

Civil liability for environmental damage and compensation

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Abstract:

The environment is the surroundings in which humans and other creatures live and from which they derive the essentials of life and survival. It comprises the natural and human elements that make up the environment. However, the increase in the world's population and its concentration in limited areas of the earth's surface, scientific and technological progress, the expansion in the use of various energy sources, and the expansion of industrial activity, which has had numerous effects on the environment, have led to the emergence of a number of environmental problems, such as environmental pollution resulting from human activity. This has necessitated the preservation and protection of the environment through legislation and laws that impose various types of legal responsibility for protecting the environment. Among these types is civil liability, which plays an important role in protecting the environment through compensation for environmental damage.

Keywords: environment, environmental damage, monetary compensation, compensation in kind.

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INTRODUCTION

The environment is the surroundings in which humans and other creatures live and from which they derive the essentials for life and survival. It comprises the natural elements that make up the natural environment and human elements.

However, the problem of pollution emerged with the advent of the means and methods invented by humans and used in various areas of their lives. The impact on the elements of the environment became clear, as most human activities began to affect the environment, causing its destruction and deterioration, which led to damage to the environment. It has lost many of its components as environmental elements suitable for life due to the many violations it has been subjected to. We find that the problem of environmental pollution has worsened in the era of industry and technological progress, which has necessitated protection from the damage caused by natural and human factors. The environment has become more vulnerable to pollution, and industrial pollution has become a real threat to the environment.

With human development and progress, the use of technology, and the advent of the industrial age and progress, its impact began to appear in the form of pollutants that invade all elements of the environment and wreak their deadly and destructive toxins. Pollution in its current form, scientifically defined as a change in the properties of the environment that may directly or indirectly affect living organisms or structures, or affect human life, or it is an act that harms the environment by introducing elements that negatively affect it or disrupt its natural balance.

We find that the deterioration of the environment was caused by the economic renaissance throughout the world, where industrialised countries began to direct their development towards the irrational exploitation of their natural resources, including soil, water, air, minerals and energy sources, all of which are resources harnessed by humans to secure their livelihoods, leading to environmental pollution, which is a global problem rather than a local one. It is therefore said that pollution knows no boundaries, and its damage is significant, affecting more than one sector at a time. This damage results from various industrial, scientific, or commercial activities, such as the establishment of nuclear power plants, chemical factories, oil refineries, and so on, which undoubtedly cause harmful environmental pollution that

has led to the deterioration and degradation of the environment, necessitating the prevention of environmental damage and the preservation and repairing environmental damage in order to enhance and promote real estate ownership. This is achieved through monetary and in-kind compensation. What are the forms of compensation for environmental damage?

To answer this question, we have divided our research into two sections:

First topic: The Environment and Sustainable Development:

First requirement : The environment and environmental damage.

Second requirement: The relationship between the environment and sustainable development.

Second topic: Liability and compensation:

First requirement: Elements of civil liability.

Second requirement: Compensation in kind and monetary compensation.

Conclusion

First topic: Environment and sustainable development

The environment is everything that surrounds humans, including water, air, and land. Humans have no control over its existence, and God has made it available to serve humans and keep them alive¹. However, the environment has been exposed to pollution of natural resources, which leads to pollution of the entire environment. Here, we will discuss the environment and environmental damage in the first section, and the relationship between the environment and sustainable development in the second section:

First requirement: The Environment and Environmental Damage

In this section, we will discuss the concept of the environment in the first subsection and the relationship between the environment and sustainable development in the second subsection.

Section one : The concept of the environment

The definition in Algerian law in the environmental legislation issued under No. 03/10² in the text of Article 4 states: (The environment consists of abiotic and biotic natural resources such as air, atmosphere, water, land, subsoil, plants and animals, including genetic heritage, and the interactions between these resources, as well as natural sites, landscapes and landmarks).

From the above, it is clear that the Algerian legislator, in defining the concept of the environment, focused on natural resources and the nature of the interaction between these factors, and did not refer to the facilities used

by humans as an integral part of the environment³.

The environment is the surroundings or milieu in which humans and other creatures live. It includes the natural elements that make up the environment, such as air, water, soil and various natural materials, as well as the human elements that make up the human environment, such as urban development⁴. Article 65 of the Environmental Protection Law stipulates that, without prejudice to the applicable legislative provisions relating to urban development, small forests, public parks, recreational areas and any area of collective benefit that contributes to improving the living environment shall be classified as allowing for the creation of an urban environmental space⁵.

Section Two: Environmental damage

It refers to damage to environmental assets such as natural resources (water, air, land) and is defined as harm to humans, natural living organisms, water and land as a direct or indirect result of the introduction of substances or living or non-living organisms that pose a threat to human health⁶.

Environmental pollution is defined as a physical, chemical or biological change that has a harmful effect on the air, water or land, or harms human health or other living organisms, and also damages the production process as a result of its impact on the state of renewable resources⁷.

Environmental scientist Odum defines environmental pollution as a physical, chemical, or biological change that has a harmful effect on the air, water, or land, or harms human health or other living organisms, and also damages the productive process as a result of its impact on the state of renewable resources⁸.

Activities that pollute the environment include large industrial or agricultural projects that have numerous effects on the quality of the environment and on large areas⁹, which appear in the form of pollutants that invade all elements of the environment. Pollution in its current form, which is scientifically defined as a change in the properties of the environment that may directly or indirectly affect living organisms or facilities, or affect human beings' ability to live their normal lives, or it is an act that harms the environment by introducing elements that negatively affect its components or disrupt its natural balance¹⁰.

The environment consists of two main elements that interact with each other, each affecting the other. The first includes natural elements, and the second includes everything that humans have created in their interaction with

the natural components of the environment. All of this is within the framework of reconciling economic development and the environment without causing imbalance. All of this requires us to clarify the relationship between the environment and the concept of sustainable development.

Second requirement: The relationship between the environment and sustainable development

In addition to the provisions of the basic legislation on environmental protection, Algerian lawmakers have sought to enshrine the principle of sustainable development by issuing a series of laws and decrees¹¹ addressing this principle. Among these texts is the Law on Regional Planning and Sustainable Development, which seeks to define the guidelines and tools related to regional planning, which by their nature ensure the harmonious and sustainable development of the national territory¹².

Section One: Development is defined as providing productive work and a better quality of life for all peoples, which requires significant growth in productivity and income and the development of human capacity.

Section Two: Sustainable Development The Algerian legislature has defined the concept of sustainable development in accordance with Article 4 of Law 03/10 (sustainable development means reconciling sustainable social and economic development with environmental protection, i.e. incorporating the environmental dimension into a development framework that takes into account the needs of present and future generations).

Sustainable development is a process that seeks to preserve the development achievements that are continuously being made without causing environmental imbalance. It is a form of development that takes into account the preservation of the natural environment, including its basic elements and components such as air, water, soil and other natural resources¹³.

We also note in particular Law 10/03 on environmental protection in the context of sustainable development, which was the result of a series of reports and whose objectives included updating the legal principles governing environmental protection. One of the most pressing issues of our time is the relationship between humans and their environment. Humans have created problems between themselves and their environment by polluting wells, seas and oceans and building factories that dump thousands of tonnes of pollutants into wells.

It is a method of development that maximises the social welfare of current generations without leading to a decrease in future welfare. In order

to achieve sustainable development, environmental protection must be an integral part of the development process and cannot be considered in isolation¹⁴.

Referring to Algerian law, the Algerian legislator, in the environmental legislation issued under No. 03/10, Law 03/10¹⁵ dated 19 July 2003 on environmental protection in the context of sustainable development, No. 43 issued on 19 July 2003, and for the first time, unlike Law 83/ 03, which was repealed, defines certain terms and concepts, including the environment and pollution, with Article 4 stipulating the following: (The environment consists of abiotic and biotic natural resources such as air, atmosphere, water, land, subsoil, plants and animals, including genetic heritage, and the interaction between these resources, as well as natural sites, landscapes and landmarks).

In addition to the provisions of the basic legislation on environmental protection, the Algerian legislature has sought to enshrine the principle of sustainable development by issuing a series of laws and decrees addressing this principle. These texts include the Law on Regional Planning and Sustainable Development, Law No. 01/20 of 12 December 2001 on regional planning and sustainable development, published in Official Gazette No. 77 of 15 December 2001.

This law sought to define the guidelines and tools related to regional planning, which are designed to ensure the harmonious and sustainable development of the national territory. Article 1 of Law 01/20 on Regional Planning and Sustainable Development.

From the above, it is clear that the Algerian legislator, in defining the concept of the environment, focused on natural resources and the nature of the interaction between these factors, and did not refer to the facilities used by humans as an integral part of the environment¹⁶.

We find that the deterioration of the environment was caused by the economic renaissance throughout the world, where industrialised countries began to direct their development towards the irrational exploitation of their natural resources, including soil, water, air, minerals and energy sources, all of which are resources harnessed by humans to ensure their livelihood¹⁷.

The damage caused by environmental pollution is unlimited and represents a global problem rather than a local one. It is therefore said that pollution knows no boundaries, as its damage is significant and affects more than one sector at a time. This damage results from various industrial,

scientific, or commercial activities. The establishment of nuclear power plants, chemical factories, oil refineries, and other such facilities undoubtedly causes some form of harmful environmental pollution. Therefore, it can be said that there is a conflict between the economy, industry, and technological progress on the one hand, and the damage that all of this can cause to the environment on the other¹⁸.

The enormous expansion in the use of various energy sources, the spread of transportation, and the increase in industrial products have led to water pollution with chemical toxins, air pollution with smoke and gases, and coastal pollution, including protected natural areas, which have been subjected to the greatest pressures and deterioration due to the concentration of heavy and polluting economic activities, despite being a limited space in terms of its small size and containing a unique ecological system such as protected areas¹⁹ that coexist with each other according to ecological systems. The environment is no longer able to renew its natural resources²⁰, and the balance between its various elements has been disrupted. These elements are no longer able to break down human waste and absorb the waste produced by various human activities²¹.

The environment is polluted by chemical pollutants, which have become a phenomenon at the present time, and these pollutants cause many environmental, health and economic damages to humans and the environment²².

The dictionary of social science terms defines pollution as the contamination of air, water and land by waste resulting from increased industrial activity²³.

Anyone who carefully considers the meaning of pollution through the definitions given must note that pollution encompasses many meanings. It can mean the appearance of something in an inappropriate place that is undesirable in that place, while the same thing may be desirable if found in another place and in another form. For example, petroleum is useful and desirable when extracted from the ground and its products are used as fuel in car engines and machines. but when it spreads on the surface of the sea or appears on the sand of beaches, it becomes undesirable and harmful to health. The same applies to insecticides, which are useful and necessary for exterminating insects and mosquitoes, but the use of these pesticides, as in the case of DDT, which is effective in eliminating insects, is very harmful to the environment and is considered one of the most dangerous pollutants because it causes harm to living organisms.

Pollutants of various types are the result of the technologies used by humans in the environment and the discoveries they have made. For example, if we take pollutants by their causes, we find that they are divided into biological, chemical and physical pollutants²⁴.

In reality, the issue is difficult. If humans are blamed for harming the environment, it is because they have used the double-edged sword of science, employing scientific methods that have led to the deterioration and corruption of the environment. If the ideal solution for the environment is to prevent and preserve it from environmental damage, compensation for environmental damage is an important aspect that cannot be overlooked. It comes after preventive measures fail to address environmental damage. Therefore, several preventive measures have emerged, including compensation. The general rule is that direct damage compensated, while indirect damage is not compensated.

Second topic: Liability and compensation

In addition to the above, liability and compensation arise when there is a victim, i.e. someone who has suffered damage and is responsible for the damage. When applied to environmental damage, it is noted that most cases do not give rise to liability claims because damage to the environment may not affect humans or other living beings. If pollution causes specific damage to a person or group, that person or group is considered to be harmed by the pollution, such as a person who drinks contaminated water or inhales polluted air and contracts certain diseases. That person or group is entitled to file a liability claim and seek compensation for that damage. The victim of pollution is always entitled to file a liability suit and claim compensation²⁵.

First requirement: Elements of civil liability

Civil liability in its traditional form (negligence liability) is considered the cornerstone of the legal system. It is based on three elements that must be present, as it requires the existence of fault, which is the basis of liability for personal acts and is, in essence, a matter of proof. i.e., the person claiming to have suffered damage from the act of another must prove the fault of that other person and that this fault resulted in damage to the injured party, and this damage must be linked to the wrongful act that caused it.

When a person commits an act that violates regulations and laws, they are held accountable for it. Therefore, when a person commits an act that violates the laws and regulations in force regarding environmental protection, this is considered an environmental fault, and this violation may be

intentional or unintentional.

Fault is a necessary condition for liability, whether the fault is intentional or unintentional. In the case of intentional or deliberate violation, the perpetrator's will is directed towards committing the act and causing the harmful result. Whether the act is intentional or unintentional, the perpetrator is liable to the Public Authority for Environmental Affairs for compensation, which is paid directly to the state treasury for the damage assessed by the Authority²⁶.

If the three elements of civil liability are present, namely fault, damage and causality, the ruling is compensation. Compensation is defined as a sum of money or any other form of satisfaction equivalent to the loss suffered by the injured party and the loss of earnings that was a natural consequence of the harmful act. Compensation is considered a means of redress for the damage²⁷.

Section one: Environmental damage

Environmental damage is an important pillar of liability, as without it, liability cannot exist. It is considered the essential pillar of liability, and the judge cannot award compensation

if there is no unlawful damage to the environment, as its existence is undisputed²⁸.

In order for environmental damage to be considered a pillar of the polluter's civil liability, and therefore subject to compensation, the following conditions must be met:

The environmental damage must be proven and certain: in order for environmental damage to be eligible for compensation, it must be proven with certainty and certainty, i.e. it must affect the interests of individuals protected by law, it must affect elements of the environment, and it must have actually occurred and resulted in material or moral damage to a person or the environment.

Or physical harm to the injured party. When harm befalls a person, they resort to the courts to seek legal protection and a ruling awarding them the necessary compensation for the harm they have suffered as a result of the act that caused the environmental damage. In order for the injured party to be able to seek legal protection through the courts, the environmental damage must have affected a legitimate interest, because civil liability presupposes the infringement of a legitimate and legally protected interest²⁹. It is also required that the environmental damage be a direct result of the harmful act

committed by the polluter, in which case it is described as actual damage³⁰.

Section tow: monetary and in-kind compensation

If the elements of civil liability are met, this entails the right of the environmentally affected party to demand the removal of all damage resulting from the harmful act, the elimination of the source of that environmental damage, and the award of appropriate compensation³¹. The environmentally affected party initiates a civil lawsuit in which it requests the cessation of the damage caused to it by the environmentally harmful act and awarding it compensation that enables it to restore the situation to what it was before the environmentally harmful act occurred. The judge has no choice but to rule on the appropriate measure if the environmental damage is proven to have actually occurred, and this is done in accordance with the principles and foundations specified by law. The judge may order the rehabilitation of the damaged environmental areas and order the payment of compensation for such damage³².

The environmental damage that must be compensated for must be certain, direct, and personal, and this damage must affect a personal interest protected by law. Therefore, the environmental damage that must be compensated for must be certain³³, whether it has already occurred or is certain to occur in the future. It is also required that the environmental damage be a direct result of the harmful act committed by the polluter, and that the direct damage be easy to prove. For example, the leakage of toxic gases from a factory adjacent to a house leading to one of the household members inhaling these gases³⁴.

One of the most important characteristics of environmental damage is that it often does not appear immediately after the pollution occurs in the environment, but rather appears in the future, only becoming apparent after a period of time. Therefore, compensation for environmental damage must include both direct and indirect damage to collective interests³⁵.

Pollution has become a very common and widespread phenomenon today, and since we are talking about responsibility, I must point out that the law has given individuals rights and protected these rights in several ways and means, perhaps the most important of which is through the judiciary by means of litigation, which is considered the legal means of protecting rights and obtaining compensation in the event of a violation of rights³⁶.

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Compensation is a form of punishment in civil liability, and it is compensation paid for damage to the natural environment, such as water, air, land, plants, and other living creatures, regardless of the individual interests of humans. This compensation is not intended to punish the perpetrator, but rather to redress the damage. Compensation can be either in kind or monetary³⁷. The judge determines the method and amount of compensation, as stipulated in Article 132 of the Algerian Civil Code (the judge determines the compensation according to the circumstances, and the compensation may be paid in instalments³⁸, or in the form of regular income. In both cases, the debtor may be required to provide security, and compensation shall be assessed in cash. However, depending on the circumstances and at the request of the injured party, the judge may order that the situation be restored to its previous state, or may rule that compensation be paid in the form of certain benefits related to the unlawful act).

Compensation for damage is determined by the nature of the violation, and civil penalties take the form of removing or erasing the effects of the legal violation and restoring things to their previous state. It is an established legal principle that every criminal offence is a civil offence, but not every civil offence is a criminal offence. Punishment means inflicting pain on the offender and punishing him for his act when he commits a crime, as well as punishing him financially or civilly by obliging him to pay compensation. A civil offence, in other words a fault, requires compensation, but not in all cases a crime punishable by law, but the person who suffered the damage has the right to compensation for that damage³⁹.

Financial compensation is paid by the offender in the amount of the damage. In general, anyone who causes damage to others due to environmental pollution is civilly liable for the resulting damage and is obliged to compensate for it⁴⁰.

Section one: Monetary compensation is the norm, but it is not always desirable. However, if all possible means of remedying environmental damage have been exhausted, the judge has no choice but to award monetary compensation for such damage. Therefore, when assessing the value of monetary compensation for environmental damage, the judge must take into account the specific nature of this type of damage and the nature and importance of the damaged environment. If it is found that the damaged environment is related to the public interest, i.e., it affects the lives of individuals and the environmental damage will have social and economic

consequences, this will be the case if the damaged environment is a shared resource such as air, water, green spaces, etc. In such cases, the compensation imposed for environmental damage may be more severe, and the judge may take into consideration the status of the polluting party (factory, individual, etc.) and its ability to pay. However, in all cases, the compensation imposed by the judge for environmental damage must be equivalent to that damage⁴¹.

When a court ruling requires the polluter to pay a monetary amount to the injured party as compensation for the damage caused, money is not only a means of exchange but also a means of assessment, as all damage can be assessed in monetary terms.

Section tow: Compensation in kind

This is the restoration of the situation after the environmental damage has occurred, or it may take the form of the cessation of illegal activities. Civil liability resulting from environmental pollution does not fit into the traditional concept of liability.

as defined by some jurists as restoring the situation to what it was before the responsible party committed the error that led to the damage, and defined by others as fulfilling the obligation in general.

Compensation in kind, in this sense, is preferable to compensation in money, as it leads to the elimination and removal of the damage, rather than the damage remaining and the injured party being given a sum of money in compensation, as is the case with compensation in money⁴².

Therefore, we can define compensation in kind as civil liability for environmental damage and the restoration by the defendant (the party responsible for the environmental damage) of the situation to what it was before the environmental damage occurred, as if the environmental damage had not happened. Compensation in kind may be total, such as closing a factory that emits toxic gases, smoke or unpleasant odours, or demolishing a chimney. Compensation in kind may also be partial, such as modifying the method of exploitation or renovating it relatively in terms of time and place, such as temporarily closing the shop or modifying the source of the damage, such as raising the chimney or directing its nozzle in another direction, moving some of the machines that emit loud noises or noise from their location, or installing sound insulation. It may be sufficient for the owner to refrain from working during certain times, such as sleeping hours, which is when the damage to neighbours occurs. This usually happens in cases of

neighbourhood damage⁴³.

Compensation in kind is the best form of compensation because it completely remedies the damage, but compensation in kind in the field of environmental damage is not easy, especially since environmental pollution issues are complex and multifaceted, especially if there is more than one type of damage, such as when toxic pollutants have fallen into a river, leading to the current situation. However, if the pollutants have fallen from the river, it is possible to remove them through purification, in which case compensation in kind is provided in return. Nevertheless, the general rule in tort liability is to resort to compensation in return, i.e. the payment of an amount of The money is intended to compensate for the damage that has occurred, which the judge rules on in a lump sum or in instalments, depending on the judge's discretion and without a request from the injured party⁴⁴.

Therefore, compensation in kind is sometimes possible as a means of valuing real estate, especially in cases of excessive damage to the neighbourhood. The judge may take certain measures to stop the disturbance to the environment, such as ordering the demolition of a building that is blocking light from a neighbour's property or cutting down a tree that is blocking air and visibility from neighbouring homes. Therefore, it is necessary to develop real estate to counter the negative effects of environmental crimes⁴⁵, as environmental factors have an impact on property value.

Conclusion:

We conclude from the above that damage related to humans is remedied by paying a sum of money, but damage to the environment as a result of the destruction of its systems can only be remedied by restoring the situation to what it was. and this solution is not possible or, we could say, impossible. On the other hand, financial compensation does not rise to the level of the environmental value to be compensated, as it is difficult to measure the value of the damage caused by pollution.

Recommendations:

Establish projects to protect natural resources and protect the environment from pollution.

Preserve environmental resources and wealth.

Fully protect the ecosystem in order to ensure the preservation and protection of unique natural areas due to their biological diversity.

Fund the studies necessary to prepare environmental programmes.

Limit environmental impacts.

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Strict control of resource consumption and implementation of a waste management system.

Intensifying tree planting to reduce environmental impact and promote environmental standards. Tree planting is considered a solution to air pollution.

Maintaining and improving natural systems and resources by preventing pollution or deterioration of their resources.

Encourage citizens to participate in preserving the environment and dealing with it positively to achieve the safety, happiness, and stability of society by motivating and encouraging people and raising environmental issues.

Raise awareness among people to change certain behaviours that some people engage in that are harmful to the environment.

Preserving the environment in all its elements and developing environmental awareness through organised activities or intensive awareness campaigns.

Spreading environmental awareness in rural and urban areas, at home, at school, in neighbourhoods and on the streets, in order to achieve comprehensive awareness and increase environmental consciousness, is a key tool for ensuring the preservation of these elements.

Introducing environmental concepts into school curricula and environmental lectures, and inviting mayors and environmental councils to participate in them.

Organising events and programmes that promote environmental awareness among citizens of all levels and cultures through workshops and scientific seminars.

Requiring factories and various sources of pollution to use modern technology to reduce the risks of pollution.

Promoting the use of available natural resources and cleaner technology, and supporting media coverage, awareness-raising, and the participation of the public and various stakeholders in environmental protection measures.

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³⁶ Walid Ayed Awad Al-Rashidi, Civil Liability Resulting from Environmental Pollution, previous reference, p 84.

³⁷ Walid Ayed Awad Al-Rashidi, same reference. p 97.

³⁸ Youssefi Nourredine, Compensation for Environmental Damage, University of kasdi Merbah, Ouargla, 2017, p. 2.

³⁹ Walid Ayd, Awad Al-Rashidi, Civil Liability Resulting from Environmental Pollution, previous reference, p. 94.

⁴⁰ Ibtissam Said El Malkaoui, Environmental Pollution Crimes, A Comparative Study, previous reference, p. 113

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⁴² Ali Mutashar, Abdul Sahib, Civil Liability of Investors for Environmental Pollution, University of Baghdad, Faculty of Law, p 257

⁴³ Hassan Hantoush Rashid Al-Hasnawi, Claims for Compensation for Environmental Damage, p.16.

⁴⁴ Walid Ayed, Awad Al-Rashidi, Civil Liability Resulting from Environmental Pollution, 2012, previous reference., p. 38. [1]

⁴⁵ Djawed abdel laoui, previous referencet, p. 23.