Journal of Politic and Law **Volume: 17 / N°: 01 (2025), p.p. 376-386**

Principles of prevention and precaution in environmental responsibility
مبدئي الوقاية والاحتياط في المسؤولية البيئية

Touaibia Hassen[**]
Kasdi merbah university Ouargla (Algeria)
tablathassen@gmail.com

Received: 30/11/2024 ***Accepted: 15/01/2025*** ***Published: 29/01/2025***

Abstract:

Various environmental legislations, whether local or international, have formulated a set of principles that seek to protect the environment within the framework of sustainable development, as some consider them new foundations for liability for environmental damage, but another side believes that these principles are nothing more than new terms for old contents known to civil liability in its traditional form, and the most confusing principles are the prevention principle and the precautionary principle. To achieve the objectives of this study, we followed the analytical approach to shed light on these two principles to resolve the ambiguity that surrounds them.

Keywords: *Environmental legislation, sustainable development, prevention, precaution.*

ملخص:

أتت التشريعات البيئية المختلفة سواء الداخلية او الدولية، بجملة من المبادئ التي تسعى الى حماية البيئة في اطار التنمية المستدامة، واعتبرها البعض أنها تشكل أسسا جديدة للمسؤولية، عن الاضرار البيئية. ورأى جانب آخر أن هذه المبادئ ماهي إلا مسميات جديدة، لمضامين قديمة تعرفها المسؤولية المدنية في صورتها التقليدية. وأكثر المبادئ إثارة لهذا اللبس هما مبدأ الوقاية ومبدأ الاحتياط. ومن خلال هذا المقال وعبر منهج تحليلي نسعى إلى القاء الضوء على هذين المبدئين لفك هذا الغموض الذي يشوبهما.

الكلمات المفتاحية: التشريعات البيئية،تنمية مستدامة،وقاية،احتياط.

[*]*Corresponding author.*

I- Introduction:

The principles of environmental protection that are enshrined in environmental legislation come to achieve harmony between the human right to development, progress and the search for a comfortable life through the exploitation of the environment in which he lives, and the right of this environment (the natural environment) to be protected from the risks of this exploitation, which may cause its destruction.

Therefore, all countries raise the slogan of environmental protection within the framework of sustainable development, as although the stipulation of environmental principles came in general, without specific guidance, many jurisprudence saw these principles as appropriate to achieve optimal protection of the environment from the dangers of pollution, as these principles grant dimensional protection to the environment by facilitating access to the person responsible for pollution, and demanding that he repair the environmental damage by bearing the costs of restoration.

Some of them also provide prior protection for the environment from potential pollution, as they are the strongest methods of protection, embodying the saying that prevention is better than cure, and we have chosen to focus our study on the last type of protection, specifically the principle of prevention and the principle of precaution.

The reason for choosing these two principles for research is the difficulty of disentangling them due to the great overlap between them in terms of content, as many researchers and interested parties use them interchangeably. The second difficulty is that when we discuss the content of environmental legislation as new foundations that civil liability in its traditional form did not know, we discover that these principles are in fact familiar in civil liability, and are not new in the sense that some imagine.

The real problem remains from two angles:

- **The first is that when we talk about them, are we expressing two connotations with the same meaning, or are they two different connotations?**
- **And second, do jurisprudence and the judiciary accept them as foundations for civil liability for environmental damage?**

II. The overlap of the concepts of prevention and precaution:

Precaution against danger means that you seek to avoid it, and in this sense, precaution will only be synonymous with prevention from a linguistic point of view, as the goal of precaution is to avoid danger, which is the same goal for the principle of prevention, but in terminology, the two principles differ in their content and scope.

II.1. The concept of prevention from the perspective of civil liability:

The exceptional nature of environmental damage, especially pure environmental damage, has made modern legal thought focus on the stage preceding the occurrence of damage, and research into the extent of the possibility of pleading civil liability as a proactive mechanism that stops it before it occurs, but such a view conflicts with the stereotypical and common image of civil liability, which is considered a post-mechanism and not a priority (thunis,2006,p.26) as it confronts the damage after it occurs by treating its effect by repairing it morally or materially, because civil liability in its traditional content is a legal system whose scope is to compensate for damages after they occur and not to prevent them,(Sintez,2011,p.24) and it is not specific to future damages that may occur.
This consecrated content of civil liability among most legal scholars has indirectly distanced it from environmental damage, the latter, and because of its seriousness, all those concerned with the issue of the environment, across all specializations, agree to prevent its occurrence from the beginning because the effects it leaves behind after it occurs are difficult to repair, due to the huge financial resources it requires, as compensation in certain cases by returning the situation to what it was is impossible, and it is the best example in which the proverb that prevention is better than cure is applied.

Therefore, before pushing for civil liability as a means of protection from environmental damage in light of the current adaptation of environmental elements, it is preceded by the necessity of rebuilding the civil liability system, whether in terms of its conditions or in terms of its basis or content, which expands its content and includes the idea of prevention or precaution.

It is believed that what is being proposed as a renewal in civil liability is in fact a renewal only in the view of those who used to limit liability to the dimensional forms of the occurrence of damage and deny its preventive form, as many commentators have recently begun to declare the preventive nature of civil liability, and that the principle of prevention is not considered a new basis in civil liability but rather an old basis in it.
- François Triboul said: "It is considered traditional to recognize a preventive function for civil liability, even if it is secondary" (Guy Trébule,2009, p.30).
- Michel Despax said thirty years ago: "We must not underestimate the role of liability in the sense enshrined in civil law, about the damage caused by pollution and its effectiveness in protecting water, instead of material compensation for the damage that has actually occurred, and its preventive characteristic and deterrent effect make it, in the framework of the fight for water safety, a weapon more effective in many respects than threats or imposing fines or punitive measures" (Guy Trébule,2009,p30)

The environment is credited with the prevention and precautionary principles it brought, allowing for the emergence of strong proposals from jurisprudence aimed at renewing the analysis of the preventive function of civil liability (Guy Trébule,p.31), as the preventive aspect of civil liability was not strange to judicial practice, and this aspect has emerged in many cases, it was applied in the field of the literary and artistic property when the judiciary ordered the ban on the screening of a film because it offended the honor of a person, and the screening of a film with the same title as a book was stopped due to the burden of confusion for the public, and the publication of an article containing technical details about the manufacture of a device that decodes an encrypted channel was also banned. The idea of prevention was also applied in the case of unfair competition between merchants, where the sale of a product that was advertised at prices that constituted unfair competition was stopped outside of discount times (Sintez, p.31).

The content of this principle was also applied to unfamiliar neighborhood hazards, before it was explicitly stipulated in French environmental legislation, where the French Court of Cassation ruled in a decision dated 1979 to grant financial compensation for carrying out building reinforcement works, due to the appearance of a risk of collapse, not collapse, on the adjacent floor due to the presence of works that pose a risk that exceeds the usual damages in the neighborhood.

In a decision in 1989, it ruled that the mere presence of a carpentry workshop very close to a plot of land on which a house is located, poses a risk of fire spreading in the event of an outbreak, it also ruled to change the path of throwing golf balls because their path overlooks the occupants of a neighboring residence, and the random throwing of these balls could harm them.

In 2005, it ruled to change the location of piles of hay and straw stored in a barn near a residential property, and despite the fact that hay is a stationary thing, its rapid flammability makes it an undeniable danger, because a small spark is enough to start a fire (Sintez, p.19).

In all these cases, although the conditions for damage were not met, this did not prevent judges from taking preventive measures for damage that had not been achieved, but whose verifiability makes it tantamount to actual damage, what Professor François Guy Trébule, calls harmful risk, and this formulation is appropriate and clearly shows that harmful risk constitutes in itself an act that generates civil liability independently of other damage that occurs if the risk is achieved, as if the potential risk is sufficiently serious and distinct, it is not acceptable to stop the plaintiff who fears the risk being achieved (Guy Trébule,p33).

The Algerian legislator, after amending the Civil Procedure Code, allowed the filing of a lawsuit on the basis of potential interest, which is stated in Article 13 thereof, which states: "No person may litigate unless he has a capacity or an existing or potential interest..." (Law

No. 08-09 dated February 23, 2008, including the Code of Civil and Administrative Procedure, official journal, No. 21 of 2008).

because the potential interest aims to prevent potential harm (Barbara,209, p.38,39). When the danger is potential, the harm is potential, and then the right to file a preventive liability lawsuit arises.

What can be concluded after this presentation is that what was intended to be a new dimension of civil liability under the precautionary principle and the prevention principle is an update of the rules of civil liability through a new type of damage, or as some have said, it is a rediscovery under another name of the moral and legal content of caution in the Aristotelian sense (Le. Tourneau and others, 2012.p24).

Prevention was and still is one of the roles of civil liability (ounas,2007,p.304**),** a role that jurisprudence and legal research have neglected despite mentioning it in rare cases and a modest manner, and the debate over the means of protecting the environment within the framework of civil liability has removed the dust from this role, where studies began to refer to it, especially after the adoption of environmental laws, and its means were given the character of a principle.

II.2. The concept of the precautionary principle:

The confusion of the meaning of precaution with the meaning of prevention in civil liability in its traditional form, has moved to its modern form related to environmental damage, but it is limited to known damages only, as for potential damages that are not known due to the lack of scientific certainty about them, the precautionary principle becomes a framework for this type of damage.

II.2. 1. The concept of the precautionary principle:

Environmental laws have separated between the prevention principle and the precautionary principle, as the prevention principle is concerned with risks that are certain to occur, while precaution is concerned with risks that are likely to occur or those whose occurrence is not certain in light of current scientific knowledge, where knowledge has not separated the degree of verification and confirmation of their occurrence or not.

It is said that the principle of prevention is based on a logical idea founded on a known risk, which can be evaluated and comprehended, while the precautionary principle is based on a hypothetical risk that cannot be remedied, and places responsibility in the interest of doubt on everyone who does not adopt a precautionary and preventive behavior, but it does not include all cases of potential risk, but only those characterized by scientific uncertainty coupled with a serious possibility of serious and irreparable harm occurring (Le Tourneau and others,p.24).

Some have interpreted the idea of prevention in civil liability as the idea of precaution, and have acknowledged that the concept of precaution in the context of civil liability is

completely different from the concept of precaution in the context of the environmental issue, as the latter aims to take precautions due to doubt about the possible results achieved by a product or activity or due to the seriousness and danger of the damages, and their potential comprehensiveness, due to the absence of scientific certainty about them, and as for its concept in the context of civil liability, it means known and confirmed risks, even if they have not yet been achieved(ouanas,p.307, while naming prevention in the context of civil liability as the idea of precaution increases the issue's ambiguity and obscurity, although we believe that the principle of precaution is a specification of the meaning of prevention only.

II.2.2. The allocation of the precautionary principle in the field of environmental damage:

The truth is that the precautionary and prevention principles as content within the framework of civil liability carry the same meaning, and even precaution is one of the aspects of prevention, so when French law commentators talk about prevention, they refer to the precautionary principle (Thunis,p.60)Also, many modern studies of liability resulting from environmental pollution talk about the precautionary principle and do not talk about the prevention principle due to confusion between the concept of prevention and the concept of precaution, which leads us to conclude that the use of either principle depends on the framework in which it is used, where if the framework is ordinary damages with known extent and effects, whether it is related to ordinary damages or environmental damages, then we are dealing with the prevention principle, but if the framework is environmental pollution or potential environmental damages with unknown effects due to the insufficiency of current scientific knowledge about them, then we are dealing with the precautionary principle.

III. Employing the precaution principle in the field of environmental liability:

Before the precaution principle became a basis for supporting civil liability for environmental pollution damages, it went through two stages: **the first** when it was explicitly stipulated in environmental legislation; and in **the second** stage, it began to be declared as a new basis for environmental liability.

III.1. Legislative consecration of the precaution principle:

This principle appeared in Germany, where it was used in the sense of expectation accompanied by taking precautions, and in German vorsorgeprinzip, and it was stipulated in the Chemical Products Act of 1970 to compensate for the damages affecting human life due to those toxic materials, to extend to the environment in 1976, and to be established as a philosophical concept by Hans Jonas(Abd Elaaziz,2014/2015,p.15), then moved to the

international level in 1992, so it came in Principle 15 of the Rio Declaration: "When there are threats of serious or irreversible damage, and the lack of complete scientific certainty, there can be no justification for postponing the adoption of effective measures to prevent environmental degradation" (mara,2013,p.183).

But According to some legal scholars, the precautionary principle first appeared, even if informally, as it was included in most laws published in 1970 before Germany adopted it in the mid-1970s. 80. Some believe that his first appearance took place definitively. declaration of the Stockholm Conference of 1972(Boucheli,2020,p.159).

It was also stipulated in the European Unity Treaty signed in Amsterdam, dated October 20, 1997, in Article 174/2(Sintez,p.50), and was adopted by many legislations, including France, where it was explicitly stipulated in what is known as the Barnier Law of 1995, Article L/1-200 of Law No. 95-101 of February 1995, and it was also explicitly stipulated in Algeria by Law No. 03/10 dated Jumada I 19, 1424 corresponding to July 19, 2003, related to environmental protection within the framework of sustainable development.

III.2. Judicial consecration of the precautionary principle:

The precautionary principle has not been accepted as a new basis for civil liability by many jurists, and the echo of its rejection is still rising today, but experience has proven that judicial practice is what determines the possibility of its implementation or not, and the extent of its effectiveness or not as well, as it is no secret to researchers that many principles of law were established by judicial practice.

III.2.1. The jurisprudential debate about its validity as a basis for environmental responsibility:

France is considered the European Union country in which this principle has sparked the most extensive discussions, and it is the country that has applied it the least directly, as some jurisprudence saw it as a curb on the initiative, which, although it may sometimes be harmful, is not without benefit to the nation at other times (Le. Tourneau and others, p.24). Some have seen this principle as the complete solution, as they expressed it: "This principle breathes the air of the philosophy of science and the sociology of risks, and it is one of the facades of sustainable development and the ideal organizer for our societies that are sick with their unbridled development" (Thunis, p.61).

Denis Mazeaud saw that the precautionary principle is a new basis, leading to a major disturbance in civil liability, as it will be a liability without damage, without a victim, and compensation.

Professor Gilles Martin also saw that the precautionary principle, by imposing new duties, gives new legitimacy to tortuous liability (Prieur,2011, p.1058), and in contrast, others

saw that adopting the precautionary principle is a return to the theory of fault in establishing civil liability so that the natural result in the long term is to remove objective liability.

The jurist Xavier Thunis responded to that by saying: "We do not understand this fear as long as objective liability exempts from considering the nature of the conduct of the one causing the damage, as we do not see how the precautionary principle can lead to a decline in this liability" (Thunis, p.62), without denying that this principle is a revival of the idea of fault or at least an expansion of its scope (Thunis, p62)**.**

In the same vein, some question the legal value of this principle, as it is essentially a return to the starting point for civil liability, and to the idea of lack of caution, care, and foresight (Naoum and Rabahi,2015, p.215)**,** which are a form of negligent error. In this sense, talking about the precautionary principle is talking about the idea of error. What reinforces this is that there are those in jurisprudence who consider the concept brought by the precautionary principle to be more of a moral concept than a legal one, because the liability based on it does not look at errors committed toward the environment, but rather at what must be done within the limits of possibility (Ouanas, p.214). Some have seen that tortuous liability guarantees special protection from the damages of polluting industrial activities (Sintez, p.48).

We respond to those who believe that the precautionary principle is an indirect evocation of the idea of error after civil liability has spent ages trying to become an objective liability, based on the meaning it suggests, at least apparently, where imposing the obligation of precaution on the owners of various activities that may cause damage, by adopting preventive policies and measures that prevent it from occurring, is an obligation to avoid error. We say that if this were actually the case, the judge who is considering the dispute would be required to investigate whether or not the wrongful conduct was wrong, while the judge rules on liability directly, without placing the burden of proving the damage on the injured party.

Even if it is said that the error on the part of the polluter is assumed as soon as the damage occurs, then we return to the same debate that began with the beginnings of civil liability for doing something, and the debate over the issue of assumed error was not accepted by jurisprudence as a basis for civil liability for doing something since its beginnings, but rather it is merely a picture of an imaginary error, and on the other hand, the precautionary principle requires that liability for environmental damage be imposed, even on owners of legitimate activities, which are practiced according to the legally and organizationally defined regulations, which is inconsistent with the idea of error.

III.2.2. Judicial application of the precautionary principle:

Judicially, the beginning of the use of the principle was with the European Union judiciary, which interpreted the idea of health security through the idea of prevention, which

is embodied in the precautionary principle, therefore, its application extended to many legal issues, such as the drug law, the consumer protection law, the genetically modified products law, as well as various technologies (Sintez, p.51).
As for the applications of this principle at the level of the French judiciary, whether administrative or ordinary judiciary, some have highlighted it through two types of disputes, disputes over mobile phone antennas, and defective medicines.

About the French State Council, the principle was to cancel all decisions issued by administrative courts, which ordered the suspension of the installation of these antennas, but outside of this issue, it accepted the content of the precaution without explicitly referring to it, as it did in the case of the contaminated blood (Sintez, p.52).

As for the French Court of Cassation, it did not test the issue of antennas, unlike the subject judiciary, which is full of cases that were presented to it in this regard, but the general feature of the rulings issued is the lack of stability regarding their legal basis, as some of them are based on the harms of the unusual neighborhood, and some of them are based on the precautionary principle, and others refer to both together (Sintez,p.53).

The judicial view was that the harm from these antennas was not proven, and some interpreted the judiciary's return to the theory of unusual neighborhood harm as considering the anxiety caused by fear of a certain danger as in itself a harm that affects health, and requires intervention to stop it (Sintez, p.54). The Versailles Court of Appeal returned to applying the precautionary principle on February 4, 2009 in a striking manner, when it ruled to punish Bouygues Télécom by dismantling its mobile phone antennas installed very close to residential premises.

It is noted that the legal basis for the dispute related to mobile phone antennas divided the judges into those who believe that exposure to the waves of those antennas is in itself a real harm, due to the anxiety generated by fear of illness, without investigating the reality of whether the illness has occurred or not, while there are those who believe that exposure to the waves of those antennas carries a real danger, so they must be dismantled as a precaution(Sintez,p.54). Regarding the disputes over defective medicines, the judges were open to the principle of prevention, and accepted the principle of precaution as a preventive means, which appears through the idea of the commitment to safety, which falls on the shoulders of the medicine producer (Sintez, p.55).

But on the contrary, the Court of Cassation was explicitly opposed, through the decision issued by the Court of Cassation on September 23, 2003, which annulled a decision issued by

the Court of Appeal due to the lack of scientific certainty linking vaccination to the disease, allowing the conclusion of a causal relationship between the damage and the vaccine.
But this opposition was broken by the Court of Cassation, as its judiciary in 2008 began to tend towards accepting the conclusion of a causal relationship despite the lack of scientific certainty (Sintez, p.56), then in 2011 it returned and refused to consider the precautionary principle as a new birth of an independent compensation system (Le. tourneau and others, p.24).
Some have seen that this principle does not create special obligations on the shoulders of persons of private law, and is directed only to public authorities (Le. tourneau and others, p.24), and in doing so they want to distance the ordinary judge in some environmental matters, which was rejected by the French Court of Cassation, as it approved this judiciary to take preventive measures (cass, 3eme civ n°28 13.01. 2010, (08-12.221).

IV.Conclusion:

Based on the above, and in response to the question we posed at the beginning of the study, we say that civil liability in its traditional form, when it requires taking measures to avoid traditional damage, these measures will only have a preventive meaning, but when it comes to environmental damage or environmental pollution, and when environmental laws require taking proactive measures that prevent potential damage from a risk that has not been confirmed by current scientific knowledge, there is no meaning to these measures other than the meaning of precaution.
Thus, the jurisdiction of each of the two principles is determined, as previously stated, when it is clear that the environmental damage is known in advance, then the indication that we use for the measures taken to avoid it is called prevention; but if the danger threatening the environment has harmful results and current scientific experience and knowledge have not revealed its extent, then the indication for the measures that seek to avoid the danger is precaution.

Apart from the ambiguity or overlap between the meaning of the two terms, we can say that jurisprudence and the judiciary are still hesitant to accept them, and the judicial rulings issued here and there have not reached the level of stability, which would allow it to be said that the prevention principle and the precautionary principle have become two new principles of civil liability, at least with regard to environmental damage, but our words are limited by the factor of our present time, and we cannot be certain of what will happen in the future.

Finally, it should be noted that the jurisprudential debate on the two principles justifies the continuous efforts of jurists to find effective alternative solutions that prevent harm, regardless of its nature, as it is a very noble task, although we, as lawyers, often say that the

rules of law are rules of conduct, but when it comes to harm, we cannot ignore that the matter is surrounded by ethics from every side. We cannot also deny the merit of lawyers who embraced the precautionary principle and adopted it as a new means of claiming (cass.civ, 1 15.03.2017, No. 16-24055 unpublished) or defending, regardless of the judges' response to that, to revive judicial practice with a new type of legal foundation, which was an opportunity to test the judicial point of view.

- ## References:

I. **Books:**

- Cyril Sintez, (2011). La sanction préventive de la responsabilité civile, France : Dalloz.
- François Guy Trébule, (2009) introductory reflection, in Chantal Cans, Environmental responsibility, Paris : Dalloz.
- François Guy Trébule, (2009). The functions of environmental responsibility, Paris Dalloz.
- Michel prieur, (2011). Environmental law, France : Dalloz, 6eme édition,

Philippe. Le.tourneau et autres, (2012). law of civil liability and contracts,Pris :Dalloz.

II. Thesis:

Bouchelif Noureddine, (2020), Legal basis for civil liability for environmental damage, research presented for obtaining a doctorate in law. Mouloud Mouloud Mammeri.University.Tizi-Ouzou

Ouanas yahya, 2007.Legal mechanisms for environmental protection, unpublished research presented for obtaining a doctorate in law, University of Tlemcen.