Study Compensation for Environmental Damage in the Legal Systems of Iran and Turkey

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Abstract

One of the basic rights of people is the right to use a clean environment as an inseparable part of human rights. However, the complete exploitation of this right encounters some difficulties due to the demolition and degradation of the environment by private and artificial entities, as well as by natural disasters. Attention to the environment has been emphasized by human reason and by all religions, including Islam, which is a manifest religion; more than ninety verses of the holy book of Islam contain environmental content, indicating the great importance of the environment in Islam. In this era, the protection of the environment has become an international challenge, insofar as the United Nations has declared environmental security as one of the seven factors of human security. In recent years, most countries around the world have experienced economic, industrial, and technological progress in various fields; however, this growth and progress have provided more opportunities for environmental abuse than in the past. Likewise, countries such as Iran and Turkey are not exceptions to this issue. Identifying environmental losses and establishing a clear and responsible system for compensating part of these damages is one of the challenges faced by the legal systems of both countries. Environmental damage refers to harm inflicted upon a place or territory, which includes consequences such as air pollution, soil contamination, nuclear pollution, and so on. For this reason, one of the main and essential issues in both countries is to develop indicators of environmental losses alongside mechanisms for compensating them. Therefore, the necessity of compensating losses resulting from environmental crimes has been recognized and accepted in both general and specific laws of Iran and Turkey.

In Iran's legal system, one of the main solutions for protecting the environment against risks, destruction, and degradation is the establishment of legal and criminal guarantees. In this way, the spirit of Article 50 of the Iranian constitution –which regards the protection of the environment as a public duty- is fully realized.

Regarding Turkey, economic, technological, and industrial growth has required significant expenditures, especially in areas related to the environment. Consequently, this has led policymakers to pay greater attention to environmental protection. In this country, general laws such as Article 737 of the Civil Code adopted in (1926) regarding the right of the neighbor and Articles 184 and 185 of the Criminal Code adopted in (2004) and specific environmental laws have all provided legal and criminal guarantees. Moreover, the necessity of compensating environmental damages has been legalized in

various laws, including the Environmental Laws 1983. Turkey has also participated in numerous international environmental conventions and accepted their obligations.

Among Turkey's legislative advancements in supporting and protecting the environment is the adoption of the "strict liability" principle under Article 30 of its environmental law. This theory, based on the concept of responsibility without fault, ensures that the burden of proving loss and damage does not rest on the injured party, thus avoiding the difficulties associated with the fault-based theory. Similarly, it is expected that in Iran's legal system, the legislature will adopt a clearer basis for compensating environmental losses and consider theories other than the fault-based approach. Under the fault theory, the burden of proving damage and causation falls on the injured party. However, proving causation- especially in complex environmental issues such as air pollution- is extremely difficult and costly, often discouraging victims from seeking compensation.

In both the legal systems of Iran and Turkey, similar solutions and methods are used to compensate for environmental damages. In Iran, these include restoration to the previous condition and payment of damages. Each of these methods, although appropriate, is not without its drawbacks. For example, in the method of paying for damages, how can damage to public property be assessed in money? Another is that the injured party is not obliged to spend the money received on compensating for environmental damage, and also, paying compensation does not eliminate the source of the damage and only compensates for the losses incurred; therefore, this method cannot prevent the development of environmental damage. While in Turkey compensation is often made through monetary payments and environmental taxes. However, greater attention has been paid in Turkey to the concept of the green economy as a method of loss compensation. In other words, in the modern era, the close relationship between the economy and the environment has led to the emergence of a new approach called the green economy. A Green economy promotes social welfare and reduces inequality while minimizing environmental risks by linking long-term social benefits with short-term economic activities. In fact, the green economy is one of the most important mechanisms for achieving sustainable development. In recent years, Turkey has supported industrial regions through policies and strategic initiatives that facilitate the transition toward a green economy. These include tax reductions, financial incentives, infrastructure support, and educational and consulting services promoting environmental sustainability.

Finally, in Turkey's legal system, the possibility for ordinary citizens, NGOs, and non-governmental organizations to bring civil claims for environmental losses- alongside the protection of public and common resources- is more clearly recognized and facilitated. In Iran's legal system, such participation is only partially anticipated. The problem with this legislative approach is that it has not taken the necessary steps to expand the participation of these organizations, because not only are they prohibited from intervening as plaintiffs in criminal matters, but they also do not have the right to appeal the verdict. Thus, by creating these restrictions for these organizations, one cannot expect them to provide proper environmental protection.

Keywords: fault, liability without fault, compensation for damage, environment, green economy.

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