, this specificity is also reflected in the level of instruments and mechanisms through which such damage is remedied, and here we raise the fundamental questions in this study as follows:

- Are the general rules of civil liability sufficient to address

¹ - Foo Kim Boon, The Rio Declaration and Its Influence On International Environmental Law, Singapore Journal of Legal Studies, Published By: National University of Singapore (Faculty of Law) (December 1992), pp. 347-364

² - Environmental Pollution Control Measures (Chapter 6), <https://www.jica.go.jp>
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environmental damage in terms of compensation, or do we need a special compensation system consistent with the specificities of environmental damage?

- How does the legal concept and specificities of environmental damage distinguish it from damage be determined in accordance with general rules?

-As long as environmental damage is compensated under the general rules of civil liability, what are the most significant difficulties limiting the establishment of civil liability proceedings to compensate for environmental damage at both the procedural and substantive levels?

This study was adopted mainly through an analysis of the various legal texts in Algerian legislation relating to the topic of compensation for environmental damage in order to form a vision on the subject as a whole in an interrelated form, with reference to foreign notions and texts that enrich the subject whenever necessary.

2- The concept of Environment and the characteristics of environmental damage

The environment is suffering as a result of the multifaceted human activities that have been restricted, where human beings have been draining their resources to the extent that the environment is unable to maintain on its system and its balance as a continuous natural system, this point is globally alarming and threatening all living beings , we will try to give an overview of the environment and its damage through the first part of this study.

2-1 The concept of environment:

It is difficult to establish a specific and comprehensive definition of the environment, so that many scientists disagree and the specialists about this term, the jurisprudence have gone on to say that the term "environment" does not exist as it is every single thing that surrounds human , on the one hand and on the other hand it is possible to give a specific approach to its definition³ , despite this difficulty, we will give a specific definition of an environment through the following branches:

Although many international and national legal texts dealing with the subject of the environment are regulated and protected, they are still able to give a uniform definition of the environment.

³- داود عبد الرزاق، الأساس الدستوري لحماية البيئة من التلوث، جامعة دار الثورة، مصر، 2007 ص34.

The environment in French law:

the French legislature defines the environment in the first article of the Law of 10 July 1917 on the protection of nature as: a set of elements: nature, animal and plant factions, air, land, protected wealth and various natural manifestations.⁴

The environment in Egyptian law:

The Egyptian legislature was broader in its definition of the environment, adding the elements that human beings enter into its creation. This is reflected in article 1, paragraph 1, of the Egyptian Environmental Law as the biosphere that smears organisms and the material they contain, the air, water and soil surrounding them, and the facilities human beings establish.

Environment in Algerian law:

Algerian legislator has taken the French legislator's approach in defining the environment In keeping with the principles and aspirations of the Environmental Protection Act within the framework of sustainable development, it is stated that the environment consists of biological and biological natural resources such as air, air, water and land. and subsoil, fauna and flora, including genetic heritage and interactions of these resources in accordance with article 07 of Act No. 03-10 on the protection of the environment in the context of sustainable development⁵

According to the Stockholm Conference, which defined the environment as more than just natural elements but rather the balance of material and social resources available at some point and somewhere to satisfy human needs and aspirations⁶, the environment can be divided into three elements:

Natural environment:

This environment consists of the atmosphere, the water atmosphere, the land and the atmosphere, including water, air, soil, minerals and sources of energy, as well as plants and animals, all of which represent the resources God has made available to mankind in order to make them

- ⁴ علي سعداف، حماية البيئة من التلوث الإشعاعي والكيميائي في القانون الجزائري، دار الخلدونية، الجزائر، 2008 ص6.

⁵ - Article 04, paragraph 07, of the Official Gazette No. 43.

- ⁶ راتب مسعود، البيئة والإنسان، دار الحميد، الأردن، 2004، ص. 18.

the ingredients of his life of food, clothing, medicine and shelter⁷

Biological environment:

This environment includes forgetfulness, its family and community, as well as organisms in the biosphere. This means that they are part of the natural environment, excluding the atmosphere, the atmosphere and land⁸.

Social environment:

It is the environment that expresses the environment in which an individual is raised, which renews his personality, behaviours, attitudes and values in which he believes⁹, it can also be seen as the framework for relationships that determine what one's relationship with another is, which is the basis for organizing any group, whether between its members and one another in an environment, or between different groups and civilization in different environments.

2- 2 The concept of Environmental damage and its characteristics :

The concept of environmental damage from pollution that affects the environmental elements differs from damage to a person's money or body in terms of definition as an element of civil liability, hereby we will address the concept of environmental damage as well as its types and impact.

a - The definition of environmental damage:

Jurisprudence scholars differs in giving precise definitions of environmental damage, there is a tendency to say that it is the damage to its technical concept which affects the primary vital areas of the elements of the environment and from this point , it is a damage to the environment itself, another tendency is to say that environmental damage is the damage that affects people by compromising the environment , affecting thus their money, bodies or health through that area that has been damaged. and the principle of non-harm is a fundamental principle in the field of international uses, It has become stable and has been approved in many international communities, charters and agreements.

⁷ -Syed Mohammed, in Human Rights and Environmental Protection Strategies, Arab Press Agency, Egypt, 2006, p. 23.

⁸ - Mohamed Ismail Omar, Introduction to Environmental Sciences, Egypt, 2007 p. 146

⁹ -Abdelkader Riziq al-Khadimi, Environmental pollution: Present Risks and Future Challenges, 2 edition of the University Publications Office, Algeria, 2006 p146

Damage in general aspect may be material and may be moral, material damage affects human's life, which may result in disability or death, damage to one's body may result in injuries or impairments that make him unable to engage in any activity. And it can cause an injury to the body, if it causes moral damage to him or his family, this is what is meant by damage in general.

In recent years, due to the huge industrial and technological development, many industrial activities and units have caused many issues of environmental pollution that have been depleted by companies, enterprises and industrial units whose activity is causing damage to the environment, as well as human as a natural person¹⁰.

Environmental damage has been defined as any impact on living or non-living components of the environment and ecosystems, including damage to marine, wild or atmospheric life.¹¹

Another view was that it was current or future harm to any element of the environment resulting from man's natural or moral activity or nature's act of disturbing environmental balance, whether or not it was exported from within or to the contaminated environment. a third trend went to environmental damage as two concepts: the first define it as the damage that is concentrated in the injury to nature itself or through something natural or ecosystem. The environmental process is overlapping, as well as the continuous independence of a particular type or ecosystem that interferes with it as well, as the second argues that the environmental damage means all damage caused by pollution, as the environmental character depends on the nature of the damage, but on the source of the damage, because pollution of the natural or artificial environment may result in damage that we call environmental damage but also economic damage.¹²

Regarding the Algerian legislation, in view of all the legal texts promulgated by Algerian legislation on environmental protection, especially before the 1990s, there was almost a legislative recognition of

¹⁰- Hamida Jameela, Legal System of Environmental Damage and Compensation Mechanisms, Dar al Khaldouniyah, Algeria, 2011, p. 67.

¹¹ Ismail Najamuddin Zanke, Environmental Law, Halabi Rights Publications, Beirut, Lebanon, 2012, p. 480

¹² -Ata Saad Mohamed Hawass, Civil Liability for Environmental Pollution Damage in Neighbourhood, Comparative Study, New University House, Alexandria, 2011 pp. 417-418

the existence of such damages, but with the promulgation of Law No. 10/03, some considered that the legislature indirectly provided for such damages since it was extrapolated.

Article 03 of the same code states that Algerian legislation is based on general principles, we understand that it has given an indication of this type of damage, such as the principle of preservation of biodiversity, the principle of non-degradation of natural resources, and the principle of the polluter responsibility.

Environmental damage has several characteristics that make it of a special nature different from that defined in the General Rules on Civil Liability, which stipulate that compensable damage must have the specific characteristics of direct personally and surely, where jurists have reached the point of distinguishing between ordinary damage and environmental damage in view of its determination in terms of nature and scope the damage is characterized by a variety of characteristics that make it of a special nature, Different from the damage recognized in the General Rules of Civil Liability¹³

b - the characteristics of environmental damage:

Scientists have divided environmental pollution into several types, given its nature, or the type of environment in which pollution occurs. According to these two divisions, the types of environmental pollution that is a general and interrelated phenomenon are determined and we will address these divisions given the nature of the pollution and the type of environment in which it occurs.

Types of pollution by their nature:

Pollution divided by its nature is divided into biological pollution, radioactive pollution and chemical pollution:

Biological Pollution:

Biological pollution is one of the oldest forms of environmental pollution experienced by man, and biological pollution arises as a result of the existence of visible or invisible plant or animal organisms, in the ecological environment and fungi and viruses that spread into substances causing diseases and epidemics, appear either as decadent substances or composed of atoms, or as living objects evolving from one form to

¹³ Hamida Jameela, previous reference, p44

another in a continuously renewed cycle

The mixing of pathogenic organisms with food eaten by humans, the water they drink or the air they inhale results in biological pollution and the consequent adverse effects of biological weapons contamination. In addition to causing serious material damage, a small amount of this weapon can eliminate a large number of human beings and organisms from animals and plants.¹⁴

Radioactive pollution:

The leakage of radioactive materials to a component of the environment is a very dangerous type of pollution and one of the most significant causes of nuclear reactor accidents, such as the Chernobyl reactor accident in April 1986. Radiation can also leak if atomic waste is buried in the soil.

Nuclear explosions lead to radioactive residues that volatilize in the air through dust and water vapour or fall to the surface of the soil in atomic dust or leak into the water when this atomic dust falls on water stations. The impact of radioactive contamination remains present for a number of years.¹⁵

Chemical pollution:

Chemical pollution means the dumping of certain chemicals manufactured for special purposes with industrial residues in watercourses, this type of pollution has very serious effects on the various components and elements of the environment.

Sometimes chemical contamination even reaches food and beverages if preservative chemicals are used in food industries, agricultural pesticides and chemical fertilizers compounds used by producers to gain taste, colour as preservatives have all become very dangerous and harmful sources of health, Their use of these substances has catastrophic consequences and has serious effects on the vital functions of the human body.¹⁶

¹⁴ - Numan Atta Allah al-Haiti, internationally prohibited weapons bases and mechanisms, Dar Raslan, First edition, Damascus, Syria, 2007, p. 5

¹⁵ - Ali Saidan, Protection of the Environment from Contamination of Radiological and Chemical Substances in Algerian Law, Dar al-Khaldouniyah, 2008. p36

¹⁶ - Tharut Abdul Hamid, "Damage arising from corrupt or contaminated food and its means of protection and compensation", New University House, Alexandria, Egypt 2007.p60

Pollution in view of the type of environment in which it occurs :

Given by the surrounding environment, environmental pollution is divided into three types: air pollution, water pollution and soil pollution. this division is considered to be the most common division of pollution to be surrounded by all types of pollution.

Air pollution:

Air pollution is defined as an air ecosystem malfunction due to the release of large quantities of gases and particles beyond the system's self-purification capacity resulting in a significant change in the size and characteristics of air elements that will shift from useful to harmful elements. Air pollution is caused by multiple sources and for various reasons, the most important of which are gases that are transformed under pressure into liquids, coal combustion, wood, oil, natural gas and pollution resulting from the increase in the number of cars, alleles and power plants, as well as the accumulation of dust and carbon dioxide in the middle atmosphere layers.¹⁷

Air pollution is one of the most dangerous types of environmental pollution, particularly for the health and integrity of the human person and for the components of the environment in general. It is responsible for hundreds of thousands of annual deaths, pathological conditions, the destruction of large areas of forests, agricultural land, river and lakes, and the erosion of archaeological buildings and installations.

Water pollution

The aquatic environment is the natural medium of aquaculture and other wealth. Given the economic value of water resources and wealth, it has become necessary for the States of today's international community to establish regulations that ensure the delineation of the scope and limits of each State's powers over the seas and rivers.

Article 4, paragraph 1, of the 1982 Law on the Sea defines marine pollution as: "The direct or indirect introduction of substances into the marine environment, including directly or indirectly infected rivers, resulting in or likely to result in harmful effects such as damage to

¹⁷ Mansour Medjadji, Scientific Meaning and Legal Concept of Pollution, Faculty of Law, University of Biskra, Ed 5 March, 2010 , p108

resources and wildlife, endangering human health and impeding marine activities, including fishing, or other legitimate uses of the sea".

Pollution of the marine environment may occur due to oil diversion from ships or from seabed nuclear testing in the oceans or by disasters, sea boats collisions and the sinking of oil tankers and the resulting of damage to components of the marine environment in general , river water is also contaminated by the insertion of substances or substances into human beings directly or indirectly resulting in harmful effects and by how such water becomes less suitable or suitable for the uses allocated to it.

Soil pollution:

Is intended to introduce foreign objects into the soil, resulting in a change in the chemical, physical or biological properties so that they affect the organisms endemic to the soil and contribute to the degradation process of organic substances that give the soil its value, health and productivity¹⁸

The sources of soil contamination are numerous and varied, including chemical pollution resulting from the excessive use of chemical fertilizers and insecticides. The soil is also contaminated by acidic airports and radioactive materials, in addition to the urbanization and drift of their fertility and their increased desertification and dehydration.

From the foregoing, it is clear to us that the jurisprudence has established that legally expressed pollution is one that has included a change in the environmental environment that results from human activities, and leads to adverse effects, either directly or indirectly, on living and non-living organisms in the immediate or future.¹⁹

3-The legal impact of environmental damage:

In the opinion of the majority of law scholars, the basis of responsibility for polluting and compensating the environment is a traditional responsibility, which requires fault, damage and causation in the event of a personal act, and in the view of some others , the

¹⁸ - Mohamed Said Abdallah Al-Hamidi, Civil Liability arising from pollution of the marine environment and legal ways to protect it, New University House, Alexandria, Egypt , 2008 p. 167

¹⁹ - Sabah Lachawi, International Responsibility for Environmental Protection, Dar al-Khaldouniyah, Edition 1 Algeria 2008, p. 61

responsibility for environmental pollution is objective, which is based on the achievement of harm in all cases, with no requirement of fault, that is, as soon as the damage exists, the person who has created the damage is required to compensate, even if there is no fault for it.

In this chapter we will try to address the implications of environmental damage in the first researchers under the heading civil liability for environmental damage and the compensation for environmental damage.

3-1 Civil liability for environmental damage

The majority of theorists in the field of civil liability in its conceptual and contractual models , whether it is a duty to prove the error or in a presumed error , in both cases, a requirement for liability has to be irrespective of its proof and the burden of proof liability"²⁰, and we will examine the extent to which traditional theories of civil liability take place in the realization of civil liability for environmental damage, through the first two demands: Tort liability within the scope of environmental damage and II contractual liability for environmental damage.

A - Tort liability in the scope of environmental damage:

In general, this situation represents the normal position of liability for environmental damage, whether it relates to environmental degradation, or environmental pollution of various types, since between the responsible and the affected person is not contractually stranded.

Traditional concepts of liability law regarding error, direct damage and causation are inappropriate for controlling the conditions of environmental degradation, and in most cases, the affected person encounters multiple obstacles to the realization of this liability. Some jurists consider that the error is: "wrongful act", while others consider that: "Breach of an earlier obligation", a third view is that the error is: "An attack on a right in which the aggressor is aware of the aspect of the aggression", some French jurists consider that the definition of error is broader, defining it as "a personal deviation in his harmful

²⁰ - Chris-James Pretorius, The basis of contractual liability in English law and its influence on the South African law of contract, pretorius-2004-the-basis-of-contractual-liability-in-english-law-and-its-influence-on-the-south-african-law-of-contract.pdf

behaviour, from the behaviour of the habitually moderate man in society."²¹

In this last direction, the legislator has made a general obligation on everyone, to follow the usual man's behaviour, which he is not very careful and committed, and he is not recognized for his indiscretion and lack of observance of ordinary care.

Thus, environmental error is a breach of the legal obligation to cause environmental damage, which is a breach of a general obligation imposed by the legislator on everyone, requiring that the human person avoid any conduct that would prejudice the rights and interests protected by the law. this obligation is supposed to be possible, if the obligation is impossible, and to be mandated only to the extent possible.

The multiple notions of error are the main reason why the element of error does not absorb environmental damage and so the French judiciary applied these rules through certain provisions, the French Court of Cassation has ruled on liability for operations resulting from which water streams are contaminated. the Court has linked liability to the error of failing to introduce the necessary precautions to prevent pollution, which was the result of the negligence and failure of those responsible for resolving those sewers.

In the area of environmental damage, error and damage can be caused by nature itself, The difficulties of proving damage from environmental pollution are evident her , when subjected to traditional liability²², environmental damage is often indirect, such as cement factories and what it can cause as a long-term environmental damage to humans, animals and plants.²³

The affected person in the field of environmental damage cannot prove the negligence of the person responsible for such damage until after

- ²¹ عبد الرزاق أحمد السنهاوري، الوسيط في التعليق على القانون المدني الجديد. 1998 ص 77

²² - Qianxun Xu and Mehran Idris Khan, Reflections on the environmental damage compensation regime in Chinese civil legislations, *Heliyon*. 2023 Apr; 9(4): e15154. Published online 2023 Apr 6. doi: 10.1016/j.heliyon.2023.e15154, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10123204/>
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²³ - K.Syamala Devi, V.Vijaya Lakshmi and A.Alakanandana, Impacts Of Cement Industry On Environment – An Overview, *Asia Pacific Journal of Research*, ISSN (Print): 2320-5504, ISSN (Online): 2347-4793, www.apjor.com Vol: I. Issue LVII, November 2017

considerable difficulty, especially if the laws and regulations governing his behaviour are not violated. The example of poisoning bees adjacent to a plant because of the contaminated smoke emitted from it is difficult for the bee owner to prove negligence on the part of the plant owner despite the damage, if he is bound by the limits of the regulations on smokes²⁴

The causal relationship in the area of civil liability is of great importance, as it determines the act that caused the damage among the facts surrounding this incident, on the one hand, and on the other hand, it is used to determine the scope of the liability²⁵

This theory has broadened the scope for the affected person, as regards the fault of the harmful person, and the breadth of the factors leading to the conclusion of liability. Moreover, it calls for all means of precaution and caution by persons, to prevent harm to others, since everyone who contributed to the damage will not be spared liability.²⁶

B - Contractual liability for environmental damage

Contract error²⁷ is the basis for contractual liability, generally consisting of non-execution, delay in execution or flawed execution of the contractual obligation and the Court of Cassation's judgement. "Is sufficient for an error in contractual liability to be found in the non-performance of the contractor's obligations arising out of the contract and shall be waived only if the contractor proves that the failure was due to force majeure or to a foreigner, or to the fault of the other contractor."

Cases where nodal liability is established may be multiple. For example, the waste product concludes with the last contract by which waste disposal is obliged to be collected, unloaded and sorted.²⁸

In the field of environmental damage, it is undoubtedly useful to overcome the burden of proof on the aggrieved, so some scholars

24 . إسماعيل امحمد محمد عبد الحافظ، فكرة الضرر في قانون البيئة، دار الجامعة الجديدة، الإسكندرية. 2018 ص133

25 - مسلط قويغان محمد الشريف المطيري، المسؤولية عن الضرر البيئي وقابلية التأمين عليه، رسالة دكتوراه، كلية الحقوق، جامعة الإسكندرية، 2008 ص. 99

26 - علي سيد حسن، فكرة الاعتبار المباشر بين النظرية والتطبيق، مجلة الحقوق والاقتصاد، كلية الحقوق جامعة القاهرة، الحقوق"، 1972، ص 43.

27- In accordance with article 54, as amended by Act No. 10-05 of 2005 of the Algerian Civil Code, "an agreement whereby one or more persons are obliged to grant, do or do not do something"

28 - ياسر محمد المنياوي، المسؤولية المدنية الناشئة عن التلوث البيئي، دار الجامعة الجديدة، الإسكندرية، 2008 ص. 264

estimate that part of the mechanism to ensure the hidden defects of the sold thing provides certain advantages for the affected by adhering to information, advice and ensuring the hidden defects.²⁹

The obligation to inform has become recognized by jurisprudence and the judiciary, but also advice in the area of agreements on the transport and treatment of wastes. This obligation falls on those who entrust such wastes to the other party for transport or treatment.

Owing to its nature, the obligation differs from the subject matter of the contract, which is a fact if the object is not a line of its nature and reaches its maximum degree to become an obligation of caution. The obligation to caution is defined by some as: "To draw the buyer's attention to the risks of using, possessing and alerting the selling object to precautions due to its damage"

The obligation to warn is not a stand-alone obligation, but rather a complement to the obligation to inform. This obligation applies in particular to dealing with things that pose risks to the security and safety of people and the environment.³⁰

Some laws contain provisions relating to contaminated sites and in view of the importance of the obligation of a world in the field of hazardous wastes and the protection of its owners and others from damage caused by such sites, we note that the French legislature, through article 8, paragraph 1, of the 1976 Law on Classified Installations, as amended by the Law of 1993, stipulates that: "When one of the licensed enterprises has been exploited on a land, the seller of such land shall inform the buyer in writing of its condition and, according to its information, of the risks or consequences arising from the exploitation of this enterprise." Impose an explicit obligation on the seller to inform and

²⁹ -Barriers and Challenges for Environmental Assessment, This report covers the work PAS have done on what can we learn from the current challenges and opportunities in Environmental Assessment practices to inform the development of Environmental Outcome Reports (EOR):

<https://www.local.gov.uk/pas/topics/environment/environmental-outcomes-reports/barriers-and-challenges-environmental> visited on 28/04/2023 at 21:39

³⁰ - Abdelaziz Al-Marsi Hamoud, pre-contractual obligation to inform a world in the sales contract in light of modern technological means - without a house Published, 2005 p.42

disclose to the buyer in writing the status of the contaminated site and the particular risk and precautions it poses when using.³¹

Securing the invisible defect is an obligation of the seller vis-à-vis the buyer, whether for ordinary goods or any sale that is hazardous in its use or circulation, Where it is not enough for the seller to transfer the seller's ownership to the buyer and enabling it to acquire a quiet possession, but also obliging the sale to be free from hidden defects that render it invalid for the purpose intended by the buyer "In determining the price, consider the interest of the seller, if the seller has a defect that decreases the amount of the interest, the price is unduly in the seller's hands."

Therefore, we can conclude that it is difficult to enforce contractual liability for environmental damage on the basis of the hidden disadvantage that environmental damage as previously indicated does not appear to be relevant until after a long period of time, making it more complicated for the aggrieved, as well as if other factors interfere with the damage, thus weakening the causal link between the contractor's act and the damage³²

From the foregoing, it is clear that contractual liability can be a partial solution in the field of environmental damage. b y reference to the contract entered into, the other contractor can sue for invisible defects, in accordance with article 379, paragraph 1, of the Algerian Civil Code, which is offset by article 1641 French civil code or article 447 Egyptian civil code. If necessary, this provision allows the seller to request the avoidance of the sales contract, the reduction of the price or the request for complacency.³³

3-2 Compensation for environmental damage:

Algeria's legislation did not provide compensation in a precise definition but referred to the possibility of governing both civil law and environmental protection law in the context of sustainable development.

³¹ - Mohsen Abd al-Hafiz al-Bayh, Civil Liability for Environmental Damage, Arab Renaissance House, Cairo, 2002 p74

³²-نبيلة إسماعيل رسلان، المسؤولية المدنية عن الأضرار البيئية، دار الجامعة الجديدة، الإسكندرية، 2007، ED1 ص 74

³³ - أمل نور الدين طاهر، خصوصية المسؤولية المدنية عن الأضرار البيئية الناجمة عن النفايات الخطرة، دراسة مقارنة، دار الجامعة الجديدة، الإسكندرية، 2008 ص 72

This is the same for the Egyptian legislature, which has identified compensable environmental damage, namely, damage to human beings or to the natural environment, resulting from incidents of pollution due to breaches of international laws and conventions to which the State of Egypt is a party or incidents of pollution of substances harmful to the marine or atmospheric environment. It did not address the definition of compensation for environmental damage or compensation in kind. This is what article 82 of the Egyptian Environmental Law stipulates³⁴. "Compensation for all damage caused by incidents of pollution resulting from violations of the provisions of the laws as well as international conventions to which the Arab Republic of Egypt is a party or from incidents of contamination by toxic substances and other harmful substances or caused by air pollution, delinquency or collision of ships or occurring during their shipment or discharge or any other incidents. Compensation includes reparation for traditional and environmental damage, restoration costs and environmental rehabilitation. "

The ideal way to compensate for damage is to remove it whenever possible, which is called restitution in kind, if it does not go to monetary compensation, then compensation can be moral in some cases.

A- Compensation in kind for environmental damage:

Compensation in kind is more common in contractual obligations and is the best way to compensate as it leads to complete repairs to damage, often facilitating the debtor's compulsion to perform in kind. In the case of tort, compensation in kind is limited in scope, as it becomes possible only to take the error caused by the debtor's image of a possible action to be removed.³⁵

In this situation, the debtor has to restore the status prior to environmental damage and to restore the status at the time of the damage, and if such compensation in kind is conceivable in ordinary damage,³⁶ the nature and specificity of environmental damage pose many difficulties with respect to compensation in kind for such damage, particularly with

³⁴ - Act No. 2 of 2009, Official journal, No. 2 bis, 01-03-2009.

³⁵ - Act No 164 "The debtor, after being excused in accordance with articles 180 and 181, shall be compelled to implement its obligation in kind, where possible

³⁶ - Hein Kötz, European Contract Law , Oxford Academic Books, Published: October 2017, Pages 241–278

regard to the means adopted to restore the status quo ante and the proportionality of such means to the nature of environmental damage.

The judge must order that the situation be restored to its pre-environmental damage if possible and claimed by the creditor but it is not obliged to rule that the situation be restored to what it was before environmental damage occurred, the victim may also request that the situation be restored. If the victim accepts the injury, there is no problem. and if the aggrieved person refuses, the court may only award monetary compensation, thereby rejecting the claimant's claim for damages.³⁷

The Algerian legislature has enshrined in the environmental Protection Act several applications of the restoration mechanism as before environmental damage. Law No. 10-03, article 105 of the Act, in which the judge ordered the return of places to their original condition in the event of exploitation of an enterprise without obtaining the licence provided for in article 19 of the same Act, Law No. 19-01 obliges a waste producer or holder, if unable to produce or value waste, to ensure that such waste is removed in an environmentally rational manner. and the same with regard to the neglect, deposit or treatment of wastes contrary to the regulatory provisions of this Law or when wastes are entered into the national territory in an unlawful manner³⁸

As a guarantee of the implementation of the obligation to restore the situation before environmental damage was caused in the event that the aggrieved person failed to do so, the injured person could obtain a judgement under article 174 of the Algerian Civil Code: "If the performance of the obligation in kind is possible or inappropriate only if it is carried out by the debtor itself, the creditor may obtain a judgement requiring the debtor to perform it and pay a mandatory fine if it refrains from doing so."

If the judge considers that the amount of the fine is not sufficient to coerce the abstaining debtor, he may increase the fine, whenever he deems it necessary to increase. "

³⁷ Mohammed Said Abdelhalla Al-Hamidi, Civil Liability arising from pollution of the marine environment and legal ways of protecting it, Al Jeddah University House, I, 1 Alexandria, 2008 p378.

³⁸ - Act No. 19-01 of the /12 /12 2001 on the Management, Control and Removal of Wastes, c. No., 77 issued on the date, 2001/12/15 article 08, article 23 and article 27 of the Law19-01.

After a violator's excuse, the judiciary can order the automatic removal of such waste on its own account³⁹, management may also replace it in the implementation of this obligation at its expense.⁴⁰

The Court obliges the person responsible for the damage to stop the activity causing environmental pollution, the cessation of illicit activities is a form of compensation considered protective for the future and not the eradication of damage caused by this activity, but rather to prevent new damage in the future. For example, when a factory dumps toxic substances into used water, the factory becomes obliged not to repeat this harmful act from the source of pollution.

Circumstances sometimes require the temporary cessation of certain industrial and commercial activities until the necessary measures and precautions are taken by some contaminated activities, such as reforms required by the example of some classified enterprises, so that future environmental damage is avoided or an imminent environmental disaster is prevented if such contaminated activities continue.

In some instances, contaminating activity merely requires some technical measures to avoid or mitigate certain damages, so the judge can rule on the reorganization of that contaminating activity.

For example, ordering a printing factory to place sound isolators on the walls of the establishment in order to reduce the disturbing sounds of the engines when using them. In this regard, article 85, paragraph 02, of Act No. 10-03 on environmental protection in the context of sustainable development empowered the judge to automatically order the owners of contaminating enterprises to reorganize their activity so as not to cause further damage in the future, under a threatening fine for every day of delay, even if those affected do not initiate a request.

B - Monetary compensation for environmental damage:

Financial compensation for environmental damage includes all damage to the natural corridor, which is necessary to restore damage, destruction, and loss to the environment due to irrational use, as well as the expenses required to estimate such damage and the expenses of

³⁹ - Article 23 of Act No. 19-01 regarding wastes.

⁴⁰ - Article 27 of Act No. 19-01 on wastes.

implementing the procedures also necessary to restore and replace natural sources and acquire other similar sources or alternatives.⁴¹

Regardless of the judge's use of specialized experts to assess environmental damage, the value of environmental elements and resources (air, water, soil, animal and plant factions, sites and landscapes) is more precious and costly than the judge would estimate in cash. On this basis, the judge may be resorted to the method of common assessment of environmental damage, or the method of fair assessment.

Common assessment of environmental damage:

The Common, or standard assessment of environmental damage is based on the cost of replacing natural wealth that has been contaminated or destroyed. In no way can we give natural elements and their sources monetary commercial values. It is just possible to place a quasi-actual value on certain elements and cases in order to estimate the damage to natural wealth critically.⁴²

A uniform assessment of environmental damage allows for a monetary estimate of environmental wealth that has no commercial values of origin, and thus it is an influential means of valuing such wealth and avoiding its loss, criticism of this theory that it did not take into account the fact that the situation before it with respect to natural elements and wealth must be assessed in the light of its functions, which are of a very special nature and which are difficult to estimate in cash⁴³. In the face of the difficulties and criticisms of a common assessment, there is a fair assessment of environmental damage.

Fair assessment of environmental damage:

This method of giving environmental damage monetary value is based on the preparation of legal schedules that determine the common value of natural elements, and is calculated according to scientific data by environmental experts.

⁴¹ Hamida Jameela, Legal System of Environmental Damage and Compensation Mechanisms, Dar al-Khaldouniyah, Algeria,,2011 p314

⁴² Said sayid Kandil, op.cit, p. 39

⁴³ Rahmouni Mohammed, Mechanisms for Compensation of Environmental Damage in Legislation Remedy Roar Memorandum , Master's degree in public law, specialization in environmental law, Faculty of Law and Political Science, Setif University 2016 , p 180

A fair estimate of compensation for environmental damage, although it relates only to items and wealth that have value such as commercial goods, it offers some advantages so that no environmental damage can be left uncompensated even if it does not take into account the true value of contaminated items.

This theory has not been delivered is also critical as it is always difficult when assessing environmental damage to prove the situation in which they had the natural elements before they got contaminated.

Most legislation accepts the provision of monetary compensation for damage to the natural environmental environment and requires that these funds be used to try to restore the condition of the damaged environment to pre-pollution or to use the sums to preserve natural wealth. The amounts awarded as compensation are transferred to the calculation of the nature protection budget entrusted to the ministries of the environment within each State.

Compensation for pollution resulting from such activity could also be capped. In the light of such determination, a portion of the damage might be incurred by the victim without being compensated. Thus, comparative legislation that had adopted a special system of environmental civil liability established the principle of limited liability on the basis of guidance. Some scholars have argued that the principle of limited liability is an application of the unfamiliar theory of harm to neighbourliness, since only unusual harm compensates for it.⁴⁴

4- Conclusion:

Reflecting the legal concept of environmental damage requires that the specificity of such damage be taken into account as non-personal and indirect in-kind damage Fast-evolving, fast-spreading characteristics and features that are unique to normal damage, The issues at stake attach importance to environmental damage unless it is reflected in the special interests and these environmental damage are indirect, which can be covered by the rules of liability in accordance with the general rules because of their limitations in this area, which requires the development of a system of liability and compensation for environmental damage. liability ", clarifying the nature and legal basis of the liability arising from

⁴⁴ Yasser Mohamed Farouk al-Manyawi, former reference, p418.

the prejudice to the environment, and enabling individuals to require and be liable for compensation

The responsibility for environmental pollution is not based on a specific basis, it may be based on error and may occur without it, which is reflected in its elements and in some cases subject to these rules of omission liability in the terms of its establishment and the means of its payment, It is required to prove fault, damage and causation, and to pay it is required to prove that the fault is no longer possible, that there is an alien's cause or one of the reasons for permitting the fault. and if the error is presumed, it is sufficient to establish the injury and the causal link of its occurrence, and to deny it must prove the availability of the foreign cause.

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