

Environmental Liabilities; the Nature and Principles

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ABSTRACT

Nowadays, destructive liabilities to the environment have attracted the attention of politicians and law-makers to this issue. In this study, we first study the nature of the environmental responsibility and then by investigating accepted traditional norms we study the principle of environmental responsibility and analyze the Iranian law of civil responsibility regarding environmental liabilities as well as the law passed in the European Parliament by comparing these two modern and traditional systems.

KEYWORDS: the environments, civil responsibilities, the European Parliament, Iranian law.

INTRODUCTION

Nowadays, the environment is an interdisciplinary issue all over the world. Therefore, currently, it is not possible to ignore the directions regarding civil responsibilities due to environmental liabilities passed in the European Council in 2004. The U.S and the European Union are pioneers of passing laws regarding environmental pollution and their system of environmental responsibilities is one of the highly developed ones, though still not a complete one. However, in developing countries, due to developmental purposes, the environment has been greatly damaged. Therefore, in order to generalize the laws passed in the U.S and the E.U, it is essential that the environmental responsibilities of these countries be studied [1].

2. The nature of environmental responsibility

By the nature of environmental responsibility, we mean whether the system of responsibilities toward environmental liabilities follows the rules of the public law or those of the traditional law since the purpose of responsibility regulations in the public law is to support social and public interests [7], while in private law, the purpose is to compensate for losses to individuals and private properties. Furthermore, these two disciplines are not equal in terms of domains and methods [9].

Nowadays, governments follow different paths for passing laws of environmental responsibilities; some prefer public and company laws while other used civil responsibilities regulations, and some use a combination of these two. Therefore, governments can opt to choose one of these methods to reach the goals specified by the E.U. so according to the directive, it is the job of domestic laws to determine the type of responsibilities. However, the overall tone of the regulations passed by the European council suggests that the system of civil responsibilities and preventing from environmental liabilities based on responsibilities designated by the civil law is more effective and that the traditional regulations regarding civil responsibilities are not effective in this respect [8].

3. Discriminating between environmental civil responsibilities and civil responsibilities by comparing the principles of these two responsibilities

Compared to the traditional civil responsibilities, the environmental civil responsibilities have unique features. In order to study the norms and principles of the environmental civil responsibilities, it seems essential to study those of the traditional civil responsibilities first:

Principles and norms of responsibility is one of the most fundamental issues in developing civil responsibility, which has moved countries from conflict concepts to common concepts [3].

The principles of the traditional civil responsibilities

a) Absolute responsibility: when the individual accepts that he/she has done some liabilities and does not need a witness to accept it. This is a concept accepted from the time of early human societies.

b) Fault-based responsibility: it is based on degrees of reproach. It is the only factor that judges need to take into account when deciding whether a behavior is considered as crime or not. This norm was developed after the rise of Capitalism [2]. During the 19th century, this norm gained a superior standing in most capitalist countries such as France, Germany, and England.

c) Hard responsibility: it is often used for dangerous activities or manufacturing responsibilities. In most countries, it is referred to as faultless responsibility [11].

d) Justice-based responsibility: justice-based responsibility free from any guilt has always been a controversial issue in academic contexts because most scholars believe that it will lead to unexpected results. However, it is a highly popular one in China [5].

Principles of Modern environmental responsibilities

The principles of environmental responsibilities are in a transition period from subjective norms to objective ones, or in other words, they are changing from fault-based responsibilities to hard responsibilities. In the past, when a case of environmental responsibility was brought to the court, most judges did not tend to accept environmental pollutions as threats, so they mostly used the fault-based responsibility, and consequently the plaintiffs had to prove their claims by plausible reasons. Since it is possible that there is a time distance between the time that pollution is made and when it is detected, and when it is claimed, the plaintiff does not have enough evidence to support it, this norm will cause irreparable consequences for the victims of environmental pollution. In the past, people did not know environmental pollution had fatal consequences. Currently, most courts tend to accept the hard responsibility principle for environmental crimes. This norm is highly dependent on objective facts of liabilities and threat, which helps courts in developing the best approach to prevent liabilities, especially when defendants have a greater scope of knowledge than judges [6].

Reasons for changing responsibility norms

Shifting from fault-based responsibility to hard responsibility in the environmental law has occurred very quickly, which is due to:

- 1- The limitations of science and technology: science and technology have not been accurately successful in helping people prevent from environmental pollution and its threats. Therefore, if courts of law use the fault-based principle, supporting victims will be impossible.
- 2- Paying more attention to victims: if the fault-based responsibility is accepted, victims will be most hurt by the environment and they will often gain the least benefit from the environment.
- 3- Disagreement between fault-based responsibility and justice: since investors have a great role in environmental pollution and make serious liabilities to people without having any responsibilities.
- 4- Encouraging investors to use modern tools and techniques: by accepting hard responsibility, investors are encouraged to use modern techniques to prevent from pollution [4].

The principles of environmental responsibility passed by the European Commission 2004 and the Iranian law

According to the directive, in some parts, hard responsibility, and in others, fault-based responsibility are accepted. The former is applicable for beneficiaries of professional activities, and the latter is for other activities [10].

Therefore, based on the directive, the basic environmental responsibility is the hard one, and the fault-based one is an [8].

However, in Iranian law, based on the article 1 of civil responsibility law, the basic responsibility is the fault-based one, which is against the global laws and those of the European Parliament. Therefore, we need to pass proper laws in this regard.

4. Conclusion

Based on the basic environmental responsibilities in developed countries and the European Parliament which follow the hard responsibility, it is essential that developing countries including Iran should also develop strategies in this regard. Although public adopting the hard responsibility will increase the costs for defendants, they are less serious compared to environmental liabilities.

REFERENCES

1. Abraham, Kenneth S., (2002). The Relation between Civil Liability and Environmental Regulation: An Analytical Overview, 41 Washburn L.J.379.
2. Cai Shouqiu, Huanjing Ziyuanfa Jiaocheng, (2002). Wuhan University publisher.
3. Cummings, Susan S., (1994) Environmental Protection and Privatization: the Allocation of Environmental Responsibility and Liability in Sale Transactions of State-owned Companies in Poland, 17 Hastings Int'l & Comp.L.Rev. 551.

4. Hylton, Keith N., (2002). When Should We Prefer Tort Law to Environmental Regulation?, 41 Washburn L.J. 515.
- 5- Mushkat, Roda, (2004), International Environmental Law and Asian Values: Legal Norms and Cultural influences, UBC Press.
6. Nanda, Ved P., and Pring, George, (2003), International Environmental Law & Policy for the 21st Century, Transnational Publishers, Inc., Ardsley, New York.
7. Katoozian, Naser, the responsibilities of environmental liabilities, Seasonal Journal of Law, 2008, 2.
8. Katoozian, Naser, (2004), the principles of public law, Mizan.
9. Clarke, Chris, (2000), Update Comparative LEGAL Study on, Environmental Liability , available at the commission's Website, 2000, at: ec.europa.eu/environment/liability/pdf/legalstudy.pdf.
10. DIRECTIVE 2004/35/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental liabilities, at: Official Journal of the European Union, at: eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:143:0056:0057:EN:PDF
11. Ludena, Santiagoareal. (2010), Environmental Civil liability urde Comparison, Transnational Il.a