Original Article

Environmental Damage And Fundamental Changes In Civil Liability (Iran And The European Union)

[1]Hossein Valizadeh, [2]Nejatollah Ebrahimian*, [3]Sharareh Mofidian

[1]Ph.D, Department of Law, Central Tehran Branch, Islamic Azad University, Tehran, Iran
Hossinvalizadh80@gmail.com
[2*]Assistant Professor, Department of Law, Central Tehran Branch, Islamic Azad University, Tehran, Iran
1344ne@gmail.com
[3]Assistant Professor, Department of law, Central Tehran Branch, Islamic Azad University, Tehran, Iran
Dr.sharareh.mofidian@gmail.com
DOI: 10.47750/pnr.2022.13.04.270

Abstract

This study examines the changes in the foundations of civil liability for environmental damages in the Iranian and European Union (EU) law. This is fundamental, descriptive-analytical research implemented with the library method through note-taking. The importance of analyzing this issue is evident from the clear tendency of the laws of most European countries to accept and recognize absolute civil liability instead of fault-based civil liability in important documents approved at the EU level. In the current research, changes in the basics of civil liability for environmental damages have been investigated in two general areas of substantive and formal changes. The substantive changes could be classified as "privatization" and "collectivism" of civil liability for environmental damages. On the other hand, formal changes can be regarded as "absolutism and despotism" in civil liability for environmental damages as well as "an evolution in the demonstrative evidence system regarding civil liability for environmental damages". Due to the destructive consequences of environmental damages for people's daily lives, many legal systems tend to take the responsibility of affirming these damages from the judicial authority. It is assumed that harmful behavior is committed, and it is the defendant who must prove that he/she did not commit such behavior or without an emergency reason. This could be the most important development in the civil liability system for environmental damages in the European Union. The outstanding result of this study is that the European Union has experienced important developments in regulations regarding the protection of the environment and is executing instructions while Iran's laws are far from these developments.

Keywords: environmental damages, Iranian law, the European Union law, absolute liability, collective liability

INTRODUCTION

Close analysis of the civil liability in Iranian laws and international documents shows that the traditional civil liability rules are not efficient for compensating environmental damages since it is based on fault, and the law of civil liability is not responsive to general interests and rights since it simultaneously supports private rights and properties. Some jurists expand environmental damages to include harm to properties, individuals, and the environment itself, which disrupts the environmental balance. Therefore, the custodians and users of environmental elements are considered the victims of ecological damages, and therefore they can file a lawsuit and demand compensation because any type of pollution is considered a violation of human rights and is a kind of fault. The traditional civil liability system is based on the theory of fault. In general, three cases are considered in the theory of fault. First, innocence is in priority, meaning that if someone has committed an act and damage is caused, his innocence is emphasized, not his responsibility for causing the damage. Second, proof of guilt is required to convict the agent, and finally, the agent must accept the fault.

The theory of fault belongs to traditional societies, which do not fit the requirements of Iran's developing society. Its most important drawbacks are that it is tough to assess environmental damages; Second, proving the relationship between pollution and environmental damages is difficult and in some cases impossible; Thirdly, environmental damages have very little incentive to follow up and claim environmental damages, and finally, the

condition for realizing civil liability, i.e. violation of individual property rights, is not provided. The reasons for the failure of the traditional rules of civil responsibility in this regard are that the victims of environmental damages have very little motivation to pursue and claim environmental damages. Proving casual elation as well as evaluating environmental damages is difficult and even in some cases it can be beyond the authority's ability. Since, in most cases, the components of the environment are not considered private properties of individuals, the condition for realizing civil liability, i.e. violation of individual property rights, will not be met.
Given the theory of civil liability regarding compensation for environmental damages, the injured party can get his rights if he proves that the agent committed a mistake, and the damage caused to him is a direct result of the agent's fault. The agent also has the opportunity to prove that the damage was caused by the fault of the injured party or due to a natural irresistible power to eliminate his liability. According to this theory, committing fault and error is the main condition of civil liability. In addition, in some legal systems, if the agent cannot recognize and is not capable of assigning a fault (like an unintelligent minor and insane), there will be no responsibility to compensate for the damage. In general, the remarkable feature is that this theory considers everyone responsible for the consequences of his actions and gives responsibility a personal aspect, which increases caution among people. It is influenced by criminal liability where committing a fault is the main condition of the individual's responsibility. The present research aims to examine the different legal opinions about civil liability for environmental damages compensation, and the place of fault in this type of liability to help better understand civil rights regarding environmental damages compensation. No research about civil liability for compensation of environmental damages with an emphasis on "the role of fault" has not been published.
Substantive developments in the foundations of civil liability for environmental damages in the laws of Iran and the European Union
1. Collective civil liability for environmental damages
A major reason for making civil liability a collective liability is related to the definition presented in new discourses and approaches regarding the right to a healthy environment. In a comprehensive definition of this right, the right to a healthy environment refers to those rights established for protecting the quality of human life as well as the destruction of the biosphere and nature. In research, the right to a healthy environment is defined as follows: "The inalienable and unobjectionable human right by which every individual and all human beings collectively have the right to share and enjoy a healthy environment together with the collective responsibility of preserving its health to preserve human health (including present and future generation) and all-round development (economic, social and cultural)"[1]. This definition has taken into account the majority of the modern elements of the right to a healthy environment for several reasons. First, it has been introduced as a right. Second, it states that human beings collectively deserve to share and enjoy a healthy environment. Third, this right is combined with the collective liability to preserve it. Fourth, it has considered future generations and the issue of sustainable development. Therefore, except for some controversial elements – e.g., the owners of this right (individuals or society) and being the third generation or independent of this right from other human rights – this could be a suitable definition.

Of course, it should be noted that analyzes presented so far on the right to a healthy environment are based on the doctrines of the international law of solidarity and the transnational origins of collective rights. In other words, these analyzes are similar. Intellectual conflicts between collectivists and individualists have in turn affected these rights Analyzes have found a dual orientation based on an "individual basis" or "collective basis". This attitude was similar to the extensive fight of the defenders of the rights of the first generation (rights of freedom) and the rights of the second generation (rights of equality) in the years after World War II, while with the end of the Cold War, this conflict also ended and moved towards Solidarity rights.
Several new rights claimed to have a collective nature, took a different path during the evolution of their rules, and were distinguished from the rights of their "companions". It is totally clear that the right to a healthy environment was first defined based on the teachings of international law and within the framework of transnational rules, and then entered into the constitution and national laws. The dominant theory that defended the international content of these rights was the "collective" nature of the right to a healthy environment, along

[1] . Keshavarz, Ismail, Philosophical foundations of the right to a healthy environment, master's thesis in environmental law, Shahid Beheshti University, 2017, p. 24.

with other collective rights including the right to peace, and the right to the common heritage of humanity. Competing analyzes, especially those related to the right to a healthy environment, were presented in the framework of a transnational understanding of this category of rights.
However, the subsequent developments revealed that the right to a healthy environment is not enough compatible with its initial analysis. The most important evolution that made this right independent was its entry into the domestic laws of countries and its recognition in domestic public law. Therefore, the right to a healthy environment is completely distinct in terms of its entry into the rules of national law, compared to its fellow trains (i.e. solidarity rights). In domestic public law, the analysis of this right nature requires a "theoretical break" from the common and "habitual" analyzes of it in the texts presented so far. Currently, the right to a healthy environment has evolved in terms of nature and basis in domestic public law and cannot be accurately adapted to the previous common analysis. Contrary to the international analyzes of the environmental right and the criticisms of its nature in this framework, the right to a healthy environment has been consolidated in domestic public law and its "inconsistent", "collective" and "soft" nature is changed. In addition, with the recognition of this right in the constitution, ordinary laws and administrative and judicial procedures of it have become the claim of each citizen against the government, which ultimately benefits the entire human society, nature, and even future generations.
Another reason relates to changing approaches regarding environmental damage in new discourses. Jurists have divided the damage into two distinct groups material and spiritual[2]. The third type, called collective damage, is less discussed but is crucial in the discussion of liability regarding the environment. That is, sometimes damage can hardly be limited to specific people. It is inflicted on an unlimited group and is so widespread that no one can consider himself the main victim and claim compensation[3]. Therefore, the damage comes to a population or a group of people without being able to identify a certain person to be the direct goal of this damage.
In the first paragraph of Article 2 of the Draft Principles (2006) regarding the International Law Commission, the damage is defined as "significant harm to persons, properties, and the environment, which includes the following: A- Harm to life or physical injury; b- Damage to property, including cultural heritage; c- Damage caused by a disturbance in the environment; D- Costs of usual measures to restore the former state to the property or the environment, including natural resources; E- Costs of common countermeasures. Damage is also defined in other international documents[4].
Therefore, damage means harm that occurred as a result of an act or omission of an act by a (real or legal) person, or natural disasters to individuals, properties, or the environment. This word has found different dimensions due to developments at any point in time and in different fields. Including the judgment of the "Trill Smelter" arbitration, Article 1 of the Paris Convention on Liability to Third Parties in the Nuclear Energy Field (1960), Article 1 Paragraph 7 of the Brussels Convention on the Liability of Operators of Nuclear Ships (1962) and the Convention on International Liability For damage caused by space objects (1972). In all these cases, the damage is defined as loss of life, personal injury, loss of property, or damage to it. Environmental damages/loss caused by risky actions, regardless of whether accompanied by physical injuries and financial losses, is independent of damage to persons and property[5]. Therefore, international law has adopted a collective responsibility approach to support beneficial but risky activities for society, support innocent victims, and not impose heavy environmental damages on only one beneficiary. More precisely, international law tries to compensate for damages in a group by obligating insurance or financial guarantees or establishing compensation funds.
In fact, according to the realities of the international community, international law supports the sharing of social costs, and it seems logical that the responsibility resulting from non-prohibited actions is a form of sharing compensation for environmental damages. Also, compensation by the government leads to the social distribution of risk and benefits to social cohesion.
After all, the understanding of the environment as a common global heritage is the basis of many theoretical

2 . Doroodian, Hassan Ali, Civil Laws 4, Civil Liability Laws, Lectures of the Bachelor of Judicial Law, Faculty of Law and Political Sciences, University of Tehran, 2017, p. 83.

3 . Katouzian, Nasser, Civil Rights (Compulsory Warranty), First volume, Tehran University Press, 19th edition, 2017, p. 243.

4 . The Draft Principles on the Allocation of Loss Arising out of Hazardous Activities, Priciple 2(a).

5 . Draft Principles on the Allocation ..., *op. cit.*, p. 127, para. 11

discourses and practical actions aimed at protecting the environment. Regarding the global interest in the "protection of the world heritage", according to Article 4, each member of the convention has to ensure the "identification, protection, preservation, introduction and transmission of heritage located in its territory to future generations". This duty includes "all attempts to achieve this goal using the maximum resources and, if necessary, using any assistance and international cooperation".

In light of this understanding of the environment, operational guidelines have emphasized a close relationship with the World Heritage Convention and strengthened cooperation with other agreements. These conventions include the 1992 Convention on Biological Diversity, the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals (CMS), the 1974 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention Ramsar about wetlands of international importance, especially as a habitat for waterfowl (Ramsar). In protecting biodiversity, none of these documents work alone.

In some international documents regarding environmental protection, the right to benefit from the environment is mostly considered an individual right, but in others, it is a collective right. For example, the Stockholm Declaration defines the right to a healthy environment as follows: "The right of man to enjoy freedom and well-being and suitable living conditions in an environment that allows him to live with dignity and happiness." According to the African Charter of Human Rights, the right to a healthy environment is presented as an independent concept from other human rights and tries to make the right to a healthy environment an independent right for people. According to this document, the right to a healthy environment is "the right of the people to enjoy a satisfactory environment suitable for development". The important issue in this document is that, unlike the American Convention on Human Rights and the Stockholm Declaration, which considers this right for individuals, it considers the right to a healthy environment as a collective concept and belonging to "the people". Therefore, according to this charter, the right to a healthy environment is an inalienable and inalienable human right by which every human being and all human beings collectively have the right to share and enjoy a healthy environment along with the collective responsibility of maintaining the health of the environment to They have the preservation of human health (both of the current and future generations) and all-round development (economic, social and cultural). This definition includes most elements of environmental rights. First, it is introduced as a right. Second, human beings collectively deserve to share and enjoy a healthy environment. Third, this right is combined with collective liability. Fourth, it attends to future generations and sustainable development. In addition, according to Article (24) of this charter, "all people have the right to enjoy a satisfactory environment that is suitable for their development." In fact, this article does not consider the right to a healthy environment as an individual human right, but rather a collective right given to all people. However, this issue does not prevent the African Commission on Human Rights, especially regarding recent events of violating this article and concerning other articles of the Charter, from interpreting this article in this specific way and imposing obligations on EU members to respect individual as well as collective rights.

However, it should be remembered that the right to a healthy environment is considered collective due to the collective nature of solidarity rights. But like other rights of solidarity, it will not prevent citizens from benefiting from the rights individually and as a group. Of course, there are different opinions about whether individuals can independently benefit from solidarity rights in the same way as other human rights and have the possibility to claim. One view is that instead of individuals, it will be sufficient to identify the representative body of the society and give the responsibility of the demand to the government. Consequently, even the so-called collective rights can be reduced to individual rights. In other words, people have the right to peace, the right to development, and the right to a healthy environment, but since the realization of these rights makes governments and groups (not individuals) involved in its demand, they have found a collective nature.

In domestic laws, even at the level of the constitution, as the most important legal text in any legal system, there are clear tendencies toward collective liabilities in preserving and protecting the environment. Specifying the necessity of environmental protection in the constitution can have various reasons, including the seriousness of environmental protection, and the wide and complex nature of environmental problems, which require collective political action to protect all members of society[6]. When environmental protection is defined as a norm in the constitution, the need for social attention to this necessity will be emphasized. Therefore, the need for collective

[6] . Hayward, Tim, Constitutional Environmental Rights, Oxford University Press, USA, 2005, p. 5.

protection of the environment as well as the recognition of collective responsibility for environmental protection is highlighted again. A basic theoretical basis for such a belief is that if environmental values become a collective value, environmental protection benefits all these different groups, and if it is preserved, they will all benefit equally. Therefore, an important goal of the environmental protection system, along with culture building for transforming the environment as a collective value, should be to create a balance of the common interests in the environment[7], which requires the development of a social justice system.

1. Privatization of civil liability for environmental damages

From a conceptual perspective, privatizing civil liability for environmental damages is based on the premise that not only governments are obliged to compensate for environmental damages, but also the private and non-governmental sectors can and even should accept this obligation. The privatization of civil liability for environmental damages is justified by two reasons; First, it is more compatible with choosing the theory of risk as the basis of responsibility for compensation of cross-border damages caused by dangerous activities. In fact, according to this theory, the person who created the risk and seeks to gain economic benefits must bear the harmful results of controlling the activity. This person is the beneficiary of a harmful activity due to the dominance of the private economic system in the modern world. Second, the extent, irreparability, and unknown nature of many transboundary damages, especially environmental damages, have been effective in encouraging governments to remove responsibility for transboundary damages[8].

Privatizing civil liability for environmental damages has been partially introduced into the approach of Iran's legal system. Meanwhile, at the level of the European Union, more serious attention has been paid to this category and important documents have been approved by the European Union members.

The most important aspect of identifying the privatization of civil liability for environmental damages in Iran is specifying the responsibilities of legal entities to protect the environment. The legislator may indirectly punish legal entities by ruling to prevent the establishment of polluting places, like the budget law of 1328, which, according to note 30, prohibits the establishment of factories and workshops in cities and their suburbs if they are injurious to health or disturb neighbors' conform.

Sometimes legal entities are punished by punishing the manager of legal entities. For example, according to Article 568 of the Islamic Penal Code, in case of the destruction of historical and cultural property by legal entities, any of the managers and officials who give orders will be sentenced to the prescribed punishments. Although the principle of personal punishment has been accepted because the responsibility for the polluting activities of a company rests with its managers the responsibility of legal entities has been considered indirectly[9].

On the other hand, the European Commission in its amendment bill, imitating the Lugano Convention, assigns the responsibility to the "operator" or "beneficiary". In this document, a beneficiary is the one who supervises an activity.

In other words, the beneficiary is the response according to the principle of "the polluter must pay" and therefore is a person other than the owner or occupier of the contamination. In the proposed directive, a co-user is defined as a person who performs the activities mentioned in the directive. The definition of "beneficiary" was one of the most controversial topics among the commission, European Union members, and non-governmental organizations. It was generally agreed that a beneficiary is a person who has control over the harmful activity as the focus is on "practical control". From the directive view, "beneficiary" is a natural or legal person, whether private or public, who executes or controls a professional activity, or if it is foreseen in the national law, he is the one with the decisive economic power over the operation and has the license for these activities; A beneficiary is a person who has direct control, i.e. is responsible for day-to-day management, not indirect control. Therefore, it does not include parent companies. Also, any economic enterprise that exploits an activity - even if it is practical

---

7 . Ibid

8 . Jan Schnieder, World Public order of the Environment: Towards an International Ecological Law and Organization, University of Toronto Press, Toronto, 2009, p. 168.

9 . Fahimi, Mustafa, Environmental Criminal Law, Khorsandi Publications, First edition, 2017, pp. 98; And Taghizadeh Ansari, Mustafa, Environmental Criminal Law, Borna Publications, First edition, 2013, pp. 128-141.

- can be recognized as a beneficiary according to the directive[10].
In Article 7-161 of the French Environmental Liability Bill, which combines Articles 6-2 (Definition of Operator) and 2-7 of the Directive (about professional activities), "beneficiary is defined as follows: "Concerning the purpose of the European Community Legislator, the operator must be a person who can effectively and efficiently carry out preventive and remedial measures. Effective control in the context of the activity, job, or company means refers to a beneficiary's efficient management. This article does not include shareholders, credit institutions, government officials who are responsible for administrative control, and also official officials".
Most countries with customary laws have accepted the responsibility of legal entities.
However, several countries have rejected this responsibility. The argument of the opponents of liability for legal entities is that some types of punishment, including imprisonment, cannot be implemented for these people, while the supporting countries, including the European Council of Ministers, believe that financial and cash punishments should be used instead of imprisonment[11].
In penalizing legal entities, a point should be attended to: the financial penalty should be determined carefully since if it is very low, it may seem negligible compared to environmental pollution for the agent (e.g., a factory), and if it is very high, it may cause economic problems or even unemployment. A reasonable solution proposed by the European Council of Ministers is to deposit the obligation on behalf of legal entities. The obligation is an amount of money determined by estimate, or it is a specific amount of money determined by the judge for each day of delay in fulfilling the obligation, to oblige the different agents to perform it. It allows the judge to implement his decision. This punishment forces the polluter to quickly take the necessary measures to stop the pollution, otherwise, a heavy fine will be waiting for him[12].
Another dimension that the European Union has focused on in the practical realization of the privatization of civil liability for environmental damages is social regulation. Regulation is a process in which the government allows or prohibits certain activities for individuals and companies. These activities are mostly private and sometimes public, and the government takes control of them through a continuous administrative process and generally through specific administrative organizations (regulatory organizations). Regulation, also called "organization", "regulation", "provision" or "adjustment", is a tool that largely expresses the interventionist effective presence of the government in social and economic relations. Governments monitor and control many products and services offered by tools[13].

Formal changes in the foundations of civil liability for environmental damages in the laws of Iran and the European Union

Absolute liability is a term used in Anglo-American law for liability based on no fault, which is used for several quasi-crimes. "Absolute liability" is used when the responsibility exists without fault, but the defendant is relieved of it by proving an external factor as the cause of the damage. This liability is based on no-fault for criminal acts and is never applied to non-criminal acts. It is only used for activities that are legal but dangerous, like those that "Responsibilite Pour Risque" is applied in written law without any breach of duty being required. It should be noted that absolute liability is described with different terms, including Liability without Fault (responsabilité sans faute), Presumed Responsibility, Objective Liability (responsabilité objective), and Risk Liability (responsabilité pour risqué crée).
For the first time, absolute liability for environmental pollution was foreseen in the " Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (1980) in the United States, and the

10 . Mohsen Zadeh, Ahmad Ali and others, Environmental Law; Theories and Procedures, Publications of Environmental Protection Organization, second edition, 2010, p.51.

11 . Wild, Mark L., The Ec Commission's white paper on Environment Liability: Issues and Implication, Journal of Environmental Law, Vol. 13, No. 1, 2001, p. 27.
12 . Vafadar, Ali, Commitment and Responsibility of Governments in Environmental Protection, Journal of Environmental Sciences and Technology, Volume 9, Number 1, 2005, p.59.
13 . M. B. Akehurst, International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law, NYIL., 2003, p. 3.

American states adopted it regarding the release. Dangerous substances were accepted into nature. Although the historical root of absolute liability in common law goes back to the responsibility against the damages caused by animals and the employer's responsibility towards the workers, gradually, it was accepted for activities with unusual risks and environmental pollution.
Absolute or no-fault liability is a new definition in civil liability law as well as modern criminal law. In short, absolute civil liability is a kind of civil (or criminal) liability that does not require psychological proof where the mere act of material behavior constituted by a crime/violation causes civil liability. Therefore, this type of responsibility is completely related to crimes with no need for proof of a psychological element. These violations, also called material or absolute violations, it is thought that the perpetrator can be imposed by a guarantee of execution, including punishment, by simply performing a material act. This is justified by the close relationship between the psychological element and the material element with absolute liability. In the common law, it is supposed that crimes with absolute liability may be committed without any psychological element and by performing only an aspect of the material element[14].

1. The tendency of the legal system of Iran and the European Union towards absoluteness of civil liability for environmental damages

In Iran, there is no clear sign of accepting this approach in the environmental legislation process. In some countries, the absolute nature of environmental crimes has eliminated the burden of verifying the psychological element in environmental crimes and made the legal and judicial confrontation with these crimes easier. Instead, these changes have put the duty to prove the lack of psychological element has been placed on the defendant's shoulder. But in Iran, the judicial authority is still obliged to prove the psychological element of such crimes along with the other two elements, i.e. legal and material, to establish criminal liability and the possibility of applying the guarantee of legal enforcement against environmental crimes. It seems that such an approach is not rational in any way and is in clear conflict with the new criteria in the field of criminal liability resulting from the commission of environmental crimes. However, accepting no need to prove the psychological element in environmental crimes and confining it to committing criminal behavior, on the one hand, frees the judicial authority from the difficulties of proving the crime's psychological element, and on the other hand, makes it easier to prove the occurrence of the crime. It also enforces the preventive mode of relevant laws because everyone will know that should be more careful about environmental damage. The sensitivity to the environment increases to an extent that even without the need to prove the psychological element, any type of harmful behavior toward the environment will be a crime, and the perpetrators will be held criminally responsible.
The lack of need to prove the psychological element in environmental crimes will be doubly important when it is understood that in the modern world, usually many environmental crimes are carried out in a corporate (participatory) manner and sometimes by legal entities while accepting the "principle of differentiation in punishing environmental crimes", manifested by the lack of need to establish the psychological element, problems caused by the need to prove a psychological element in the criminal behavior of legal entities or in the assumption of committing a crime cooperatively will be eliminated.
On the other hand, a problem in Iranian's laws for compensating environmental damages (regardless of whether these damages directly caused harm to people or whether they only target the environment) is the lack of a proper basis for the government's civil liability, because usually, the courts condemn environmental polluters to compensation based on the laws established on the theory of fault. This is even though this theory leads to many problems in environmental issues because it is very difficult to prove the fault of the polluter and when the environmental pollution has direct victims, their motivation to file a lawsuit and claim damages will be reduced. This difficulty is doubled when the government is the cause of the loss, because the structure of the government consists of employees whose actions may cause a lot of damage to the environment without being related to the government apparatus, as a result of the loss in the maze of proving the causal relationship between The act or omission of the cause of the loss and the damage caused, and then proving the fault of the cause of the loss, will

---

14 . Taghrangar, Hassan et al., Researching the Psychological Element in Crimes with Absolute Liability, Journal of Legal Research, N. 43, 2019, p. 75.

be caught and maybe discouraged from filing such a lawsuit[15].

In the European Union, the approach of the legal system of England is mentioned, which is one of the most important legal systems in the world today, which focuses on the absolutism of environmentally damaging behaviors. The approach of the English legal system, in this case, can be examined especially for environmental crimes, but the point is that for harmful behaviors as well as environmental crimes, the principles emphasized by jurists regarding the absoluteness of liability have followed the same path and no difference exists in this respect between theoretical foundations and approaches. A clear example is the tendency to omit the need to prove the intentionality of environmental crimes, and instead, let the judicial authority verify this intention in the committed behavior and accept no-fault liability (purely material) or, in other words, absolute liability in environmental crimes. England seems to be the first legal system in which the tendency to accept criminal liability without fault, or based on committing a material element, without considering the psychological element has been formed[16].

3. Developments in demonstrative evidence of civil liability for environmental damages

The evolution in the evidence system regarding complaints of civil liability for environmental damages should be studied based on the belief in absolute liability, and regarding it as the basis for environmental damages. Since absolute liability is the basis for the realization of civil liability for environmental damages, the demonstrative evidence for liability also becomes distinctly different from what is commonly proposed.

This development is caused by the belief in the absoluteness of liability. In the transformation of the basis of civil liability from fault to absoluteness, the way of presenting evidence to prove complaints also changes significantly, while if the civil liability is based on fault, the demonstrative evidence is mainly the confession of the defendant to what he has committed. If absolute civil liability is realized, the demonstrative evidence is mainly based on the committed behavior. In other words, if the civil liability is based on fault, the priority of proving complaints is the defendant's confession of his harmful behavior. Therefore, if the defendant does not admit to what caused the damage, it will be difficult to prove the damage complaint on his part.

On the contrary, if the basis for realizing the civil liability is not the fault of the defendant, but merely the commission of a harmful behavior, the commission of the behavior is enough to prove his liability. In this assumption, even if the defendant did not admit to his behavior, his liability can be considered realized by referring to the evidence and circumstances related to his behavior. Therefore, the defendant's lack of confession is not an obstacle to proving the civil liability against the defendant, because by referring to the peripheral condition of the committed behavior, his civil responsibility is easily proven[17].

Basically, in the transformation from no-fault liability to absolute liability, one should know that the industrial revolution in the 19th century weakened the appeal of the theory of fault because the new production systems caused losses to workers and consumers, proving the fault of the damage caused was difficult.

Accidents caused by transportation and worker-employer relations in the industry further showed the weakness of the theory of fault, and gradually the social theory of rights was proposed, which denied the involvement of intent and fault in the occurrence of damage, and emphasized that rights have social goals that should be reached. Jusran, the theory developer, believed that the theory of fault was not fair while justice dictates that the person who has caused the damage must compensate for it even if no fault has been committed, instead of imposing the damage on a suffered person someone with no role[18]. Following these criticisms, the French jurist, Sally, also

---

15 . Qasimzadeh, Morteza, Civil liability due to omission an act, Judiciary Law Journal, No. 44, 2018, p. 51.

16 . Gardner, John, Answering for Crime, Responsibility and Liability in the Criminal Law, Hart Publishing, R A- Duff, 2007, p. 113.

17 . Babaei-Moghadam, Abedin, Examining the Differences between Environmental Damages and other Damages and the Effects of a Differential View in the Field of Personal Liability, Master's Thesis in Environmental Law, Shahid Beheshti University, 2013, p. 45.

18 . Ra'ai, Massoud, Fault in civil Liability and Justice, Journal of Legal Knowledge, 1, 2018, p. 173.

considered a criminal liability to be separate from civil liability and denied the involvement of the moral and fault in causing damage. Therefore, Reaper opined that due to the shortcomings of the theory of fault, its followers gradually moved to a theory similar to the theory of risk. In this regard, the insistence of the courts on the labor contract between the worker and the employer could be referred which considered the guarantee of the worker's health as the result of the implicit contract of work, and the provision of the passenger's health in the transport contract as the result of the implicit obligation for the benefit of the third party, to prevent damages to workers and passengers.[19]

Examining the basics of liability in law shows that a noted development in civil liability in terms of explaining, diagnosing, and determining the basis of civil liability for environmental damages is a thematic (or objective) liability while the fault has no place, and what matters is establishing the causal relationship between the act/omission of an act and the damage. Many legal developments around the world regarding demonstrative evidence systems for civil liability for environmental damages also tend towards absolute liability to the extent that even the most loyal professors following the theory of fault state that "although it is not the case today, soon it will turn out that most damages are compensated through strict liability and this theory governs the principle of fault"

Some jurists have spoken about bringing civil liability closer to criminal liability. Several approaches focusing on the unquestionable importance of the environment, its easy access, and its critical role in human life deem that environmental crimes have a completely anti-human nature, and the principle of criminal strictness against these trespassers perpetrators has been the top priority of legislators in some countries. One of the most prominent manifestations of this strictness is seen in identifying the psychological element of environmental crimes. Air polluting behaviors are also an important manifestation of environmental crimes[20].

Environmental crimes could be examined from various legal angles, including a psychological perspective. Analyzing the psychological element of environmental crimes includes crustal material raised in environmental criminal law and is different from the normal procedure of studies in criminal law. Therefore, it could be analyzed as interdisciplinary by both environmental law and criminal law.

Regarding diagnosis, determination, and explanation of civil liability for environmental damages, the criterion of fault theory is used in Iranian law, and seemingly, even though many professors and theorists believe in the establishment of civil liability for environmental damages, the Iranian legal system is far from assuming this type of liability.

More precisely, many theorists of civil liability for environmental damages believe that the environment is the basis of life and the formation of human society; As a result, protecting it is the duty of all human generations. Today's man has more responsibility in this field due to the excessive use of resources. Law, as the official system that shapes human relations, must fulfill its duty in protecting the environment well. For this purpose, solutions have been designed in different branches of law, including public law and private law. Public law by determining the international responsibilities of governments and organizational responsibilities, and private law by specifying civil responsibility do their duty in this case. Civil liability is a tool of private law to protect the property and financial rights of individuals and to compensate for the losses incurred. In civil liability, the damage must be compensated based on traditional principles. The basic elements of civil liability are damage, harmful act, and the causal relationship between the previous two elements. However, due to the specific nature of environmental damages, it is possible that traditional civil liability and its principles be insufficient to meet the goals of civil liability. Therefore, civil liability can improve this role by developing special solutions not specific to environmental damages. These solutions mainly consist of the wider use of no-fault or absolute liability and tolerance in proving the causal relationship. These cause civil liability to play a decisive role in compensating

---

[19] Nowroznia, Roya, Investigation of Civil Liability Caused by Pollution and Damage to the Environment in Iran's Thematic Law and International Conventions, Master's Thesis in Private law, Islamic Azad University, Garmi Branch, 2015, p. 112.

[20] . Raisi, Leila, International Liability Developments due to Environmental Damages according to the Basel Convention, Journal of Man and Environment, 13, 2019, p. 83.

environmental damages and at the same time preventing such damages from occurring[21].
The legislation system regarding the environment includes principles, regulations, and instructions that must be observed not only by the EU institutions and both real and legal members but also should be considered in all the policies of the EU. Therefore, the regulations of liability arising from the violation of these laws are also very comprehensive and strict. In this type of liability, it is assumed that no-fault liability better ensures the implementation of the EU policies and principles for environmental protection.
Seemingly, the main legal document available at the European Union to establish the system of civil liability for environmental damages based on the criterion of absolute liability is the Directive of the European Parliament, 2004, which believes in the realization of civil liability for environmental damages based on environmental liability or civil liability without fault. In this directive, the mere fact that the damage is imminent is considered sufficient to file a claim and the potential damage is allowed to take preventive measures. Another necessary condition for claiming damage is that the direction should be direct. Of course, this condition is more related to verifying the causal relationship between the damage and the person's act, than to the conditions of claimable damage.
The meaning of the condition of direct damage does not mean that no other cause is involved in the occurrence of the damage, but rather it refers to establishing a customary causal relationship. Therefore, when the wind releases the polluting substances of a factory into the air and the villagers suffer from respiratory disease, the usual reference of damage belongs to the factory, and the factory cannot be exempted from paying damages due to the wind. Another condition for proving direct is the ability to predict it based on its nature, not the amount. Regarding the environmental damages liability, based on the following philosophy, this condition should be doubted or at least limited to cases where the polluter was not at fault or negligent in not foreseeing the damage, because, for example, exempting a hospital that discharges its sewage into the city river and makes some people ill, simply because the hospital officials could not predict the damage, is against legal justice and the goal of environmental protection[22].
The most important principle accepted by the European Union based on the belief in absolute civil liability for explaining environmental damages is the "Payment by the polluter", which shapes the basis for the complaints proof system. This principle is determined by the Organization for Economic Cooperation and Development (OECD). This principle refers to the allocation of costs to prevent pollution, established as a control regulation by public authorities, and encourages the members of the European region to use rare environmental resources properly.
Following the changes that occurred in the evidence system regarding civil liability complaints caused by environmental damages, the proof system of these complaints has also evolved. No need for confession in for proving complaints as well as the emphasis on the importance of other proofs, especially in the UAE Legal and judicial proving these complaints are among the most important changes. As much as the judicial authority is disappointed by the action of the defendant to confess an environmentally damaging behavior, he can attend to other evidence, including certificates and legal and judicial presumptions. Therefore, there is no need for the defendant's confession for committing an environmentally damaging behavior; it can be proved based on testimony and evidence of committing, or by referring to legal and judicial presumptions. This is a prominent change in the demonstrative evidence of civil liability for environmental damages since omits the need to obtain the defendant's confession to prove these complaints only with the help of other evidence.
However, the foundation of the civil liability system and proof of liability based on fault in Iran's legal system greatly limits the ability of judges and judicial authorities to transform this system. Despite many lawyers' efforts to convince the legislator and official authorities to accept absolute liability in the field of realizing civil liability for environmental damages, no positive development has occurred in this field in Iran's legal system. The two judicial rulings mentioned before confirm that Iran's legal system is facing a dilemma in changing traditional principles of civil liability caused for environmental damages. While recognizing and accepting the basis of absolute liability, in practice, will help the judicial authorities in easily affirming the liability and guarantee caused

[21] . Mirhosseini, Seyyed Majid and Farsima Khamsipour, Law Governing Civil Liability Claims Due to Environmental Destruction in European Union and Iranian Law, Journal of Strategy, 73, 2013, p. 114.

[22] . Majnounian, Henrik, Global Strategies and Treaties for the Protection of Nature and Living Resources, Journal of Environmental Protection Publications, 9th edition, 2009, p. 271

by environmentally damaging behaviors. The weakness of Iran's legal system in this field is evident while some jurists, referring to several jurisprudence principles including "no harm and loss", believe that in the Islamic legal system, contrary to the notions, the absolutism of civil liability for environmental damages not only existed before but at least these two important rules could be the basis for the official and legal identification of absolute liability for environmental damages in Iran[23].
Close analysis of the European Union's approach to evolution in the system of proving complaints of civil liability for environmental damages reveals important points. Discussions about the expansion of the environmental liability regime in the European Union are very controversial since the tendency towards environmental liability differs in each specific member. These issues often arise from policies related to environmental incidents. The first action for describing the regime of civil liability for environmental damages in the European Union dates back to the Directive on the care and control of hazardous waste transport by ship, 1984.
The first activities were limited to the establishment of a liability regime for damages caused by sewage, which the European Commission presented in 1989 with a proposed directive on civil liability for damages caused by sewage. But this proposal was canceled in 1993 when the commission thought of a broader liability regime. The first high-level goals of the commission are related to the statement of its positions known as the Green Paper on Environmental Liability in 1993, which was written about compensation for environmental damages. This new measure was implemented in the Union at the same time as the signing of the Convention on civil liability for damage resulting from activities dangerous to the environment (Lugano), 1993. This convention is supported by the Council of Europe, which currently has more than 44 members. That is, almost all the countries of the European continent are participating in its discussions, but only 9 countries signed it (Cyprus, Finland, Greece, Iceland, Liechtenstein, Luxembourg, Netherlands, and Portugal).

Conclusion

Protecting the environment is so important that the classical international liability based on the commission of a wrongful act is now shaken, and the strict liability - which only requires proof of the occurrence of harm, the occurrence of a harmful act, and the causal relationship between the harmful act and the damage caused to the environment, - in government activities, judicial procedure, and international arbitration, international documents and even domestic laws have been emphasized. The International Law Commission, by raising the international responsibility resulting from acts not prohibited in international law, through the approval of two draft articles of 2001 on "prevention of transboundary damage caused by risky acts" and the draft principles of 2006 "allocation of damages in damage transboundary due to risky actions", has taken a further step in protecting the environment. It should be noted that the nature of this liability requires that, unlike the responsibility of governments for internationally wrongful acts, there is no longer a need for " full reparation " and "adequate compensation" should be replaced since this type of liability arises from the legal activity and In compensation, it is not necessary to erase all the effects of that activity.
The basic approach of the international liability system to environmental damages is preventive and it has shaped all the differences and approaches. In other words, the international liability law's view of environmental damages is preventive rather than curative. This roots in the vast and some cases, irreparable nature of environmental damages. This preventive approach is manifested in two ways in this type of liability: the development of primary rules through secondary rules, and the acceptance of absolute liability for the operator.
Regarding the development of the primary rules through the secondary rules it should be mentioned that in the liability resulting from non-prohibited actions, the primary rules have been formed based on the secondary rules because prevention is essentially focused on the stage before the secondary rules, and these rules are not included in the prevention filed. Based on this, the International Law Commission has revised the rules of responsibility for non-prohibited acts by following the basic rules, that is, the 2001 articles of the International Law Commission on "prevention of transboundary damage caused by risky acts" and the 2006 principles of the Commission on "allocation of loss in a cross-border damage caused by risky acts".
Regarding accepting absolute liability for the beneficiary, imposing absolute heavy responsibility seems a good motivation for him to avoid damages in the future because he assesses the state of the legal rules governing the responsibility for prohibited acts and finds the most economical way to prevent the occurrence of environmental

[23] . Bahrami Ahmadi, Hamid and Azizullah Fahimi, The Basis of Environmental Civil Liability in Iranian Jurisprudence and Law, Journal of Islamic Law Research, p. 137.

damages as much as possible. So apparently the best way to protect the environment is to prevent damage. In this regard, the International Law Commission has taken an effective step in adopting a preventive approach through the acceptance of absolute liability for the perpetrators of risky acts not prohibited in international law in the 2006 draft of principles regarding "allocation of loss in cross-border damage caused by risky acts ".

The second approach focusing on the responsibility for non-prohibited actions is privatizing liability. In other words, according to the rules of classical international liability, that is, responsibility for internationally wrongful acts, liability is raised at the state level, but in the case of international liability resulting from non-prohibited acts, the responsibility is not only raised at the state level but manifested with a private approach. The approach of privatizing liability in non-prohibited actions has been achieved in two ways: by accepting the initial liability of the beneficiary instead of the responsibility of the government of origin, which is also referred to as channeling the liability towards the beneficiary, and by reducing liability from the intergovernmental level to the internal rights of the government of origin.

The last approach is collective liability. In other words, the liability resulting from risky but not prohibited actions is first imposed on the operator, meaning that he is the one who should compensate for the damage caused, and the government of origin has the duty to, first, guarantee immediate and adequate compensation for the damage by the operator, and secondly, if it is not possible to collect compensation from the operator for any reason, the government will compensate the damage.

As manifested, the questions raised in this research are answered and the hypotheses are proven. In other words, the first hypothesis, regarding changes in the approach of the international liability system towards transboundary damages for dangerous activities (acts not prohibited in international law), especially environmental damages, and the second hypothesis, i.e, the international liability system has been changed regarding prevention of environmental damages, privatization of international liability and collective liability in environmental damages were investigated and proven.

Iran's laws are far from what is going on at the level of the European Union to recognize this important feature of the rules of civil liability for environmental damages. The Iranian legislator is expected to pay attention to this phenomenon in the current situation. Also, the judicial procedure can insist less on the necessity of the principle of individualization of penalties and should compensate more environmental damages by attending to the changes made in the rules of civil liability for environmental damages in the contemporary legal literature around the world.

On the other hand, discussion about the international responsibility of governments for damages to the environment and its components is a new issue that has attracted the attention of the international community, and signs of it can also be found in the sources of international law. Of course, the occurrence of this responsibility depends on the transboundary nature of many environmental damages, which have affected the international community. Although civil liability is a domestic issue, damages are not limited to domestic borders at the environmental level (e.g., pollution caused by nuclear accidents). For this reason, it may have a transnational aspect. A critical issue in this field is determining the person responsible for compensation.

Although at the level of legal doctrine various analyzes and research have been performed and specific proposals have been explicitly suggested to identify both cases in the legal system of civil liability for environmental damages by domestic policymakers, no outstanding changes have occurred in Iran's legal system, while it seems that civil liability for environmental damages is in dire need of both transformations in the nature.

REFERENCES

1. Babaei-Moghadam, Abedin, Examining the Differences between Environmental damages and other Damages and the Effects of a Differential View in the Field of Personal Liability, Master's Thesis in Environmental Law, Shahid Beheshti University, 2013, p. 45.
2. Bahrami Ahmadi, Hamid and Azizullah Fahimi, The Basis of Environmental Civil Liability in Iranian Jurisprudence and Law. Journal of Islamic Law Research, 8 (26), 2016, p. 134.
3. Bahrami Ahmadi, Hamid and Azizullah Fahimi, The Basis of Environmental Civil Liability in Iranian Jurisprudence and Law, Journal of Islamic Law Research, p. 137.
4. Dabiri, Farhad et al., Investigating Compensation for Environmental damages Caused by Transboundary Pollution and International Environmental Destruction, Journal of Human and Environment, 12, 2019, p. 51.
5. Doroodian, Hassan Ali, Civil Laws 4, Civil Liability Laws, Lectures of the Bachelor of Judicial Law, Faculty of Law and Political Sciences, University of Tehran, 2017, p. 83.
6. Draft Principles on the Allocation …, *op. cit.*, p. 127, para. 11.
7. Fahimi, Mustafa, Environmental Criminal Law, Khorsandi Publications, First edition, 2017, pp. 98; And Taghizadeh Ansari,

Mustafa, Environmental Criminal Law, Borna Publications, First edition, 2013, pp. 128-141.
8. Gardner, John, Answering for Crime, Responsibility and Liability in the Criminal Law, Hart Publishing, R A- Duff, 2007, p. 113.
9. Hayward, Tim, Constitutional Environmental Rights, Oxford University Press, USA, 2005, p. 5.
10. J.P.H Trevor(1969) Principles of Civil Liability for Nuclear Damage, in: Nuclear Law for a Developing World, Legal Series, No.5, IAEA, Vienna, p. 109; Liability and Compensation for Nuclear Damage, first edition, NEA/ OECD, Vienna, 1994, p.16.
11. Jan Schnieder, World Public order of the Environment: Towards an International Ecological Law and Organization, University of Toronto Press, Toronto, 2009, p. 168.
12. Katouzian, Nasser, Civil Rights (Compulsory Warranty), First volume, Tehran University Press, 19th edition, 2017, p. 243.
13. Leila Amini, "International Responsibility of Governments due to Environmental Pollution", Master's thesis, Faculty of Law, Shahid Beheshti University, 2019, pp. 26-27.
14. M. B. Akehurst, International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law, NYIL., 2003, p. 3.
15. Majnounian, Henrik, Global Strategies and Treaties for the Protection of Nature and Living Resources, Journal of Environmental Protection Publications, 9th edition, 2009, p. 271.
16. Mirhosseini, Seyyed Majid and Farsima Khamsipour, Law Governing Civil Liability Claims Due to Environmental Destruction in European Union and Iranian Law, Journal of Strategy, 73, 2013, p. 114.
17. Mohsen Zadeh, Ahmad Ali and others, Environmental Law; Theories and Procedures, Publications of Environmental Protection Organization, second edition, 2010, p.51.
18. Nowroznia, Roya, Investigation of Civil Liability Caused by Pollution and Damage to the Environment in Iran's Thematic Law and International Conventions, Master's Thesis in Private law, Islamic Azad University, Garmi Branch, 2015, p. 112.
19. Qasimzadeh, Morteza, Civil liability due to omission, Judiciary Law Journal, No. 44, 2018, p. 51.
20. Ra'ai, Massoud, Fault in civil Liability and Justice, Journal of Legal Knowledge, 1, 2018, p. 173.
21. Raisi, Leila, International Liability Developments due to Environmental Samages according to the Basel Convention, Journal of Man and Environment, 13, 2019, p. 83.
22. Taghrangar, Hassan et al., Researching the Psychological Element in Crimes with Absolute Liability, Journal of Legal Research, N. 43, 2019, p. 75.
23. Vafadar, Ali, Commitment and Responsibility of Governments in Environmental Protection, Journal of Environmental Sciences and Technology, Volume 9, Number 1, 2005, p.59.
24. Wild, Mark L., The Ec Commission’s white paper on Environment Liability: Issues and Implication, Journal of Environmental Law, Vol. 13, No. 1, 2001, p. 27.